Federal Highway Administration Webinar on Transportation Utility Fees

Webinar Date: March 10, 2021

Answers to Questions Posed During the Webinar

Definition of TUFs

What are TUFs?

TUFs are periodic fees paid by a property owner or a building occupant to a municipality based on use of the local transportation system, which can include local streets and bridges, arterials, sidewalks, bike lanes, and other public paths. TUFs are also referred to as transportation maintenance fees, street maintenance fees, road use fees, pavement maintenance utility fees, street restoration and maintenance fees, or street utility fees.

How do TUFs differ from impact fees?

Impact fees are ***one-time fees*** on new development to help raise revenue for the construction of infrastructure facilities that benefit the new development. The new development pays a proportionate share of its anticipated impact on surrounding infrastructure and "buys into the system." In contrast, TUFs are ***ongoing fees*** to offset the cost of maintenance after construction of the transportation infrastructure.

How do TUFs differ from special assessment districts?

TUFs are primarily implemented to fund ***maintenance***, whereas special assessment districts typically fund the construction of ***new*** infrastructure and ***possibly*** the maintenance of that infrastructure. Many special assessments are similar to a property tax.

Common Uses of TUF Receipts

Can TUFs be used to build or maintain bike/pedestrian facilities or to convert a rail line to a bike path?

Whether TUF receipts may be used for a rails-to-trails project will depend on the specific project and, more importantly, what is allowed under the local implementing ordinance for the TUF. Some municipalities (e.g., Hillsboro, Oregon) have used TUF receipts to fund the construction and maintenance of bike/pedestrian infrastructure. In Loveland, Colorado, the local ordinance does not allow TUF receipts to be used to construct new bike lanes.

Have any communities used TUFs to cover operating expenses of public transit systems?

TUF receipts typically cover maintenance costs associated with roads and other related infrastructure. However, the City of Corvallis, Oregon, used its TUF receipts to pay for downtown bus service. The city levied a "transit operations fee" on municipal utility bills to generate revenue for its transit operations.

Determining Who Pays a TUF

Could a TUF be charged for a parking facility? If so, which category should be used from the Trip Generation Manual[i] published by the Institute of Transportation Engineers (ITE)?

Parking facilities are usually exempted from TUFs.

Who pays the TUF for a rental property?

Typically, a municipality sends a TUF bill to the property owner or resident as part of the utility bill. Generally, that is the same person or company that occupies the property. However, this becomes more complicated for multi-family buildings. For these buildings, the TUFs bill is usually sent to the owner. Although it could be sent to the individual tenants, municipalities generally hold the property owner liable for payment of the TUF.

Most railroads cross streets at grade, and often these streets show the worst deterioration. Why are railroads typically exempted from a TUF?

A TUF is based on trip generation, and in many communities, it is difficult to link a railroad to local trips. Further, the railroads themselves are typically responsible for the maintenance of railroad crossings.

Legal and Regulatory Considerations

Have any of the municipalities that have implemented TUFs been subject to legal challenges?

Yes, four State supreme courts have ruled on municipal TUF programs. Three of them have struck down the TUF program, and one ruled in favor, but not for the municipality that was involved in the case. **Table 1** below summarizes key takeaways from each of the cases. Under the Verdict for TUFs column, the X's indicate a rejection and a check mark indicates approval.

The case law suggests takeaways for the design of TUF programs. For example, the Colorado Supreme Court's ruling highlighted that allowing the transfer of TUF receipts to the general fund may blur the line between a TUF being a fee versus a tax. From a public policy perspective, one of the benefits of a TUF is that there is much greater transparency regarding the use of public monies. The Washington State case suggested that TUFs should be based on a metric that relates directly to road use (e.g., number of trips generated). As with all value capture techniques, practitioners should consult with legal counsel familiar with their State's case law to determine the relevant legal issues.

Is there a way to apply TUFs on a reservation where land rights are non-severable?

The purpose of a TUF is to treat roadways as a utility. If a dwelling unit on a reservation receives a utility bill for electricity, water, or sewer, a TUF could potentially be added to that bill. If the reservation is not charging residents for other utilities, it may be difficult to implement a TUF to fund road maintenance.

Have TUFs been implemented successfully outside of city limits (e.g., for rural subdivisions or county-maintained roads)?

