

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1525

AN ACT

AMENDING SECTION 9-463.05, ARIZONA REVISED STATUTES; RELATING TO CITY AND TOWN 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 advisory committee: limitation on actions:
7 definitions

8 A. A municipality may assess development fees to offset costs to the
9 municipality associated with providing ~~necessary public services to a~~
10 ~~development, including the costs of infrastructure, improvements, real~~
11 ~~property, engineering and architectural services, financing, other capital~~
12 ~~costs and associated appurtenances, equipment, vehicles, furnishings and~~
13 ~~other personalty~~ INFRASTRUCTURE IMPROVEMENTS TO A DEVELOPMENT, INCLUDING THE
14 COSTS OF INFRASTRUCTURE, IMPROVEMENTS, REAL PROPERTY, ENGINEERING AND
15 ARCHITECTURAL SERVICES, FINANCING AND PROFESSIONAL SERVICES REQUIRED FOR THE
16 PREPARATION OR REVISION OF THE PORTION OF THE INFRASTRUCTURE IMPROVEMENTS
17 PLAN NECESSARY FOR THE IMPOSITION OF A DEVELOPMENT FEE.

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

20 1. Development fees shall result in a beneficial use to ~~the~~ A
21 development.

22 2. THE MUNICIPALITY SHALL CALCULATE THE DEVELOPMENT FEE BASED ON THE
23 INFRASTRUCTURE IMPROVEMENTS PLAN ADOPTED PURSUANT TO THIS SECTION.

24 3. THE DEVELOPMENT FEE SHALL NOT EXCEED A PROPORTIONATE SHARE OF THE
25 COST OF INFRASTRUCTURE IMPROVEMENTS, BASED ON SERVICE UNITS, NEEDED TO
26 PROVIDE INFRASTRUCTURE IMPROVEMENTS TO A NEW DEVELOPMENT.

27 4. COSTS FOR INFRASTRUCTURE IMPROVEMENTS MADE NECESSARY BY NEW
28 DEVELOPMENT SHALL BE BASED ON THE SAME LEVEL OF SERVICE PROVIDED TO EXISTING
29 DEVELOPMENT IN THE SERVICE AREA.

30 5. DEVELOPMENT FEES MAY NOT BE USED FOR:

31 (a) CONSTRUCTION, ACQUISITION OR EXPANSION OF PUBLIC FACILITIES OR
32 ASSETS OTHER THAN INFRASTRUCTURE IMPROVEMENTS OR FACILITY EXPANSIONS
33 IDENTIFIED IN THE INFRASTRUCTURE IMPROVEMENTS PLAN.

34 (b) REPAIR, OPERATION OR MAINTENANCE OF EXISTING OR NEW INFRASTRUCTURE
35 IMPROVEMENTS OR FACILITY EXPANSIONS.

36 (c) UPGRADING, UPDATING, EXPANDING, CORRECTING OR REPLACING EXISTING
37 INFRASTRUCTURE IMPROVEMENTS TO SERVE EXISTING DEVELOPMENT IN ORDER TO MEET
38 STRICTER SAFETY, EFFICIENCY, ENVIRONMENTAL OR REGULATORY STANDARDS.

39 (d) UPGRADING, UPDATING, EXPANDING, CORRECTING OR REPLACING EXISTING
40 INFRASTRUCTURE IMPROVEMENTS TO PROVIDE BETTER SERVICE TO EXISTING
41 DEVELOPMENT.

42 (e) ADMINISTRATIVE, MAINTENANCE OR OPERATING COSTS OF THE
43 MUNICIPALITY.

44 6. ANY DEVELOPMENT FOR WHICH A DEVELOPMENT FEE HAS BEEN PAID IS
45 ENTITLED TO THE PERMANENT USE AND BENEFIT OF THE SERVICES FOR WHICH THE FEE

1 WAS IMPOSED AND IS ENTITLED TO RECEIVE IMMEDIATE SERVICE FROM ANY EXISTING
2 FACILITY WITH ACTUAL CAPACITY TO SERVE THE NEW SERVICE UNITS.

3 7. DEVELOPMENT FEES SHALL NOT BE COLLECTED UNLESS ANY OF THE FOLLOWING
4 OCCUR:

5 (a) THE COLLECTION IS MADE TO PAY FOR AN INFRASTRUCTURE IMPROVEMENT OR
6 FACILITY EXPANSION THAT HAS BEEN IDENTIFIED IN THE INFRASTRUCTURE
7 IMPROVEMENTS PLAN AND THE MUNICIPALITY COMMITS TO COMPLETE CONSTRUCTION AND
8 HAVING THE SERVICE AVAILABLE WITHIN A REASONABLE PERIOD OF TIME CONSIDERING
9 THE TYPE OF INFRASTRUCTURE IMPROVEMENT OR FACILITY EXPANSION TO BE
10 CONSTRUCTED, BUT IN NO EVENT LONGER THAN FIVE YEARS.

11 (b) THE MUNICIPALITY AGREES TO RESERVE CAPACITY TO SERVE FUTURE
12 DEVELOPMENT AND THE OWNER AND THE MUNICIPALITY ENTER INTO A WRITTEN AGREEMENT
13 TO DO SO.

14 (c) THE MUNICIPALITY AGREES THAT THE OWNER OF A DEVELOPMENT MAY
15 CONSTRUCT OR FINANCE THE INFRASTRUCTURE IMPROVEMENTS OR FACILITY EXPANSIONS
16 AND ANY OF THE FOLLOWING APPLY:

17 (i) THE COSTS INCURRED OR MONEY ADVANCED ARE CREDITED AGAINST THE
18 DEVELOPMENT FEES OTHERWISE DUE FROM A DEVELOPMENT.

19 (ii) THE MUNICIPALITY REIMBURSES THE OWNER FOR THOSE COSTS FROM THE
20 DEVELOPMENT FEES PAID FROM OTHER DEVELOPMENTS THAT WILL USE THOSE
21 INFRASTRUCTURE IMPROVEMENTS OR FACILITY EXPANSIONS.

