Surprise

Surprise OK of impact-fee collection faces challenge

by **Lesley Wright** - Jun. 3, 2011 09:06 AM
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Surprise City Council members maneuvered their way through a new state law this week and declared their intent to continue collecting certain developer fees. The money will be used to pay off debts that city officials said Surprise incurred to meet the demands of the recent building boom.

"It's important to our residents that growth pays for itself," said Mayor Lyn Truitt. "That's been our policy."

The issue hardly is resolved and is likely to face legal challenge.

The council on Tuesday unanimously approved the move as an emergency measure to meet a deadline imposed by the new law, which limits the fees that cities charge developers for new public buildings and services.

The Home Builders Association of Central Arizona sent an attorney to Tuesday's council meeting to warn the council that its action was not permitted under the law, which is referred to widely as Senate Bill 1525.

Attorney Jackson Moll, deputy director of municipal affairs for the homebuilders association, said the group will "investigate any and all legal means to enforce the clear intent" of the law.

Without the fees, Surprise could be on the hook for $40 million in interfund loans used to help pay for City Hall, along with parks, libraries and other facilities that were built to serve new subdivisions constructed during a decades-long building boom.

The dispute between homebuilders and municipalities had simmered for years and resulted in the legislation this year. City financial officials have huddled with council members about the issue since early spring.

"From our perspective, this was a bomb going off," said Surprise spokesman Ken Lynch.

Not a good time for Surprise

The law came at a perilous time for the city. A recent audit found that the city needs to repay $40 million that officials had moved from city accounts to pay for the new City Hall. A new police and fire headquarters and other projects were built using money improperly taken from other city accounts, according to the audit.

Besides about $73 million that was misallocated, Surprise has other debts, including $120 million in bonds for projects such as a water treatment plant and $92 million to pay the city's share of development agreements.

All of this was meant to get Surprise ready for population growth that appeared boundless.

About 77,000 people have moved into Surprise since 2000 and the Maricopa Association of Governments estimates that the city could have as many as 400,000 people by 2030.

But supporters of the new law said that cities long have abused their ability to collect impact fees, charging developers for cultural facilities, artwork and buildings that are not directly linked to public needs caused by new homes.

The impact fees generally are passed on to homebuyers, pricing some people out of the market, according to this view.

Senate President Russell Pearce, R-Mesa, who proposed the bill, said that fees had gotten out of line.

"We're just driving people out of the ability to afford a home," he said, when introducing the bill in the state Senate earlier this year.

Cities across the Valley protested, saying that impact fees, which have been part of the landscape for decades, make new growth pay for itself without burdening existing homeowners.

Mayors from major Valley cities, including Glendale and Goodyear, campaigned against the law, warning that residents could face steep increases in property taxes or utility rates to make up the difference.

Gov. Jan Brewer signed the bill, with some compromises, in late April.

A 'difficult situation'

One particularly troubling aspect of the law for Surprise restricts cities from using impact fees to pay for construction of civic facilities, such as city halls and courts. But there is an escape clause - cities can use the fees to pay existing debt on general government buildings. But that debt had to be incurred before June 1.

At first, city officials feverishly tried to get a bank loan for the $40 million, talking to representatives of at least two financial institutions. Surprise officials last week huddled in executive session, without detailing in public what happened with the proposed bank loans.

Later, they released a statement saying that impact fees could still be used to pay the loans because it met the letter of the new law.

By reaffirming that the City Hall debt was incurred before Wednesday, the city appears to have met that deadline.

Moll said the action was an attempt to evade the law, since the cash used to build City Hall was taken from other city funds. There is no outstanding debt obligation that fits the parameters of the law, he said.

City Attorney Michael Bailey disagreed.

"The issue is preserving a revenue stream that the city has relied on," Bailey said. "We are declaring an emergency because there are debt obligations that continually exist. It's important we maintain credit worthiness."

In a letter Moll delivered to the council on Tuesday, he countered that argument, too, saying that the bill was passed because cities had begun to consider impact fees as a revenue source. Moll said that the fees were meant instead to "reimburse the city for costs attributable to growth."

After the meeting, Truitt said that the council was comfortable taking Bailey's legal advice during a quick executive session before the vote on Tuesday.

"It's a difficult situation," Truitt said. "We're getting legal advice that it's the appropriate thing to do."

The mayor said that nobody knows if the new law will survive legal scrutiny anyway and that the action gives Surprise some protection for the future.

"We aren't looking for a battle with any particular group," he said of the homebuilders association. "We need to find a reasonable solution. One exists. We just need to work harder to find it."