If the rural subdivision is not within the city limits, then generally, it would not be subject to a TUF. If the TUF were levied at the county level, this could be possible; however, there are no known instances of TUFs being levied at the county level. Clackamas County, Oregon, explored the idea of levying TUFs at the county level, but municipalities were not satisfied with centralized management of the TUFs. As a result, the municipalities used existing, local utility billing systems to administer their own TUFs.[ii]

Table 1. Key Takeaways from TUF Court Rulings.

Case/State	Takeaway	Verdict for TUFs
Brewster v. City of Pocatello, ID 1988[iii]	• Court holds that revenue to be collected has no relationship to the regulation of travel over its streets but rather to generate funds for street maintenance. • The fee is in reality a tax.	✕
Bloom v. City of Fort Collins, CO 1989[iv]	• The TUF is a service fee and not a property tax. • Court ruled that transferring TUFs monies into general fund makes it an "impermissible" tax • The Court did not take issue with the TUF mechanism itself. The court effectively ruled that the TUFs mechanism is acceptable as long as the monies are kept in a separate, dedicated fund and used for the stated purposes. The court recognized that TUF is not conditioned on the voluntary choice of property owners, but the court does not hold that service fee must be voluntary.	✓
State v. City of Port Orange, FL 1994[v]	• TUF receipts were used to secure revenue bonds. • The TUF converts city's roads into a toll road system with only property owners having to pay the tolls. • Court does not find statutory or constitutional authority for such tolls.	✕
Covell v. City of Seattle, WA 1995[vi]	• The TUF varied by the value of each property, meaning that a $60,000 single-family house paid less than a $2.4 million mansion, even if the trip impact was the same. • Court found it difficult to determine that TUFs were: 1) intended for services rendered, and 2) intended to regulate street traffic. • Court ruled that the TUF was a tax and not a fee; therefore, the TUF has to be imposed in accordance with the legal requirements for a new tax.	✕

Setting the Amounts Charged for TUFs

What is the typical amount charged per property?

Each municipality has its own method of calculating its TUF for different classes of property. Municipalities generally determine the amount of revenue they need from a TUF and work backwards to determine the fee for different property classes. For details on calculating TUFs, see chapter 5 of the *TUFs Primer*.[vii]

What is the basis for the variable business fees?

Generally, municipalities will classify the properties subject to the TUF according to whether they are residential or non-residential. Non-residential properties, which include "businesses," are generally classified further by the type of property and the number of trips they generate, often using estimates from the ITE Trip Generation Manual. For example, Hillsboro, Oregon, classifies its non-residential properties in seven "bins" based on trips "per 1,000 square feet." These classifications are used to set the fees for these businesses. See **Table 2** for details.

Table 2. Classification of Non-Residential Properties in Hillsboro, Oregon.

Bin	Trips/1000 Sq. Ft.	Example
1	<7 trips/1000 sq. ft.	Intel
2	7-21 trips/1000 sq. ft.	School District
3	25-53 trips/1000 sq. ft.	Target
4	53-151 trips/1000 sq. ft.	City Hall
5	151-400 trips/1000 sq. ft.	Wells Fargo
6	Greater than 400 trips/1000 sq. ft.	McDonald's
7	Special for ITE trip generation not based on sq. ft.	Regal Cinemas

Have any communities indexed their TUFs to inflation or some other metric to keep pace with increases in construction and maintenance costs over time?

Yes, many municipalities adjust their TUFs using an index that reflects inflation or the escalation of costs that relate to street maintenance, such as a construction index. Lake Oswego, Oregon, indexes its TUF using the Construction Cost Index produced by the Engineering News Record. This is qualified in that the adjustment must be between 2 percent and 7 percent. On the other hand, Hillsboro, Oregon, does not index its TUF. Instead, the city increases the amounts charged based on its needs.

Effect of TUFs on Municipal Finances

Do municipalities reduce general funds for roads if they have a TUF?

If municipalities are using the general funds to fund street maintenance, then receipt of TUFs revenues could allow municipalities to reduce the amount of general funds they use for roads. Often street maintenance is funded from local sales tax revenue, gas taxes, and property taxes. Gas taxes, in particular, have not kept pace with inflation, leaving many municipalities with gaps in street maintenance budgets. Most municipalities with TUFs introduced them because they lacked enough other revenue sources to fund maintenance on their roadways.

