

Equitable Development Toolkit Developer Exactions

Updated February 2002

What Is It?

Cities and towns use developer exactions as a strategy to offset the burdens of new development on the community. Exactions contribute to regional equity by ensuring that a new development pays a fair share of the public costs that they generate.

Exactions consist of a developer's payment of "impact fees." These fees are used to fund new schools and parks; construction or maintenance of the public infrastructure directly connected to the new development; and off-site improvements and services. Exactions are levied on developers in exchange for the approvals to proceed with a project.

Cities across the country have increasingly turned to exactions as a means to meet new infrastructure and public service needs. In California, reliance on exactions has intensified since the passage of Proposition 13 in 1978. Proposition 13 caps property tax available to localities and therefore hinders their ability to tax new residential development sufficiently to cover increased demand for services.

Why Use It?

Exactions benefit communities in that they provide income without raising local property or other taxes. Exactions benefit existing residents of a community who are not required to subsidize the servicing of new development. The exactions can create benefit for low-income residents, when a developer pays into an affordable housing fund, builds affordable housing, or agrees to living-wage and local hiring agreements.

A key advantage of exactions is that the beneficiaries of new developments (developers, property owners, business tenants) pay more of the costs associated with those developments. In other words, exactions can help reduce the infrastructure subsidies to new developments.

In addition, exactions can serve to discourage new development on undeveloped "greenfield" (open space) sites by charging higher rates for extending public infrastructure to those areas. In this usage, exactions can create incentives for infill development because development costs are lower where infrastructure and services already exist.

Community Benefits

Increasingly, community coalitions are demanding community benefits from large developments using exactions that mandate production of affordable housing, local hiring, and living-wage jobs.

TYPES OF EXACTIONS AND POTENTIAL BENEFITS

Exaction Category	Examples	Potential Benefits
Infrastructure Exaction	Dedication of land for park. Construction of roads to serve new housing development. School construction.	Recreational amenity for residents. New development pays own way; city funds freed up to maintain existing roadways. Expands capacity to serve new residents, reducing potential overcrowding at existing schools.
Impact Fees	Funding for affordable housing, childcare, schools, and other needs.	Resources obtained to offset social and economic impacts of new development. <i>(Boston's housing linkage program has allocated approximately \$45 million from developer impact fees to fund nearly 5,000 affordable housing units. (May 2000)</i>
Community Benefits	Development agreement.	Developer commits to local hiring and living-wage jobs. Developer constructs affordable housing off site. Developer pays for traffic mitigation/traffic calming measures. Developer funds job training programs. <i>(The Bayer Developer Agreement in Berkeley, CA included the developer paying \$1,200,000 - \$1,400,000 for a</i>

		<i>biotechnology education program for local youth.)</i>
--	--	--

How to Use it

The ability to obtain developer concessions derives from a local government's power to regulate through its general planning responsibilities, zoning ordinances, and governance of subdivisions.

- **Infrastructure Costs.** Localities can establish the legal basis for exactions by passing an "Adequate Public Facilities Ordinance" (or similar law). Such laws require necessary infrastructure and services before any new development can be approved. Infrastructure requirements include utilities, roads, parks, schools, or other services.
- **Affordable Housing.** Jurisdictions can use exactions as part of a broader "linkage" program to support affordable housing. Linkage programs generally require exactions from the developer in the form of construction of affordable housing or payment into a housing fund in return for permits or other concessions.
- **Community Benefits.** Local governments can negotiate exactions with developers on a project-by-project basis. In Los Angeles, a community coalition of labor, housing advocates, and community groups concluded a far-reaching agreement with the city and the developer of a billion dollar hotel and entertainment center. The Staples Center developers agreed to hire neighborhood residents, provide living-wage jobs, build affordable housing, and create new parks in the area adjacent to the project.

To avoid legal challenges, governments must ensure the exaction is linked in content and cost to the impact of the proposed development.

