

MEMORANDUM

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: CITY MANAGER J. CRYSTAL DYCHES

SUBJECT: DEVELOPMENT IMPACT FEES, FOREIGN TRADE ZONE AND THE REQUIREMENTS OF OFF-SITE CONSTRUCTION ON PROPERTY DEVELOPMENT

DATE: FEBRUARY 9, 2024

PURPOSE

The topic of development in El Mirage's industrial area has been clouded by misinformation regarding fees, taxes, and infrastructure costs paid by developers. This memo addresses and clarifies the three main misconceptions that seem to be causing concern among the residents.

- The elimination of Development Impact Fees (DIF) in 2011 has been a point of contention, with some residents feeling that it has placed an unfair burden on them. However, it is important to consider that reinstating DIF in 2024 may not necessarily benefit the City or its residents. Eliminating DIF may be a beneficial factor in incentivizing development in the area, leading to increased economic growth and job opportunities.
- There is a misconception that businesses in the Foreign Trade Zones (FTZs) within the industrial area automatically receive tax breaks. In reality, the tax benefits available to companies in FTZs are contingent upon meeting specific federal requirements and being located within approved Usage-Driven Sites. New developments do not automatically receive tax breaks and are subject to stringent criteria to qualify for such benefits.
- There is also a concern that the cost of new development is straining City resources and causing an unfair burden on taxpayers and ratepayers. However, the City Code clearly outlines that developers are responsible for the design and construction of off-site improvements. This ensures that new development does not strain existing resources and utilities.

The purpose of my memo is to address and dispel the misconceptions surrounding the elimination of DIF, the tax benefits related to FTZs, and the responsibility of developers for off-site improvements to provide a more nuanced and accurate understanding of the situation. Hopefully, by dispelling these misconceptions, we can foster a better-informed and more constructive dialogue about the development within El Mirage.

DEVELOPMENT IMPACT FEES

The City of El Mirage experienced a surge in housing development between 1999 and 2004, resulting in the construction of 7,834 single-family homes. City impact fees were introduced in March 2005 following a study to determine the cost of providing services to these new developments. Prior to this, developers were subject to fees determined by individual agreements. Between 2005 and 2011, the City collected \$4,950,185 in Development Impact Fees from those constructing 615 single-family homes.

The ability to collect such fees changed significantly in 2011 when legislative modifications were implemented. The Arizona Revised Statute 9-463.05 amendment altered the circumstances under which a municipality can lawfully levy development impact fees to ensure that these fees are determined proportionately to new infrastructure costs. This led to the City Council's decision to rescind the fees. In addition, the City faced economic hardships that affected commercial development, which made it necessary to look into alternative means of facilitating the needed infrastructure improvements. The rescinding of development impact fees reflected a complex interplay between legislative changes, economic conditions, and the City's desire to promote growth.

Debates over establishing development impact fees in El Mirage have persisted, with some supporting their implementation while others contesting it. The reasons that led to the abolition of these fees in 2011 are still relevant today. Their use has become increasingly restrictive and less advantageous.

Development impact fees aim to finance essential public services required to accommodate new development and maintain the current level of service. Nevertheless, levying such fees could impede the City's capacity to enhance or expand essential public services for existing development, comply with more stringent safety or environmental standards, or provide a higher level of service. In essence, the enforcement of development impact fees has the potential to limit the City's ability to improve its infrastructure and services for its current residents and businesses without their proportional financial involvement (ARS 9-463.05-B.4.).

Considering the possible adverse effects on businesses and economic development is important. El Mirage's current appeal as a business destination is mainly due to the absence of development fees. Introducing such fees could deter future companies from establishing themselves in the City, potentially impeding the economic growth and employment that El Mirage aims to foster. These new businesses are major property tax contributors for El Mirage, the School District, the State, and other taxing districts. The taxes paid by these businesses help lower taxes for existing residents and businesses.

Moreover, the cost-benefit analysis of implementing development impact fees must be carefully evaluated. The expenses associated with conducting these analyses and collecting fees may ultimately surpass the revenue generated by the fees themselves, not to mention the credits that might be required

for infrastructure provided directly by the developers. This calls into question the value and practicality of imposing development impact fees, particularly in a City with limited available development land.

Furthermore, any decision to impose development impact fees must be proportional and mindful of the impact on existing residents and businesses. If the objective is to enhance the level of service, it is crucial to acknowledge that funding these improvements should not solely fall on new development. Existing property owners in the community may also need to contribute to ensure the sustainability and growth of the City (ARS 9-463.05-B.3.).

Summary: Several compelling reasons suggest that establishing development impact fees in 2024 may not be advantageous for El Mirage. Potential limitations on infrastructure improvements, negative impact on economic development, and questionable cost-benefit analysis all point to the need for careful consideration before implementing such fees. In pursuing sustainable and inclusive growth, weighing the potential drawbacks against the perceived benefits is imperative to make informed decisions for the entire community's benefit.

