

Impact Fees

Sussex County has become a destination of attention and relocation for many retirees and baby boomers. It offers a wide range of attractive incentives that include beautiful beaches, no sales tax, a low property tax, and a relatively low density. The result has been a population increase of 38.3 percent from 1990—2000, and an increase of 12.7 percent from 2000—2005 according to the U.S. Census. However, Sussex County is facing serious development issues. Public services such as water, sewer, volunteer fire and ambulance services, and transportation modes are reaching capacity with no end in sight.

Currently, Kent and Sussex County charge a 0.25 percent building-permit surcharge on the value of new construction to help some of the capital improvements. New Castle County collects \$731 in fees on a detached dwelling, and the money goes toward parks, libraries, county facilities, emergency medical services, police, and volunteer fire and rescue. Simply stated, impact fees allow growth to pay for growth.

What are Impact Fees? According to the American Planning Association, “Impact fees are payments required by local governments of new development for the purpose of providing new or expanded public capital facilities required to serve that development.



The fees typically require cash

payments in advance of the completion of development, are based on a methodology and calculation derived from the cost of the facility and the nature and size of the development, and

are used to finance improvements offsite of, but to the benefit of the development.”

Impact fees may be used for highway improvements, public safety facilities, sewer- and water-treatment plants, parks and open spaces, school improvements, or other public infrastructure.

Legality of Impact Fees

Across the nation, as impact fees have been challenged in court cases, a principle known as the *rational nexus* test is used to determine the legitimacy of an impact fee. The rational nexus test consists of requirements to assure the fairness of a fee,¹

- The expansion of the facility and/or service must be necessary and must be caused by the development.
- The fees charged must be based on the costs of the new facility/service apportioned to the new development.
- The fees must benefit those who pay; funds must be earmarked for a particular account and spent within a reasonable amount of time.
- Funds received from impact fees must be segregated from the municipality’s general fund and may be used only for the project or intent for which they were collected.

Potential Advantages of Impact Fees

Direct benefit: Those beneficiaries who pay for the service receive the service.

¹ Main State Planning Office. 2003. *Financing Infrastructure Improvements through Impact Fees*. Online. Available from: www.state.me.us/spo/landuse/docs/impactfeemanual.pdf

Equity and efficiency: Once a method of collecting impact fees is established, it is efficient and equitable to old and new residents.

Politically popular: Impact fees help shift the costs of new facilities for new developments from current residents to the new residents who will be using the service.

May reduce borrowing and debt costs: Impact fees provide an alternative method to finance public infrastructure improvements.

Potential Disadvantages of Impact Fees

May not cover total infrastructure costs: Rarely will a new facility or improvement to a facility solely serve new development, (e.g., a new fire station.)

Difficult to establish: Impact fees must be based upon substantial planning and research. A local government must complete a needs assessment and use recent cost estimates. A community must also establish desired standards for levels of service, such as acres of parkland per capita.

Difficult to administer: An impact-fee system requires long-term maintenance of segregated accounts that tracks contributions to and withdrawals from these accounts.

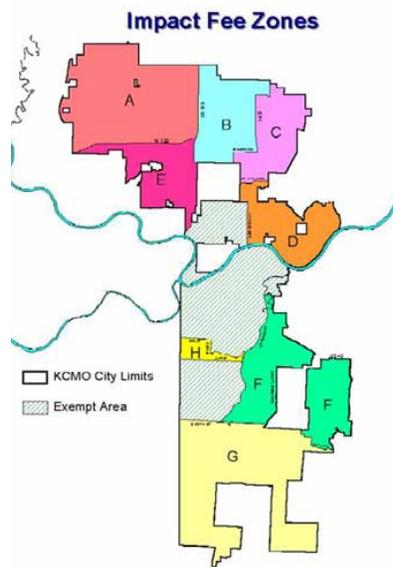
Examples of Regional Practices

The American Planning Association has developed Impact Fee Program Standards that communities are recommended to follow:

- Benefit must accrue to the development as a result of the payment.
- The amount of the fee must be a proportionate fair share of the costs of the improvements

made necessary by the development and must not exceed the cost of the improvements.

- A fee cannot be imposed to address existing deficiencies, except where they are exacerbated by new development.
- Funds received must be segregated from the general fund and used solely for the purposes for which the fee is established.
- The fees collected must be expended in a reasonable timeframe.
- The fee assessed cannot exceed the cost of the improvements, and credits must be given for outside funding sources (such as federal and state grants, developer-initiated improvements for impacts related to new development, etc).



- The fee cannot be used to cover normal operation and maintenance or personnel costs, but must be used for capital improvements or, under some linkage programs, affordable housing, job training, child care, etc.
- The fee established for specific capital improvements should be reviewed at least every two years to determine whether an adjustment is required.

Additional Resources:

American Planning Association. planning.org/policyguides/impactfees.html

Duncan Associates. *An Online Impact Fee resource*. Available from: www.impactfees.com

Jerry Kolo and Todd J. Dicker. "Practical Issues in Adopting Local Impact Fees." *State and Local Government Review* Vol. 25, No. 3 (Fall 1993): 197-206.

Juergensmeyer, Julian, Arthur Nelson, James Nicholas. 1992. *Practitioner's Guide to Development Impact Fees*. APA Planners Press