



Introduction to Development Impact Fees and Other Development Charges



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Presentation Outline

- 1 Overview
- 2 Efficiency and Equity Concerns
- 3 Legal Issues and Legislative Needs
- 4 Nexus Studies and Fee Structuring
- 5 Implementation Process and Issues
- 6 Case Example—Transportation

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Overview: What is a development impact fee (DIF)?

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Real Estate Developer



Local Government



\$



Project Approval

DIF is a legal one-time, upfront cash payment made by a developer for local government's approval of his/her development project

- ✓ DIF offsets some/all of public facility costs
- ✓ Focused on improvements outside project boundary
- ✓ Examples include parks, roads, water/sewage, schools, and police/emergency
- ✓ Intended for capital costs but sometimes used for O&M and administration expenses

Overview: How is it different from other funding?



Compared to...

DIF provides...

Negotiated exactions

- ✓ Add speed and predictability
- ✓ Generate more revenues

Special/benefits assessments

- ✓ Fund wider variety of services, focus on off-site improvements
- ✓ Less secure source of revenues; limited financing options

User fees

- ✓ Allow reserve capacity regardless of usage
- ✓ Tied directly to local planning process

DIFs can buy into existing excess capacity and allow recouping of prior investments; best-suited for urban infill developments

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Evaluating DIF as an **efficient** funding source



Sufficient?

Do DIF revenues cover all costs involved in providing public facility needs for new developments?

Proportional?

Are facility costs allocated to those who benefit and are they proportional to benefits they receive?

Least cost?

Can facilities be provided with least cost possible?

Efficiency (“Horizontal Equity”)—User Pay Principle

Key efficiency concerns



Efficiency factor	Concerns/remedies
Sufficiency	<ul style="list-style-type: none"> ✓ Insufficient, unpredictable when project-by-project basis ✓ Better handled when legislated as a formal city-wide program tied to local General Plan (GP)
Proportionality	<ul style="list-style-type: none"> ✓ Gets high marks because enabling laws generally prohibits charging more than proportionate share ✓ Often benefit existing properties at the expense of new developments
Least Cost Basis	<ul style="list-style-type: none"> ✓ Better for infill and redevelopments close to existing infrastructure capacity—pay for incremental cost only (“marginal” cost pricing) ✓ Greenfield without existing infrastructure more costly

Under marginal pricing, DIFs can help avoid undesirable urban sprawl (“leapfrog”)

How well does DIF address **equity** concerns?



Under DIF, inequities could occur in two respects:

Gentrification

DIFs on new developments can increase property values and price out low-income property buyers

Flat Fee Structure

Uniform fees across all stakeholders without consideration for their ability to pay

“Vertical Equity”—Ability-to-Pay Principle

DIF as an equitable funding source



Equity concerns

Issues/Remedies

Gentrification

- ✓ Developers typically pass on DIF costs to property buyers
- ✓ DIF can make both existing and new properties less affordable for low-income homeowners/renters
- ✓ Remedies: DIF waivers, deferments, other financial incentives

Flat Fee Structure

- ✓ Regressive flat-fee structure often used to reduce complexity and fee administration needs
- ✓ Remedies: Vary fees by land use, building type/size, density, location, and/or configuration

Striking a right balance between equitable fee structure and administrative complexity



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Legal basis for charging DIFs is well established

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Nollan**Essential Nexus Tests***[Nollan v. CA Coastal Commission (1987)]***Dolan****Rough Proportionality Test***[Dolan v. City of Tigard (1994)]***Koontz****Reasonable Relationship Test (Program vs. Project)***[Koontz v. St. John River (2013)]*

**Nexus studies help
establish
Nollan/Dolan legal
basis**

Three U.S. Supreme Court cases address regulatory takings concerns that limit owners' (developers') use of their properties, ensure paying fair share of public improvements



Legal Guidelines—Program vs. Project

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**Citywide Legislated Policy
(All Developers)**

**Reasonable Relationship Test
(Koontz)**

**Project-Level Requirements
(Single Developer)**

**Essential Nexus/Rough Proportionality Test
(Nollan/Dolan)**

**When DIF legislated into local ordinance, burden of proof resides with developers;
When adjudicated without ordinance, burden of proof resides with local agencies**

