Frequently Asked Questions – Impact Fees

Disclaimer: The contents of these Frequently Asked Questions (FAQs) do not have the force and effect of law and are not meant to bind the public in any way. These FAQs are intended only to provide information and clarity to the public regarding existing requirements under the law or agency policies.

GENERAL INFORMATION

What is an impact fee?

An impact fee is a one-time capital charge imposed on developers by municipalities to help fund the capital cost of the additional public services, infrastructure, or transportation facilities necessitated by, and attributable to, new development. Impact fees are not required or authorized by Federal law; rather, they are enabled by State or local laws.

What is a traffic impact fee?

A traffic impact fee is used to pay for transportation projects needed to accommodate the demands on the transportation system created by new development. Examples include street and sidewalk improvements, new highway capacity, bicycle and pedestrian facilities, new traffic signals, and transit facilities. A traffic impact fee ensures that new development and redevelopment projects pay their fair share of the improvements needed to mitigate the added burden they will impose on the transportation system. They relieve a portion of the burden for the general taxpayer.

Are impact fees referred to by any other names?

In California and Washington, impact fees are often known as mitigation fees; in Florida, as mobility fees; in Oregon, as system development charges; in Minnesota, as service availability charges; and in North Carolina, as facility fees. In States such as Kansas, Colorado, and Tennessee, impact fees are referred to as adequate facility taxes or excise taxes. Developer contributions are also sometimes known as fair-share fees, developer exactions, or cash proffers. However, in most places, they are generally referred to as development fees or impact fees. Impact fees are not as common in transit.

What are the advantages of impact fees?

Impact fees have been in use for decades, are relatively easy to implement, and may encounter little public resistance. In addition, because they are collected up front, public agencies can access these funds earlier than with post-project incremental tax growth or property tax revenues generated by new economic activity. Impact fees also foster timely investments in local community infrastructure. Supporters of impact fees believe that they are economically efficient and equitable, because they directly link those paying for and those receiving benefits.

Because impact fees are applied similarly across all new developments within a jurisdiction, they help create a level playing field, predictability, and certainty for developers. If applied in areas that lack infrastructure capacity, they can help re-direct development to areas where existing capacity can already accommodate new development. In addition, research has shown that impact fees increase the supply of buildable land for developers. Without impact fees, municipalities may not be able to make the required investments in infrastructure to accommodate growth. Impact fees allow municipalities to pay for necessary water, sewer, and transportation infrastructure to open new parcels for land development.

What are some of the challenges with using impact fees?

Impact fees increase the cost of development by shifting some of the cost of infrastructure improvements from taxpayers to developers. As a result, impact fees sometimes face resistance from developers and landowners. In addition, the public could perceive an impact fee as a new tax if they are not aware of who will pay the fee and how the proceeds will be used. Another challenge is that impact fees are unlikely to fund the entire cost of the public infrastructure or service necessitated by new development. Also, impact fees must be related to, and proportional to, the anticipated costs of accommodating the new development. It can be challenging to estimate the incremental cost impact of a new development on transportation facilities or services. Another challenge is that municipalities typically must create and maintain reports documenting the capacity of existing surface transportation infrastructure and the impact of new development on that capacity.

How many States have enacted laws to enable the use of impact fees?

As of 2015, 29 States had explicit enabling legislation for impact fees. Other States have upheld municipalities' authority to charge impact fees. States such as California, Colorado, Florida, Georgia, Massachusetts, Missouri, Ohio, Oregon, Pennsylvania, Texas, and Virginia, as well as the District of Columbia, are using value capture options successfully.

How do impact fees differ from taxes?

An impact fee is not a tax. Taxes are generally paid by all and collected to fund general government services. Impact fees are paid by developers as part of the development approval process. The fee is intended to help pay for the impacts of new development on public infrastructure such as roadways, sewer, water, police, fire, and schools. The primary purpose is to recover costs and not to generate revenue. State laws generally require that municipal impact fees not exceed the cost of providing the services and that the fee payers receive a benefit. Local impact fees must adhere to State requirements regarding the timing of the infrastructure improvements, geographic service area, accounting, and expenditure control.

How do impact fees differ from negotiated exactions?

Negotiated exactions follow a similar rationale as impact fees in that they are aimed at helping mitigate the impact of new development on infrastructure. However, negotiated exactions are determined on an ad hoc, project-by-project basis through the development approval process. Impact fees, in contrast, are based on objective fair-share studies and standardized pro-rata formulas.

