



Impact Fees

An MAPC Policy Summit Issue Brief

Massachusetts is confronting a crisis in its ability to maintain and appropriately expand infrastructure. New developments – especially large-scale commercial developments – often add to our infrastructure needs. Development can also degrade the environment or drive up housing prices. At the same time, growth is imperative to our economy and quality of life.

Currently, impact fees are not expressly permitted in the state. Instead, many municipalities negotiate exactions that can be unpredictable and costly to developers, while often failing to mitigate the full impact of developments.

MAPC is preparing a recommendation to address capital costs associated with new growth, while ensuring that the system does not deter or penalize development that is consistent with MetroFuture. Short term steps would help to “clean up” the current use of exactions and aid communities with an eventual transition to impact fees. The ultimate goal is to amend state law to explicitly allow impact fees, including both local and regional impacts, and to encourage adoption of the practice.

Impact Fees around the Country

Impact fees are becoming the mitigation tool of choice across the country. A recent study conducted by Duncan Associates found that 27 states have enabling legislation to define and allow fees, 19 of which have passed laws since 1990. Other states, such as Ohio, do not have formal impact fee legislation but allow municipalities and counties to implement fees through the use of their police power.

A few states have formalized regional impact fee systems. New Jersey uses special Transportation Development Districts to ensure that traffic impacts across municipal borders are fully addressed. California allows its transit authorities to implement impact fees and links regional fees to the state’s environmental review process. Other states allow county governments or regional authorities to implement impact fees.

Impact Fees in Massachusetts

Massachusetts communities attempting to formalize their exaction process have consistently lost court battles with developers. The Greater Franklin Development Association v. the Town of



Duncan Associates, 2007

Franklin is one of the most significant cases. In 2000 the Massachusetts Superior Court ruled that Franklin's system was an unlawful tax. This history of case law against impact fees in Massachusetts has led to confusion and municipal hesitation to implement impact fee programs under their police power rights.

Not all of Massachusetts is without legally defined impact fees. In 1989 the state Legislature empowered the Cape Cod Commission to implement impact fees in Barnstable County. The law identified the need for special planning and preservation on Cape Cod to maintain its unique environmental character.

At the state level, proposed legislation currently before the Legislature (Community Planning Act or CPA II) would enable municipal impact fees as part of a broader zoning reform package.

Three Questions for Discussion:

How can regional impacts be addressed?

Development impacts are not limited by municipal boundaries. Transportation, water, and wastewater issues often extend beyond the municipality where the development takes place, affecting neighboring cities and towns. A comprehensive impact fee system would address these multi-community or regional mitigation needs. How can we structure a regional impact fee? How would it be administered? Should it be coordinated with the MEPA process?

How can the current system of exactions be made more equitable to all parties involved? Passing impact fee legislation is a medium to long term plan and may not be the answer for all municipalities. By helping to make the current system more transparent to developers, supporting smaller municipalities in calculating current infrastructure capacity and future need, and improving coordination across municipalities, we can improve the fairness of the current system and pave the way for a transition to a full impact fee system. What are the necessary policy steps, technical assistance plans, and education programs needed to improve the current exaction system while laying the groundwork for adoption of a formal impact fee process?

What would a state law that defines and governs impact fees look like?

Impact fee legislation must define the impact fee process, clearly reflect the goals of the police, and be constitutionally defensible. What elements are needed in state impact fee legislation to ensure that it is fair to municipalities, developers, and others? What would stand up to legal challenges? What types of capital costs should be included? Should political entities beyond municipalities be able to implement impact fees? What steps should a municipality be required to take before it can implement an impact fee program?

