

Impact Fees

Impact fees imposed on new development can result in many challenges in jurisdictions that adopt them. Impact fees can increase construction costs or altogether subvert new development—thereby causing the supply-demand gap to increase and result in an impact on housing affordability.¹ 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.^{2,3}

To ensure that these issues do not merge, policymakers should assess a proportional share of the costs amongst real estate developers. Flat rate fees can impose a higher cost on apartment homes than single family developments, are regressive and cause apartment residents to assume disproportionately higher costs through higher rents. Flat impact fees are impact fees that are not scaled to reflect the unit size or type, and this can inflict larger costs on projects that may have less of an effect on infrastructure.⁴

Local jurisdictions impose impact fees on real estate developments to offset the public expenditures used to accommodate new growth in the local community. While these one-time fees were originally intended to finance direct project infrastructure impacts such as transportation, or water and sewer systems, their use has expanded to finance the construction of a broad range of public facilities. In addition, local governments rarely account for the differences between single family and multifamily development when imposing these exactions.

Overall apartments are more efficient, and their residents have a significantly smaller effect on public services than single-family homeowners. Apartment occupants generate fewer vehicle trips on average,⁵ and have less school-age children than single-family residents.⁶ Moreover, the density of apartment homes requires fewer miles of roadway, sewers and water lines, and governments can provide public services such as waste and snow removal to apartment residents more efficiently than the same number of single-family homes.

¹ Clancy Mullen, Duncan Associates, *2015 National Impact Fee Survey*:
http://impactfees.com/publications%20pdf/2015_survey.pdf

² Vicki Been, CityScape, *Impact Fees and Housing Affordability*

³ Allison Charette, et al, Urban Land Institute, *Bending the Cost Curve on Affordable Housing Development: Understanding the Drivers of Cost*

⁴ Allison Charette, et al, Urban Land Institute, *Bending the Cost Curve on Affordable Housing Development: Understanding the Drivers of Cost*

⁵ Mark Obrinsky and Debra Stein, The Harvard University Joint Center for Housing Studies, *Overcoming Opposition to Multifamily Rental Housing*

⁶ Rachelle L. Levitt, et al, Urban Land Institute, *Higher-Density Development: Myth and Fact*

Twenty-nine states currently allow local jurisdictions to levy impact fees.⁷ This enabling legislation helps bring certainty and clarity to the development process by requiring that local governments follow specific statutory guidelines when imposing these fees. In Dillon's Rule states, local governments must have explicit authority from the state to charge impact fees, otherwise the fees stand little chance of holding up to scrutiny from the courts; however, in Home Rule States, municipalities have greater autonomy to levy impact fees without specific statutory authorization.⁸

Regardless of authority from state enabling legislation or Home Rule, governments that have impact fee programs must follow case law. The U.S. Supreme Court has ruled that two requirements need to be met—rough proportionality and rational nexus—when assessing these fees.⁹ This means impact fees must be roughly proportionate to the costs associated with providing the infrastructure to a community. So, governments must prove a link exists for the development necessitating the exaction, the need for new infrastructure created by the development, and the benefits the development derives from the new infrastructure.

NAA urges local lawmakers to implement impact fee waivers or smart impact fees (smaller unit sizes receive reduced impact fees that scale by number of bedrooms or anticipated household size)¹⁰ to achieve their goals while mitigating the effect on development. In the absence of judicious local policy, state legislators should consider action to prevent or constrain local governments from imposing flat or excessive impact fees on apartment housing.

NAA Viewpoint: Flat rate impact fees unfairly discriminate against the apartment housing industry. Given the efficiency with which apartments are built policymakers should consider the use of public facilities, a specific developments location, and size and configuration of units when calculating impact fees.

⁷ Clancy Mullen, Duncan Associates, *2015 National Impact Fee Survey*:
http://impactfees.com/publications%20pdf/2015_survey.pdf

⁸ Debbie Bassert, et al, National Association of Home Builders, *2016 Impact Fee Handbook*

⁹ *Nollan v. California Coastal Commission* 483 U.S. 825 (1987); *Dolan v. City of Tigard* 512 U.S. 374 (1994)

¹⁰ Allison Charette, et al, Urban Land Institute, *Bending the Cost Curve on Affordable Housing Development: Understanding the Drivers of Cost*