22 (iii) FOR THOSE COSTS INCURRED THE MUNICIPALITY ALLOWS THE OWNER TO
23 ASSIGN THE CREDITS FROM THE DEVELOPMENT FEES OTHERWISE DUE FROM A DEVELOPMENT
24 TO OTHER DEVELOPMENTS IN THE SAME SERVICE AREA.

25 8. PROJECTED INTEREST CHARGES AND OTHER FINANCE COSTS MAY BE INCLUDED
26 IN DETERMINING THE AMOUNT OF DEVELOPMENT FEES ONLY IF THE MONIES ARE USED FOR
27 THE PAYMENT OF PRINCIPAL AND INTEREST ON THE PORTION OF THE BONDS, NOTES OR
28 OTHER OBLIGATIONS ISSUED TO FINANCE CONSTRUCTION OF INFRASTRUCTURE
29 IMPROVEMENTS OR FACILITY EXPANSIONS IDENTIFIED IN THE INFRASTRUCTURE
30 IMPROVEMENTS PLAN.

31 ~~2-~~ 9. Monies received from development fees assessed pursuant to this
32 section shall be placed in a separate fund and accounted for separately and
33 may only be used for the purposes ~~authorized by this section~~ FOR WHICH THE
34 DEVELOPMENT FEE WAS IMPOSED AS SHOWN BY THE INFRASTRUCTURE IMPROVEMENTS PLAN.
35 Monies received from a development fee identified in an infrastructure
36 improvements plan adopted or ~~amended~~ UPDATED pursuant to subsection D of this
37 section shall be used to provide the same category of ~~necessary public~~
38 ~~service~~ INFRASTRUCTURE IMPROVEMENTS OR FACILITY EXPANSIONS for which the
39 development fee was assessed for the benefit of the same SERVICE area, as
40 defined in the infrastructure improvements plan, ~~within~~ IN which the
41 development fee was assessed. Interest earned on monies in the separate fund
42 shall be credited to the fund.

43 ~~3-~~ 10. The schedule for payment of fees shall be provided by the
44 municipality. Based on the cost identified in the infrastructure
45 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~~ INFRASTRUCTURE IMPROVEMENTS 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~~ INFRASTRUCTURE IMPROVEMENTS 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 section 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.

~~4. The amount of any development fees assessed pursuant to this section must bear a reasonable relationship to the burden imposed on the municipality to provide additional necessary public services to the development.~~

11. ANY CONSTRUCTION OF, CONTRIBUTIONS TO OR DEDICATION OF ON-SITE OR OFF-SITE FACILITIES, IMPROVEMENTS OR REAL OR PERSONAL PROPERTY WITH OFF-SITE BENEFITS THAT ARE NOT REQUIRED TO SERVE DEVELOPMENT, THAT ARE IN EXCESS OF MINIMUM MUNICIPAL STANDARDS ESTABLISHED BY A PREVIOUSLY ADOPTED ORDINANCE AND THAT ARE REQUIRED BY A MUNICIPALITY AS A CONDITION OF DEVELOPMENT APPROVAL SHALL BE CREDITED AGAINST THE DEVELOPMENT FEE OTHERWISE DUE FROM NEW DEVELOPMENT. THE CREDIT SHALL INCLUDE THE VALUE OF:

(a) THE DEDICATION OR IMPROVEMENT OF LAND, RIGHTS-OF-WAY, EASEMENTS AND ANY PAYMENTS IN LIEU OF THAT DEDICATION OR IMPROVEMENT.

(b) CONSTRUCTION, DEDICATION OR IMPROVEMENT OF FACILITIES FOR WHICH DEVELOPMENT FEES ARE ASSESSED PURSUANT TO THIS SECTION.

12. AS DETERMINED PURSUANT TO SUBSECTION E, PARAGRAPH 7 OF THIS SECTION, 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~~ INFRASTRUCTURE IMPROVEMENTS covered by the development fee and THAT CONTRIBUTION shall ~~include these contributions in determining the extent of the burden imposed by the development~~ BE CREDITED AGAINST ANY DEVELOPMENT FEES ASSESSED ON A DEVELOPMENT.

~~5.~~ 13. If development fees are assessed by a municipality, ~~such~~ THE fees shall be assessed in a ~~nondiscriminatory~~ manner THAT DOES NOT DISCRIMINATE BASED ON THE NATURE OF THE DEVELOPMENT. IF A MUNICIPALITY AGREES TO WAIVE ANY OF THE DEVELOPMENT FEES ASSESSED ON A DEVELOPMENT, THE MUNICIPALITY SHALL REIMBURSE THE DEVELOPMENT FEE ACCOUNTS FOR THE AMOUNT THAT WAS WAIVED AND NOTIFY THE ADVISORY COMMITTEE OF THE WAIVER AND REIMBURSEMENT.

1 ~~6-~~ 14. In determining and assessing a development fee applying to
2 land in a community facilities district established under title 48, chapter
3 4, article 6, the municipality shall take into account all public
4 infrastructure provided by the district and capital costs paid by the
5 district for ~~necessary public services~~ INFRASTRUCTURE IMPROVEMENTS and shall
6 not assess a portion of the development fee based on the infrastructure or
7 costs.

