

66.0617 Impact fees. (1) DEFINITIONS. In this section:

(a) "Capital costs" means the capital costs to construct, expand or improve public facilities, including the cost of land, and including legal, engineering and design costs to construct, expand or improve public facilities, except that not more than 10% of capital costs may consist of legal, engineering and design costs unless the municipality can demonstrate that its legal, engineering and design costs which relate directly to the public improvement for which the impact fees were imposed exceed 10% of capital costs. "Capital costs" does not include other noncapital costs to construct, expand or improve public facilities, vehicles; or the costs of equipment to construct, expand or improve public facilities.

(b) "Developer" means a person that constructs or creates a land development.

(c) "Impact fees" means cash contributions, contributions of land or interests in land or any other items of value that are imposed on a developer by a municipality under this section.

(d) "Land development" means the construction or modification of improvements to real property that creates additional residential dwelling units within a municipality or that results in non-residential uses that create a need for new, expanded or improved public facilities within a municipality.

(e) "Municipality" means a city, village, or town.

(f) "Public facilities" means highways, as defined in s. 340.01 (22), and other transportation facilities, traffic control devices, facilities for collecting and treating sewage, facilities for collecting and treating storm and surface waters, facilities for pumping, storing, and distributing water, parks, playgrounds, and land for athletic fields, solid waste and recycling facilities, fire protection facilities, law enforcement facilities, emergency medical facilities and libraries. "Public facilities" does not include facilities owned by a school district.

(g) "Service area" means a geographic area delineated by a municipality within which there are public facilities.

(h) "Service standard" means a certain quantity or quality of public facilities relative to a certain number of persons, parcels of land or other appropriate measure, as specified by the municipality.

(2) GENERAL. (a) A municipality may enact an ordinance under this section that imposes impact fees on developers to pay for the capital costs that are necessary to accommodate land development.

(b) Subject to par. (c), this section does not prohibit or limit the authority of a municipality to finance public facilities by any other means authorized by law, except that the amount of an impact fee imposed by a municipality shall be reduced, under sub. (6) (d), to compensate for any other costs of public facilities imposed by the municipality on developers to provide or pay for capital costs.

(c) Beginning on May 1, 1995, a municipality may impose and collect impact fees only under this section.

(3) PUBLIC HEARING; NOTICE. Before enacting an ordinance that imposes impact fees, or amending an existing ordinance that imposes impact fees, a municipality shall hold a public hearing on the proposed ordinance or amendment. Notice of the public hearing shall be published as a class 1 notice under ch. 985, and shall specify where a copy of the proposed ordinance or amendment and the public facilities needs assessment may be obtained.

(4) PUBLIC FACILITIES NEEDS ASSESSMENT. (a) Before enacting an ordinance that imposes impact fees or amending an ordinance that imposes impact fees by revising the amount of the fee or altering the public facilities for which impact fees may be imposed, a municipality shall prepare a needs assessment for the public facilities for which it is anticipated that impact fees may be imposed. The public facilities needs assessment shall include, but not be limited to, the following:

1. An inventory of existing public facilities, including an identification of any existing deficiencies in the quantity or quality of those public facilities, for which it is anticipated that an impact fee may be imposed.

2. An identification of the new public facilities, or improvements or expansions of existing public facilities, that will be required because of land development for which it is anticipated that impact fees may be imposed. This identification shall be based on explicitly identified service areas and service standards.

3. A detailed estimate of the capital costs of providing the new public facilities or the improvements or expansions in existing public facilities identified in subd. 2., including an estimate of the effect of recovering these capital costs through impact fees on the availability of affordable housing within the municipality.

(b) A public facilities needs assessment or revised public facilities needs assessment that is prepared under this subsection shall be available for public inspection and copying in the office of the clerk of the municipality at least 20 days before the hearing under sub. (3).

(5) DIFFERENTIAL FEES, IMPACT FEE ZONES. (a) An ordinance enacted under this section may impose different impact fees on different types of land development.

(b) An ordinance enacted under this section may delineate geographically defined zones within the municipality and may impose impact fees on land development in a zone that differ from impact fees imposed on land development in other zones within the municipality. The public facilities needs assessment that is required under sub. (4) shall explicitly identify the differences, such as land development or the need for those public facilities, which justify the differences between zones in the amount of impact fees imposed.

(6) STANDARDS FOR IMPACT FEES. Impact fees imposed by an ordinance enacted under this section:

(a) Shall bear a rational relationship to the need for new, expanded or improved public facilities that are required to serve land development.

(b) May not exceed the proportionate share of the capital costs that are required to serve land development, as compared to existing uses of land within the municipality.

