

## Frequently Asked Questions – Transportation Utility Fees

September 2020

### GENERAL INFORMATION

#### What is a transportation utility fee?

A transportation utility fee (TUF) is a periodic fee paid to a municipality by property users or owners within a local jurisdiction to fund the operations and maintenance costs of transportation facilities, primarily roads. Residents and businesses are charged a fee based on their use of the transportation system rather than being charged taxes based on the value of the property that they occupy. Because the use of the transportation system is not metered like electricity or water, the amount that is charged for a TUF is based on estimates of the number of trips generated by different land uses (e.g., single family residence, multi-family residence, school, gas station, shopping center). Those estimates are typically informed by trip-generation rates prepared by the Institute of Transportation Engineers.

#### Are TUFs referred to by any other names?

TUFs may also be referred to as: transportation maintenance fees, street maintenance fees, road or street user fees, pavement maintenance utility fees, street restoration and maintenance fees, or street utility fees.

#### What types of projects do TUFs support?

Generally, TUFs have been used by local public agencies to generate funding for the operation and maintenance of local roads and streets. Funded activities typically include the repair, maintenance, and preservation of: roads, traffic signals, curbs, sidewalks, and bikeways. TUFs have also been used to fund transportation projects that address pedestrian safety and compliance with the Americans with Disabilities Act.

Because most operations and maintenance costs are ineligible for Federal-aid highway funding, TUFs can fill an important role in maintaining these

**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. Value capture techniques and policies are often implemented outside of Federal funding or regulatory requirements.*

assets.<sup>i</sup> However, Federal funding is possible for preservation<sup>ii</sup> or safety improvement projects on Federal-aid highways, so TUFs can provide matching funds for those projects.<sup>iii</sup> In those cases, the municipality must follow all Federal requirements.

#### Where are TUFs currently being used?

The first TUFs in the U.S. were implemented in Oregon in the 1980s. Since then, they have been implemented in smaller cities in Washington, Idaho, Utah, Colorado, Texas, Missouri, and Florida. Specific examples include:

- The City of Newberg, Oregon, adopted a TUF in 2017 to close an annual funding gap of \$1.9 million for street maintenance and to improve its pavement conditions significantly over the next decade.<sup>iv</sup>
- Since 2005, the City of Corvallis, Oregon, has had a transportation maintenance fee that is dedicated to pavement preservation of local, arterial, and collector streets and roads.<sup>v</sup> The transportation maintenance fee is charged monthly on the city services bill, along with the water, wastewater, and stormwater fees. Furthermore, the town instituted a transit operations fee in 2011 that is calculated using a similar

methodology as the transportation maintenance fee and is administered in the same way.<sup>vi</sup>

- In 2017, Highland City, Utah, created a transportation utility fund dedicated to the operation, improvement, maintenance, and rehabilitation of roads.<sup>vii</sup>

### **What is the difference between a TUF and a transportation impact fee?**

Transportation impact fees, another value capture technique authorized under State or local law, are one-time payments to cover the cost of new infrastructure (including roads and streets) that is needed as a result of new real estate development. In contrast, TUFs are used to pay for the ongoing costs of maintenance of that infrastructure.

### **What are the advantages of TUFs?**

Some of the advantages that have been cited for TUFs include the following:

- According to some researchers, TUFs are fairer and more economically efficient than other funding mechanisms (e.g., property taxes) because they adhere more closely to the “user pays” principle.<sup>viii</sup>
- Because TUFs are not taxes, a locality may be able to implement a TUF without a public referendum, although this depends on the city and State in question.
- The clear relationship between a TUF and the defined purposes for which it was created may make the TUF more acceptable to the public than new or increased taxes.<sup>ix</sup>
- A locality may be able to collect a TUF with other public utility charges such as electricity, sewer, or water.

