

REFERENCE TITLE: municipal development fees; procedures

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1423

Introduced by
Senator Bee; Representative McClure

AN ACT

AMENDING SECTION 9-463.05, ARIZONA REVISED STATUTES; RELATING TO MUNICIPAL
DEVELOPMENT FEES.

(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; definitions

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 ALL NECESSARY OR DESIRABLE APPURTENANCES, EQUIPMENT, VEHICLES,
12 FURNISHINGS AND 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 MAY BE USED ONLY TO PROVIDE THE SAME
21 NECESSARY PUBLIC SERVICE FOR WHICH THE DEVELOPMENT FEE WAS ASSESSED.
22 Interest earned on monies in the separate fund shall be credited to the fund.

23 3. The schedule for payment of fees shall be provided by the
24 municipality. The municipality shall provide a credit toward the payment of
25 a development fee for the required dedication of public sites and
26 improvements provided by the developer for which that development fee is
27 assessed. The developer ~~of residential dwelling units~~ shall be required to
28 pay development fees when construction permits ~~for the dwelling units~~ are
29 issued, OR AT A LATER TIME IF SPECIFIED IN A DEVELOPMENT AGREEMENT PURSUANT
30 TO SECTION 9-500.05. IF A DEVELOPMENT AGREEMENT PROVIDES FOR FEES TO BE PAID
31 AT A TIME LATER THAN THE ISSUANCE OF CONSTRUCTION PERMITS, THE DEFERRED FEES
32 SHALL BE PAID NO LATER THAN THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY. THE
33 DEVELOPMENT AGREEMENT MAY PROVIDE FOR THE VALUE OF ANY DEFERRED FEES TO BE
34 SUPPORTED BY APPROPRIATE SECURITY, INCLUDING A SURETY BOND, LETTER OF CREDIT
35 OR CASH BOND.

36 4. The amount of any development fees assessed pursuant to this
37 section must bear a reasonable relationship to the burden imposed upon the
38 municipality to provide additional necessary public services to the
39 development. The municipality, in determining the extent of the burden
40 imposed by the development, shall consider, among other things, the
41 contribution made or to be made in the future in cash or by taxes, fees or
42 assessments by the property owner towards the capital costs of the necessary
43 public service covered by the development fee.

44 5. If development fees are assessed by a municipality, such fees shall
45 be assessed in a ~~non-discriminatory~~ NONDISCRIMINATORY manner.

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

7 C. A municipality shall give at least sixty days' advance notice of
8 intention to assess a new or ~~increased~~ MODIFIED development fee and shall
9 release to the public a written report ~~including all~~ THAT IDENTIFIES THE
10 METHODOLOGY FOR CALCULATING THE AMOUNT OF THE DEVELOPMENT FEE, EXPLAINS THE
11 RELATIONSHIP BETWEEN THE DEVELOPMENT FEE AND THE INFRASTRUCTURE IMPROVEMENTS
12 PLAN, INCLUDES documentation that supports the assessment of a new or
13 ~~increased~~ MODIFIED development fee AND IDENTIFIES ANY INDEX OR INDICES TO BE
14 USED FOR AUTOMATIC ADJUSTMENT OF THE DEVELOPMENT FEE PURSUANT TO SUBSECTION
15 F OF THIS SECTION AND THE TIMING OF THOSE ADJUSTMENTS. The municipality
16 shall conduct a public hearing on the proposed new or ~~increased~~ MODIFIED
17 development fee at any time after the expiration of the sixty day notice of
18 intention to assess a new or ~~increased~~ MODIFIED development fee and at least
19 fourteen days prior to the scheduled date of adoption of the new or ~~increased~~
20 MODIFIED fee by the governing body. A development fee assessed pursuant to
21 this section shall not be effective until ninety days after its formal
22 adoption by the governing body of the municipality. Nothing in this
23 subsection shall affect any development fee adopted prior to July 24, 1982.

24 D. BEFORE THE ASSESSMENT OF A NEW OR MODIFIED DEVELOPMENT FEE, THE
25 GOVERNING BODY OF THE MUNICIPALITY SHALL ADOPT OR AMEND AN INFRASTRUCTURE
26 IMPROVEMENTS PLAN. THE MUNICIPALITY SHALL CONDUCT A PUBLIC HEARING ON THE
27 INFRASTRUCTURE IMPROVEMENTS PLAN AT LEAST FOURTEEN DAYS BEFORE THE ADOPTION
28 OR AMENDMENT OF THE PLAN. THE MUNICIPALITY SHALL RELEASE THE PLAN TO THE
29 PUBLIC AND PROVIDE PUBLIC NOTICE AT LEAST THIRTY DAYS BEFORE THE PUBLIC
30 HEARING, SUBJECT TO THE FOLLOWING:

31 1. AN INFRASTRUCTURE IMPROVEMENTS PLAN MAY BE ADOPTED CONCURRENTLY
32 WITH THE REPORT REQUIRED BY SUBSECTION C OF THIS SECTION, AND THE
33 MUNICIPALITY MAY PROVIDE FOR AND SCHEDULE THE NOTICES AND HEARINGS REQUIRED
34 BY THIS SUBSECTION TOGETHER WITH THE NOTICES AND HEARINGS REQUIRED BY
35 SUBSECTION C OF THIS SECTION.

