Arizona Revised Statutes Annotated
Title 9. Cities and Towns
Chapter 4. General Powers
Article 6.2. Municipal Subdivision Regulations (Refs & Annos)

A.R.S. § 9-463.05

§ 9-463.05. Development fees; imposition by cities and towns; infrastructure improvements plan; annual report; advisory committee; limitation on actions; definitions

Effective: January 1, 2012

Currentness

A. A municipality may assess development fees to offset costs to the municipality associated with providing necessary public services to a development, including the costs of infrastructure, improvements, real property, engineering and architectural services, financing and professional services required for the preparation or revision of a development fee pursuant to this section, including the relevant portion of the infrastructure improvements plan.

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

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

2. The municipality shall calculate the development fee based on the infrastructure improvements plan adopted pursuant to this section.

3. The development fee shall not exceed a proportionate share of the cost of necessary public services, based on service units, needed to provide necessary public services to the development.

4. Costs for necessary public services made necessary by new development shall be based on the same level of service provided to existing development in the service area.

5. Development fees may not be used for any of the following:

(a) Construction, acquisition or expansion of public facilities or assets other than necessary public services or facility expansions identified in the infrastructure improvements plan.

(b) Repair, operation or maintenance of existing or new necessary public services or facility expansions.

(c) Upgrading, updating, expanding, correcting or replacing existing necessary public services to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards.

(d) Upgrading, updating, expanding, correcting or replacing existing necessary public services to provide a higher level of service to existing development.

(e) Administrative, maintenance or operating costs of the municipality.

6. Any development for which a development fee has been paid is entitled to the use and benefit of the services for which the fee was imposed and is entitled to receive immediate service from any existing facility with available capacity to serve the new service units if the available capacity has not been reserved or pledged in connection with the construction or financing of the facility.

7. Development fees may be collected if any of the following occurs:

(a) The collection is made to pay for a necessary public service or facility expansion that is identified in the infrastructure improvements plan and the municipality plans to complete construction and to have the service available within the time period established in the infrastructure improvement plan, but in no event longer than the time period provided in subsection H, paragraph 3 of this section.

(b) The municipality reserves in the infrastructure improvements plan adopted pursuant to this section or otherwise agrees to reserve capacity to serve future development.

(c) The municipality requires or agrees to allow the owner of a development to construct or finance the necessary public service or facility expansion and any of the following apply:

(i) The costs incurred or money advanced are credited against or reimbursed from the development fees otherwise due from a development.

(ii) The municipality reimburses the owner for those costs from the development fees paid from all developments that will use those necessary public services or facility expansions.

(iii) For those costs incurred the municipality allows the owner to assign the credits or reimbursement rights from the development fees otherwise due from a development to other developments for the same category of necessary public services in the same service area.

8. Projected interest charges and other finance costs may be included in determining the amount of development fees only if the monies are used for the payment of principal and interest on the portion of the bonds, notes or other obligations issued to finance construction of necessary public services or facility expansions identified in the infrastructure improvements plan.

9. Monies received from development fees assessed pursuant to this section shall be placed in a separate fund and accounted for separately and may only be used for the purposes authorized by this section. Monies received from a development fee identified in an infrastructure improvements plan adopted or updated pursuant to subsection D of this section shall be used to provide the same category of necessary public services or facility expansions for which the development fee was assessed and for the benefit of the same service area, as defined in the infrastructure improvements plan, in which the development fee was assessed. Interest earned on monies in the separate fund shall be credited to the fund.

10. The schedule for payment of fees shall be provided by the municipality. Based on the cost identified in the infrastructure improvements plan, the municipality shall provide a credit toward the payment of a development fee for the required or agreed to dedication of public sites, improvements and other necessary public services or facility expansions included in the infrastructure improvements plan and for which a development fee is assessed, to the extent the public sites, improvements and necessary public services or facility expansions are provided by the developer. The developer of residential dwelling units shall be required to pay development fees when construction permits for the dwelling units are issued, or at a later time if specified in a development agreement pursuant to § 9-500.05. If a development agreement provides for fees to be paid at a time later than the issuance of construction permits, the deferred fees shall be paid no later than fifteen days after the issuance of a certificate of occupancy. The development agreement shall provide for the value of any deferred fees to be supported by appropriate security, including a surety bond, letter of credit or cash bond.

11. If a municipality requires as a condition of development approval the construction or improvement of, contributions to or dedication of any facilities that were not included in a previously adopted infrastructure improvements plan, the municipality shall cause the infrastructure improvements plan to be amended to include the facilities and shall provide a credit toward the payment of a development fee for the construction, improvement, contribution or dedication of the facilities to the extent that the facilities will substitute for or otherwise reduce the need for other similar facilities in the infrastructure improvements plan for which development fees were assessed.

12. The municipality shall forecast the contribution to be made in the future in cash or by taxes, fees, assessments or other sources of revenue derived from the property owner towards the capital costs of the necessary public service covered by the development fee and shall include these contributions in determining the extent of the burden imposed by the development. Beginning August 1, 2014, for purposes of calculating the required offset to development fees pursuant to this subsection, if a municipality imposes a construction contracting or similar excise tax rate in excess of the percentage amount of the transaction privilege tax rate imposed on the majority of other transaction privilege tax classifications, the entire excess portion of the construction contracting or similar excise tax shall be treated as a contribution to the capital costs of necessary public services provided to development for which development fees are assessed, unless the excess portion was already taken into account for such purpose pursuant to this subsection.