8 C. A municipality shall give at least ~~sixty~~ THIRTY days' advance
9 notice of intention to assess a ~~new or modified~~ development fee and shall
10 release to the public a written report ~~that identifies the methodology for~~
11 ~~calculating the amount of the development fee, explains the relationship~~
12 ~~between the development fee and the infrastructure improvements plan,~~
13 ~~includes documentation that supports the assessment of a new or modified~~
14 ~~development fee and identifies any index or indices to be used for automatic~~
15 ~~adjustment of the development fee pursuant to subsection G of this section~~
16 ~~and the timing of those adjustments~~ OF THE LAND USE ASSUMPTIONS AND
17 INFRASTRUCTURE IMPROVEMENTS PLAN ADOPTED PURSUANT TO SUBSECTION D OF THIS
18 SECTION AND POST THE REPORT ON ITS WEBSITE. The municipality shall conduct a
19 public hearing on the proposed ~~new or modified~~ development fee at any time
20 after the expiration of the ~~sixty~~ THIRTY day notice of intention to assess a
21 ~~new or modified~~ development fee and at least thirty days ~~prior to~~ BEFORE the
22 scheduled date of adoption of the new or modified fee by the governing body.
23 WITHIN SIXTY DAYS AFTER THE DATE OF THE PUBLIC HEARING ON THE PROPOSED
24 DEVELOPMENT FEE, A MUNICIPALITY SHALL APPROVE OR DISAPPROVE THE IMPOSITION OF
25 THE DEVELOPMENT FEE. A MUNICIPALITY SHALL NOT ADOPT AN ORDINANCE, ORDER OR
26 RESOLUTION APPROVING A DEVELOPMENT FEE AS AN EMERGENCY MEASURE. A
27 development fee assessed pursuant to this section shall not be effective
28 until seventy-five days after its formal adoption by the governing body of
29 the municipality. Nothing in this subsection shall affect any development
30 fee adopted ~~prior to~~ BEFORE July 24, 1982.

31 D. Before the assessment of a ~~new or modified~~ development fee, the
32 governing body of the municipality shall adopt or ~~amend~~ UPDATE ~~an~~ THE LAND
33 USE ASSUMPTIONS AND infrastructure improvements plan FOR A DESIGNATED SERVICE
34 AREA. The municipality shall conduct a public hearing on the LAND USE
35 ASSUMPTIONS AND infrastructure improvements plan at least thirty days before
36 the adoption or ~~amendment~~ UPDATE of the plan. The municipality shall release
37 the plan to the public, POST THE PLAN ON ITS WEBSITE, INCLUDING IN THE
38 POSTING ITS LAND USE ASSUMPTIONS, THE TIME PERIOD OF THE PROJECTIONS, A
39 DESCRIPTION OF THE INFRASTRUCTURE IMPROVEMENTS INCLUDED IN THE INFRASTRUCTURE
40 IMPROVEMENTS PLAN AND A MAP OF THE SERVICE AREA TO WHICH THE LAND USE
41 ASSUMPTIONS APPLY, make available to the public the documents used to prepare
42 the ASSUMPTIONS AND plan and provide public notice at least sixty days before
43 the public hearing, subject to the following:

44 ~~1. An infrastructure improvements plan may be adopted concurrently~~
45 ~~with the report required by subsection C of this section, and the~~

1 ~~municipality may provide for and schedule the notices and hearings required~~
2 ~~by this subsection together with the notices and hearings required by~~
3 ~~subsection C of this section.~~

4 ~~2. A municipality may amend an infrastructure improvements plan~~
5 ~~without a public hearing if the amendment addresses only elements of~~
6 ~~necessary public services that are included in the existing infrastructure~~
7 ~~improvements plan. The municipality shall provide public notice of those~~
8 ~~amendments at least fourteen days in advance of their effective date.~~

9 1. THE LAND USE ASSUMPTIONS AND INFRASTRUCTURE IMPROVEMENTS PLAN SHALL
10 BE APPROVED OR DISAPPROVED WITHIN SIXTY DAYS AFTER THE PUBLIC HEARING ON THE
11 LAND USE ASSUMPTIONS AND INFRASTRUCTURE IMPROVEMENTS PLAN AND AT LEAST THIRTY
12 DAYS BEFORE THE PUBLIC HEARING ON THE REPORT REQUIRED BY SUBSECTION C OF THIS
13 SECTION. A MUNICIPALITY SHALL NOT ADOPT AN ORDINANCE, ORDER OR RESOLUTION
14 APPROVING THE LAND USE ASSUMPTIONS OR INFRASTRUCTURE IMPROVEMENTS PLAN AS AN
15 EMERGENCY MEASURE.

16 2. AN INFRASTRUCTURE IMPROVEMENTS PLAN SHALL BE DEVELOPED BY QUALIFIED
17 PROFESSIONALS USING GENERALLY ACCEPTED ENGINEERING AND PLANNING PRACTICES
18 PURSUANT TO SUBSECTION E OF THIS SECTION.

19 3. A MUNICIPALITY SHALL UPDATE THE LAND USE ASSUMPTIONS AND
20 INFRASTRUCTURE IMPROVEMENTS PLAN AT LEAST EVERY FIVE YEARS. THE INITIAL FIVE
21 YEAR PERIOD BEGINS ON THE DAY THE INFRASTRUCTURE IMPROVEMENTS PLAN IS
22 ADOPTED. THE MUNICIPALITY SHALL REVIEW AND EVALUATE ITS CURRENT LAND USE
23 ASSUMPTIONS AND SHALL CAUSE AN UPDATE OF THE INFRASTRUCTURE IMPROVEMENTS PLAN
24 TO BE PREPARED PURSUANT TO THIS SECTION.

25 4. WITHIN SIXTY DAYS AFTER COMPLETION OF THE UPDATED LAND USE
26 ASSUMPTIONS AND INFRASTRUCTURE IMPROVEMENTS PLAN, THE MUNICIPALITY SHALL
27 SCHEDULE AND PROVIDE NOTICE OF A PUBLIC HEARING TO DISCUSS AND REVIEW THE
28 UPDATE AND SHALL DETERMINE WHETHER TO AMEND THE ASSUMPTIONS AND PLAN.

29 5. A MUNICIPALITY SHALL HOLD A PUBLIC HEARING TO DISCUSS THE PROPOSED
30 AMENDMENTS TO THE LAND USE ASSUMPTIONS, THE INFRASTRUCTURE IMPROVEMENTS PLAN
31 OR THE DEVELOPMENT FEE. THE LAND USE ASSUMPTIONS AND THE INFRASTRUCTURE
32 IMPROVEMENTS PLAN, INCLUDING THE AMOUNT OF ANY PROPOSED CHANGES TO THE
33 DEVELOPMENT FEE PER SERVICE UNIT, SHALL BE MADE AVAILABLE TO THE PUBLIC ON OR
34 BEFORE THE DATE OF THE FIRST PUBLICATION OF THE NOTICE OF THE HEARING ON THE
35 AMENDMENTS.