### **What are the challenges with using TUFs?**

Some of the challenges that jurisdictions may encounter when implementing a TUF include:

- Successful implementation of a TUF depends on public acceptance of the methodology for setting and assessing the fee. Therefore, localities seeking acceptance for a TUF usually

need to conduct extensive outreach to local business groups and the general public.<sup>x</sup>

- Jurisdictions may face an administrative burden up front to cover the cost of traffic and fee-calculation studies, depending on the methodology that is used.
- Other levels of government or non-profit institutions that are exempt from property taxes but subject to a TUF may resist implementation of a TUF, arguing that it is a disguised tax or that they should be exempt from paying it.<sup>xi</sup>

## **STRUCTURE AND APPLICATION OF TRANSPORTATION UTILITY FEES**

### **What are the typical legal considerations that TUFs must meet?**

In most States, enabling legislation is required before a locality can implement a TUF. In addition, a TUF typically must relate reasonably to use of the transportation service (i.e., the number of trips), and receipts must be dedicated to the specific purpose for which the charges are being levied.<sup>xii</sup> As with all value capture techniques, legal counsel familiar with the law in their respective States may be a useful resource for practitioners, because requirements vary across jurisdictions.

### **How are TUFs calculated?**

The amount that is charged for a TUF is often based on estimates of the number of trips generated by different land uses (e.g., single family residence, multi-family residence, school, gas station, shopping center). Those estimates are typically informed by trip-generation rates prepared by the Institute of Transportation Engineers. Some localities have used other bases for calculating their TUFs, such as the number of parking spaces required by local zoning.<sup>xiii</sup>

Successful implementation of a TUF depends on broad stakeholder acceptance of the methodology for pricing and assessing the fee. In some cases in which stakeholders have challenged the pricing methodology, the fees have had to be rolled back.

## How often are TUFs paid and how are they collected?

TUFs are paid on a periodic basis, usually monthly. TUFs are generally collected with other utility fees such as those for water, sewer, or electricity. TUF receipts are typically segregated in a special fund to be used for defined purposes such as resurfacing roads or maintaining sidewalks.

Municipalities may establish waiver provisions for residents in circumstances (e.g., unemployed) that make it difficult for them to pay the TUF. Additionally, localities sometimes allow waivers for other situations. For example, the City of Austin, Texas, exempts vacant properties, residents age 65 or older, and residents who do not own or regularly use a private motor vehicle.<sup>xiv</sup>

## Do TUFs ever sunset or expire?

TUFs may end after a defined period of time or may continue in perpetuity, depending on the authorizing statute. In Corvallis, Oregon, the the City Council initially approved the implementation of a transportation maintenance fee for a five-year period (2006 to 2011). In 2010, the City Council continued the fee indefinitely, but it is to be reviewed every five years to evaluate the success of the funded activities and the appropriateness of the fee.<sup>xv</sup>

## Are TUFs easy to implement?

One of the advantages of a TUF is that it can be collected with other public utility charges. However, even if a locality implements a TUF using existing billing systems for utility services, it may still experience up-front costs, such as trip-generation studies, drafting of the city ordinance, and public hearings. For example, Clackamas County, Oregon, undertook a large number of surveys and data collection efforts to define land usage at the parcel level so that they could be matched to the land-use categories reported by the Institute of Transportation Engineers.<sup>xvi</sup>

## OTHER

### Is public outreach crucial to successful implementation of a TUF?

For a TUF to be successfully implemented, public outreach and acceptance is critical. This is particularly the case in States where local residents can refer actions to a general vote. When implementing its TUF, the City of Newburg, Oregon, created an ad-hoc advisory committee made up of 14 representatives from the business community, residents, non-profit organizations, the school district, and others who use the roads. The committee met seven times. The city also held a public open house and an online open house, as well as making several presentations to community groups.<sup>xvii</sup>

### Are TUFs considered to be more equitable than other funding mechanisms?

TUFs are considered by some to be more equitable than property taxes. With a property tax, a percentage of road users pay nothing due to their tax-exempt status (e.g., non-profit schools or religious institutions), whereas, with a TUF, more entities that generate local traffic pay for maintenance of the road system.<sup>xviii</sup>

Some researchers also assert that TUFs are more equitable than property taxes because of how TUFs allocate road maintenance costs between residential and commercial properties. Because TUFs are based on trip-generation estimates rather than property values, TUFs tend to allocate more of the cost of road maintenance to the types of land uses (i.e., commercial) that generate larger numbers of trips. This could be considered more equitable because the number of trips is related to the magnitude of impacts on road conditions.<sup>xix</sup>

TUFs may be considered by some to be inequitable because they are based on trip-generation estimates rather than the actual number of trips generated (which localities generally consider infeasible to measure for every land parcel). Also, the trip-generation estimates are usually calculated for broad

property classes and therefore may not capture differences in trip-generation among parcels within a given property class.<sup>x</sup> Conducting a study can help a locality improve the accuracy of its trip-generation estimates.