13. If development fees are assessed by a municipality, the fees shall be assessed against commercial, residential and industrial development, except that the municipality may distinguish between different categories of residential, commercial and industrial development in assessing the costs to the municipality of providing necessary public services to new development and in determining the amount of the development fee applicable to the category of development. If a municipality agrees to waive any of the development fees assessed on a development, the municipality shall reimburse the appropriate development fee accounts for the amount that was waived. The municipality shall provide notice of any such waiver to the advisory committee established pursuant to subsection G of this section within thirty days.

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

C. A municipality shall give at least thirty days' advance notice of intention to assess a development fee and shall release to the public and post on its website or the website of an association of cities and towns if a municipality does not have a web site a written report of the land use assumptions and infrastructure improvements plan adopted pursuant to subsection D of this section. The municipality shall conduct a public hearing on the proposed development fee at any time after the expiration of the thirty day notice of intention to assess a development fee and at least thirty days before the scheduled date of adoption of the fee by the governing body. Within sixty days after the date of the public hearing on the proposed development fee, a municipality shall approve or disapprove the imposition of the development fee. A municipality shall not adopt an ordinance, order or resolution approving a development fee as an emergency measure. A development fee assessed pursuant to this section shall not be effective until seventy-five days after its formal adoption by the governing body of the municipality. Nothing in this subsection shall affect any development fee adopted before July 24, 1982.

D. Before the adoption or amendment of a development fee, the governing body of the municipality shall adopt or update the land use assumptions and infrastructure improvements plan for the designated service area. The municipality shall conduct a public hearing on the land use assumptions and infrastructure improvements plan at least thirty days before the adoption or update of the plan. The municipality shall release the plan to the public, post the plan on its website or the website of an association of cities and towns if the municipality does not have a website, including in the posting its land use assumptions, the time period of the projections, a description of the necessary public services included in the infrastructure improvements plan and a map of the service area to which the land use assumptions apply, make available to the public the documents used to prepare the assumptions and plan and provide public notice at least sixty days before the public hearing, subject to the following:

1. The land use assumptions and infrastructure improvements plan shall be approved or disapproved within sixty days after the public hearing on the land use assumptions and infrastructure improvements plan and at least thirty days before the public hearing on the report required by subsection C of this section. A municipality shall not adopt an ordinance, order or resolution approving the land use assumptions or infrastructure improvements plan as an emergency measure.

2. An infrastructure improvements plan shall be developed by qualified professionals using generally accepted engineering and planning practices pursuant to subsection E of this section.

3. A municipality shall update the land use assumptions and infrastructure improvements plan at least every five years. The initial five year period begins on the day the infrastructure improvements plan is adopted. The municipality shall review and evaluate its current land use assumptions and shall cause an update of the infrastructure improvements plan to be prepared pursuant to this section.

4. Within sixty days after completion of the updated land use assumptions and infrastructure improvements plan, the municipality shall schedule and provide notice of a public hearing to discuss and review the update and shall determine whether to amend the assumptions and plan.

5. A municipality shall hold a public hearing to discuss the proposed amendments to the land use assumptions, the infrastructure improvements plan or the development fee. The land use assumptions and the infrastructure improvements plan, including the amount of any proposed changes to the development fee per service unit, shall be made available to the public on or before the date of the first publication of the notice of the hearing on the amendments.

6. The notice and hearing procedures prescribed in paragraph 1 of this subsection apply to a hearing on the amendment of land use assumptions, an infrastructure improvements plan or a development fee. Within sixty days after the date of the public hearing on the amendments, a municipality shall approve or disapprove the amendments to the land use assumptions, infrastructure improvements plan or development fee. A municipality shall not adopt an ordinance, order or resolution approving the amended land use assumptions, infrastructure improvements plan or development fee as an emergency measure.

7. The advisory committee established under subsection G of this section shall file its written comments on any proposed or updated land use assumptions, infrastructure improvements plan and development fees before the fifth business day before the date of the public hearing on the proposed or updated assumptions, plan and fees.

8. If, at the time an update as prescribed in paragraph 3 of this subsection is required, the municipality determines that no changes to the land use assumptions, infrastructure improvements plan or development fees are needed, the municipality may as an alternative to the updating requirements of this subsection publish notice of its determination on its website and include the following:

(a) A statement that the municipality has determined that no change to the land use assumptions, infrastructure improvements plan or development fee is necessary.

(b) A description and map of the service area in which an update has been determined to be unnecessary.

(c) A statement that by a specified date, which shall be at least sixty days after the date of publication of the first notice, a person may make a written request to the municipality requesting that the land use assumptions, infrastructure improvements plan or development fee be updated.

(d) A statement identifying the person or entity to whom the written request for an update should be sent.

9. If, by the date specified pursuant to paragraph 8 of this subsection, a person requests in writing that the land use assumptions, infrastructure improvements plan or development fee be updated, the municipality shall cause, accept or reject an update of the assumptions and plan to be prepared pursuant to this subsection.

10. Notwithstanding the notice and hearing requirements for adoption of an infrastructure improvements plan, a municipality may amend an infrastructure improvements plan adopted pursuant to this section without a public hearing if the amendment addresses only elements of necessary public services in the existing infrastructure improvements plan and the changes to the plan will not, individually or cumulatively with other amendments adopted pursuant to this subsection, increase the level of service in the service area or cause a development fee increase of greater than five per cent when a new or modified development fee is assessed pursuant to this section. The municipality shall provide notice of any such amendment at least thirty days before adoption, shall post the amendment on its website or on the website of an association of cities and towns if the municipality does not have a website and shall provide notice to the advisory committee established pursuant to subsection G of this section that the amendment complies with this subsection.