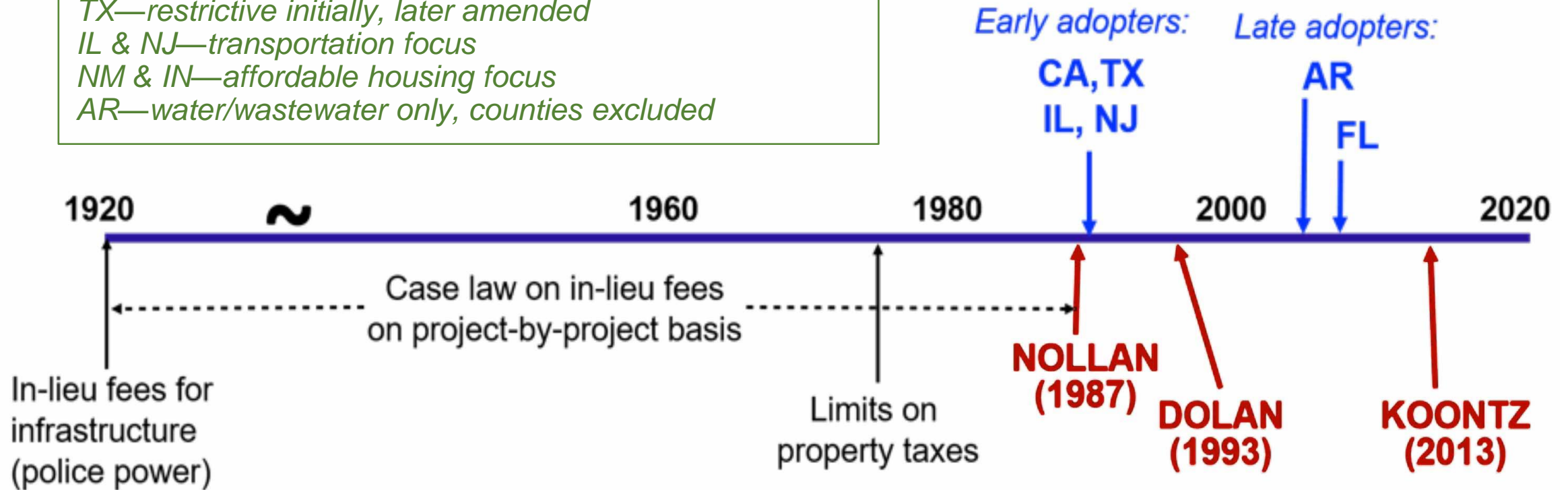
Some 30 States have DIF enabling legislation

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Examples:

*CA—early adopter, case laws
 FL—late adopter, existing statute
 TX—restrictive initially, later amended
 IL & NJ—transportation focus
 NM & IN—affordable housing focus
 AR—water/wastewater only, counties excluded*

} *Highest use of DIFs*



State enabling legislation vary widely in allowing local authorities to impose DIFs; most are based on decades of case law on exactions within each State


Local DIF Ordinance Examples and Features


State	City	Key Features of Local DIF Legislation	Local vs. State
CA	San Francisco	<ul style="list-style-type: none"> • Long established transportation impact fees • Capital, O&M, and overhead costs • Apply only to non-residential; some areas exempt 	Local ordinance (1981) preceded State (1989)
	Oakland	<ul style="list-style-type: none"> • New City-wide impact fees for capital costs only • Affordable housing and transportation 	State DIF legislation specifies local eligibility criteria
	Los Angeles	<ul style="list-style-type: none"> • New City-wide impact fees • Parks and affordable housing 	
OR	Portland	<ul style="list-style-type: none"> • First transportation system development charges (SDC) • Multi-modal transportation improvements • Exclude maintenance costs 	
FL	Aventura	<ul style="list-style-type: none"> • Transportation mitigation impact fees • Capital, O&M, and administration costs of public transit 	State legislation ambiguous on local eligibility criteria
	Broward (County)	<ul style="list-style-type: none"> • County's DIF authority established over municipalities' authority through County-level Land Development Code 	
OH	Beavercreek	<ul style="list-style-type: none"> • Impact fee ordinance and special impact fee district • New roads/transportation improvements for new developments • Exclude maintenance costs 	No State DIF enabling legislation


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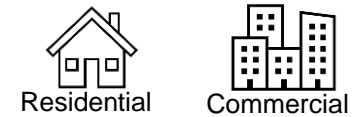
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Public agencies commission nexus studies to establish legally defensible fees

 Establish maximum defensible fee ceilings

 Develop standard fee schedules by land use


and for different infra category




- ✓ Residential (Single vs. Multi-Family)
- ✓ Non-Residential (Commercial, Industrial)

- ✓ Transportation
- ✓ Water/sewage
- ✓ Parks/open space
- ✓ Fire/safety
- ✓ Affordable housing



 Could maximum ceiling impede new developments?