Localities impose exactions in the context of particular development scenarios. To mitigate the effect of increased motor traffic to a new shopping center, a developer may be required to pay for construction of a left turn lane and traffic lights. In some instances, local governments may require exactions from developers of commercial and office space to offset rising housing prices caused by economic growth. These exactions are generally based on square footage formulas, generating greater revenue from larger developments with larger impacts. Cambridge, Massachusetts requires commercial, hotel, retail, and institutional development to pay a linkage fee of \$3.00/square foot. These exactions create a jobs-housing balance and help to maintain housing affordability. In this context, exactions represent an important linkage between land use regulations and a city's economic and social equity concerns.

Level of Use: Exactions are generally required by local governments to regulate development within their jurisdictions. Exactions are based on local "Adequate Public Facilities Ordinances," [sample ordinance of Washington County, Maryland at <http://www.wc-link.org/washco/adqpub.pdf>], provisions in the zoning regulations [San Francisco linkage ordinance at <http://www.amlegal.com/sanfranplanning/lpext.dll?f=templates&fn=main-j.htm&2.0>], and/or negotiated on a project-by-project basis. In addition, states may enact legislation to both enable and regulate local use of impact fees and exactions.

Key Players

Supportive elected officials and city staff can be important allies in instituting exactions, either project-by-project or through an ordinance. Other key stakeholders include citizens concerned with the impacts of development, affordable housing advocates, environmental groups, and service providers. Business support can create affordable housing for employees.

Financing

There are few "hard" costs to the jurisdiction beyond administration. Developers build in the cost of compliance into overall project budgets. In some cases, this becomes a loophole. (see Challenges below). Methods of payment and timing vary by type of exaction. If a developer is paying a fee, it is usually paid when the building permit is issued. For the commercial exactions, the costs may be paid over a period of several years, allowing the developer to use income from the development's operations rather than having to make the payment before the development is built. If a jurisdiction is providing subsidy to a new development, exactions may offset the costs of the subsidy.

Challenges

A potential drawback is that exactions may raise the market price of residential properties being developed by increasing the costs of creating such properties. Developers pass on these costs to consumers in varying degrees in the form of higher prices, limiting the ability of low-income/low-wealth families to own a home.

Opponents contend that governments utilize exactions to rectify problems not directly attributable to new development. In California, some new developments come with costly exactions for school construction due to constrained funding at the state level. Because of the broad social benefits inherent in an educated population, there is continuing debate over whether school costs should be funded through exactions or shared by the larger community.

Case Studies

- In Lancaster, California, the municipal code authorizes the levying of a variety of impact fees on new development, including fees for traffic signalization, sewage treatment improvement, water improvement, park development, and library facilities among others. In 1993, in an innovation designed to further smart growth principles, Lancaster instituted an additional change on new development outside a five-mile radius from the central core. According to the New Rules Project, "a typical new house located within the core would incur an impact fee of \$5,500. The same house located one mile beyond the core would incur a fee of \$10,800."
- Sacramento imposes a developer exaction by charging varying square footage fees on non-residential development for affordable housing. Developers pay a fee to a housing fund, or alternatively, they may meet up to 80 percent of their obligation by directly building affordable housing.
- Boston requires that developers of large-scale commercial, retail, or hotel structures pay an exaction to construct affordable housing off site. (See tool on linkage programs for more detail).

Resources

- *A Planner's Guide to Financing Public Improvements*. 1997. Sacramento, CA: Governor's Office of Planning and Research. See Chapter 4: Fees and Exactions. Retrieval from <http://ceres.ca.gov/planning/financing/chap4.html>.
- Dresch, Marla and Steven M. Sheffrin. 1997. *Who Pays for Development Fees and Exactions?* San Francisco: Public Policy Institute of California. Retrieval from www.ppic.org.
- Dreier, Peter and Bruce Ehrlich, 1991. "Downtown Development and Urban Reform: the Politics of Boston's Linkage Policy." *Urban Affairs Quarterly* 26(3).