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

1. A description of the existing necessary public services in the service area and the costs to upgrade, update, improve, expand, correct or replace those necessary public services to meet existing needs and usage and stricter safety, efficiency, environmental or regulatory standards, which shall be prepared by qualified professionals licensed in this state, as applicable.

2. An analysis of the total capacity, the level of current usage and commitments for usage of capacity of the existing necessary public services, which shall be prepared by qualified professionals licensed in this state, as applicable.

3. A description of all or the parts of the necessary public services or facility expansions and their costs necessitated by and attributable to development in the service area based on the approved land use assumptions, including a forecast of the costs of infrastructure, improvements, real property, financing, engineering and architectural services, which shall be prepared by qualified professionals licensed in this state, as applicable.

4. A table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of necessary public services or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial and industrial.

5. The total number of projected service units necessitated by and attributable to new development in the service area based on the approved land use assumptions and calculated pursuant to generally accepted engineering and planning criteria.

6. The projected demand for necessary public services or facility expansions required by new service units for a period not to

exceed ten years.

7. A forecast of revenues generated by new service units other than development fees, which shall include estimated state-shared revenue, highway users revenue, federal revenue, ad valorem property taxes, construction contracting or similar excise taxes and the capital recovery portion of utility fees attributable to development based on the approved land use assumptions, and a plan to include these contributions in determining the extent of the burden imposed by the development as required in subsection B, paragraph 12 of this section.

F. A municipality's development fee ordinance shall provide that a new development fee or an increased portion of a modified development fee shall not be assessed against a development for twenty-four months after the date that the municipality issues the final approval for a commercial, industrial or multifamily development or the date that the first building permit is issued for a residential development pursuant to an approved site plan or subdivision plat, provided that no subsequent changes are made to the approved site plan or subdivision plat that would increase the number of service units. If the number of service units increases, the new or increased portion of a modified development fee shall be limited to the amount attributable to the additional service units. The twenty-four month period shall not be extended by a renewal or amendment of the site plan or the final subdivision plat that was the subject of the final approval. The municipality shall issue, on request, a written statement of the development fee schedule applicable to the development. If, after the date of the municipality's final approval of a development, the municipality reduces the development fee assessed on development, the reduced fee shall apply to the development.

G. A municipality shall do one of the following:

1. Before the adoption of proposed or updated land use assumptions, infrastructure improvements plan and development fees as prescribed in subsection D of this section, the municipality shall appoint an infrastructure improvements advisory committee, subject to the following requirements:

(a) The advisory committee shall be composed of at least five members who are appointed by the governing body of the municipality. At least fifty per cent of the members of the advisory committee must be representatives of the real estate, development or building industries, of which at least one member of the committee must be from the home building industry. Members shall not be employees or officials of the municipality.

(b) The advisory committee shall serve in an advisory capacity and shall:

(i) Advise the municipality in adopting land use assumptions and in determining whether the assumptions are in conformance with the general plan of the municipality.

(ii) Review the infrastructure improvements plan and file written comments.

(iii) Monitor and evaluate implementation of the infrastructure improvements plan.

(iv) Every year file reports with respect to the progress of the infrastructure improvements plan and the collection and expenditures of development fees and report to the municipality any perceived inequities in implementing the plan or imposing the development fee.

(v) Advise the municipality of the need to update or revise the land use assumptions, infrastructure improvements plan and development fee.

(c) The municipality shall make available to the advisory committee any professional reports with respect to developing and implementing the infrastructure improvements plan.

(d) The municipality shall adopt procedural rules for the advisory committee to follow in carrying out the committee's duties.

2. In lieu of creating an advisory committee pursuant to paragraph 1 of this subsection, provide for a biennial certified audit of the municipality's land use assumptions, infrastructure improvements plan and development fees. An audit pursuant to this paragraph shall be conducted by one or more qualified professionals who are not employees or officials of the municipality and who did not prepare the infrastructure improvements plan. The audit shall review the progress of the infrastructure improvements plan, including the collection and expenditures of development fees for each project in the plan, and evaluate any inequities in implementing the plan or imposing the development fee. The municipality shall post the findings of the audit on the municipality's website or the website of an association of cities and towns if the municipality does not have a website and shall conduct a public hearing on the audit within sixty days of the release of the audit to the public.

H. On written request, an owner of real property for which a development fee has been paid after July 31, 2014 is entitled to a refund of a development fee or any part of a development fee if:

1. Pursuant to subsection B, paragraph 6 of this section, existing facilities are available and service is not provided.

2. The municipality has, after collecting the fee to construct a facility when service is not available, failed to complete construction within the time period identified in the infrastructure improvements plan, but in no event later than the time period specified in paragraph 3 of this subsection.

3. For a development fee other than a development fee for water or wastewater facilities, any part of the development fee is not spent as authorized by this section within ten years after the fee has been paid or, for a development fee for water or waste water facilities, any part of the development fee is not spent as authorized by this section within fifteen years after the fee has been paid.