36 6. THE NOTICE AND HEARING PROCEDURES PRESCRIBED IN PARAGRAPH 1 OF THIS
37 SUBSECTION APPLY TO A HEARING ON THE AMENDMENT OF LAND USE ASSUMPTIONS, AN
38 INFRASTRUCTURE IMPROVEMENTS PLAN OR A DEVELOPMENT FEE. WITHIN SIXTY DAYS
39 AFTER THE DATE OF THE PUBLIC HEARING ON THE AMENDMENTS, A MUNICIPALITY SHALL
40 APPROVE OR DISAPPROVE THE AMENDMENTS TO THE LAND USE ASSUMPTIONS,
41 INFRASTRUCTURE IMPROVEMENTS PLAN OR DEVELOPMENT FEE. A MUNICIPALITY SHALL NOT
42 ADOPT AN ORDINANCE, ORDER OR RESOLUTION APPROVING THE AMENDED LAND USE
43 ASSUMPTIONS, INFRASTRUCTURE IMPROVEMENTS PLAN OR DEVELOPMENT FEE AS AN
44 EMERGENCY MEASURE.

1 7. THE ADVISORY COMMITTEE ESTABLISHED UNDER SUBSECTION G OF THIS
2 SECTION SHALL FILE ITS WRITTEN COMMENTS ON ANY PROPOSED OR UPDATED LAND USE
3 ASSUMPTIONS, INFRASTRUCTURE IMPROVEMENTS PLAN AND DEVELOPMENT FEES BEFORE THE
4 FIFTH BUSINESS DAY BEFORE THE DATE OF THE PUBLIC HEARING ON THE PROPOSED OR
5 UPDATED ASSUMPTIONS, PLAN AND FEES.

6 8. IF, AT THE TIME AN UPDATE AS PRESCRIBED IN PARAGRAPH 3 OF THIS
7 SUBSECTION IS REQUIRED, THE MUNICIPALITY DETERMINES THAT NO CHANGES TO THE
8 LAND USE ASSUMPTIONS, INFRASTRUCTURE IMPROVEMENTS PLAN OR DEVELOPMENT FEES
9 ARE NEEDED, THE MUNICIPALITY MAY AS AN ALTERNATIVE TO THE UPDATING
10 REQUIREMENTS OF THIS SUBSECTION PUBLISH NOTICE OF ITS DETERMINATION ON ITS
11 WEBSITE AND INCLUDE THE FOLLOWING:

12 (a) A STATEMENT THAT THE MUNICIPALITY HAS DETERMINED THAT NO CHANGE TO
13 THE LAND USE ASSUMPTIONS, INFRASTRUCTURE IMPROVEMENTS PLAN OR DEVELOPMENT FEE
14 IS NECESSARY.

15 (b) A DESCRIPTION AND MAP OF THE SERVICE AREA IN WHICH THE UPDATING
16 HAS BEEN DETERMINED TO BE UNNECESSARY.

17 (c) A STATEMENT THAT BY A SPECIFIED DATE, WHICH SHALL BE AT LEAST
18 SIXTY DAYS AFTER THE DATE OF PUBLICATION OF THE FIRST NOTICE, A PERSON MAY
19 MAKE A WRITTEN REQUEST TO THE MUNICIPALITY REQUESTING THAT THE LAND USE
20 ASSUMPTIONS, INFRASTRUCTURE IMPROVEMENTS PLAN OR DEVELOPMENT FEE BE UPDATED,
21 AND THAT THE MUNICIPALITY MAY ACCEPT OR REJECT THE REQUEST BY FOLLOWING THE
22 REQUIREMENTS PRESCRIBED IN THIS SUBSECTION.

23 (d) A STATEMENT IDENTIFYING THE PERSON OR ENTITY TO WHOM THE WRITTEN
24 REQUEST FOR AN UPDATE SHOULD BE SENT.

25 9. IF, BY THE DATE SPECIFIED PURSUANT TO PARAGRAPH 8 OF THIS
26 SUBSECTION, A PERSON REQUESTS IN WRITING THAT THE LAND USE ASSUMPTIONS,
27 INFRASTRUCTURE IMPROVEMENTS PLAN OR DEVELOPMENT FEE BE UPDATED, THE
28 MUNICIPALITY SHALL CAUSE, ACCEPT OR REJECT AN UPDATE OF THE ASSUMPTIONS AND
29 PLAN TO BE PREPARED PURSUANT TO THIS SUBSECTION.

30 E. For ~~each necessary public service~~ INFRASTRUCTURE IMPROVEMENTS that
31 ~~is~~ ARE the subject of a development fee, the infrastructure improvements plan
32 shall INCLUDE:

33 ~~1. Estimate future necessary public services that will be required as~~
34 ~~a result of new development in the area, as defined in the infrastructure~~
35 ~~improvements plan, within which the development fee will be assessed and the~~
36 ~~basis for the estimate, including a comparison of the necessary public~~
37 ~~services provided to existing development and the necessary public services~~
38 ~~to be provided to new development.~~

39 ~~2. Forecast the costs of infrastructure, improvements, real property,~~
40 ~~financing, other capital costs and associated appurtenances, equipment,~~
41 ~~vehicles, furnishings and other personalty that will be associated with~~
42 ~~meeting those future needs for necessary public services.~~

43 ~~3. Forecast the revenue sources that will be available to fund the~~
44 ~~necessary public services and estimate the time required to finance and~~
45 ~~provide the necessary public services.~~

1 1. A DESCRIPTION OF THE EXISTING INFRASTRUCTURE IMPROVEMENTS IN THE
2 SERVICE AREA AND THE COSTS TO UPGRADE, UPDATE, IMPROVE, EXPAND, CORRECT OR
3 REPLACE THE IMPROVEMENTS TO MEET EXISTING NEEDS AND USAGE AND STRICTER
4 SAFETY, EFFICIENCY, ENVIRONMENTAL OR REGULATORY STANDARDS, WHICH SHALL BE
5 PREPARED BY A QUALIFIED PROFESSIONAL ENGINEER LICENSED TO PERFORM THE
6 PROFESSIONAL ENGINEERING SERVICES IN THIS STATE.