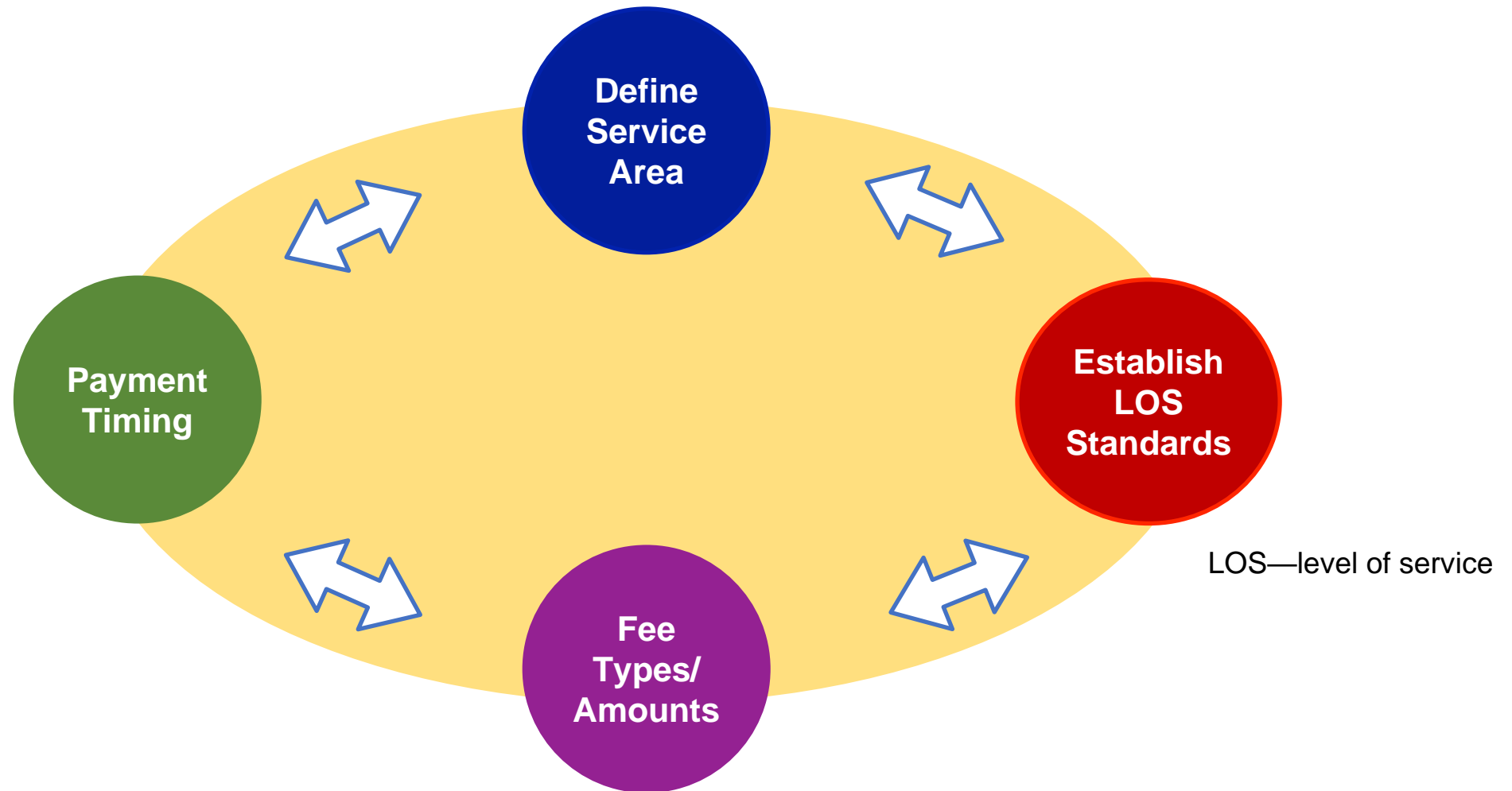
 Refine/finalize fee schedules and legislate DIF program

Ultimate fee decisions driven by funding priorities and DIF effect on new development feasibility based on local real estate market



Designing DIF Fee Structure—Basic Components

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Defining Service Areas and LOS Standards

Define Service Area

Geographic-specific impact fees for variations in infra costs and project impacts:

- ✓ Existing infrastructure capacity (infill vs. Greenfield)
- ✓ Proximity to public transit
- ✓ Availability of other funding sources

Establish LOS Standards

Most State DIF statutes allow full local authority in setting LOS standards

- ✓ Generally, same LOS standards for all
- ✓ LOS standards can vary based on local growth/land use policy, development patterns/constraints

Setting Standard Fees and Payment Schedule

Standard Fee Types/Amounts

Standard fee schedules for each service area based on LOS stds

- ✓ **Fees for each infra category and each land use within category**
- ✓ **Based on incremental infra costs to accommodate new trips**
- ✓ **Residential: No. trips/dwelling unit (DU) for single vs. multi-family**
- ✓ **Non-residential: No. trips/1,000 sq. ft. for office, retail, industrial**

- ✓ **Inter-jurisdictional fees for regional impacts, share resources**

Payment Timing

When fees are imposed (assessed) and when they are collected

- ✓ **Timing of building permit vs. certificate of occupancy (CO)**
- ✓ **Significant lag between the two and many variations**

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Typical DA Implementation Steps

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Key Implementation Challenge—Transparency

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Difficulty in estimating total developer charges (“fee stack”)

- ✓ **Many other developer charges outside DIF legislation**
- ✓ **Lack of transparency and standardization**
- ✓ **Local agency—difficulty in assessing DIF reasonableness**
- ✓ **Developer—difficulty in assessing project feasibility; may take project elsewhere**

CA Example

Category	Applicable Legislation/ Fee Type	Eligible Uses	Subject to DIF Legislation?
DEVELOPMENT IMPACT FEES (DIFs)	MITIGATION FEE ACT (State DIF Statute)	NEW DEVELOPMENT IMPACTS	YES
In-Lieu Fees	Subdivisions Map Act	Bike paths, open space	No
	Quimby Act	Parks	No
	Inclusionary Housing Ordinance	Affordable housing	No
	California Environmental Quality Act (CEQA)	Environmental impacts initiation	Yes (if involuntary)
Other Development Fees	Utility connection fees	Utility system connection	No
	School Facility Impact Fees	School facility	No
	Permit Processing Fees	Permit processing	No

Dealing with Fee Transparency Issues

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Key concerns

Need readily available and accessible:

- ✓ Fee schedules
- ✓ Nexus studies/basis for fee calculation
- ✓ Annual accounting of fees already being implemented

Remedies

Some local agencies post on their website:

- ✓ All nexus studies in standardized format in advance of fee adoption
- ✓ Single, regularly updated master fee schedule linked to interactive fee map
- ✓ Fee booklet with step-by-step guidance on relevant fee estimation

Lack of transparency often means lack of local resources, internal coordination, and/or analytical rigor in nexus/feasibility studies—*consider joint procurement*

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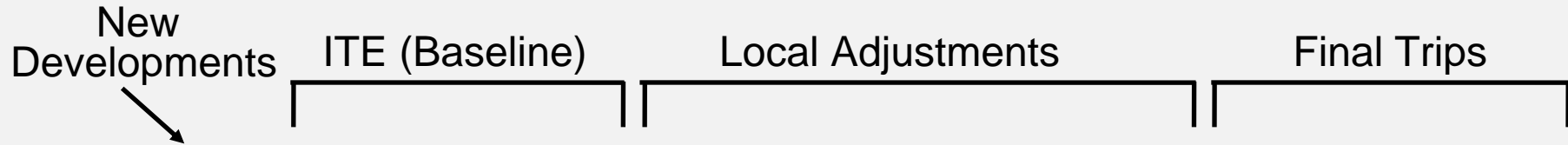
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Overall Developer “Fee Stack” for East Palo Alto

