Reductions in impact fees and exactions

Overview

Communities use impact fees and other exactions to address the need for new public infrastructure, facilities, and other capital improvements associated with new development.

Impact fees and other types of exactions are assessed on developments as a condition of approval of a proposed project, but they take slightly different forms. Impact fees are monetary payments made to the local jurisdiction. The fee amounts are specifically calculated to cover the cost of the infrastructure improvements needed to serve new residents. The use of revenue generated by impact fees is restricted by law only for this purpose. Other exactions may be less directly linked to a specific project, and can range from cash payments to cover the cost of necessary improvements to land donations for new facilities, such as schools or police stations, or on- or off-site physical improvements.

Impact fees can help to increase the supply of housing by enabling new development
in locations that would otherwise lack the infrastructure to make it possible. However, in some places the cost of the fee or exaction may necessitate a reduction in land prices or an increase in rents or home prices that go beyond what developers believe the market will bear. This scenario may lead developers to pursue projects in other jurisdictions where development costs are lower and the economics are more favorable. Cities seeking to foster new residential development can examine their impact fee structure or exactions law to determine whether it can be lowered without compromising the availability of sufficient infrastructure.

There are also a number of ways to directly promote affordability through impact fees. Some communities waive or reduce impact fees for developments that meet affordability objectives. Other communities collect a special impact fee dedicated to funding the development of dedicated affordable housing.

**Approach**

Impact fees and other exactions can help to make increases in housing supply possible by ensuring the availability of adequate infrastructure to support new developments and residents. Without impact fees and other exactions, communities with limited funding may restrict or even prohibit new construction due to concerns about the ability to expand roads, sewers, schools, and other infrastructure to keep up with new growth. Local jurisdictions may also face community opposition to new development if current residents fear an erosion of service levels following an influx of new residents. Impact fees and other exactions can help to alleviate these concerns, thereby reducing one or more of the potential sources of opposition. When fee amounts are set too high, however, communities risk dampening new construction if developers can no longer find projects that are economically feasible.

To ensure that infrastructure needs are covered but avoid deterring new development, local jurisdictions should strive to establish impact fees and other exaction amounts at levels that reflect the actual cost of new infrastructure as accurately as possible. Whereas some exactions are sometimes determined on a case-by-case basis as part of the development approval process, impact fees are established independently of any particular project. Impact fee schedules should be regularly reevaluated to ensure the fee amounts are justified and do not exceed the actual costs of the infrastructure needed to accommodate anticipated growth and usage. Failure to do so can not only dampen new development, but also result in legal challenges (see Other considerations, below).
Once the fee schedule has been determined some local jurisdictions index fee amounts to an existing price index, while also establishing requirements to revisit fee amounts periodically (e.g., every 5 years). Local jurisdictions often hire consultants with specialized experience researching and calculating fee amounts to assist in the reevaluation process. Where communities are concerned about impacts on affordability for low- and moderate-income households, they can also consider waiving these fees for developments that meet affordability objectives.

Many cities use broad categories to establish impact fee amounts, often setting a flat rate for housing that does not differentiate between housing types or unit sizes. Alternatively, local jurisdictions can adopt variable impact fees, establishing rate tiers that can be based on several factors, including the type of development and the service area in which it is located:

**Vary by development type**

In some local jurisdictions, impact fees vary depending on whether the housing development is composed of single-family or multifamily structures and the size of individual units or houses (based on the number of bedrooms or square footage). Cities that adopt this system should be able to document a relationship between unit size or type and actual rates of usage or demand on infrastructure – for example, indicating that a one-bedroom apartment is likely to place a significantly lower burden on local infrastructure than a four-bedroom house – whether in terms of water consumption, usage of roads, or other types of infrastructure paid for by impact fees.

NOTE: the National Association of Home Builders has published a guidebook that makes the case for flat fees on residential properties, on the grounds that flat fees are more progressive than variable fees, less sensitive to shifts in market conditions (and therefore generate a more predictable revenue stream), and easier to implement from an administrative standpoint.

**Vary across service areas**

All impact fees must be associated with a defined service area, which provides the basis for establishing the fee amount. Many cities identify only one service area, defined by the jurisdiction’s boundaries. In some cases, however, the infrastructure in certain parts of the city is not being used at capacity – that is, roads carry fewer cars than they are designed to accommodate, or parks and green space are more than adequate, as defined by the city’s standards, to serve the existing population. When new residential development is proposed in these areas, infrastructure expansion needs may be relatively low compared with areas that are still undeveloped and require entirely new roadways, parks, schools, and other infrastructure. In recognition
of this variation, cities can identify multiple geographic service areas for the different systems and functions that make up impact fee assessments, with lower fees in areas where the system currently has excess capacity and higher fees in other areas to reflect greater need for expansion. San Antonio, TX has six service areas for wastewater collection, with different impact fee amounts based on assessments of current system capacity and actual usage. In California, local jurisdictions are required to consider lower trip generation rates at transit-oriented developments when assessing road impact fees.