36 2. A MUNICIPALITY MAY AMEND AN INFRASTRUCTURE IMPROVEMENTS PLAN
37 WITHOUT A PUBLIC HEARING IF THE AMENDMENT ADDRESSES ONLY ELEMENTS OF
38 NECESSARY PUBLIC SERVICES THAT ARE INCLUDED IN THE EXISTING INFRASTRUCTURE
39 IMPROVEMENTS PLAN. THE MUNICIPALITY SHALL PROVIDE PUBLIC NOTICE OF THOSE
40 AMENDMENTS AT LEAST FOURTEEN DAYS IN ADVANCE OF THEIR EFFECTIVE DATE.

41 E. FOR EACH NECESSARY PUBLIC SERVICE THAT IS THE SUBJECT OF A
42 DEVELOPMENT FEE, THE INFRASTRUCTURE IMPROVEMENTS PLAN SHALL:

43 1. ESTIMATE FUTURE NECESSARY PUBLIC SERVICES THAT WILL BE REQUIRED AS
44 A RESULT OF NEW DEVELOPMENT.

1 2. FORECAST THE COSTS OF INFRASTRUCTURE, IMPROVEMENTS, REAL PROPERTY,
2 FINANCING, OTHER CAPITAL COSTS AND ALL NECESSARY OR DESIRABLE APPURTENANCES,
3 EQUIPMENT, VEHICLES, FURNISHINGS AND OTHER PERSONALTY THAT WILL BE ASSOCIATED
4 WITH MEETING THOSE FUTURE NEEDS FOR NECESSARY PUBLIC SERVICES.

5 3. PROVIDE DOCUMENTATION THAT SUPPORTS THE INFRASTRUCTURE IMPROVEMENTS
6 PLAN.

7 F. A MUNICIPALITY MAY AUTOMATICALLY ADJUST A DEVELOPMENT FEE ON AN
8 ANNUAL BASIS WITHOUT A PUBLIC HEARING IF THE ADJUSTMENT IS BASED ON A
9 NATIONALLY RECOGNIZED INDEX APPLICABLE TO THE COST OF THE NECESSARY PUBLIC
10 SERVICE THAT IS THE SUBJECT OF THE DEVELOPMENT FEE AND THE ADJUSTMENT
11 MECHANISM IS IDENTIFIED IN THE REPORT REQUIRED BY SUBSECTION C OF THIS
12 SECTION. THE MUNICIPALITY SHALL PROVIDE PUBLIC NOTICE OF THOSE ADJUSTMENTS
13 AT LEAST THIRTY DAYS IN ADVANCE OF THEIR EFFECTIVE DATE.

14 ~~D.~~ G. Each municipality that assesses development fees shall submit
15 an annual report accounting for the collection and use of the fees. The
16 annual report shall include the following:

17 1. The amount assessed by the municipality for each type of
18 development fee.

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

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

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

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

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

29 5. The amount of development fee monies spent on each capital
30 improvement project that is the subject of a development fee assessment and
31 the physical location of each capital improvement project.

32 6. The amount of development fee monies spent for each purpose other
33 than a capital improvement project that is the subject of a development fee
34 assessment.

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

39 ~~F.~~ I. A municipality that fails to file the report required by this
40 section shall not collect development fees until the report is filed.

41 J. ANY ACTION TO COLLECT A DEVELOPMENT FEE SHALL BE COMMENCED WITHIN
42 TWO YEARS AFTER THE OBLIGATION TO PAY THE FEE ACCRUES.

43 K. FOR THE PURPOSES OF THIS SECTION:

44 1. "INFRASTRUCTURE IMPROVEMENTS PLAN" MEANS ONE OR MORE WRITTEN PLANS
45 THAT INDIVIDUALLY OR COLLECTIVELY IDENTIFY EACH PUBLIC SERVICE THAT IS

1 PROPOSED TO BE THE SUBJECT OF A DEVELOPMENT FEE AND OTHERWISE COMPLIES WITH
2 THE REQUIREMENTS OF THIS SECTION, AND MAY BE THE MUNICIPALITY'S CAPITAL
3 IMPROVEMENTS PLAN.

4 2. "NECESSARY PUBLIC SERVICES" MEANS SERVICES THAT ARE WITHIN THE
5 SCOPE OF SERVICES A MUNICIPALITY IS AUTHORIZED TO PROVIDE, INCLUDING WATER
6 SYSTEMS FOR DOMESTIC, INDUSTRIAL, IRRIGATION OR FIRE PROTECTION PURPOSES,
7 WATER RESOURCES, SANITARY SEWAGE SYSTEMS, SOLID WASTE FACILITIES, DRAINAGE
8 AND FLOOD CONTROL SYSTEMS, STREETS, ROADWAYS, BRIDGES AND PARKING FACILITIES,
9 AREAS FOR PEDESTRIAN, BICYCLE OR OTHER NONMOTOR VEHICLE USE, LIBRARIES,
10 PARKS, RECREATIONAL FACILITIES, LANDSCAPING, PUBLIC BUILDINGS, PUBLIC SAFETY
11 FACILITIES, FIRE PROTECTION FACILITIES, LIGHTING SYSTEMS, EQUIPMENT REPAIR
12 FACILITIES AND TRAFFIC CONTROL SYSTEMS AND DEVICES.

13 Sec. 2. Applicability

14 Section 9-463.05, Arizona Revised Statutes, as amended by this act,
15 applies to development fees adopted or amended on or after the effective date
16 of this act and shall not affect development fees duly adopted or amended
17 before the effective date of this act.