

# **An Update on the Use of Impact Fees**

By Jim Damicis, PolicyOne Research and Sylvia Most, S.J. Most Consulting

It has been seven years since the Townsman last included a discussion of impact fees. This article is based on research conducted by the authors for an assessment of the potential use of impact fees in the city of Auburn. We provide an overview including a description of two types of fee mechanisms used by municipalities; a description of fees being used by Maine municipalities; and some considerations in planning for the use of fees.

## ***What are Impact Fees?***

Impact fees are charges on new development to cover some or all of the cost of public facilities and infrastructure needed to serve the development. Two different types of impact fees are currently being used in Maine. Each is enabled by different elements of Maine law. They are impact fees adopted by ordinance and “mitigation fees” applied as part of subdivision and site plan approval. The distinction here is that an Impact Fee ordinance is separate from subdivision and site plan approval and may be triggered by any development meeting the criteria of the ordinance. All applicable projects are subject to impact fees, where mitigation fees are charged on a case-by-case basis.

## ***Impact fees by Ordinance***

“Impact Fees” are enabled by Title 30-A , Chapter 187 (Planning and Land Use Regulation), §4354 (Impact Fees). The introduction states:

“A municipality may enact an ordinance under its home rule authority requiring the construction of off-site capital improvements or the payment of impact fees instead of the construction. Notwithstanding section 3442, subsection 2, an impact fee may be imposed that results in a developer or developers paying the entire cost of an infrastructure improvement. A municipality may impose an impact fee either before or after completing the infrastructure improvement.”

In Maine, impact fees are enabled by State statute. Maine’s statute requires that the amount of the fee must be reasonably related to the development’s share of the cost of infrastructure improvements made necessary by the development. Revenues received from impact fees must be segregated into a separate fund and must be eventually refunded if the project is not undertaken within a specified time period. The list of infrastructure projects suitable for impact fees includes:

- Waste water collection and treatment facilities
- Municipal water facilities
- Solid waste facilities
- Public safety equipment and facilities
- Roads and traffic control devices
- Parks and other open space or recreational areas
- School facilities.

Fees may be assessed based on building permits, vehicle trips or other suitable, locally determined criteria.

### ***Mitigation Fees***

“Mitigation fees” (to borrow a term from a conversation with Dan Bacon, Town Planner in Scarborough) are a side effect of site plan or subdivision standards, or development review by Maine DOT. These fees are paid by a developer in lieu of making a physical improvement, typically either to road or sewer infrastructure.

Title 23 (Highways); Chapter 13 (Construction, Maintenance and Repairs); §704A (Traffic Movement Permits) states:

A. For any project that generates 100 or more passenger car equivalents at peak hour, the person responsible for the project is required to make adequate provision for traffic movement of all types into and out of the project area. Before issuing a permit, the department shall determine that any traffic increase attributable to the proposed project will not result in unreasonable congestion or unsafe conditions on a road in the vicinity of the proposed project. [1999, c. 468, §2 (new).]

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E. Adequate provision for traffic movement may be provided through payment of funds pursuant to section 57-A. [1999, c. 468, §2 (new).]

For traffic fees, the requirements typically stipulate that the improvement be done within three years after Maine DOT has contributed its share of the funds. These fees may be paid to the municipality or the state, depending on the arrangement.

Provisions in a community’s subdivision or site plan review standards may dictate that a particular project not impact the level of service of neighboring intersections, provide pedestrian amenities, contribute to open space or other similar infrastructure-related provisions. One way to do this is through “exactions” in which the developer actually makes the physical infrastructure improvements to offset the impact. Another way is through payments or fees in lieu of physical improvements, which are allowable under the enabling legislation for these local ordinances. From discussion with planners, one key distinction of “mitigation” fees is that they require a developer to pay a proportional share of an overall infrastructure improvement, and that improvement does not need to be specifically designed or planned at the time of the fee assessment. If the improvement is never constructed, the fee must be returned.

### ***Who is using Impact and Mitigation Fees?***

#### Use of Impact Fees in the US

The International City/County Management Association conducted a 2006 survey of impact fee use in the United States (Lawhon, Larry, L., *Local Government Use of Development Impact Fees*, Municipal Year Book 2007, p. 11-14. ICMA). This was an update to a similar survey it conducted in 2002. The ICMA survey found that in 2006, 39% of municipal respondents (which included cities, towns, villages, boroughs, and

townships) imposed some form of impact fee. This was an increase from the 2002 level of 25%.

Use of impact fees varied by geographic region with the Pacific Coast region reporting 90% use compared to a low of only 8% use in the New England region. New England municipalities actually reported a decreased use of impact fees from the 2002 level of 18%. In general, higher use of impacts fees was experienced in regions that were experiencing growth and building infrastructure in response to that growth. Regions that experienced substantial increases in the use of impact fees since 2002 include the Pacific Coast, Mountain, East South-Central, South Atlantic, and Mid-Atlantic division. The ICMA reports that, “states located in these divisions—California, Oregon, Washington, Colorado, Texas, Florida, Maryland, and Virginia—have been aggressively pursuing impact fees and other progressive land use planning techniques.”