(c) Shall be based upon actual capital costs or reasonable estimates of capital costs for new, expanded or improved public facilities.

(d) Shall be reduced to compensate for other capital costs imposed by the municipality with respect to land development to provide or pay for public facilities, including special assessments, special charges, land dedications or fees in lieu of land dedications under ch. 236 or any other items of value.

(e) Shall be reduced to compensate for moneys received from the federal or state government specifically to provide or pay for the public facilities for which the impact fees are imposed.

(f) May not include amounts necessary to address existing deficiencies in public facilities.

(g) Shall be payable by the developer or the property owner to the municipality in full within 14 days of the issuance of a building permit or within 14 days of the issuance of an occupancy permit by the municipality.

(7) LOW-COST HOUSING. An ordinance enacted under this section may provide for an exemption from, or a reduction in the amount of, impact fees on land development that provides low-cost housing, except that no amount of an impact fee for which an exemption or reduction is provided under this subsection may be shifted to any other development in the land development in which the low-cost housing is located or to any other land development in the municipality.

(8) REQUIREMENTS FOR IMPACT FEE REVENUES. Revenues from each impact fee that is imposed shall be placed in a separate segregated interest-bearing account and shall be accounted for separately from the other funds of the municipality. Impact fee revenues and interest earned on impact fee revenues may be expended only for the particular capital costs for which the impact fee was imposed, unless the fee is refunded under sub. (9).

(9) REFUND OF IMPACT FEES. (a) Subject to par. (b), an ordinance enacted under this section shall specify that impact fees that are imposed and collected by a municipality but are not used within 7 years after they are collected to pay the capital costs for which they were imposed shall be refunded to the current owner of the property with respect to which the impact fees were imposed, along with any interest that has accumulated, in described in sub. (8). The ordinance shall specify, by type of public facility, reasonable time periods within which impact fees must be spent or refunded under this subsection, subject to the 7-year limit in this paragraph and the extended time period specified in par. (b). In determining the length of the time periods under the ordinance, a municipality shall consider what are appropriate planning and financing periods for the particular types of public facilities for which the impact fees are imposed.

(b) The 7-year time limit for using impact fees that is specified under par. (a) may be extended for 3 years if the political subdivision adopts a resolution stating that, due to extenuating circumstances or hardship in meeting the 7-year limit, it needs an additional 3 years to use the impact fees that were collected. The resolution shall specify the extenuating circumstances or hardship that led to the need to adopt a resolution under this paragraph.

(10) APPEAL. A municipality that enacts an impact fee ordinance under this section shall, by ordinance, specify a procedure under which a developer upon whom an impact fee is imposed has the right to contest the amount, collection or use of the impact fee to the governing body of the municipality.

History: 1993 a. 305; 1997 a. 27; 1999 a. 150 s. 524; Stats. 1999 s. 66.0617; 2005 a. 203, 477.

An association of developers had standing to challenge the use of impact fees. As long as individual developers had a personal stake in the controversy, the association could contest the use of impact fees on their behalf. Further, individual developers subject to the impact fees do have the right to bring their own separate challenges. *Metropolitan Builders Association of Greater Milwaukee v. Village of Germantown*, 2005 WI App 103, 282 Wis. 2d 458, 698 N.W.2d 301, 04-1433.

Sub. (6) allows a municipality to impose impact fees for a general type of facility without committing itself to any particular proposal before charging the fees. The needs assessment must simply contain a good-faith and informed estimate of the sort of costs the municipality expects to incur for the kind of facility it plans to provide. Sub. (9) requires impact fees ordinances to specify only the type of facility for which fees are imposed. A municipality must be allowed flexibility to deal with the contingencies inherent in planning. *Metropolitan Builders Association of Greater Milwaukee v. Village of Germantown*, 2005 WI App 103, 282 Wis. 2d 458, 698 N.W.2d 301, 04-1433.

Subs. (2) and (6) (b) authorize municipalities to hold developers responsible only for the portion of capital costs whose necessity is attributable to their developments. A municipality cannot expect developers' money to subsidize the existing residents' proportionate share of the costs. If impact fees revenues exceed the developers' proportionate share of the capital costs of a project, the municipality must return those fees to the current owners of the properties for which developers paid the fees. *Metropolitan Builders Association of Greater Milwaukee v. Village of Germantown*, 2005 WI App 103, 282 Wis. 2d 458, 698 N.W.2d 301, 04-1433.

Rough Proportionality and Wisconsin's New Impact Fee. Ishikawa. Wis. Law. March 1995.