

REFERENCE TITLE: municipal development fees; technical correction

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1406

Introduced by
Senator Bee

AN ACT

AMENDING SECTION 9-463.05, ARIZONA REVISED STATUTES; RELATING TO MUNICIPAL
SUBDIVISION REGULATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-463.05, Arizona Revised Statutes, is amended to
3 read:

4 9-463.05. Development fees; imposition by cities and towns;
5 infrastructure improvements plan; annual report;
6 limitation on actions; definition

7 A. A municipality may assess development fees to offset costs to the
8 municipality associated with providing necessary public services to a
9 development, including the costs of infrastructure, improvements, real
10 property, engineering and architectural services, financing, other capital
11 costs and associated appurtenances, equipment, vehicles, furnishings and
12 other personalty.

13 B. Development fees assessed by a municipality under this section are
14 subject to the following requirements:

15 1. Development fees shall result in a beneficial use to the
16 development.

17 2. Monies received from development fees assessed pursuant to this
18 section shall be placed in a separate fund and accounted for separately and
19 may only be used for the purposes authorized by this section. Monies
20 received from a development fee identified in an infrastructure improvements
21 plan adopted or amended pursuant to subsection D of this section shall be
22 used to provide the same category of necessary public service for which the
23 development fee was assessed. Interest earned on monies in the separate fund
24 shall be credited to the fund.

25 3. The schedule for payment of fees shall be provided by the
26 municipality. The municipality shall provide a credit toward the payment of
27 a development fee for the required dedication of public sites, improvements
28 and other necessary public services included in the infrastructure
29 improvements plan and for which a development fee is assessed, to the extent
30 the public sites, improvements and necessary public services are provided by
31 the developer. The developer of residential dwelling units shall be required
32 to pay development fees when construction permits for the dwelling units are
33 issued, or at a later time if specified in a development agreement pursuant
34 to section 9-500.05. If a development agreement provides for fees to be paid
35 at a time later than the issuance of construction permits, the deferred fees
36 shall be paid no later than fifteen days after the issuance of a certificate
37 of occupancy. The development agreement shall provide for the value of any
38 deferred fees to be supported by appropriate security, including a surety
39 bond, letter of credit or cash bond.

40 4. The amount of any development fees assessed pursuant to this
41 section must bear a reasonable relationship to the burden imposed ~~upon~~ ON the
42 municipality to provide additional necessary public services to the
43 development. The municipality, in determining the extent of the burden
44 imposed by the development, shall consider, among other things, the
45 contribution made or to be made in the future in cash or by taxes, fees or

1 assessments by the property owner towards the capital costs of the necessary
2 public service covered by the development fee.

3 5. If development fees are assessed by a municipality, such fees shall
4 be assessed in a nondiscriminatory manner.

5 6. In determining and assessing a development fee applying to land in
6 a community facilities district established under title 48, chapter 4,
7 article 6, the municipality shall take into account all public infrastructure
8 provided by the district and capital costs paid by the district for necessary
9 public services and shall not assess a portion of the development fee based
10 on the infrastructure or costs.

11 C. A municipality shall give at least sixty days' advance notice of
12 intention to assess a new or modified development fee and shall release to
13 the public a written report that identifies the methodology for calculating
14 the amount of the development fee, explains the relationship between the
15 development fee and the infrastructure improvements plan, includes
16 documentation that supports the assessment of a new or modified development
17 fee and identifies any index or indices to be used for automatic adjustment
18 of the development fee pursuant to subsection F of this section and the
19 timing of those adjustments. The municipality shall conduct a public hearing
20 on the proposed new or modified development fee at any time after the
21 expiration of the sixty day notice of intention to assess a new or modified
22 development fee and at least thirty days prior to the scheduled date of
23 adoption of the new or modified fee by the governing body. A development fee
24 assessed pursuant to this section shall not be effective until seventy-five
25 days after its formal adoption by the governing body of the municipality.
26 Nothing in this subsection shall affect any development fee adopted prior to
27 July 24, 1982.

28 D. Before the assessment of a new or modified development fee, the
29 governing body of the municipality shall adopt or amend an infrastructure
30 improvements plan. The municipality shall conduct a public hearing on the
31 infrastructure improvements plan at least thirty days before the adoption or
32 amendment of the plan. The municipality shall release the plan to the
33 public, make available to the public the documents used to prepare the plan
34 and provide public notice at least sixty days before the public hearing,
35 subject to the following:

36 1. An infrastructure improvements plan may be adopted concurrently
37 with the report required by subsection C of this section, and the
38 municipality may provide for and schedule the notices and hearings required
39 by this subsection together with the notices and hearings required by
40 subsection C of this section.

41 2. A municipality may amend an infrastructure improvements plan
42 without a public hearing if the amendment addresses only elements of
43 necessary public services that are included in the existing infrastructure
44 improvements plan. The municipality shall provide public notice of those
45 amendments at least fourteen days in advance of their effective date.

1 E. For each necessary public service that is the subject of a
2 development fee, the infrastructure improvements plan shall:

3 1. Estimate future necessary public services that will be required as
4 a result of new development and the basis for the estimate.

5 2. Forecast the costs of infrastructure, improvements, real property,
6 financing, other capital costs and associated appurtenances, equipment,
7 vehicles, furnishings and other personalty that will be associated with
8 meeting those future needs for necessary public services and estimate the
9 time required to finance and provide the necessary public services.

10 F. A municipality may automatically adjust a development fee on an
11 annual basis without a public hearing if the adjustment is based on a
12 nationally recognized index applicable to the cost of the necessary public
13 service that is the subject of the development fee and the adjustment
14 mechanism is identified in the report required by subsection C of this
15 section. The municipality shall provide public notice of those adjustments
16 at least thirty days in advance of their effective date.

17 G. Each municipality that assesses development fees shall submit an
18 annual report accounting for the collection and use of the fees. The annual
19 report shall include the following:

20 1. The amount assessed by the municipality for each type of
21 development fee.

22 2. The balance of each fund maintained for each type of development
23 fee assessed as of the beginning and end of the fiscal year.

24 3. The amount of interest or other earnings on the monies in each fund
25 as of the end of the fiscal year.

26 4. The amount of development fee monies used to repay:

27 (a) Bonds issued by the municipality to pay the cost of a capital
28 improvement project that is the subject of a development fee assessment.

29 (b) Monies advanced by the municipality from funds other than the
30 funds established for development fees in order to pay the cost of a capital
31 improvement project that is the subject of a development fee assessment.

32 5. The amount of development fee monies spent on each capital
33 improvement project that is the subject of a development fee assessment and
34 the physical location of each capital improvement project.

35 6. The amount of development fee monies spent for each purpose other
36 than a capital improvement project that is the subject of a development fee
37 assessment.

38 H. Within ninety days following the end of each fiscal year, each
39 municipality shall submit a copy of the annual report to the city clerk.
40 Copies shall be made available to the public on request. The annual report
41 may contain financial information that has not been audited.

42 I. A municipality that fails to file the report required by this
43 section shall not collect development fees until the report is filed.

44 J. Any action to collect a development fee shall be commenced within
45 two years after the obligation to pay the fee accrues.

1 K. For the purposes of this section, "infrastructure improvements
2 plan" means one or more written plans that individually or collectively
3 identify each public service that is proposed to be the subject of a
4 development fee and otherwise complies with the requirements of this section,
5 and may be the municipality's capital improvements plan.