7 2. AN ANALYSIS OF THE TOTAL CAPACITY, THE LEVEL OF CURRENT USAGE AND
8 COMMITMENTS FOR USAGE OF CAPACITY OF THE EXISTING INFRASTRUCTURE
9 IMPROVEMENTS, WHICH SHALL BE PREPARED BY A QUALIFIED PROFESSIONAL ENGINEER
10 LICENSED TO PERFORM THE PROFESSIONAL ENGINEERING SERVICES IN THIS STATE.

11 3. A DESCRIPTION OF ALL OR THE PARTS OF THE INFRASTRUCTURE
12 IMPROVEMENTS OR FACILITY EXPANSIONS AND THEIR COSTS NECESSITATED BY AND
13 ATTRIBUTABLE TO DEVELOPMENT IN THE SERVICE AREA BASED ON THE APPROVED LAND
14 USE ASSUMPTIONS, WHICH SHALL BE PREPARED BY A QUALIFIED PROFESSIONAL ENGINEER
15 LICENSED TO PERFORM THE PROFESSIONAL ENGINEERING SERVICES IN THIS STATE.

16 4. A DEFINITIVE TABLE ESTABLISHING THE SPECIFIC LEVEL OR QUANTITY OF
17 USE, CONSUMPTION, GENERATION OR DISCHARGE OF A SERVICE UNIT FOR EACH CATEGORY
18 OF INFRASTRUCTURE IMPROVEMENTS OR FACILITY EXPANSIONS AND AN EQUIVALENCY OR
19 CONVERSION TABLE ESTABLISHING THE RATIO OF A SERVICE UNIT TO VARIOUS TYPES OF
20 LAND USES, INCLUDING RESIDENTIAL, COMMERCIAL AND INDUSTRIAL.

21 5. THE TOTAL NUMBER OF PROJECTED SERVICE UNITS NECESSITATED BY AND
22 ATTRIBUTABLE TO NEW DEVELOPMENT IN THE SERVICE AREA BASED ON THE APPROVED
23 LAND USE ASSUMPTIONS AND CALCULATED PURSUANT TO GENERALLY ACCEPTED
24 ENGINEERING AND PLANNING CRITERIA.

25 6. THE PROJECTED DEMAND FOR INFRASTRUCTURE IMPROVEMENTS OR FACILITY
26 EXPANSIONS REQUIRED BY NEW SERVICE UNITS FOR A PERIOD NOT TO EXCEED TEN
27 YEARS.

28 7. A FORECAST OF REVENUES GENERATED BY NEW SERVICE UNITS OTHER THAN
29 DEVELOPMENT FEES, WHICH SHALL INCLUDE ESTIMATED STATE-SHARED REVENUE, HIGHWAY
30 USERS REVENUE, FEDERAL REVENUE, AD VALOREM PROPERTY TAXES, GRANTS, DONATIONS,
31 CONSTRUCTION CONTRACTING OR SIMILAR EXCISE TAXES AND THE CAPITAL RECOVERY
32 PORTION OF UTILITY FEES ATTRIBUTABLE TO DEVELOPMENT IN THE SERVICE AREA BASED
33 ON THE APPROVED LAND USE ASSUMPTIONS, AND A PLAN TO CREDIT THESE
34 CONTRIBUTIONS AGAINST DEVELOPMENT AS REQUIRED IN SUBSECTION B, PARAGRAPH 12
35 OF THIS SECTION.

36 F. ~~Except for adjustments pursuant to subsection G of this section,~~ A
37 municipality's development fee ordinance shall provide that a new development
38 fee or an increased portion of a modified development fee shall not be
39 assessed against a development for ~~twenty-four~~ SIXTY months after the date of
40 the municipality's final approval of the development if no ~~material changes~~
41 ~~are~~ INCREASE IN THE NUMBER OF SERVICE UNITS IS made to the site plan or
42 subdivision plat that was the subject of the final approval. IF THE NUMBER
43 OF SERVICE UNITS INCREASES, THE DEVELOPMENT FEE SHALL BE LIMITED TO THE
44 AMOUNT ATTRIBUTABLE TO THE ADDITIONAL SERVICE UNITS. The ~~twenty-four~~ SIXTY
45 month period shall not be extended by a renewal or amendment of the site plan

1 or the final subdivision plat that was the subject of the final approval.
2 The municipality shall issue, on request, a written statement of the
3 development fee schedule applicable to the development.

4 ~~G. A municipality may automatically adjust a development fee on an~~
5 ~~annual basis without a public hearing if the adjustment is based on a~~
6 ~~nationally recognized index applicable to the cost of the necessary public~~
7 ~~service that is the subject of the development fee and the adjustment~~
8 ~~mechanism is identified in the report required by subsection C of this~~
9 ~~section. The municipality shall provide public notice of those adjustments~~
10 ~~at least thirty days in advance of their effective date.~~

11 G. BEFORE THE ADOPTION OF PROPOSED OR UPDATED LAND USE ASSUMPTIONS,
12 INFRASTRUCTURE IMPROVEMENTS PLAN AND DEVELOPMENT FEES AS PRESCRIBED IN
13 SUBSECTION D OF THIS SECTION, THE MUNICIPALITY SHALL APPOINT AN
14 INFRASTRUCTURE IMPROVEMENTS ADVISORY COMMITTEE, SUBJECT TO THE FOLLOWING
15 REQUIREMENTS:

16 1. THE ADVISORY COMMITTEE SHALL BE COMPOSED OF AT LEAST FIVE MEMBERS
17 WHO ARE APPOINTED BY THE GOVERNING BODY OF THE MUNICIPALITY. AT LEAST FORTY
18 PER CENT OF THE MEMBERS OF THE ADVISORY COMMITTEE MUST BE REPRESENTATIVES OF
19 THE REAL ESTATE, DEVELOPMENT OR BUILDING INDUSTRIES, AND AT LEAST TWENTY PER
20 CENT OF THE MEMBERS OF THE COMMITTEE MUST BE FROM THE HOME BUILDING INDUSTRY.
21 MEMBERS SHALL NOT BE EMPLOYEES OR OFFICIALS OF THE MUNICIPALITY.