What are the benefits of using TUFs instead of a transportation sales tax to support road maintenance? TUFs are paid by property owners, so they do not seem to generate receipts from tourists, visitors, or commuters who live outside of the community.

TUFs do not necessarily completely replace other funding sources; a TUF could complement a community's transportation sales tax. In addition, the properties that tourists, visitors, and commuters frequent (e.g., restaurants, gas stations, and entertainment venues) do pay TUFs to the community.

Can TUFs receipts serve as matching funds for grants?

This depends on the local legal context in which the TUF is being applied, as well as the specific funding-related goals of the municipality. For example, Loveland, Colorado, does not have the authority under local ordinance to use TUF receipts as a match for grants. On the other hand, Hillsboro, Oregon, has no legal limitations to using TUFs receipts as a match for grant funds. However, that city has yet to do so. Hillsboro does often combine TUF receipts with other funding to pay for reconstruction of existing roadways.

Waivers and Payment Plans

Do municipalities generally offer payment plans to those who fall behind on their TUF (and other utility) payments?

Many cities do offer payment plans for residents. For example, the City of Loveland, Colorado, provides different payment options, including "budget billing" that allows residents to pay a fixed amount every month. Loveland also has a program that allows people to contribute to a fund to pay some of the utility costs of those with lower incomes.

Regarding waivers for low-income residents, do a certain number of people in the household need to provide evidence of eligibility?

Many cities offer some type of waiver or hardship discount to residential owners, usually for income reasons. These waivers may include:

- Households with income below an established threshold
- Senior citizens with income below an established threshold
- Households with members who have experienced recent unemployment

Some localities also grant waivers for property owners who do not own motor vehicles, which may be a proxy for low-income households. For that waiver, Newberg, Oregon, only grants a 50-percent discount. The rationale is that the property owner still benefits from the transportation network to some degree even if he or she does not own a motor vehicle.

Generally, only the property owner has to demonstrate an income level below the threshold set by the municipality. In some instances, as in Hillsboro, Oregon, waivers do not apply to "multi-family residential units," because it is hard to know when tenants move in and out. Thus, it is challenging to determine if a new tenant in a larger property complex meets the income requirements for the waiver. For this reason, the municipality does not grant waivers to multi-family rentals.

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[i] Institute of Transportation Engineers, Trip Generation Manual, https://www.ite.org/technical-resources/topics/trip-and-parking-generation/.

[ii] Carl Springer and John Ghilarducci, "Transportation Utility Fee: Oregon Experience," Transportation Research Record: Journal of the Transportation Research Board, vol. 1895, no. 1, January 2004, pp. 15–24, https://doi.org/10.3141/1895-03.

[iii] 768 P.2d 765 (1988) 115 Idaho 502 E. (Al) Brewster, Logan D. Robinson, Glen S. Marshall, Isaac McDougall, and Ann McDougall, husband and wife, Peter D. Behrendt, Guy Anderst and Trevor Henderson, Plaintiffs-Respondents, v. City of Pocatello, a municipal corporation of Idaho, Richard S. Finlayson, Mayor of the City of Pocatello and the City Council of the City of Pocatello, Idaho, Defendants-Appellants, and People for a Progressive Pocatello, Inc., a non-profit corporation, intervenor. Nos. 17074, 17096. December 29, 1988. Rehearing Denied March 2, 1989.

[iv] 784 P.2d 304 (1989) Arvid R. Bloom and Beverly T. Bloom, Plaintiffs-Appellees, v. City of Fort Collins, Defendant-Appellant. No. 88SA162. December 18, 1989. As Modified on Denial of Rehearing January 16, 1990.

[v] 650 So.2d 1 (1994) State of Florida, Appellant, v. The City of Port Orange, Florida, a political subdivision of the State of Florida, Appellee. No. 83103. November 3, 1994. Rehearing Denied February 17, 1995.

[vi] 127 Wn.2d 874 (1995) 905 P.2d 324, Libby Covell, et al., Appellants, v. The City of Seattle, Respondent. No. 61178-5. November 2, 1995.

[vii] FHWA, Transportation Utility Fees: Maintaining Local Roads, Trails, and Other Transportation, November 2020, https://www.fhwa.dot.gov/ipd/value_capture/vcsp/fhwa_hin_19_005/.