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Municipal Development Impact Fees

Why Municipalities Must Be Creating Infrastructure Plans Now to Meet the SB1525 Deadline

By: Peter W. Culp and Cheyenne C. Walsh

Though the legislative session is crawling to an end, and nary has a word been mentioned about impact fees, now is not the time to be complacent about this perennially troublesome topic. While no new bills this session affect the laws governing how impact fees are assessed by cities and towns, the deadline from the last overhaul of the statute looms near. Senate Bill 1525, from the 2011 legislative session, imposes numerous new requirements and limitations on development fee programs and must be complied with no later than August 1, 2014, if your city or town plans to collect impact fees to fund new growth. Considering the statutory timelines in place, you have approximately **five months** to publish your infrastructure plans and get the process moving. Here is how we get there.

Overview - Timing is Everything

I know what you're thinking: "We have more than five months, the deadline is nearly a year and a half away!" Let's take a look at the statutory timeframe and see why time is more limited than it appears. The Arizona development fee statutes contemplate a linear process, in which the municipality must create an Infrastructure Improvements Plan ("IIP") that identifies a host of requirements for each necessary public service in each service area in the municipality. See A.R.S. § 9-463.05(E). Once the IIP is completed, a public hearing is conducted, and the IIP is later adopted. Then the city or town may give notice of its intent to adopt an impact fee ordinance based on the IIP, hold another public hearing, and then take final action on the impact fees. The statute contemplates numerous waiting periods extending this process into a seven-to-eight month-long affair. Let's look into this process in detail and see why you should be working on this now if your municipality plans to use impact fees in the future.

Statutory Timeline Requires a Seven-Month Process from IIP to Effective Date

[Click here to view the DIF Process Timeline](#)

The timeline makes most sense working backwards from the deadline: August 1, 2014. Arizona law requires cities and towns that collect development fees to have an ordinance complying

with the new provisions effective no later than August 1, 2014, or the municipality cannot collect any development fees until its ordinance meets the new requirements. A.R.S. § 9-463.05(K). The statute also provides for a minimum 75-day waiting period between when the council adopts the fee ordinance, and when the fees become effective. A.R.S. § 9-463.05(C). This means your council must approve the final ordinance no later than May 18, 2014 to meet the deadline.

Okay, so that is still over a year away, so there is time, right? Not really. In addition to the statutory delayed effective date, there are multiple statutory notice periods and waiting periods during the mandatory public comment process. There is a minimum 30-day period between the second public hearing (remember, we're working backwards here: we'll discuss the first public hearing below) required on the proposed development fees; this period cannot exceed 60 days. A.R.S. § 9-463.05(D). That pushes our timeline back to April 18, 2014, almost exactly one year from now. The statute also requires a minimum 30-day period between that second public hearing (on the proposed fees) and publication of a notice of intent to assess development fees ("notice"). A.R.S. § 9-463.05(C). This pushes us back even further to March 19, 2014 (i.e., roughly 11 months away).

The preceding timeline assumes that the city or town can coordinate the timing of this process to both adopt the IIP and give the notice on the same day. The IIP must be produced with the notice in order for the development community to have time to review the land use assumptions contained therein. A.R.S. § 9-463.05(D)(1). Therefore, the notice cannot be given until the IIP is adopted in its final form. A public hearing is required on the IIP before it can be approved as final; this hearing must take place at least 30 days before the IIP is adopted. A.R.S. § 9-463.05(D). This pushes our timeline back to February 17, 2014 as the last possible day for the public hearing that will still allow you to meet the August 1, 2014 deadline. The statute also requires a 60-day window between when the IIP is first published to the public, and the public hearing. A.R.S. § 9-463.05(D). Effectively, your IIP must be complete and published no later than December 21, 2013 in order to meet the August 1, 2014 deadline.

Important Caveat: Build in Some Wiggle Room

December 21, 2013. That is just over seven months away. Also, consider this: the timeline above presumes that every deadline will be timed perfectly with your council meeting schedule, and that absolutely no delays occur during the public process. As most of you know, having enacted development fees before, this is fairly unlikely to happen. Your council may not meet in some months, or meet on the 29th day, which means an additional month before the plan can be approved. Also, despite the notice periods, the development community is likely to request more time for review, especially in light of the new statutory requirements that require greater detail in the IIP. We highly suggest you budget in at least a month or two for delays in order to ensure you meet the August 1, 2014 deadline.

So, in effect, there are about **five months** remaining in which

your city or town must create an IIP that complies with all of the requirements of the statute in terms of calculating growth, estimating cost of infrastructure, determining any portion attributable to existing residents, and many more. With the complexity of the statute and the limited number of consultants, this is going to be no easy feat. The League has a wealth of resources available to guide you through this process, including its **model development fee ordinance**, which we highly encourage you to use. We are also available to discuss issues and concerns that will inevitably arise as you work through this process.

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