22 2. THE ADVISORY COMMITTEE SERVES IN AN ADVISORY CAPACITY AND SHALL:
23 (a) ADVISE AND ASSIST THE MUNICIPALITY IN ADOPTING LAND USE
24 ASSUMPTIONS AND DETERMINE WHETHER THE ASSUMPTIONS ARE IN CONFORMANCE WITH THE
25 GENERAL PLAN OF THE MUNICIPALITY.

26 (b) REVIEW THE INFRASTRUCTURE IMPROVEMENTS PLAN AND FILE WRITTEN
27 COMMENTS.

28 (c) MONITOR AND EVALUATE IMPLEMENTATION OF THE INFRASTRUCTURE
29 IMPROVEMENTS PLAN.

30 (d) EVERY YEAR FILE REPORTS WITH RESPECT TO THE PROGRESS OF THE
31 INFRASTRUCTURE IMPROVEMENTS PLAN AND REPORT TO THE MUNICIPALITY ANY PERCEIVED
32 INEQUITIES IN IMPLEMENTING THE PLAN OR IMPOSING THE DEVELOPMENT FEE.

33 (e) ADVISE THE MUNICIPALITY OF THE NEED TO UPDATE OR REVISE THE LAND
34 USE ASSUMPTIONS, INFRASTRUCTURE IMPROVEMENTS PLAN AND DEVELOPMENT FEE.

35 3. THE MUNICIPALITY SHALL MAKE AVAILABLE TO THE ADVISORY COMMITTEE ANY
36 PROFESSIONAL REPORTS WITH RESPECT TO DEVELOPING AND IMPLEMENTING THE
37 INFRASTRUCTURE IMPROVEMENTS PLAN.

38 4. THE MUNICIPALITY SHALL ADOPT PROCEDURAL RULES FOR THE ADVISORY
39 COMMITTEE TO FOLLOW IN CARRYING OUT THE COMMITTEE'S DUTIES.

40 H. AN OWNER OF REAL PROPERTY IS ENTITLED TO A REFUND OF A DEVELOPMENT
41 FEE OR ANY PART OF A DEVELOPMENT FEE THAT IS NOT SPENT IF:

42 1. ON THE REQUEST OF AN OWNER OF THE PROPERTY ON WHICH A DEVELOPMENT
43 FEE HAS BEEN PAID, THE MUNICIPALITY REFUNDS THE DEVELOPMENT FEE IF EXISTING
44 FACILITIES ARE AVAILABLE AND SERVICE IS NOT PROVIDED OR THE MUNICIPALITY HAS,
45 AFTER COLLECTING THE FEE WHEN SERVICE IS NOT AVAILABLE, FAILED TO COMPLETE

1 CONSTRUCTION WITHIN A REASONABLE PERIOD OF TIME CONSIDERING THE TYPE OF
2 INFRASTRUCTURE IMPROVEMENT OR FACILITY EXPANSION TO BE CONSTRUCTED BUT IN NO
3 EVENT LATER THAN FIVE YEARS AFTER THE DATE OF PAYMENT.

4 2. ANY PART OF THE DEVELOPMENT FEE IS NOT SPENT AS AUTHORIZED BY THIS
5 SECTION WITHIN FIVE YEARS AFTER THE DATE OF PAYMENT.

6 3. ON COMPLETION OF THE INFRASTRUCTURE IMPROVEMENTS OR FACILITY
7 EXPANSIONS IDENTIFIED IN THE INFRASTRUCTURE IMPROVEMENTS PLAN, THE
8 MUNICIPALITY RECALCULATES THE DEVELOPMENT FEE USING THE ACTUAL COSTS OF THE
9 INFRASTRUCTURE IMPROVEMENTS OR FACILITY EXPANSION. IF THE DEVELOPMENT FEE
10 CALCULATED BASED ON ACTUAL COSTS IS LESS THAN THE DEVELOPMENT FEE PAID,
11 INCLUDING ANY SOURCES OF FUNDING NOT ANTICIPATED IN THE INFRASTRUCTURE
12 IMPROVEMENTS PLAN, THE MUNICIPALITY SHALL REFUND THE DIFFERENCE IF THE
13 DIFFERENCE EXCEEDS THE DEVELOPMENT FEE PAID BY MORE THAN TEN PER CENT, BASED
14 ON ACTUAL COSTS.

15 I. A REFUND SHALL BEAR INTEREST CALCULATED FROM THE DATE OF COLLECTION
16 TO THE DATE OF REFUND AT A RATE PURSUANT TO SECTION 44-1201, SUBSECTION A.
17 ALL REFUNDS SHALL BE MADE TO THE RECORD OWNER OF THE PROPERTY AT THE TIME THE
18 REFUND IS PAID. IF THE DEVELOPMENT FEE IS PAID BY A GOVERNMENTAL ENTITY, THE
19 REFUND SHALL BE PAID TO THE GOVERNMENTAL ENTITY. THE OWNER OF REAL PROPERTY
20 ON WHICH A DEVELOPMENT FEE HAS BEEN PAID OR A MEMBERSHIP ORGANIZATION
21 REPRESENTING THE OWNER OF REAL PROPERTY OR A GOVERNMENTAL ENTITY THAT HAS
22 PAID A DEVELOPMENT FEE HAS STANDING TO SUE FOR A REFUND.