In terms of why municipalities were using impact fees, the 2002 ICMA survey indicates the most common reasons were “citizens’ desire that new growth pay its way,” and a “large increase in new home construction.”

#### Use of Impact Fees in Maine

Eighteen communities were contacted by phone for this assessment including Augusta, Bangor, Biddeford, Brunswick, Cumberland, Freeport, Lewiston, Old Town, Orono, Portland, Saco, Sanford, Scarborough, South Portland, Standish, Waterville, Westbrook, and York . The most commonly implemented fee was for some form of road infrastructure (8). Other communities utilize sewer (6), open space (4), school (2). Of the six communities not currently using impact fees, four were considering some sort of road impact fees program. Most communities do generate funds through various types of infrastructure mitigation fees in the development review process, even if they do not have a separate impact fee ordinance.

Some examples of impact fees include the Bangor Mall Area Impact Fee which has been in place since 1988 and generates revenue based on square footage of a commercial development. Funds generated through this fee may be used for a variety of infrastructure projects; however in practice it has generated enough money to finance additional road improvements in the area beyond minimum MDOT requirements. Brunswick uses a Solid Waste Impact fee which generates revenue from residential and non-residential development on a per-ton basis. Brunswick also uses a road impact fee in the Cooks Corner and Bath Road corridors that is assessed per vehicle trip. In addition to traffic impact fees for the Payne Road corridor and the Dunstan intersection, Scarborough assesses a school impact fee to new homes.

Most communities contacted had some experience with mitigation fees. Two typical types of mitigation fees are traffic fees charged to commercial developments as a condition of a traffic movement permit and open space or recreation fees paid at subdivision approval. For some communities these are set amounts and in other cases fees are negotiated on a case by case basis.

### ***Planning for Impact Fees***

The use of impact fees require up-front as well as on-going planning and should be grounded in a community's overall economic and development efforts and fiscal policy. There are several planning and policy related issues to explore and address when considering the use of impact fees. These should be considered prior to the steps of calculating and adopting fees. (For more information on calculating impact fees, see *Impact Fees*, Maine Townsman, July 2000, which included a sidebar on calculating impacts fees and adopting an impact fee as well as the manual produced by the Maine State Planning Office, Financing Infrastructure Improvements through Impact Fees, A Manual for Maine Municipalities on the Design and Calculation of Development Impact Fees, January 2003).

The first planning and policy issue to explore and address is the fit of impact fees within community goals, plans, and policies. This can be accomplished by reviewing the community's existing comprehensive plan, economic and community development strategies, capital improvements plan, and service level guidelines or practices. These efforts and related documents often shed light on the important first questions when deciding whether to proceed with impact fees: Is growth impacting your community, will it likely continue to impact your community in the next 3-10 years, and if so does the community anticipate responding to that growth through capital improvements? If the answers to these questions are "no", then it may not be worth further consideration of impact fee calculation and adoption. Furthermore, an examination of these issues and questions will help a community determine not only if an impact fee is an appropriate mechanism to achieve planning and policy objectives but also what fees should apply to and how revenues should be used.

The second planning and policy issue to consider is how fees would fit within the community's revenue structure. Specifically a community should consider:

- what other methods are being used to finance infrastructure and facilities associated with growth beyond the property tax, (for example: Tax Increment Financing)?
- are any of these other methods preferred to impact fees and why?;
- and if an impact fee was adopted would its application run counter to the objectives of the other financing mechanisms?

Regarding this last issue and as an example, a community may have adopted TIFs to both finance infrastructure such as roads or sewer, but also to encourage development by offsetting a portion of property taxes paid by developers. In this case it may not make sense for a community to adopt impact fees which would place added costs on developers and run counter to the objectives of TIF agreements.

The last planning and policy issue to consider in preparing for an impact fee is a fee's effect on investment decisions made by developers and in the case of residential impact fees, homeowners. Impact fees place a cost on specific development activities and increase the cost of investment. This is not necessarily bad policy as long as the ratio between the overall cost of development (taxes, fees, development costs) and benefits (services received, economic gain) from investment are reasonably in line with nearby

communities. If they are not, development and investment may be forgone in a place with impact fees in favor of a nearby community, thus impacting community development objectives.

In summary, while impact fee use has increased within the past ten years in some regions of the US, in New England their use has declined. In Maine, impact fee use is still not widespread and is more common among growing edge and suburban communities. However, more service center communities in Maine are using or are considering impact fees to help finance reinvestment in infrastructure to serve economic development, particularly for roads. Fees being used by Maine municipalities include fees established by ordinance as well as mitigation-type fees that apply to a specific development.

*About the Authors*

**Jim Damicis** is principal with PolicyOne Research providing research and analysis for economic development, service delivery, and public policy

**Sylvia Most** is principal of SJ Most Consulting, providing project management, facilitation and policy research services to private companies, government and non-profit agencies.

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For more information about this article or the use of impact fees contact:

Jim Damicis, Principal  
PolicyOne Research, Inc.  
Phone: 207-831-1061  
Email: [jim@policyonereseach.com](mailto:jim@policyonereseach.com)  
Web: [www.policyonereseach.com](http://www.policyonereseach.com)