How long have impact fees been in use?

Impact fees came into existence in the mid-1900s and were implemented in Florida and California during the late 1970s in response to new limitations on local property taxes and reductions in Federal and State aid for local infrastructure. Since that time, their use and popularity have spread. Texas was the first State to enact specific legislation authorizing local governments to levy impact fees on new development in 1987.

STRUCTURE AND APPLICATION OF IMPACT FEES

What are the legal standards that impact fees must meet?

Federal court decisions addressing the constitutionality of impact fees generally require the impact fees to meet the "rational nexus" and "rough proportionality" tests. See, e.g., Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595, 614 (2013); Nollan v. Cal. Costal Comm'n, 483 U.S. 825 (1987); and Dolan v. City of Tigard, 512 U.S. 374 (1994). These cases and others mandate a reasonable connection between new development and the "need" for additional facilities. Second, it must be shown that the fee payer will "benefit" in some way from the fee. Finally, the calculation of the fee must be based on a proportionate "fair-share" formula. Additional legal standards may exist under applicable State or local law. Municipalities contemplating the creation of a new impact fee should consult with their legal counsel to ensure the proposed impact fee meets all relevant legal standards.

Are impact fees levied on both residential and commercial development?

Impact fees are typically levied on both residential and commercial development, but the fee amounts are usually calculated differently for each land use, based on the differing impacts that each kind of development is expected to have on the use of local transportation facilities.

Do impact fees change from year to year?

Impact fee updates are conducted as required by city ordinance. Most cities require that impact fees be reviewed and updated at least every three to five years. Sometimes, updates are done every year. For example, the City of Bellingham, WA, bases its transportation impact fee calculations on a rolling 12-year window. The rate changes every year as old project costs are taken out and new project costs are added to the calculations.

Why don't impact fees necessarily cover 100 percent of the increased cost of surface transportation infrastructure or services?

In principle, impact fees are supposed to recover only for the incremental cost imposed on the system by new development. For example, if a project will remedy an existing roadway deficiency as well as add capacity, only the cost of the added capacity can be recovered through the impact fee. State laws dictate the maximum proportion of costs that can be imposed on developers. Other limits that State laws may establish include, but are not limited to, the designated impact zone's geographic boundaries and the timing of impact costs (e.g., the 10-year Capital Improvement Plan), among others. There are examples in which impact fees have funded the full cost of a transportation improvement.

PAYMENT OF FEES

How are impact fees calculated?

The calculation of impact fees typically relies on land use and population projections and the 10-year impact fee capital improvement plan (CIP). The costs associated with existing development and growth after the 10 years are then removed from the CIP to estimate the "recoverable" cost of the CIP. The impact fee per service unit is estimated by dividing the recoverable cost of the CIP by the estimated number of new service units in the development.

How much is the average impact fee?

Impact fees vary greatly by region and by the type of public facility that is the basis for the fee.

When are impact fees paid?

Impact fees are generally one-time charges. They are typically imposed as a condition of approval of the development, either when the construction or development permit is issued or when the occupancy permit is issued.

USE OF IMPACT FEE RECEIPTS

For which purposes can impact fees be used?

Impact fees are used for capital expenses. Impact fees should be segregated from general funds, deposited in dedicated, interest-bearing accounts, and used solely for allowable purposes. Those purposes normally are closely linked to the impact the fees were intended to mitigate.

Who determines where the impact fee receipts will be spent and for what public services?

Impact fees may be managed by different agencies, depending on purpose. Those related to the water or sewer system may be managed by utility commissions. Transportation impact fees may be managed by transportation or public works departments.

OTHER

Is public involvement required to establish an impact fee?

State enabling laws typically include requirements for public hearings or other forms of public involvement.

Do impact fees increase the cost of housing or property taxes?

Impact fees could affect the cost of new homes. However, the housing market determines the value of property. In general, in an economic upcycle, impact fees are passed on to homebuyers, and in an economic downturn, they are assumed by the developer.

RESOURCES

FHWA EDC-5 Value Capture: Capitalizing on the Value Created by Transportation

https://www.fhwa.dot.gov/innovation/everydaycounts/edc_5/value_capture.cfm

FHWA Center for Innovative Finance Support – Value Capture

https://www.fhwa.dot.gov/ipd/value_capture

U.S. Department of Transportation
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