I. If the development fee was collected for the construction of all or a portion of a specific item of infrastructure, and on completion of the infrastructure the municipality determines that the actual cost of construction was less than the forecasted cost of construction on which the development fee was based and the difference between the actual and estimated cost is greater than ten per cent, the current owner may receive a refund of the portion of the development fee equal to the difference between the development fee paid and the development fee that would have been due if the development fee had been calculated at the actual construction cost.

J. A refund shall include any interest earned by the municipality from the date of collection to the date of refund on the amount of the refunded fee. All refunds shall be made to the record owner of the property at the time the refund is paid. If the development fee is paid by a governmental entity, the refund shall be paid to the governmental entity.

K. A development fee that was adopted before January 1, 2012 may continue to be assessed only to the extent that it will be used to provide a necessary public service for which development fees can be assessed pursuant to this section and shall be replaced by a development fee imposed under this section on or before August 1, 2014. Any municipality having a development fee that has not been replaced under this section on or before August 1, 2014 shall not collect development fees until the development fee has been replaced with a fee that complies with this section. Any development fee monies collected before January 1, 2012 remaining in a development fee account:

1. Shall be used towards the same category of necessary public services as authorized by this section.

2. If development fees were collected for a purpose not authorized by this section, shall be used for the purpose for which they were collected on or before January 1, 2020, and after which, if not spent, shall be distributed equally among the categories of necessary public services authorized by this section.

L. A moratorium shall not be placed on development for the sole purpose of awaiting completion of all or any part of the process necessary to develop, adopt or update development fees.

M. In any judicial action interpreting this section, all powers conferred on municipal governments in this section shall be narrowly construed to ensure that development fees are not used to impose on new residents a burden all taxpayers of a municipality should bear equally.

N. Each municipality that assesses development fees shall submit an annual report accounting for the collection and use of the fees for each service area. The annual report shall include the following:

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

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

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

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

(a) Bonds issued by the municipality to pay the cost of a capital improvement project that is the subject of a development fee assessment, including the amount needed to repay the debt service obligations on each facility for which development fees have been identified as the source of funding and the time frames in which the debt service will be repaid.

(b) Monies advanced by the municipality from funds other than the funds established for development fees in order to pay the cost of a capital improvement project that is the subject of a development fee assessment, the total amount advanced by the municipality for each facility, the source of the monies advanced and the terms under which the monies will be repaid to the municipality.

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

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

O. Within ninety days following the end of each fiscal year, each municipality shall submit a copy of the annual report to the city clerk and post the report on the municipality's website or the website of an association of cities and towns if the municipality does not have a website. Copies shall be made available to the public on request. The annual report may contain financial information that has not been audited.

P. A municipality that fails to file the report and post the report on the municipality's website or the website of an association of cities and towns if the municipality does not have a website as required by this section shall not collect development fees until the report is filed and posted.

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

R. A municipality may continue to assess a development fee adopted before January 1, 2012 for any facility that was financed before June 1, 2011 if:

1. Development fees were pledged to repay debt service obligations related to the construction of the facility.

2. After August 1, 2014, any development fees collected under this subsection are used solely for the payment of principal and interest on the portion of the bonds, notes or other debt service obligations issued before June 1, 2011 to finance construction of the facility.

S. Through August 1, 2014, a development fee adopted before January 1, 2012 may be used to finance construction of a facility and may be pledged to repay debt service obligations if:

1. The facility that is being financed is a facility that is described under subsection T, paragraph 7, subdivisions (a) through (g) of this section.

2. The facility was included in an infrastructure improvements plan adopted before June 1, 2011.

3. The development fees are used for the payment of principal and interest on the portion of the bonds, notes or other debt service obligations issued to finance construction of the necessary public services or facility expansions identified in the infrastructure improvement plan.

T. For the purposes of this section:

1. "Dedication" means the actual conveyance date or the date an improvement, facility or real or personal property is placed into service, whichever occurs first.

2. "Development" means:

(a) The subdivision of land.

(b) The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure that adds or increases the number of service units.

(c) Any use or extension of the use of land that increases the number of service units.

3. "Facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise new necessary public service in order that the existing facility may serve new development. Facility expansion does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development.

4. "Final approval" means:

(a) For a nonresidential or multifamily development, the approval of a site plan or, if no site plan is submitted for the development, the approval of a final subdivision plat.

(b) For a single family residential development, the approval of a final subdivision plat.

5. "Infrastructure improvements plan" means a written plan that identifies each necessary public service or facility expansion that is proposed to be the subject of a development fee and otherwise complies with the requirements of this section, and may be the municipality's capital improvements plan.

6. "Land use assumptions" means projections of changes in land uses, densities, intensities and population for a specified service area over a period of at least ten years and pursuant to the general plan of the municipality.

7. "Necessary public service" means any of the following facilities that have a life expectancy of three or more years and that are owned and operated by or on behalf of the municipality:

(a) Water facilities, including the supply, transportation, treatment, purification and distribution of water, and any appurtenances for those facilities.

(b) Wastewater facilities, including collection, interception, transportation, treatment and disposal of wastewater, and any appurtenances for those facilities.

(c) Storm water, drainage and flood control facilities, including any appurtenances for those facilities.

(d) Library facilities of up to ten thousand square feet that provide a direct benefit to development, not including equipment, vehicles or appurtenances.

(e) Street facilities located in the service area, including arterial or collector streets or roads that have been designated on an officially adopted plan of the municipality, traffic signals and rights-of-way and improvements thereon.

