



## Spreading the burden

BY ADAM WALLWORTH Northwest Arkansas Times

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Fayetteville residents may be asked to approve impact fees for roads, police and fire at the same time they decide the fate of a \$140 million sales tax bond issue for transportation improvements. "I've been working on this for over a year, and I think it's time a decision is made on this, one way or the other," said Alderman Lioneld Jordan, who represents the city's Ward 4.

Impact fees will reduce the tax burden on Fayetteville residents, in the case of the sales tax bond issue, by reducing the amount of time it takes to repay the bonds, Jordan said. The sales tax bonds will be structured with a 25-year maturity, he said, but if impact fees are used the bonds could be repaid faster. "That loan is set up for 2025, but we might be able to pay off in 2020 with impact fees so it reduces the tax burden on residents already living here," Jordan said. "It's the same principle, that if you want to pay off your house early, you go out get a second job and put that on the house loan to pay off the loan earlier."

Tim Conklin, director of planning and development management, said Duncan Associates has been contracted to update the impact fee study to reflect the cost estimates prepared for the transportation program.

The calculation of the fees will be adjusted to reflect the expected increase in sales tax collection that should be created by the construction of new homes, Conklin said, as well as other credits that will offset the amount developers are charged.

Conklin said that while the road impact fees will be charged on developers to recuperate some of the costs for constructing arterial and collector streets, which are larger streets that provide access throughout the city, the developers will continue to pay for the construction of local streets.

Developers build local streets whenever they construct a subdivision, Conklin said, which will not change. Developers also dedicate street rights of way and construct portions of arterial streets if the streets are needed to provide access to their development, he said.

One of the projects in the proposed transportation program is the completion of Ruppel Road as a boulevard with two 28-foot street sections, Conklin said. Currently, a developer would be required to dedicate the right of way and build one of the 28-foot sections, he said.

One policy issue that the council will have to determine is whether to continue having developers dedicate rights of way or to use the impact fees to make up the cost for the city to purchase it, Conklin said.

The impact fee study presented to the city June 22, 2004, includes potential annual revenues as follows:

- The city could generate about \$1.7 million annually if developers continue to dedicate rights of way.
- If developers do not dedicate rights of way, the city could collect an estimated \$2.9 million annually.
- Fire impact fees are estimated to generate \$383,000 annually.
- Police impact fees could generate \$463,000 annually.

Jordan said that while he would rather the City Council vote on the issue, he will follow the direction of City Attorney Kit Williams, who is concerned about potential legal issues that could arise if the impact fees are not voted on by the people.

Williams said that because the money generated by the fees would be spent on projects that benefit the community as a whole, the city could face litigation if the council doesn't refer the decision to the people. Without a public vote, there will remain a risk that, if challenged, the Arkansas Supreme Court could declare the impact fees "to be a tax masquerading as a fee."

Arkansas Attorney General Mike Beebe last year opined that impact fees enacted pursuant to Arkansas Code Annotated § 14-56-103, which authorizes impact fees would not be considered a tax if approved under the pertinent law.

Williams disagrees, noting that when the city of Marion's impact fee law was challenged, the Supreme Court cited a Florida case that found a road impact fee to be a tax. Just as money generated by road impact fees would be applied to the cost of projects that benefit the community, he said, police and fire protection improvements would benefit everybody in the city.

If the impact fees are put to a vote of the people, Williams said, it would remove the potential for an illegal exaction suit, which could cause the city to refund the fees as well as pay potentially millions in attorney's fees.

Williams said that as an attorney, if he is presented with a safe option and a risky option, he will choose

the safe option, especially when it is practicing democracy. The council could to vote on the matter on its own, as the Attorney General has said would be all right, Williams said, but it would be a gamble. "I don't think you should roll the dice if you don't have to," Williams said. Williams said he expects to have a draft ordinance for each fee sometime next week. He said that while he is still reviewing the impact fee study, there may have been some things included in the police and fire fees that should not have been, which might mean a reduction in those fees. The council may decide to let its Ordinance Review Committee review the ordinances before having a discussion by the full council, Williams said. Because the issue can prove to be contentious, he said, he expects there will be plenty of opportunities for public input.

Jordan said he would like to bring the impact fees forward parallel to the sales tax bond issue. If the city is going to spend roughly \$14,000 on a special election for the bond issue, it would make sense to have the impact fees on the same ballot, he said.

The council's Street Committee will begin prioritizing the projects to plan what should be done in each phase, Jordan said. Ideally, every phase will be planned before voters are asked to approve the sales tax, he said.

The \$140 million is planned to be repaid with a 1-cent sales tax that will be levied into phases. The first would be to increase the total general sales tax by 1/4 cent, and then extending the 3/4-cent sales tax currently dedicated to repay up to \$125 million Wastewater Improvement Project, now estimated to cost \$140 million.

Residents may be encouraged to vote for the sales tax increase if the impact fees are on the ballot, Jordan said, because it will show that the residents that are already here are not expected to carry the entire burden. "That will help them understand that this is a need and that everybody is going to be paying their fair share," he said.

The committee is scheduled to meet at 5:30 p.m. June 14 in room 326 of the City Administration Building.

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