## 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](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](https://www.fhwa.dot.gov/ipd/value_capture)

### **FHWA Center for Innovative Finance Support – Transportation Utility Fees**

[https://www.fhwa.dot.gov/ipd/value\\_capture/defined/transportation\\_utility\\_fees.aspx](https://www.fhwa.dot.gov/ipd/value_capture/defined/transportation_utility_fees.aspx)

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<sup>i</sup> A State transportation agency or other direct recipient of Federal-aid funds may not use those funds to perform routine maintenance. The recipient is required to maintain, or cause to be maintained, the project constructed under the provisions of chapter 1 of title 23, U.S.C., or constructed under provisions of prior Acts. (23 U.S.C. 116 (b)).

<sup>ii</sup> "Guidance on Highway Preservation and Maintenance," Federal Highway Administration (FHWA), U.S. Department of Transportation, February 25, 2016,

<https://www.fhwa.dot.gov/preservation/memos/160225.cfm>.

<sup>iii</sup> Section 1103 of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) added preservation to the definition of construction (23 U.S.C. 101 (a)(3)). As such, preservation work is eligible and encouraged under the National Highway Performance Program and the Surface Transportation Program.

<sup>iv</sup> "The Transportation Utility Fee," City of Newburg, Oregon, accessed June 19, 2020,

<https://www.newbergoregon.gov/engineering/page/transportation-utility-fee>.

<sup>v</sup> "Transportation Maintenance Fee," Public Works, City of Corvallis, Oregon, accessed June 19, 2020,

<https://www.corvallisoregon.gov/publicworks/page/transportation-maintenance-fee>.

<sup>vi</sup> "CTS Funding," Corvallis Transit System, City of Corvallis, Oregon, accessed June 19, 2020,

<https://www.corvallisoregon.gov/cts/page/cts-funding>.

<sup>vii</sup> "Transportation Utility Fund Background Information," City of Highland City, Utah, accessed June 19, 2020, <https://www.highlandcity.org/399/Transportation-Utility-Fund>.

<sup>viii</sup> Carole Turley Voulgaris, "A TUF Sell: Transportation Utility Fees as User Fees for Local Roads and Streets," *Public Works Management & Policy* 21, no. 4 (2016): 305-323.

<sup>ix</sup> J. R. Junge and D. Levinson, "Prospects for Transportation Utility Fees," *Journal of Transport and Land Use* 5, no. 1 (2012): 33-47.

<sup>x</sup> Carl Springer and John Ghilarducci, "Transportation Utility Fee: Oregon Experience," *Transportation Research Record: Journal of the Transportation Research Board* 1895, no. 1 (2004),

<https://doi.org/10.3141/1895-03>.

<sup>xi</sup> Reid Ewing, "Transportation Utility Fees," *Transportation Research Record: Journal of the Transportation Research Board* 1395 (1993).

<sup>xii</sup> See, e.g., *Bloom v. City of Ft. Collins*, 784 P.2d 304 (Colorado 1989); *V-1 Oil Co. v. Utah State Tax Com'n*, 942 P.2d 906 (Utah 1996); *State v. City of Port Orange*, 650 So. 2d 1 (Florida 1995); *Heartland Apartment Association, Inc. v. City of Mission*, 352 P.3d 1073 (Kan. Ct. App. 2015); *Brewster v. City of Pocatello*, 115 Idaho 502 (Idaho 1989).

<sup>xiii</sup> Voulgaris, *Public Works Management & Policy* 21: 305-323.

<sup>xiv</sup> "What is the transportation user fee?," City of Austin, Texas, accessed July 14, 2020,

<https://www.austintexas.gov/faq/what-transportation-user-fee>.

<sup>xv</sup> City of Corvallis, Oregon, "Transportation Maintenance Fee."

<sup>xvi</sup> Carl and Ghilarducci, *Transportation Research Record: Journal of the Transportation Research Board* 1895.

<sup>xvii</sup> City of Newburg, Oregon, "Transportation Utility Fee."

<sup>xviii</sup> Ewing, *Transportation Research Record: Journal of the Transportation Research Board* 1395.

<sup>xix</sup> Junge and Levinson, *Journal of Transport and Land Use* 5: 33-47.

<sup>xx</sup> Ewing, *Transportation Research Record: Journal of the Transportation Research Board* 1395.



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