(f) Fire and police facilities, including all appurtenances, equipment and vehicles. Fire and police facilities do not include a facility or portion of a facility that is used to replace services that were once provided elsewhere in the municipality, vehicles and equipment used to provide administrative services, helicopters or airplanes or a facility that is used for training firefighters or officers from more than one station or substation.

(g) Neighborhood parks and recreational facilities on real property up to thirty acres in area, or parks and recreational facilities larger than thirty acres if the facilities provide a direct benefit to the development. Park and recreational facilities do not include vehicles, equipment or that portion of any facility that is used for amusement parks, aquariums, aquatic centers, auditoriums, arenas, arts and cultural facilities, bandstand and orchestra facilities, bathhouses, boathouses, clubhouses, community centers greater than three thousand square feet in floor area, environmental education centers, equestrian facilities, golf course facilities, greenhouses, lakes, museums, theme parks, water reclamation or riparian areas, wetlands, zoo facilities or similar recreational facilities, but may include swimming pools.

(h) Any facility that was financed and that meets all of the requirements prescribed in subsection R of this section.

8. "Qualified professional" means a professional engineer, surveyor, financial analyst or planner providing services within the scope of the person's license, education or experience.

9. "Service area" means any specified area within the boundaries of a municipality in which development will be served by necessary public services or facility expansions and within which a substantial nexus exists between the necessary public services or facility expansions and the development being served as prescribed in the infrastructure improvements plan.

10. "Service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated pursuant to generally accepted engineering or planning standards for a particular category of necessary public services or facility expansions.

Credits

Added by Laws 1982, Ch. 187, § 2. Amended by Laws 1988, Ch. 320, § 1; Laws 1991, Ch. 273, § 1; Laws 2001, Ch. 378, § 1; Laws 2005, Ch. 215, § 1; Laws 2007, Ch. 136, § 1; Laws 2009, 3rd S.S., Ch. 7, § 5, eff. Jan. 1, 2010; Laws 2011, Ch. 243, § 1, eff. Jan. 1, 2012.

Footnotes

[1] Section 48-701 et seq.

A. R. S. § 9-463.05, AZ ST § 9-463.05

Current through the First Regular Session of the Fifty-Third Legislature (2017)

End of Document

Notes Of Decisions (36)

Construction and application

"Necessary," in statute granting municipalities the authority to impose development fees for necessary public services, is an elastic term that can be applied on a case-by-case basis to the needs of individual communities; accordingly, a service is a "necessary" public service depends on whether it is rationally related to the implementation of powers specifically granted to the municipality. Home Builders Ass'n of Cent. Arizona v. City of Mesa (App. Div.1 2010) 226 Ariz. 7, 243 P.3d 610 , review denied. Zoning and Planning 1382(4)

When construing what is a necessary public service, for purposes of statute granting municipalities the authority to impose development fees for necessary public services, a court should adopt an approach sufficiently flexible to preserve the broad powers of municipal governments to respond to the needs of the diverse communities they serve, while preserving the ability of the courts to enforce the statute according to its intended meaning. Home Builders Ass'n of Cent. Arizona v. City of Mesa (App. Div.1 2010) 226 Ariz. 7, 243 P.3d 610 , review denied. Zoning and Planning 1382(4)

City consultant's assertion that city would not use sales and other taxes from improvements to pay growth-related infrastructure costs that were to be funded by impact fee revenue, was admissible to show consultant's state of mind as he created plan subsequently adopted by city, at administrative review hearing held to determine if there was sufficient evidence to support city's decision to impose development impact fee ordinances. Home Builders Ass'n of Cent. Arizona v. City of Goodyear (App. Div.1 2009) 223 Ariz. 193, 221 P.3d 384 . Zoning And Planning 1657

Trial court's determination that city complied with statutory requirement that the impact fees bore a reasonable relationship or were roughly proportionate to the burden imposed by the new development, was implicit in its conclusion that city used only growth related costs in calculating its impact fees and offset all other funding sources or revenue sources that would pay for capital improvements including grants and state shared revenues, in home builders association's action seeking declaration that impact fee ordinances were illegal. Home Builders Ass'n of Cent. Arizona v. City of Goodyear (App. Div.1 2009) 223 Ariz. 193, 221 P.3d 384 . Zoning And Planning 1725

Fire districts, unlike municipalities, do not have the power to impose development fees. Northwest Fire Dist. v. U.S. Home of Arizona Const. Co. (2007) 215 Ariz. 492, 161 P.3d 535 . Zoning And Planning 1382(4)

Statute stating that a "municipality shall provide credit toward the payment of a development fee for the required dedication of public sites and improvements provided by the developer for which that development fee is assessed" is intended to prevent the governmental authority from imposing a double burden on the developer and does not indicate a legislative intent to permit a city to charge a development fee notwithstanding the existence of a development agreement that provides to the contrary. Home Builders Ass'n of Central Arizona v. City of Maricopa (App. Div.2 2007) 215 Ariz. 146, 158 P.3d 869 . Zoning And Planning 1382(4)

Development agreement statute stating that "[t]he municipality shall provide credit toward the payment of a development fee for the required dedication of public sites and improvements provided by the developer for which that development fee is assessed" did not apply to allow newly incorporated city, as county's successor-in-interest, to impose additional fees on developers who had entered into development agreements with county. Home Builders Ass'n of Central Arizona v. City of Maricopa (App. Div.2 2007) 215 Ariz. 146, 158 P.3d 869 . Zoning And Planning 1382(4)

