■ HOUSING POLICY EXPLAINER

Impact Fees

Impact fees are charges imposed by local governments on new developments with the stated purpose of funding public infrastructure and services needed to support that development or growth.

These fees can include funds to support parks, sewer, water, schools, emergency services, streets, or other public infrastructure projects. Authorization for impact fees varies from city to city and state to state, depending on a municipality's needs, the development's impact, and the specific fees authorized in that state.

Home Rule states have broad authority to collect impact fees. In states that apply some form of Dillon's Rule, cities must have the explicit authority to charge impact fees. Some Home Rule states have limitations on taxation and follow Dillon's Rule, with taxation often falling under the latter.

Impact fees can be enacted either by ordinance via a fee schedule or imposed as part of conditional approval.

Since the post-war suburban expansion, impact fees have grown to become a considerable part of financing municipal infrastructure. At the same time, impact fees have grown to become controversial as the cost of new housing has soared in recent decades.

ON IMPACT FEES

The housing industry has long been concerned with impact fees due to the cost these fees add to the development and how they price new homebuyers out of the housing market.

> *"First, adding new homes to urban neighborhoods is a good thing overall, a net positive for people and the planet, not a transgression to penalize. Second, impact fees are regressive because the burden of paying them falls primarily on renters and first-time home buyers."*

Impact Fees on Urban Housing Punish Renters and First-Time Buyers, Dan Bertolet

Another concern opponents have with impact fees is how fees can be weighted to discourage certain forms of development.

> *"In addition, excessive impact fees are sometimes used by NIMBY advocates to prevent the development of affordable or market rate apartment housing, to the detriment of minority populations or low-to-moderate income residents."*

Impact Fees Issue Fact Sheet, National Apartment Association

IMPACT ON HOUSING AFFORDABILITY

While impact fees are designed to ensure that growing communities have the resources they need, they can significantly increase housing costs. Like all cost inputs, impact fees increase the cost of a project, which gets passed onto the buyers or renters of new homes, condos, and apartments. As a result, families looking to purchase homes may find themselves paying more upfront, making affordability a bigger challenge – especially in markets where housing demand is already high.

> *"The imposition of an impact fee translates into an increase in the cost to produce a home . . . The effect of the impact fee on consumers of new homes is thus some combination of a price increase and reduction in quantity of housing produced."*

Impact Fee Handbook, National Association of Home Builders

HOUSING POLICY EXPLAINER

Impact Fees

In California, researchers found that the cities with this highest level of income from impact fees had housing costs that far exceeded the state averages:

> *"These suburbs with the highest impact fee revenues have home values over double the state average of $765,000. Sunnyvale's average home value is over $2 million and Mountain View's is over $1.9 million. Likewise, both cities' average rent of around $3,150 is well above California's statewide average of $2,775. Higher home values may support higher impact fees, but they also may reflect these communities' resistance to new affordable housing development."*

The Impact of Fees, California YIMBY Educational Fund.

The cost increase and correlating effect of pricing out prospective homebuyers have also raised the issue of impact fees being used as an exclusionary zoning tactic:

> *"Besides the impact on affordable housing provisions. Another prospective consequence of the imposition of impact fees is that some potential residents are simply priced out of the housing market, thus perpetuating economic exclusion. This fact may result in encouraging the homogeneity of communities and discouraging socioeconomic diversification with a kind of "exclusionary zoning."*

Development Impact Fees for Minnesota: A Review of Principles and National Practices. Center for Transportation Studies, University of Minnesota.

IMPACT FEE ALTERNATIVES

Impact fees may be a common method for funding infrastructure improvements; municipalities can explore several alternative approaches to manage growth and development costs. While options vary from state to state, common alternatives include:

Tax Increment Financing	**General Obligation Bonds**
Special Assessment Districts	**Special Service District**
Public-Private Partnerships	**Direct Local and State Funding**
Municipal Utility Districts	**Local Option Sales Tax**

LEGAL CONSIDERATIONS

Impact fees are one of the most litigated topics in housing and development. As the American Planning Association notes, the increased reliance on impact fees as a funding mechanism has seen a rise in court challenges:

> *"Local government experimentation with impact fees has been paralleled by increasing state court involvement in the review of these fees. A general trend in the state courts has been to require a 'rational nexus' between the fee and the needs created by development and the benefits incurred by the development."*

APA Policy Guide on Impact Fees, Revised and Updated, April 1997.

The 5th Amendment's protections on takings lie at the heart of the industry's concern, specifically the *Nollan-Dolan* standard.

First, there must be a clear connection, or essential nexus, between the development's impact and the need for public improvement tied to the fee. Second, the fees must be roughly proportional to the development's anticipated impact. As these fees are imposed via a fee ordinance, as a condition of approval, or for unspecified projects, nexus and proportionality can be left in doubt.

SHEETZ V. EL DORADO

While exactions tied to land use approvals have long fallen under the 5th Amendment, the April 2024 U.S. Supreme Court ruling in *Sheetz v. El Dorado County*, 22-1074 (2024) saw the same protections afforded to municipal ordinances, like fee schedules:

> *"In sum, there is no basis for affording property rights less protection in the hands of legislators than administrators. The Takings Clause applies equally to both–which means that it prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits."*

Justice Amy Coney Barrett in *Sheetz v. El Dorado County*

Sheetz was a landmark decision, bringing impact fees clearly into the Nollan-Dolan standard and teeing up potential future challenges to the constitutionality of impact fees, especially when tied to future improvement.

SUMMARY

Impact fees remain one of the most litigated aspects of new housing development. As municipalities have grown reliant on impact fees as a funding mechanism, these fees have become a contentious tool, often sparking debate about their fairness and affordability.