



303 North Beeline Highway  
Payson, Arizona 85541  
Phone 928-474-5242  
Fax 928-474-8472

## Replacement<sup>1</sup> Development Impact Fees, 2014

The purpose of this paper is to (a) provide general information about the new Development Impact Fee scheme enacted by SB1525, (b) provide specific information on the Town's adoption process for replacement Development Impact Fees, (c) address the administrative costs associated with any replacement Development Impact Fees, and (d) discuss the possibility of full or partial refunds of any replacement Development Impact Fees.

The information is broken down into the following categories: Background, Adoption Process, Collection and Timing, Record Keeping, Use, Refunds, Budget Implications, and Other Notable Items.

### I. Background.

The Town of Payson adopted and imposed its first Development Impact Fee (DIF) in 1986. Since that time, the Town has added and/or increased its DIF on 5 separate occasions. See attached chart of Historical Development Impact Fees for the Town of Payson. The current DIF adoption process was initiated by the legislature's approval of SB1525. SB1525 requires that municipalities do additional studies and adopt replacement DIF prior to August 1, 2014.

Under the current version of the Statute, as well as past versions, the purpose of DIF is to allow new development to pay for infrastructure costs associated with such new development. One of the reasons for SB1525 was that the home builder's community believed municipalities were over reaching with their DIF. SB1525 also explicitly requires a municipality to determine what, if any, non DIF amounts or contributions new development will contribute to the projects in the Infrastructure Improvements Plan (IIP). DIF must be reduced by any such amounts/contributions.

---

<sup>1</sup> The term "replacement" is used throughout this paper instead of "new" because (1) state legislation requires the Town to re-adoption any existing fees it wishes to continue; and (2) the Town is only considering the re-adoption of its existing fees. The Town is not considering any new fees, i.e., fees it does not currently charge. Note – the current 'public safety' impact fees, because of state law requirements have been separated out into 'fire' and 'police.'

FEB 20 2014 D.I. B

## II. Adoption Process

The adoption process for DIF is much more restrictive than in the past. The new adoption process takes months with multiple public hearings. After a replacement DIF is approved, developers may take steps to 'lock in' development fees for periods of up to 24 months.

The first step in the Town's venture through this process was the development of Land Use Assumptions (LUA) and an IIP. The Town contracted with TischlerBise for assistance with the DIF adoption process, including development of the LUA and IIP. The IIP is specifically required to be "developed by qualified professionals using generally accepted engineering and planning practices . . . ." A.R.S. §9-463.05(D)(2). The LUA and IIP were made available to the public in late 2013 and a notice of the Council's adoption schedule was placed in the Payson Roundup on November 8 and 12, 2013.

On December 12, 2013, the Council took its first formal step in the process and directed Staff to proceed with the biennial audit option as opposed to having a citizens committee. See Item I(1) from the December 12, 2013 Council Meeting.

On January 9, 2014, the Council was formally presented with the LUA and IIP, heard from a representative of TischlerBise, and held a public hearing on the LUA and IIP.

On February 20, 2014, the LUA and IIP will come before the Council for adoption. If adopted, the LUA and IIP become the technical supporting documents for any replacement DIF that may be adopted. At the February 20, 2014 meeting, the Council will also consider adopting a formal 'Notice of Intent to Assess Replacement Development Impact Fees.' The LUA and IIP address five potential DIF – Water, Parks, Streets, Fire, and Police. It is anticipated that the Council will determine if it will move forward with the process for some, all, or none of the five possible replacement DIF.

On April 3, 2014, the Council will hold a Public Hearing on the proposed DIF. Finally, the Council will make a final decision on the DIF (including the adoption of a new DIF ordinance) in May of 2014. The effective date of any replacement DIF would be August 1, 2014.

## III. Collection and Timing.

The Statute specifically states that DIF on residential development are to be collected at the time of building permit issuance, unless there is a development agreement. If there is a development agreement, the DIF may be collected later, up to 15 days after the issuance of a Certificate of Occupancy. The Statute is silent on the timing of the collection of DIF on commercial development. Traditionally, these have been collected concurrent with issuance of a building permit, unless a deferred payment agreement is signed.

If a municipality chooses to waive a DIF, the municipality must pay such DIF with general fund money into the specific DIF account.

#### IV. Record Keeping Requirements for DIF

DIF collected must be “placed in a separate fund and accounted for separately.” A.R.S. §9-463.05(A)(9). The League’s model ordinance required that the fees “be placed in separate, interest bearing accounts” for each category.<sup>2</sup> Interest earned on DIF collections must also be tracked separately and credited to the applicable DIF fund. Because of the potential for refunds (see Section VI below), each DIF should be able to be tracked back to the specific parcel for which it was collected. There must be a system to determine if a DIF has been paid on behalf of a specific parcel, the date of such payment, and the interest earned on the DIF from the date of payment.

In addition to tracking the collection of impact fees, the disbursement of impact fees must also be tracked for three reasons: (1) ensure that the DIF are spent appropriately, (2) facilitate preparation of the annual report and biennial audit,<sup>3</sup> and (3) determine if actual costs for capital projects in the IIP are less than forecasted costs. The annual report must include: collections, fund balances, Interest/earnings, debt payments, amounts spent on acceptable capital projects, and amounts spent on non acceptable projects. If the annual report is not done, a municipality is precluded from collecting fees until it is completed and posted.

Finally, any DIF refunds must be tracked so that a subsequent property owner could not request or receive a second refund.