23 J. A DEVELOPMENT FEE THAT IS IN PLACE ON THE EFFECTIVE DATE OF THIS
24 AMENDMENT TO THIS SECTION SHALL BE REPLACED BY A DEVELOPMENT FEE IMPOSED
25 UNDER THIS SECTION ON OR BEFORE AUGUST 1, 2012. ANY MUNICIPALITY HAVING A
26 DEVELOPMENT FEE THAT HAS NOT BEEN REPLACED UNDER THIS SECTION ON OR BEFORE
27 AUGUST 1, 2012 IS LIABLE TO ANY PARTY WHO, AFTER THE EFFECTIVE DATE OF THIS
28 AMENDMENT TO THIS SECTION, PAYS A DEVELOPMENT FEE THAT EXCEEDS THE MAXIMUM
29 PERMITTED UNDER THIS SECTION BY MORE THAN TEN PER CENT FOR AN AMOUNT EQUAL TO
30 TWO TIMES THE DIFFERENCE BETWEEN THE MAXIMUM DEVELOPMENT FEE ALLOWED AND THE
31 ACTUAL DEVELOPMENT FEES IMPOSED, PLUS ANY REASONABLE ATTORNEY FEES AND COURT
32 COSTS. ANY DEVELOPMENT FEE MONIES IN THE DEVELOPMENT FEE ACCOUNTS COLLECTED
33 BEFORE AUGUST 1, 2012:

34 1. SHALL BE USED TOWARDS THE SAME CATEGORY OF INFRASTRUCTURE
35 IMPROVEMENTS AS AUTHORIZED BY THIS SECTION.

36 2. IF DEVELOPMENT FEES ARE IN A FUND FOR A PURPOSE NOT AUTHORIZED BY
37 THIS SECTION, SHALL BE DISTRIBUTED EVENLY AMONG THE CATEGORIES OF
38 INFRASTRUCTURE IMPROVEMENTS AUTHORIZED BY THIS SECTION.

39 K. A MORATORIUM SHALL NOT BE PLACED ON DEVELOPMENT FOR THE SOLE
40 PURPOSE OF AWAITING COMPLETION OF ALL OR ANY PART OF THE PROCESS NECESSARY TO
41 DEVELOP, ADOPT OR UPDATE DEVELOPMENT FEES.

42 L. ANY PERSON OR GOVERNMENTAL ENTITY THAT HAS PAID A DEVELOPMENT FEE,
43 OR MEMBERSHIP ORGANIZATION REPRESENTING A PERSON THAT HAS PAID A DEVELOPMENT
44 FEE, HAS STANDING TO SUE UNDER THIS SECTION. IN ANY JUDICIAL ACTION

1 INTERPRETING THIS SECTION, ALL POWERS CONFERRED ON MUNICIPAL GOVERNMENTS IN
2 THIS SECTION SHALL BE NARROWLY CONSTRUED.

3 ~~H.~~ M. Each municipality that assesses development fees shall submit
4 an annual report accounting for the collection and use of the fees FOR EACH
5 SERVICE AREA. The annual report shall include the following:

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

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

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

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

13 (a) Bonds issued by the municipality to pay the cost of a capital
14 improvement project that is the subject of a development fee assessment,
15 INCLUDING THE AMOUNT NEEDED TO REPAY THE DEBT SERVICE OBLIGATIONS ON EACH
16 FACILITY FOR WHICH DEVELOPMENT FEES HAVE BEEN IDENTIFIED AS THE SOURCE OF
17 FUNDING AND THE TIME FRAMES IN WHICH THE DEBT SERVICE WILL BE REPAID.

18 (b) Monies advanced by the municipality from funds other than the
19 funds established for development fees in order to pay the cost of a capital
20 improvement project that is the subject of a development fee assessment, THE
21 TOTAL AMOUNT ADVANCED BY THE MUNICIPALITY FOR EACH FACILITY, THE SOURCE OF
22 THE MONIES ADVANCED AND THE TERMS UNDER WHICH THE MONIES WILL BE REPAID TO
23 THE MUNICIPALITY.

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

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

30 ~~I.~~ N. Within ninety days following the end of each fiscal year, each
31 municipality shall submit a copy of the annual report to the city clerk AND
32 POST THE REPORT ON THE MUNICIPALITY'S WEBSITE. Copies shall be made
33 available to the public on request. The annual report may contain financial
34 information that has not been audited.

35 ~~J.~~ O. A municipality that fails to file the report AND POST THE
36 REPORT ON THE MUNICIPALITY'S WEBSITE AS required by this section shall not
37 collect development fees until the report is filed AND POSTED.

38 ~~K.~~ P. Any action to collect a development fee shall be commenced
39 within two years after the obligation to pay the fee accrues.

40 Q. DEVELOPMENT FEES COLLECTED AFTER AUGUST 1, 2012 ARE USED SOLELY FOR
41 THE PAYMENT OF PRINCIPAL AND INTEREST ON THE PORTION OF THE BONDS ISSUED
42 BEFORE DECEMBER 31, 2010 TO FINANCE CONSTRUCTION OF THE FACILITY.

1 ~~1.~~ R. For the purposes of this section:

2 1. "DEDICATION" MEANS THE ACTUAL CONVEYANCE DATE OR THE DATE THE
3 IMPROVEMENT, FACILITIES OR REAL OR PERSONAL PROPERTY IS PLACED INTO SERVICE,
4 WHICHEVER OCCURS FIRST.

5 2. "DEVELOPMENT" MEANS:

6 (a) THE SUBDIVISION OF LAND.

7 (b) THE CONSTRUCTION, RECONSTRUCTION, CONVERSION, STRUCTURAL
8 ALTERATION, RELOCATION OR ENLARGEMENT OF ANY STRUCTURE THAT ADDS OR INCREASES
9 THE NUMBER OF SERVICE UNITS.

10 (c) ANY USE OR EXTENSION OF THE USE OF LAND THAT INCREASES THE NUMBER
11 OF SERVICE UNITS.

12 3. "FACILITY EXPANSION" MEANS THE EXPANSION OF THE CAPACITY OF AN
13 EXISTING FACILITY THAT SERVES THE SAME FUNCTION AS AN OTHERWISE NEW
14 INFRASTRUCTURE IMPROVEMENT IN ORDER THAT THE EXISTING FACILITY MAY SERVE NEW
15 DEVELOPMENT. FACILITY EXPANSION DOES NOT INCLUDE THE REPAIR, MAINTENANCE,
16 MODERNIZATION OR EXPANSION OF AN EXISTING FACILITY TO BETTER SERVE EXISTING
17 DEVELOPMENT.