Capital financing costs for schools were not "costs to the municipality" associated with providing "necessary public services" to development, as purported statutory basis for general law city to voluntarily finance capital costs for additional schools through a development fee on residential development, because city lacked any constitutional or statutory

authority over, or responsibility for, public school matters. Home Builders Ass'n of Central Arizona v. City of Apache Junction (App. Div.2 2000) 198 Ariz. 493, 11 P.3d 1032 , review denied, on remand 2002 WL 34075425 . Zoning And Planning 1382(4)

Fact that counties but not cities were expressly limited by statute as to the matters for which they could assess development fees did not allow for an expansion, by inference, of the "necessary public services" which cities could finance through development fees. Home Builders Ass'n of Central Arizona v. City of Apache Junction (App. Div.2 2000) 198 Ariz. 493, 11 P.3d 1032 , review denied, on remand 2002 WL 34075425 . Zoning And Planning 1382(4)

"Costs to the municipality," within meaning of statute allowing a municipality to assess development fees to offset costs to the municipality associated with providing necessary public services to a development, must be caused by the direct provision of necessary public services by the municipality. Home Builders Ass'n of Central Arizona v. City of Apache Junction (App. Div.2 2000) 198 Ariz. 493, 11 P.3d 1032 , review denied, on remand 2002 WL 34075425 . Zoning And Planning 1382(4)

A community facilities district's statutory authority to construct public school facilities did not authorize city to impose a development fee on residential development to finance capital costs for additional schools. Home Builders Ass'n of Central Arizona v. City of Apache Junction (App. Div.2 2000) 198 Ariz. 493, 11 P.3d 1032 , review denied, on remand 2002 WL 34075425 . Zoning And Planning 1382(4)

Rational basis

Cultural facilities development fee imposed by city bore a rational relationship to city's municipal powers, as required in order for such development fee to be authorized by development fees statute, as the city had the power to develop and fund tourism-related improvements, which included cultural facilities. Home Builders Ass'n of Cent. Arizona v. City of Mesa (App. Div.1 2010) 226 Ariz. 7, 243 P.3d 610 , review denied. Zoning and Planning 1382(4)

Before a municipality is authorized by statute to impose a development fee, the public service funded by the fee must be rationally related to the powers granted to a municipality, and the service must be one that traditionally has been provided or lawfully forecast pursuant to statutes governing municipal planning. Home Builders Ass'n of Cent. Arizona v. City of Mesa (App. Div.1 2010) 226 Ariz. 7, 243 P.3d 610 , review denied. Zoning and Planning 1382(4)

A challenge to the reasonable relationship requirement in the development fees statute could be premised upon a municipality's failure to actually account, in some meaningful way, for future revenues to be paid by a development property owner and applied to the growth-related capital costs on which impact fees were calculated, but a city need only demonstrate some rational basis for setting the amount of the fee in order to avoid it being clearly erroneous, arbitrary, and wholly unwarranted. Home Builders Ass'n of Cent. Arizona v. City of Mesa (App. Div.1 2010) 226 Ariz. 7, 243 P.3d 610 , review denied. Zoning and Planning 1382(4)

Reasonableness of city's development fee was not before trial court, and remand on that issue was unwarranted, where developer did not offer any evidence on reasonableness of fee or challenge amount of fee at trial, but based argument on lack of concrete benefit conferred by fee. Home Builders Ass'n of Cent. Arizona v. City of Scottsdale (1997) 187 Ariz. 479, 930 P.2d 993 , certiorari denied 117 S.Ct. 2512, 521 U.S. 1120, 138 L.Ed.2d 1015 . Appeal And Error 1178(1)

Municipality is not required to have specific plans that must yield specific results to specific development within given period of time before it may assess development fees; only requirement is that municipality have some basis for fee that withstands clearly erroneous, arbitrary, and wholly unwarranted test. Home Builders Ass'n of Cent. Arizona v. City of Scottsdale (App. Div.1 1993) 179 Ariz. 5, 875 P.2d 1310 , review granted, cause remanded, supplemented 183 Ariz. 243, 902 P.2d 1347 , opinion approved in part 187 Ariz. 479, 930 P.2d 993 , certiorari denied 117 S.Ct. 2512, 521 U.S. 1120, 138 L.Ed.2d 1015 . Zoning And Planning 1382(4)

Development fees are not subject to restrictive special-assessment-like standards requiring specific and definite plans and direct benefit from fees; municipality need only show some rational basis for setting amount of fee for it to avoid being clearly erroneous, arbitrary, and wholly unwarranted. Home Builders Ass'n of Cent. Arizona v. City of Scottsdale (App. Div.1 1993) 179 Ariz. 5, 875 P.2d 1310 , review granted, cause remanded, supplemented 183 Ariz. 243, 902 P.2d 1347 , opinion approved in part 187 Ariz. 479, 930 P.2d 993 , certiorari denied 117 S.Ct. 2512, 521 U.S. 1120, 138 L.Ed.2d 1015 . Zoning And Planning 1104