Cities and counties that require other types of exactions – such as land dedication or in-lieu fees – should also periodically review existing policy to ensure requirements are reasonably related to new demand. Local jurisdictions may wish to compare their approach with neighboring jurisdictions to assess variation in local practices and rates.

Eligibility

As of 2015, 29 states adopted impact fees enabling legislation authorizing local jurisdictions to assess impact fees, and at least four states without enabling legislation had used legislative action to authorize impact fees for individual jurisdictions. State enabling acts allow fees to be charged for a variety of purposes – most common among these are roads, sewer and storm water systems, parks, and fire and police service. Enabling legislation may impose other eligibility requirements, including preparation of a capital improvement plan that details the activities to be funded with impact fee revenue and documentation of the analysis used to set fee amounts. The State of Georgia requires municipalities to have an approved comprehensive plan in place before they may adopt an impact fee ordinance. Depending on the level of scrutiny and review by the state (and other stakeholders who have an interest in impact fee amounts) these types of requirements may help to promote carefully-designed fee schedules that accurately reflect the cost of serving increased demand.

Other considerations

- Legal issues. Impact fees and other exactions may be subject to due process claims that challenge the “taking” of private property by the government without just compensation. To avoid potential legal challenges, impact fees will need to pass the “rational nexus” test. This test establishes that the need for the infrastructure that will be funded by the fees is directly attributable to the development on which fees will be assessed. In addition, the jurisdiction should be able to demonstrate that the required fee is “roughly proportional” to the impact caused by the development.
- Waiving impact fees to promote affordability. One way to reduce the cost of developing affordable housing is to waive impact fees for developments that meet affordability objectives. Under this approach, the costs of installing infrastructure
for qualifying developments would need to be supported through another mechanism. Learn more about reduced or waived fees for qualifying projects.

- **Impact fees for affordable housing.** Another approach to using impact fees to promote affordability is to assess fees on new commercial or residential development that are similar to traditional impact fees but are intended to specifically mitigate the impact of that development on the demand for affordable housing. These fees are grounded in the assumption that the creation of new retail centers, industrial or manufacturing facilities, and even market-rate homes will stimulate growth in low-wage jobs. Revenue from the fee supports the development of housing affordable to workers in those jobs. When applied to commercial development, these impact fees are often known as linkage fees. Learn more about linkage fees/affordable housing impact fees.

### Example
**Phoenix, AZ** charges impact fees to cover the cost of expanding fire protection, police, parks, libraries, major arterials, storm drainage, water, and wastewater services to new development. The city calculates impact fees on the basis of development type (single-family or multifamily) as well as impact fee areas. The Department of Planning and Development has separated the city into eight fee areas, each of which is characterized by unique infrastructure requirements. For example, the fee for major arterials ranges from $0 to $2,392. The variable fees reflect the different fee amounts that are required to provide the same level service in different parts of town. This approach helps to ensure that projects that have a relatively low impact on infrastructure needs because of their location or development type pay a lower rate than projects that require a larger investment in new infrastructure. A flat fee based on the cost of projects with the greatest infrastructure needs would potentially have the effect of dampening new construction if the fees pushed development costs beyond what the market would bear. More details [here](#).

### Related resources
**Implementation**
- [Development Exactions: Process and Planning Issues](#), Lincoln Institute of Land Policy (2006) – This report provides a practical overview of exactions and impact fees, including types of exactions, institutional and legal requirements for their adoption and implementation, and potential challenges.
state enabling legislation also includes an introduction that details common elements of enabling acts and recent changes in related state legislation.

**Local example**
- *Albuquerque, New Mexico Adopts Proportional Impact Fees*, HUD Regulatory Barriers Clearinghouse (2007) – This case study describes how Albuquerque created a Planned Growth Strategy in partnership with the county of Bernalillo to enable development of a proportional impact fee structure.

**Market impact**
- *Impact Fees and Housing Affordability*, Cityscape (2005) – This article explores the relationship between impact fees and housing affordability. Also includes discussion of how impact fees are used.
- *Impact Fee Handbook*, National Association of Home Builders (NAHB) (2016) – Chapter 3 of the Handbook analyzes the economic implications of impact fees, including on house prices. The Handbook also includes guidance from NAHB on how to structure impact fees to ensure the fees are reasonable and reflect real costs.

**See also:**
- Increases in the supply of buildable land by expanding growth boundaries
- Zoning changes to facilitate the use of lower-cost housing types
- Streamlined permitting processes