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Fee Type/Facility Category	Single-Family	Multi-Family	Office/R&D	Retail	Industrial
	Per DU		Per 1,000 Sq. Ft.		
DEVELOPMENT IMPACT FEE (DIF) SCHEDULES					
Parks & Trails					
- Citywide Fees	\$4,133	\$2,847	\$1.15	\$0.77	\$0.46
Public Facilities					
- Citywide Fees	\$7,248	\$4,993	\$2.01	\$1.34	\$0.81
Transportation					
- Citywide Fees	\$2,358	\$1,775	\$7.33	\$7.33	\$4.77
Storm Drainage					
	Per DU	Per Impervious Acre			
- Fees Outside RBD	\$2,800	\$70,000			
- Fees Within RBD	\$4,840	\$121,000			
OTHER DEVELOPMENT CHARGES (NOT DIF)					
Affordable Housing Commercial Linkage Fees					
- Citywide Fees	\$0	\$0	\$10.72	\$0.00	\$0.00
Housing Impact In-Lieu Fees					
	Per Sq. Ft.				
- Citywide Fees: Single-Family Infill	\$36.22	n.a.	n.a.	n.a.	n.a.
- Citywide Fees: Townhouses	\$34.78	n.a.	n.a.	n.a.	n.a.
- Citywide Fees: Rental Units	n.a.	\$25.35	n.a.	n.a.	n.a.
- Fees Outside RBD: Condos	n.a.	\$50.58	n.a.	n.a.	n.a.
- Fees Within RBD: Condos	n.a.	\$67.62	n.a.	n.a.	n.a.
Quimby Act In-Lieu Fees (Parks)					
- Citywide Fees	Varies[1]		n.a.	n.a.	n.a.
Storm Drainage Fees					
- Citywide Fees	Varies[2]				
Water Capacity Fees[3]					
- Citywide Fees	\$8,147	\$5,014	\$3.45	\$5.01	\$3.45

Transportation Impact Fees—Trip Generation Basis



Land Use	ITE Code	2040 Forecast (GP)	Trips/Unit (ITE)	Total No. Trips (ITE)	Local Travel Demand	Inter-Zonal Trips	Non-Motor Trips	Transit Mode Share	Adjusted Trips/Unit	Adjusted No. Trips
Residential		DUs	Per DU						Per DU	
- Townhouses	230	1,486	0.52	773	76%	8%	n.a.	6%	0.34	508
- Multi-Family	220	1,033	0.39	403	76%	8%	n.a.	6%	0.26	266
Non-Residential		Sq. Ft.	Per 1,000 Sq. Ft.						Per 1,000 Sq. Ft.	
- Office/R&D	710	1,939,853	1.49	2,890	76%	0.5%	n.a.	6%	1.06	2,063
- Retail	820	333,406	3.73	1,244	76%	11%	19%	6%	1.93	643
- Industrial	110	267,987	0.97	260	76%	0.5%	n.a.	6%	0.69	185
TOTAL				5,570						3,665

Source: AECOM (2019), City of Palo Alto Development Impact Fee Program-Nexus Study

DU = dwelling unit

Capital cost allocation to new developments

Transportation Project Category (from CIP)	Project Cost (in \$M)
Road/Interchange Improvements	\$55.1
Bicycle/Pedestrian/Sidewalk	\$19.0
Street Lights/Safety	\$1.1
Plans/Studies/Assessments	\$0.8
Other	\$6.6
Ravenswood SP Projects	\$16.1
TOTAL	\$98.6

Total daily trips (2040)	124,453
Existing daily trips (2015)	93,782
New daily trips (2015-2040)	30,671
% increase in daily trips (2015-2040)	25%

Capital Costs Attributed to New Developments:
 $(\$98.6\text{M} \times 25\%) +$
 $(4\% \text{ Administrative Fee})$
 $= \$25.3\text{M}$

Unit Cost/Trip = $\$25.3\text{M}/3,665$ (Adj.) = $\$6,869/\text{Trip}$

Transportation Impact Fee Schedule

Land Use	Unit Cost (\$/Trip)	Adjusted Trips/ Unit	Maximum Defensible Fee Schedule (\$/Unit)	Adopted Fee Schedule (\$/Unit)	Fee Range at Nearby Cities
Residential	\$6,869	<i>(Per DU)</i>			
- Townhouses		0.34	\$2,358	\$2,358	\$1,800 - 2,600
- Multi-Family		0.26	\$1,775	\$1,775	\$1,100 - 1,600
Non-Residential		<i>(Per 1,000 Sq. Ft.)</i>			
- Office/R&D		1.06	\$7.33	\$7.33	\$2.7 - \$3.9
- Retail		1.93	\$13.30	\$7.33*	\$3.3 - \$3.9
- Industrial		0.69	\$4.77	\$4.77	n.a.

Maximum ceiling adjusted based on local prevailing rate

* Note: City adjusted this down from \$13.30

Two Main Takeaways about DIFs

1. DIFs are specifically designed for off-site public improvement needs for new developments that help trigger the local growth
2. Through local ordinance, DIFs can be directly incorporated into local planning process as part of formal CIP funding source

Questions?

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