Evidence was sufficient to establish that ordinance authorizing water resource development fee would result in beneficial use based on plans to develop new water supplies to support new development, though remand was required to determine whether fee bore reasonable relationship to burden placed on municipality. Home Builders Ass'n of Cent. Arizona v. City of Scottsdale (App. Div.1 1993) 179 Ariz. 5, 875 P.2d 1310 , review granted, cause remanded, supplemented 183 Ariz. 243, 902 P.2d 1347 , opinion approved in part 187 Ariz. 479, 930 P.2d 993 , certiorari denied 117 S.Ct. 2512, 521 U.S. 1120, 138 L.Ed.2d 1015 . Zoning And Planning 1663 ; Zoning And Planning 1724

Development fee meets reasonable relationship requirement so long as fee bears reasonable relationship to method of obtaining beneficial use; fact that municipality may spend fees on projects not originally planned does not invalidate calculation. Home Builders Ass'n of Cent. Arizona v. City of Scottsdale (App. Div.1 1993) 179 Ariz. 5, 875 P.2d 1310 , review granted, cause remanded, supplemented 183 Ariz. 243, 902 P.2d 1347 , opinion approved in part 187 Ariz. 479, 930 P.2d 993 , certiorari denied 117 S.Ct. 2512, 521 U.S. 1120, 138 L.Ed.2d 1015 . Zoning And Planning 1382(4)

Purpose

The requirement of a nexus between the amount of the fee and the burden imposed, in statute granting municipalities the authority to impose development fees for necessary public services, indicates legislative intent to limit the imposition of the fee to actual services provided, or to be provided, by the municipality. Home Builders Ass'n of Cent. Arizona v. City of Mesa (App. Div.1 2010) 226 Ariz. 7, 243 P.3d 610 , review denied. Zoning and Planning 1382(4)

Discriminatory assessment

Enforcing development agreements between developers and city, as county's successor-in-interest, which did not allow city to impose additional development fees did not violate statutory prohibition precluding city from assessing development fees in a non-discriminatory manner, as agreements between developers and county pre-existed the city's fee schedule. Home Builders Ass'n of Central Arizona v. City of Maricopa (App. Div.2 2007) 215 Ariz. 146 , 158 P.3d 869 . Zoning And Planning 1382(4)

Ordinance authorizing water resource development fee did not assess fee in discriminatory manner, though fees would place additional burden upon new developments, where there was no allegation of discrimination in way fee was imposed. Home Builders Ass'n of Cent. Arizona v. City of Scottsdale (App. Div.1 1993) 179 Ariz. 5, 875 P.2d 1310 , review granted, cause remanded, supplemented 183 Ariz. 243, 902 P.2d 1347 , opinion approved in part 187 Ariz. 479, 930 P.2d 993 , certiorari denied 117 S.Ct. 2512, 521 U.S. 1120, 138 L.Ed.2d 1015 . Zoning And Planning 1104

Taking

Statutory prohibition against issuance of injunction to prevent enforcement of public statute by officers of law for public benefit did not deprive trial court of authority to issue injunction to prevent city and State from diverting and channeling excess storm water into terminal basin beyond its retention capacity; residents were not seeking to enjoin enforcement of public statutes authorizing city and State to construct drainage channels, manage retention basins, and other drainage components relating to storm water management, but instead sought to enjoin city and State from allegedly exceeding

their statutory authority by negligently managing system, knowingly breaching terminal basin's retention capacity, and using their properties as "ad hoc" overflow relief for basin without just compensation. Boruch v. State ex rel. Halikowski (App. Div.1 2017) 242 Ariz. 611, 399 P.3d 686 . Courts 4

Development fee charged by city as condition to issuance of building permit was "regulatory fee" akin to land-use regulation implicating eminent domain, rather than "tax" not subject to takings clause; fee was for express purpose of providing future water to subject property and, thus, was to be used to benefit property on which fee was imposed, rather than for general revenue, and extent of property's need for future water was directly related to new development. Home Builders Ass'n of Cent. Arizona v. City of Scottsdale (App. Div.1 1995) 183 Ariz. 243, 902 P.2d 1347 , review granted, opinion approved in part 187 Ariz. 479, 930 P.2d 993 , certiorari denied 117 S.Ct. 2512, 521 U.S. 1120, 138 L.Ed.2d 1015 . Eminent Domain 2.10(7)

Necessary public services

Cultural facilities were existing necessary public services that city traditionally had provided to its residents, for purposes of determining whether cultural facilities development fee imposed by city was authorized by development fees statute, where city had been imposing a cultural facilities development fee for more than a decade to maintain existing cultural facilities, including a historical museum, an art museum and a youth museum. Home Builders Ass'n of Cent. Arizona v. City of Mesa (App. Div.1 2010) 226 Ariz. 7, 243 P.3d 610 , review denied. Zoning and Planning 1382(4)

Special assessment

Even if fire district's facilities benefit assessment were similar in nature to development fees, which municipalities were statutorily authorized to impose, fire district was authorized to impose assessment under statute governing powers and duties of fire districts; legislature intended to allow fire district to assess fees on those who benefited from district's facilities. Northwest Fire Dist. v. U.S. Home of Arizona Const. Co. (App. Div.2 2006) 213 Ariz. 489, 143 P.3d 1030 , review granted, vacated 215 Ariz. 492, 161 P.3d 535 . Municipal Corporations 406(2)

Development fees are generally considered "regulatory fees" if they are reasonably related to needs created by new development and are used to benefit land on which they are imposed, but are considered "taxes" if fees are not related to new development and are used to benefit other property. Home Builders Ass'n of Cent. Arizona v. City of Scottsdale (App. Div.1 1995) 183 Ariz. 243, 902 P.2d 1347 , review granted, opinion approved in part 187 Ariz. 479, 930 P.2d 993 , certiorari denied 117 S.Ct. 2512, 521 U.S. 1120, 138 L.Ed.2d 1015 . Zoning And Planning 1382(4)