18 ~~1.~~ 4. "Final approval" means:

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

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

24 5. "INFRASTRUCTURE IMPROVEMENT" MEANS ANY OF THE FOLLOWING FACILITIES
25 THAT HAVE A LIFE EXPECTANCY OF TEN OR MORE YEARS AND THAT ARE OWNED AND
26 OPERATED BY OR ON BEHALF OF THE MUNICIPALITY:

27 (a) WATER FACILITIES, INCLUDING THE SUPPLY, TRANSPORTATION, TREATMENT,
28 PURIFICATION AND DISTRIBUTION OF WATER.

29 (b) WASTEWATER FACILITIES, INCLUDING COLLECTION, INTERCEPTION,
30 TRANSPORTATION, TREATMENT AND DISPOSAL OF WASTEWATER.

31 (c) STREET FACILITIES LOCATED IN THE SERVICE AREA, INCLUDING ARTERIAL
32 OR COLLECTOR STREETS OR ROADS THAT HAVE BEEN DESIGNATED ON AN OFFICIALLY
33 ADOPTED PLAN OF THE MUNICIPALITY AND RIGHTS-OF-WAY AND IMPROVEMENTS THEREON.

34 (d) FIRE AND POLICE FACILITIES, INCLUDING ALL APPURTENANCES FOR THOSE
35 FACILITIES. FIRE AND POLICE FACILITIES DO NOT INCLUDE A FACILITY OR PORTION
36 OF A FACILITY THAT IS USED TO REPLACE SERVICES THAT WERE ONCE PROVIDED
37 ELSEWHERE IN THE MUNICIPALITY, VEHICLES AND EQUIPMENT USED TO PROVIDE
38 ADMINISTRATIVE SERVICES, HELICOPTERS OR AIRPLANES OR A FACILITY THAT IS USED
39 FOR TRAINING FIREFIGHTERS OR OFFICERS FROM MORE THAN ONE STATION OR
40 SUBSTATION.

41 (e) PARK AND RECREATIONAL FACILITIES ON REAL PROPERTY NOT LARGER THAN
42 THIRTY ACRES IN AREA. PARK AND RECREATIONAL FACILITIES DO NOT INCLUDE
43 AMUSEMENT PARKS, AQUARIUMS, AUDITORIUMS, ARENAS, ARTS AND CULTURAL
44 FACILITIES, BANDSTAND AND ORCHESTRA FACILITIES, BATHHOUSES, BOATHOUSES,
45 CLUBHOUSES, COMMUNITY CENTERS GREATER THAN THREE THOUSAND SQUARE FEET IN

1 FLOOR AREA, ENVIRONMENTAL EDUCATION CENTERS, EQUESTRIAN FACILITIES, GOLF
2 COURSE FACILITIES, GREENHOUSES, LAKES, MUSEUMS, SWIMMING POOLS, THEME PARKS,
3 WATER RECLAMATION OR RIPARIAN AREAS, WETLANDS, ZOO FACILITIES OR SIMILAR
4 RECREATIONAL FACILITIES.

5 (f) ANY FACILITY THAT WAS FINANCED AND THAT MEETS ALL OF THE FOLLOWING
6 REQUIREMENTS:

7 (i) WAS INCLUDED IN A PREVIOUSLY ADOPTED INFRASTRUCTURE IMPROVEMENT
8 PLAN.

9 (ii) DEVELOPMENT FEES WERE PLEDGED TO REPAY DEBT SERVICE OBLIGATIONS
10 THAT WERE USED TO CONSTRUCT THE FACILITY.

11 (iii) CONSTRUCTION WAS COMPLETED ON THE FACILITY BEFORE DECEMBER 31,
12 2010.

13 ~~2-~~ 6. "Infrastructure improvements plan" means ~~one or more~~ A written
14 ~~plans that individually or collectively identify~~ PLAN THAT IDENTIFIES each
15 ~~public-service~~ INFRASTRUCTURE IMPROVEMENT OR FACILITY EXPANSION that is
16 proposed to be the subject of a development fee and otherwise complies with
17 the requirements of this section, and may be the municipality's capital
18 improvements plan.

19 7. "LAND USE ASSUMPTIONS" MEANS PROJECTIONS OF CHANGES IN LAND USES,
20 DENSITIES, INTENSITIES AND POPULATION FOR A SPECIFIED SERVICE AREA OVER A
21 PERIOD OF AT LEAST TEN YEARS AND PURSUANT TO THE GENERAL PLAN OF THE
22 MUNICIPALITY.

23 8. "QUALIFIED PROFESSIONAL" MEANS A PROFESSIONAL ENGINEER, SURVEYOR,
24 FINANCIAL ANALYST OR PLANNER PROVIDING SERVICES WITHIN THE SCOPE OF THE
25 PERSON'S LICENSE, EDUCATION OR EXPERIENCE.

26 9. "SERVICE AREA" MEANS ANY SPECIFIED AREA WITHIN THE BOUNDARIES OF A
27 MUNICIPALITY IN WHICH DEVELOPMENT WILL BE SERVED BY INFRASTRUCTURE
28 IMPROVEMENTS OR FACILITY EXPANSIONS AND WITHIN WHICH DEVELOPMENT IS SERVED
29 DIRECTLY AND BENEFITED BY THE INFRASTRUCTURE IMPROVEMENTS OR FACILITY
30 EXPANSIONS AS PRESCRIBED IN THE INFRASTRUCTURE IMPROVEMENTS PLAN. SERVICE
31 AREA DOES NOT INCLUDE ANY AREA THAT MAKES UP THE ENTIRE AREA OF A
32 MUNICIPALITY, EXCEPT FOR MUNICIPALITIES WITH A POPULATION OF LESS THAN TEN
33 THOUSAND PERSONS.

34 10. "SERVICE UNIT" MEANS A STANDARDIZED MEASURE OF CONSUMPTION, USE,
35 GENERATION OR DISCHARGE ATTRIBUTABLE TO AN INDIVIDUAL UNIT OF DEVELOPMENT
36 CALCULATED PURSUANT TO GENERALLY ACCEPTED ENGINEERING OR PLANNING STANDARDS
37 FOR A PARTICULAR CATEGORY OF INFRASTRUCTURE IMPROVEMENTS OR FACILITY
38 EXPANSIONS.