



**Statutory Authorization:** 24 V.S.A., §4412(4) / **Type:** REGULATORY

**Related Topic Areas:** Community & Economic Development; Design Review; Land Use & Development Regulations; Open Space & Resource Protection Programs; Open Space & Resource Protection Regulations; Transportation Demand Management; Zoning Regulations

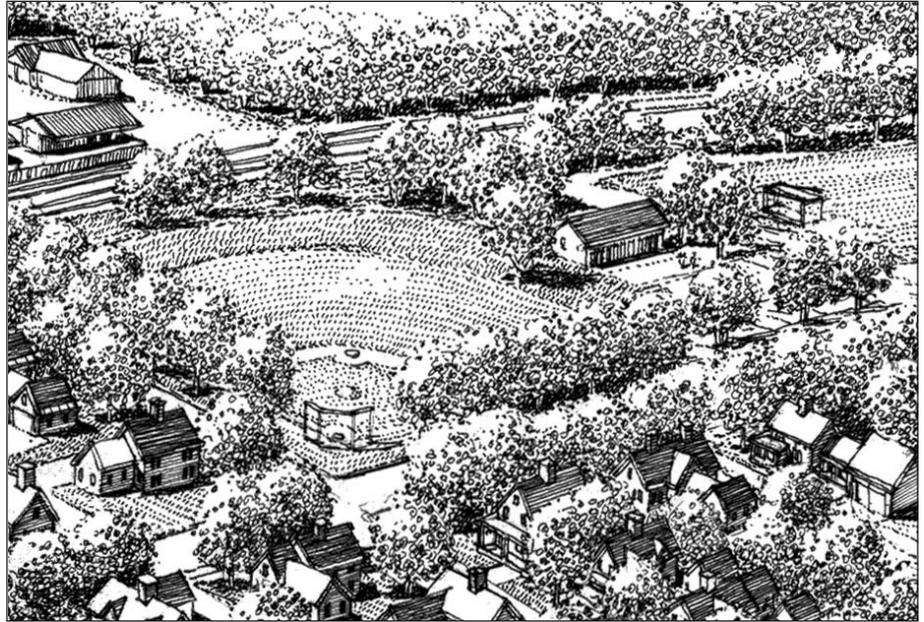
15

# Impact Fees

## Overview

When a community is growing—especially when it’s growing rapidly—public facilities and services are often operating at or near capacity. In this situation, the community faces the challenge of servicing new development without degrading the services it provides to existing residents and businesses. Meeting this challenge may require the construction of new facilities, such as schools and parks, or the purchase of additional equipment, including fire trucks and road equipment. These types of capital investments are usually financed directly from local tax revenues, or by a bond or other loan obligation that’s paid off with tax revenues. When this happens, all taxpayers in the community carry the burden of financing a new facility, even though it’s needed only to accommodate new growth and development. It can be argued that this represents an unfair burden to existing residents and taxpayers.

The use of impact fees is one way of mitigating at least a part of this burden. An impact fee is a fee levied on new development to help mitigate its fiscal impacts on the community. Under state law (24 V.S.A., §§5200, et.



**Fast-growing municipalities can require that new development share in the cost of constructing parks, roads, and other public facilities. Impact fees may only be used for capital investments that will accommodate new growth and cannot be used to cover operations and maintenance costs.**

seq.), the purpose of authorizing impact fees is “to enable municipalities to require the beneficiaries of new development to pay their proportionate share of the cost of municipal and school capital projects which benefit them and to require them to pay for or mitigate the negative effects of construction.”

## Application

A municipality is authorized to enact an impact fee ordinance and levy fees if:

- It has an adopted municipal plan in effect that has been approved by the regional planning commission.
- Its planning process has been confirmed by the regional planning commission in accordance with Chapter 117 (§4350).
- It has an adopted capital budget and program in effect. (See topic paper,

Capital Improvement Program.)

Impact fees are especially useful in municipalities experiencing significant new development that stresses their ability to provide adequate facilities and services. Smaller, rural communities may not have enough growth, capital needs, or capacity constraints to justify the use of impact fees. A municipality with a declining population or employment base may also find it difficult to levy fees; if excess capacity exists, impact fees may not be legally justified and could discourage new development.

It’s also important to remember that, while additional staff may be needed to manage new or expanded facilities, impact fee revenues cannot be used to cover operation and maintenance costs, including staff salaries. Impact fee revenues must be used only for capital projects.

### Warning about School Impact Fees

Despite the common practice of adopting school impact fees, there is concern that municipalities are no longer authorized to levy impact fees for school construction projects. At the time of this publication, Act 68, Vermont’s education funding law, appears to restrict a municipality’s ability to impose impact fees for schools. Contact your town attorney for guidance.

## Steps for Developing Impact Fees



**1. Identify Facilities.** Development of an impact fee program begins with the identification of municipal services that are being stressed by continuous growth. Any services that require capital facility improvements or expansions to maintain acceptable levels and qualities of service are candidates for funding through impact fees. Possible examples include the need for additional

park space, school buildings, road capacity, or transit facilities to sustain existing levels of service for more users.