#### V. Use of DIF

The expenditure of DIF is very limited. DIF can be used only for purposes authorized by the Statute and only spent in the same area for which the fee was assessed. In addition to all of the specific requirements listed in the statute, DIF may only be spent upon projects that are contained in the adopted IIP. Finally, DIF not spent within 10 years of its collection (15 for water and waste water fees) is subject to refund as detailed in Section VI below.

#### VI. Refunds

Subsection (H) of the DIF statute creates a formalized process where owners of property for which a DIF has been paid may request a refund of the entire DIF in three specific scenarios:

---

<sup>2</sup> The Arizona League of Cities and Towns drafted a model ordinance for use under the strictures of SB1525. The League believes that by adopting a uniform ordinance, cities/towns will find strength in this uniformity and have less likelihood of litigation. The Town Council will be presented with the model ordinance, with some very minor changes, for consideration for adoption in May, 2014.

<sup>3</sup> The biennial audit may not be done by a Town employee.

(1) If the improvements for which the DIF was collected are built, but the services of such improvements are not available to the property owner, the owner may request a refund.

(2) If the Town collects a DIF, but fails to “complete construction within the time period identified” in the IIP, the owner may request a refund.

(3) If the Town collects a DIF and “any part of the development fee is not spent” within 10 years after the collection (or 15 years for water and waste water), the owner may request a refund.

Subsection (l) creates a formalized process where owners of property for which a DIF has been paid may request a partial refund. If the “actual cost of construction” is at least 10% less than the “forecasted cost of construction” (which was presumably used to determine the amount of the DIF), the owner may request a proportional refund.

Three additional items that are noteworthy related to full or partial refunds: (1) The Statute does not contain a time limit on full or partial refund requests. In theory, someone could seek a refund 100 years after the fee was paid. (2) Refund requests are made by and payable to the then current owner of the property. (3) All refunds must be paid plus any interest earned on the amount being refunded between the date the DIF was paid and the date of any refund.

Several refund scenarios are laid out at the end of this paper.

## VII. Budget Implications

As strange as it sounds, the assessment of DIF may mandate general fund expenditures. As mentioned above in Section VI (Refunds), if a municipality fails to complete a project for which a DIF is collected within the time contained in the IIP, refunds may be requested. Below is a summary of cash flow requirements of Payson’s 5 potential DIF. Any deficit would have to be funded through the general fund. If the general fund did not fund these projects, they would not get completed and the DIF that were collected would be subject to refund request.

Parks shows a cumulative deficit through at least 2018 in an amount up to \$215,000. If all projects hold, the balance is positive by 2023.

Fire shows a deficit in 2014 and then positive amounts throughout the remainder of the 10 year period.

Police alternates between positive and negative numbers, showing a \$196,000 deficit by 2018 and a \$164,000 positive balance by 2023.

Streets show an annual deficit that continues throughout the study, growing to a cumulative deficit of \$635,000 at the 10 year mark.

Water shows a surplus in the early years, transitioning to a cumulative deficit by the end of the 10 year study period.

#### VIII. Other Notable Items

If a DIF is adopted by the Council, it must apply to all development types, i.e., commercial, residential, and industrial. The Town currently assesses parks, streets, public safety and water DIF on residential developments. Only water DIF are assessed on commercial and industrial development.

The LUA and IIP must be reviewed and updated at least every five years.

The one thing that everyone who has read, analyzed, and worked with the Statute agrees upon is that it is far from a model of clarity. Over the next five plus years, many of the ambiguities will be resolved through Court challenges. This ambiguity makes implementing the Statute, even in a very conservative way, extremely difficult.

Because of the ambiguity in the Statute, the threat of litigation is real. Many municipalities, in an attempt to avoid the lawsuits and the expenses associated with implementing the law, have abandoned DIF altogether.

If a lawsuit is filed against a municipality based upon the DIF statute, the municipality's authority shall be narrowly construed. A.R.S. §9-463.05(M). The section specifically addresses the scope and adoption of DIF. It is unclear if such a presumption against the municipality would apply in the refund context, but it is possible.

**Current verses maximum allowable replacement DIF**

	Current DIF Residential	Current DIF Commercial	Current DIF Industrial	Max new DIF Resdnt	Max new DIF Cmmrcl	Max new DIF Industrl
Water	7570	7500	7570	6592	6592	6592
Parks	1000	n/a	n/a	673	\$.20/ sq ft	\$.23/ sq ft
Public Safty	500	n/a	n/a	n/a	n/a	n/a
Fire	n/a	n/a	n/a	406	\$.65/ sq ft	\$.16/ sq ft
Police	n/a	n/a	n/a	565	\$.27/ sq ft	\$.06/ sq ft
Streets	1235	n/a	n/a	830	\$.96/ sq ft	\$.26/ sq ft
Total	10,305	7570	7570	9066	10752	8012

\* Current DIF commercial and industrial assumes water usage of 1 ERU.

\* Parks, Fire, Police, and Streets Development Impact Fees for Commercial and Industrial were calculated using a 2000 square foot building.

**Scenarios (looking at refund request possibilities)**

Scenario	Capital Cost in IIP	Collections in 10/15 years	Actual Cost of Project	Project Completed?	Poss. Refund Request?
A	1,000,000	1,000,000	1,000,000	Yes	No
B	500,000	250,000	n/a	Not begun	Yes
C	250,000	100,000	100,000 spent	Begun, but not complete	unknown
D	250,000	250,000	220,000	Yes	Yes
E	500,000	560,000	510,000	Yes	unknown