"Development fees" are distinguishable from "special assessments," which are not subject to takings analysis; development fees are imposed by government upon property owners who wish to develop their land, while special assessments are generally imposed only after affected property owners have petitioned for creation of improvement district and, moreover, development fees are condition on ability to develop one's property and are directly necessitated by needs created by new development, while special assessments are neither conditions on development nor necessarily caused by new development. Home Builders Ass'n of Cent. Arizona v. City of Scottsdale (App. Div.1 1995) 183 Ariz. 243, 902 P.2d 1347 , review granted, opinion approved in part 187 Ariz. 479, 930 P.2d 993 , certiorari denied 117 S.Ct. 2512, 521 U.S. 1120, 138 L.Ed.2d 1015 . Eminent Domain 2.10(7)

Benefit to development

A municipality is not required by the development fees statute to have specific plans that must, by necessity, yield specific results to a specific development within a given period of time before it may assess development fees. Home Builders Ass'n of Cent. Arizona v. City of Mesa (App. Div.1 2010) 226 Ariz. 7, 243 P.3d 610 , review denied. Zoning and Planning 1382(4)

Municipalities are entitled to deference concerning whether a development fee will result in a beneficial use, for purposes of statute authorizing development fees. Home Builders Ass'n of Cent. Arizona v. City of Mesa (App. Div.1 2010) 226 Ariz. 7, 243 P.3d 610 , review denied. Zoning and Planning 1625

Development fee imposed by city on all new real estate developments conferred sufficient benefit on potential developments, as required by enabling statute, to extent fee would be used to acquire new water supplies so that city could demonstrate adequate future water supply under Groundwater Management Act, as necessary to approve new developments. Home Builders Ass'n of Cent. Arizona v. City of Scottsdale (1997) 187 Ariz. 479, 930 P.2d 993 , certiorari denied 117 S.Ct. 2512, 521 U.S. 1120, 138 L.Ed.2d 1015 . Zoning And Planning 1382(4)

Requirement of development fee statute that fee result in benefit to developer did not include requirement that benefit be based on "locked in" or unchangeable concrete and immediate plans; statute required only that municipality develop plans indicating good faith intent to use fees to provide services within reasonable time. Home Builders Ass'n of Cent. Arizona v. City of Scottsdale (1997) 187 Ariz. 479, 930 P.2d 993 , certiorari denied 117 S.Ct. 2512, 521 U.S. 1120, 138 L.Ed.2d 1015 . Zoning And Planning 1382(4)

Injunctions

Statutory prohibition against issuance of injunction to prevent exercise of public or private office in lawful manner by person in possession did not deprive trial court of authority to issue injunction to prevent city and State from diverting and channeling excess storm water into terminal basin to level that exceeded basin's retention capacity; residents alleged that city and State were unlawfully, in unreasonable and arbitrary manner, exceeding their statutory authority to construct drainage channels, manage retention basins, and other drainage components relating to storm water management, by diverting excess storm water into basin, despite knowledge that basin lacked effective emergency overflow relief during heavy storm, which caused excess contaminated storm water to flood residents' properties, in manner constituting trespass. Boruch v. State ex rel. Halikowski (App. Div.1 2017) 242 Ariz. 611, 399 P.3d 686 . Municipal Corporations 715 ; States 21(1)

Sufficiency of evidence

Cultural facilities development fee imposed by city complied with beneficial use and reasonable relationship requirements of development fees statute, though city did not have a specific plan for the use of the fee, where city's master plan stated that the purpose of the fee was to enhance the city's historical and artistic legacy, city paid an independent consultant to determine the projected impact of new development on the demand for city's cultural facilities, study determined the maximum cost per dwelling unit of maintaining existing cultural facilities, ordinance set the cultural facilities development fee at a level slightly below the level recommended by the study, finding by city that growth was increasing demand for cultural facilities was supported by some evidence, and city considered other sources of future revenue to ensure the burden of the fee was proportional to the benefit. Home Builders Ass'n of Cent. Arizona v. City of Mesa (App. Div.1 2010) 226 Ariz. 7, 243 P.3d 610 , review denied. Zoning and Planning 1382(4)

Evidence that city tried to separate forecasted capital costs strictly related to growth from other projected capital costs, and that other revenues to be paid by property owners were considered in calculating impact fees for new development, was sufficient to support finding that city met its duty to consider relevant future revenues, and to ensure that new impact fees reasonably related to the burden of necessary growth-related improvements, even if it did not offset anticipated sales and property taxes to be collected from improvements, in action by home builders association seeking declaration that impact fee ordinances were illegal. Home Builders Ass'n of Cent. Arizona v. City of Goodyear (App. Div.1 2009) 223 Ariz. 193, 221 P.3d 384 . Zoning And Planning 1382(4)

Review

If a municipality can show that its plans, calculations and predictions are not clearly erroneous, arbitrary, and wholly unwarranted, courts will defer to its judgment and uphold a development fee ordinance as satisfying the broad requirements of the development fee statute. Home Builders Ass'n of Cent. Arizona v. City of Mesa (App. Div.1 2010) 226 Ariz. 7, 243 P.3d 610, review denied. Zoning and Planning 1632

