

**TOWN OF PRESCOTT VALLEY
REQUEST FOR COUNCIL ACTION
Date: December 8, 2011**

SUBJECT: Amendment Town Code Provisions Re Adoption of Development Impact Fees

SUBMITTING DEPARTMENT: Town Manager's Office

PREPARED BY: Ryan Judy, Deputy Town Manager

AGENDA LOCATION: Comments/Communications , Consent , Work/Study ,
New Business , Public Hearing , Second Reading

ATTACHMENTS: a) Resolution No. 1776, and b) Ordinance No. 764

SUMMARY/BACKGROUND: Development Impact Fees (DIFs) are one-time charges applied to new development in order to alleviate its "impact" on current public improvements and services. The intent is to ensure that "growth pays for growth" and that existing residents are not unduly burdened to pay for new improvements and services needed to accommodate growth. DIFs have been assessed by the Town of Prescott Valley since adoption of a recreation fee by Resolution No. 624 on April 27, 1995. DIFs were most recently revised by Resolution No. 1461 on September 14, 2006.

When DIFs were revised by Resolution No. 1183 on May 8, 2003, the Town Council adopted the recommendation from a citizen's advisory committee that the Circulation System, Public Safety and Civic fees applicable to non-residential development be suspended for a period of three (3) years in order to incentivize the commercial and industrial base of the Town. This suspension was subsequently extended by Resolution No. 1431 (May 25, 2006), Resolution No. 1461 (Sep 14, 2006), Resolution No. 1590 (Jun 26, 2008), and Resolution No. 1712 (Jul 22, 2010). In the meantime, on Nov 9, 2006, the Homebuilders Association of Central Arizona (HACA) filed suit against the Town and the City of Prescott for this practice. Over time, the two communities were successful in court in defending the practice both at the local level (Summary Judgment May 4, 2009) and on appeal (Memorandum Decision Sep 28, 2010), based on an argument that non-residential development provides other benefits to the Town in the form of transaction privilege taxes (TPT) ad valorem taxes for jurisdictions that apply them, (i.e. school district, fire district), and new employment. However, HACA decided to carry its arguments to the Legislature. Over several sessions, HACA effectively lobbied for new limits on the ability of cities and towns to collect DIFs. Particularly sweeping changes were adopted by the Legislature during the most recent session through Senate Bill 1525.

Among other things, SB 1525 now prohibits cities and towns from waiving any fees for non-residential development. It also enacts refund provisions if projects are not completed within a ten (10) year period, establishes service levels and areas, and limits the types of projects for which DIFs may be assessed at all. DIF studies and rate structures must be updated in accordance with the new requirements by Aug 1, 2014. Cities and towns may continue to collect existing DIFs in the interim, but certain actions must be taken prior to Jan 1, 2012. For the Town of Prescott Valley, such actions include elimination of the Civic DIF.

The League of Arizona Cities and Towns recently distributed a draft ordinance for cities and towns to consider for possible adoption. The League desires that all cities and towns adopt Code provisions that are as similar to one another as possible in order to present a unified front and to prevent future damaging legislation or new lawsuits challenging the legality of DIFs.

Staff has modified this proposed Ordinance No. 764 to be consistent with the requirements of SB 1525. Based on input from the Council, the Ordinance uses the advisory committee option to provide oversight of DIFs on an on-going basis. It also exempts Town and school buildings from DIFs (as allowed under the statute).

In a related action, staff will propose adoption of a resolution adjusting the Town's DIF structure as described above until such a time as a new study is completed. Staff proposes that the new study be considered in the FY 2012-2013 budget process. Also, Council will note that the resolution will extend the current suspension of application certain DIFs on non-residential development until such time as the new study is conducted. This is different from what was initially discussed at the Nov 3, 2011 work-study session. Following that session, staff again consulted with our contract attorney who has specialized knowledge of SB 1525 and the League's model ordinance. He acknowledged that continued discussions among municipalities about the interpretation of SB 1525 had resulted in a consensus that current DIFs not applicable to non-residential development would not have to be immediately applied as of January 1, 2012, and such application could be postponed until such a time as a new study is completed and fees revised. Staff confirmed that the City of Prescott planned to follow this interpretation of SB 1525.

[Note that staff proposes to adopt this Town Code revision using the procedure outlined in ARS §9-802 which allows adoption of lengthy provisions by reference to avoid significant publication costs.]

OPTIONS ANALYSIS: The Council may approve Ordinance No. 764 revising Town Code provisions related to adoption of DIFs, or decline to adopt said Ordinance at this time.

ACTION OPTION: A) Motion to authorize the Mayor (or, in his absence, the Vice Mayor) to sign Resolution No. 1776 declaring the document "Development Impact Fees" to be a public record under ARS §9-802, **OR** Motion not to approve Resolution No. 1776. **VOTE.**

B) Motion to read Ordinance No. 764 adopting by reference the documents "Development Impact Fees" by title only on two separate occasions and then place the same on final passage, **OR** Motion not to read Ordinance No. 764. **VOTE.**

[if the motion passes to read the Ordinance, the Mayor asks the Town Clerk to read Ordinance No. 764 by title only for the first reading]

RECOMMENDATION: Staff recommends approval of Ordinance No. 764 adopting by reference the document "Development Impact Fees".

FISCAL ANALYSIS: DIFs have played an important role in the Town's fiscal picture since 1995. It is expected that as Arizona slowly emerges from the current recession, Prescott Valley (like other Arizona cities and towns) will need to be prepared to have effective DIFs that recover costs for needed public improvements and services for the next round of growth, without stifling that growth. There will eventually be a substantial cost to obtain a new DIF study.

REVIEWED BY:

Management Services Director _____

Town Clerk _____

Town Attorney _____

Town Manager _____

COUNCIL ACTION:

Approved Denied Tabled/Deferred Assigned to _____