FOREIGN TRADE ZONE

Recent discussions surrounding the new developments within the LogistiCenterSM at Copperwing have raised questions about the potential tax benefits of the Foreign Trade Zone (FTZ) Magnet Site. There appears to be a misnomer that these developments are receiving large tax breaks, which has sparked controversy. Clarifying how the FTZ and tax benefits are linked may be important to dispel misconceptions.

Understanding what FTZ is and how it relates to tax benefits is essential.

- An FTZ is a designated site where foreign and domestic materials are allowed to remain before formal customs entry. Within the Zone, materials are duty-free until they are shipped out. Arizona has a state-defined tax benefit tied to FTZs, specifically related to property taxes. The re-classification under Arizona State Law allows property in an approved FTZ to be valued at 5% rather than the standard 18%, resulting in a 72% annual tax discount for Zone users, tenants, owners, and operators. However, it is essential to note that only companies meeting federal requirements for FTZ status are eligible for these tax benefits.
- The designated Foreign Trade Zone in El Mirage is a Usage-Driven Site, which requires each company desiring the designation to apply for acceptance. When companies apply for this status, they must commit to activating and utilizing the FTZ within three years, or the site will lose its FTZ status.

- The Greater Maricopa Foreign Trade Zone (GMFTZ) Annual Board Meeting resulted in the Dermody Magnet Site Application being pulled from the Board. Maricopa County did not approve the application or any future magnet site applications. The approval process for future "Usage-Driven" applications in the zone will require County approval letters.

Summary: New developments located with the FTZ site do not automatically receive tax breaks; the potential for tax benefits is tied to specific criteria and processes. We do not have any businesses in El Mirage that have applied for FTZ Usage-Driven status. By understanding how the FTZ and tax benefits are linked, the public can avoid misconceptions and engage in informed discussions regarding the development and economic implications for the future of El Mirage.

REQUIREMENTS OF OFF-SITE CONSTRUCTION ON PROPERTY DEVELOPMENT

Off-site construction plays a crucial role in the development of properties, as it involves the design, engineering, and installation of infrastructure and improvements that are on and adjacent to the site being developed. These improvements ensure that new development integrates seamlessly into the existing community and contributes positively to the cityscape. To meet the requirements, developers must comply with the various regulations and codes set forth by the City Council, ensuring that new development not only enhances the area's aesthetic appeal but also contributes to the safety and functionality of the surrounding neighborhoods.

One of the primary requirements of off-site construction is the developer's responsibility to design, engineer, construct, and install all off-site improvements and infrastructure on and adjacent to the site being developed per the City Code and Zoning Regulations. This includes the construction of new infrastructure such as roads, sidewalks, street lighting, irrigation, and landscaping. By taking on this responsibility, the developer ensures that new development is integrated seamlessly into the existing infrastructure, enhancing the overall appeal and functionality of the area. If the City collected Development Impact Fees for roads, streets, and other off-site infrastructure, the developer would not be required to install the improvements or would be entitled to offset development impact fees for the cost incurred, negating the perceived value of collecting impact fees.

Compliance with the City's regulations and codes is essential to ensuring that off-site construction meets the required standards for safety, accessibility, and environmental impact. Developers must adhere to the Design and Development Standards Manual adopted by the City Council, which sets forth the guidelines for the design and construction of improvements. This ensures that new development meets aesthetic requirements and fulfills the necessary safety and accessibility standards, contributing to the community's overall well-being.

These requirements alleviate the burden on City resources and infrastructure. By holding developers accountable for the design and construction of off-site improvements, the City ensures that new developments do not unduly strain existing resources and utilities, so residents do not bear the costs of developing new infrastructure.

An example of a successful approach to managing these costs is the collaboration between the City of El Mirage and the water and wastewater utility company EPCOR. The City worked with EPCOR to acquire the Certificate of Convenience and Necessity from the Arizona Corporation Commission for the industrial portion of the City. This strategic move will enable the area to develop without having to raise rates to spend significant utility funds on capital infrastructure. The City granted, and the residents voted to approve, a franchise agreement with EPCOR for this area, allowing them to operate within it while providing revenue to the City. This partnership ensures that all utility assets, maintenance, and associated costs are the responsibility of EPCOR, relieving the City of additional financial burdens. It is worth mentioning again that this franchise agreement does not impact the City's residential water and sewer rates.

Summary: The requirement for developers to provide off-site improvements in conjunction with property development is essential for ensuring that development contributes positively to the growth and prosperity of the community. By adhering to the City's regulations and codes, developers can ensure that their projects meet safety, functionality, and aesthetics standards. Holding developers responsible for the design and construction of off-site improvements ensures that new development does not place undue strain on existing resources and utilities, ultimately contributing to the community's overall well-being.

CONCLUSION

The misinformation circulating is causing unnecessary concern and confusion among residents. By providing this information, I hope we can dispel misconceptions and reassure residents that development is being carried out responsibly. Staff is considering how best to communicate this information so that, moving forward, the community will have an accurate understanding of the development process and its associated costs.