**2. Identify Capital Projects.** The second step is to identify those capital projects needed to provide and maintain desired levels of service as anticipated growth occurs. Ideally, these will be capital projects that are included in the municipal-

ity's capital budget and program. Capital projects that are needed, solely or in part, to support anticipated development are candidates for impact fees. This is an important distinction. Impact fees cannot be used to cover operation or maintenance costs, nor to address existing deficiencies—for example, to replace or renovate facilities that serve the existing population. Only

## Steps for Developing Formulas

**1. Calculate the capital cost per unit of capacity.** For example, cost is usually calculated in the form of the cost per person served or per peak hour trip, and so on. Each service will require its own analysis to determine associated costs, units of capacity, and the total capacity of a particular project. The cost of a capital project often can be taken directly from the capital budget and program. It's necessary, however, to consider only the municipality's cost: contributions from outside sources such as state and federal grants must be deducted. If the project is to be financed by a bond or loan, the interest on the bond or loan should be included in the project cost. Ultimately, the formula should be based on the total municipal cost of the capital project.

Typically, the level of service or capacity is specified as part of the project design, such as a school for 200 students or a library for 5,000 residents. In other cases, there are commonly used service level standards, such as five acres of devel-

oped recreation land per 1,000 persons or two tennis courts per 1,000 persons. In a few cases, more information may be needed. For example, a fairly detailed traffic study may be required to determine the total volume of traffic that can be accommodated by a community's roadway system during afternoon rush hours.

**2. Link units of development to the demand for services being analyzed.** For services intended for local residents, such as recreation facilities and libraries, development is usually measured in dwelling units, sometimes differentiated by type (single family, multiple family) or size (number of bedrooms). The relevant ratios are the number of persons—for example, the number of school-age children—per dwelling unit. For non-residential development, ratios often relate demand to floor area, such as 1,000 square feet of floor space.

**3. Multiply the capital cost per unit of capacity by the demand per unit of development.** For instance, the basic impact fee on a dwelling unit for recreation facilities would be the cost

of needed recreation facilities per person, multiplied by the number of persons per dwelling unit. The basic transportation impact fee for each 1,000 square feet of nonresidential floor area could be calculated as the cost per afternoon peak hour trip multiplied by the number of afternoon peak hour trips generated by each 1,000 square feet of new floor space.

**4. Estimate the credits against the impact fee to offset any double payments.** For example, a residential development that provides land for a park or school should be credited for that capital investment. Similarly, a nonresidential development that constructs needed road improvements should be credited. A more complicated, but common, situation exists when the municipality's annual expenditures for capital facilities exceed impact fee revenues, and the balance is paid from general tax revenues. When this happens, tax revenues are generated from properties for which impact fees also have been paid, resulting in double payments. In these situations, credits are used to offset other taxes or fees paid by the developer.

capital projects that add to existing capacity—through the purchase of additional land or equipment, the expansion of an existing facility, or the construction of a new facility—may be funded through impact fees.

**3. Develop Formulas.** The next required step is to establish a formula that sets the fees (§5203[b]). The formula must carefully link the capital costs of new facility capacity to the demand for that capacity generated by each “unit” of new development. This creates the “rational nexus” that serves as the logical and legal foundation for levying impact fees. Studies are usually needed to develop and document impact fee formulae and to support adopted fee schedules. These studies often rely on available information, including U.S. Census data, but in some cases require more specific community or facility research and analyses. See previous page for steps in developing a formula.

**4. Adopt Impact Fee Regulations.** The formulae and procedures for levying impact fees may be adopted as an ordinance (under 24 V.S.A.

Chapter 59) or as part of a bylaw (under Chapter 117). Chapter 117 requires impact fees to be levied as a condition of the issuance of a zoning permit or subdivision approval—though fees may be collected prior to the issuance of permits and approvals, along with other application fees. The municipality must maintain a record of the source and amount of each fee collected and the capital project(s) that were funded with the fee.

The municipality is also required to provide an annual accounting of its impact fee revenues. Under state law, impact fee revenues must be expended for designated capital projects within six years of the date they are collected, or be refunded at the request of the property owner. If a project costs less than the fees collected, the unexpended portion must be refunded to property owners within one year of the date that construction is completed.

Vermont’s impact fee statute allows municipalities to accept off-site mitigation in lieu of an impact fee or as compensation for impacts to impor-

tant land (for example, farmland or wildlife habitat) and also to waive all or part of impact fees levied on developments that fulfill clearly stated municipal plan objectives. The waiver provision, for example, allows communities to waive impact fees as an incentive for qualifying affordable housing projects.

### Acceptable Standards

24 V.S.A. §5203(a)(2)

Chapter 117 requires that levels of service be determined from existing levels of service, accepted state or federal standards, or a standard adopted as part of the municipal plan or capital budget. for guidance.

The Vermont Department of Education can provide assistance on questions of school capacity, and the State Department of Libraries has many references on library design. National standards or services levels, such as recreation service levels published by the National Recreation and Park Association, are intended only for general guidance, and must be adjusted to reflect local needs.