

# An Overview of Impact Fees

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## What are Impact Fees?

- An impact fee is an upfront charge assessed on new or sometimes existing development to fund current and future public infrastructure expenditures that are or may be necessitated by the development.
- One-time charge which is typically imposed in advance of the completion of a development project.
  - Often a condition of receiving a building permit or certificate of occupancy.

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- An impact fee can refer to any number of services but oftentimes is used in the context of water and sewer facilities.
- May be called a variety of names, such as:
  - Capacity fee
  - Facility fee
  - Capital reserve fee
- However, the name of the fee is immaterial, it is how the fee operates in practice that matters.

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## Exactions

- *Anderson Creek Partners, L.P. v. County of Harnett (2022)*
  - An exaction is a condition of development permission that requires a public facility or improvement to be provided at the developer's expense.
- Impact fees are considered monetary exactions
- Local government must determine two things when seeking to impose an exaction:
  1. Is the exaction constitutional?
  2. Is there statutory authority for the exaction?
- U.S. Constitution places limitations on the authority of governments to require exactions.

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- Courts use a two-part test, known as the *Nollan/Dolan* test, when determining whether an exaction is constitutional:
  1. Permit conditions must have an essential nexus to the government's land-use interest.
  2. Permit conditions must have rough proportionality to the development's impact on the land-use interest.
- U.S. Supreme Court has extended the *Nollan/Dolan* test to monetary exactions (*Koontz v. St. Johns River Water Management District*).

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## Categories of Exactions

- Most exactions fall into one of four categories:
  1. Dedication of land for street rights-of-way, parks, or utility easements and the like.
  2. Construction or installation of improvements on land so dedicated.
  3. Payment of fees in lieu of compliance with dedication or improvement provisions.
  4. Payments of *"impact" or "facility" fees* by developers that reflect their respective prorated shares of the cost of providing new roads, utility systems, parks, and similar facilities serving the entire area.

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## Authorized Exactions

- Statutory authority exists for local governments to impose exactions for certain purposes.
- For example, exactions may be imposed related to the *subdivision of land* for a variety of purposes, including:

Purpose	Authority
Transportation	Unit may require dedication of right-of-way or easements for street purposes or remit funds in lieu of street construction.
Utilities	Unit may require dedication of rights-of-way or easements for utilities.
Recreation	Unit may require dedication or reservation of recreation areas or payment of funds to acquire or develop recreation areas serving development or immediate area.
Schools	Unit may require a developer reserve land for a school site.

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## What About Impact Fees?

- No specific statutory authority to charge impact fees under general law, at least to fund general government infrastructure or services.
  - *Lanvale Properties, LLC v. County of Cabarrus* (2012) – School impact fees are not authorized by general statute.
- However, a handful of units have been given local act authority to assess impact fees for certain purposes.
- Recent caselaw and legislation have shifted where impact fees related to water and sewer facilities currently stand in the State.

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## *Point South Properties, LLC v. Cape Fear Public Utility Authority (2015)*

- Payment of impact fee required to receive building permit.
- Developers paid the fee to secure development permits from county.
- Once constructed, properties built by developers received water/sewer services from private entity.
- Area where properties were located was identified as a potential future service area by the county.

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- Question: Are impact fees authorized when a water and sewer district does not have a defined plan to service the developed property?

- **G.S. 162A-88:**
  - District "may establish and revise a schedule of rates, fees, and other charges for the use of or for the services furnished or *to be furnished by* any sanitary sewer system, water system or sanitary sewer and water system of the district."

- North Carolina Court of Appeals held that the district did not have authority to charge an impact fee under such facts.

- The court found that defendants failed to prove they "ever decided or planned" for water and sewer service "to be furnished" to the properties.

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### **Quality Built Homes, et. al. v. Town of Carthage (2016)**

- Carthage had two impact fee ordinances – one for water and one for sewer; however, both fees operated as follows:
  - Imposed on all new development, with some exceptions.
  - Fee amount based on projected water meter size needed to serve new development.
  - Fee due upon payment of tap fee or issuance of development permit.
  - Fee revenue used to cover cost of *expanding* the water/sewer system.

- Question – Do municipalities have the authority to require impact fees for future services?

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- The court focused on the statutory authority to charge fee in question and compared it to the authorizing fee statute for a county water and sewer district:

- **Municipality Statute** (G.S. 160A-314) – "A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the *use of or the services furnished by* any public enterprise."

- **District Statute** (G.S. 162A-88) – District "may establish and revise a schedule of rates, fees, and other charges for the *use of or for the services furnished or to be furnished by* any sanitary sewer system, water system or sanitary sewer and water system of the district."

- Court found the absence of the phrase "to be furnished" in municipal statute to be significant.

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- Holding – Carthage lacked the authority to assess the impact fees at issue in the case.
- Municipality may charge impact fees for the contemporaneous use of its water and sewer systems, not for future services.
- As Carthage’s impact fee was used to fund costs associated with future maintenance and expansions of the systems, the fee lacked statutory authority and was unlawful.




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### Session Law 2017-138

- In response to *Carthage*, the General Assembly passed S.L. 2017-138
- Added language to G.S. 153A-277 (counties) and G.S. 160A-314 (municipalities) allowing fees/charges for services to be furnished
- Created a framework for System Development Fees




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### *True Homes, LLC v. City of Greensboro (2025)*

- Court ruled that System Development Fees are the sole legal authority for imposing upfront charges related to utility capacity.
- Local governments currently lack legal authority to charge capacity or other similar upfront fees on properties not classified as “new development” under the System Development Fee law.
  - No authority to impose impact fee on existing development.




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## System Development Fees

- Article 8 of Chapter 162A of the General Statutes
- Meant to ensure that the cost of growth is shared by those creating the demand – new homes and businesses – rather than existing ratepayers.
- Revenue from SDF's can be used to pay off debt for infrastructure expansion or to fund future improvements that *benefit the new users*.
  - Not a general revenue source – SDFs are restricted in use

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## What are SDF's

- Charges assessed on *new development* to fund construction or rehabilitation of water and wastewater facilities necessitated to *serve the new development that paid the fees*.
- May cover costs necessary to *serve the new development*, such as:
  - Constructing new infrastructure
  - Expanding capacity in existing systems
  - Repairing, maintaining, upgrading, or replacing facilities
  - Increasing preexisting level of service for existing development
  - Purchasing/reserving capacity in facilities of other local units

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## Who Can Assess SDF's

- Three categories of local governments are authorized to assess SDF's:
  1. Local government entities that own or operate a water or wastewater system.
  2. Local government entities that purchase reserve capacity in another local government's system.
  3. Water and sewer authorities who enter into wholesale agreements with other local government utilities.

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## Calculating SDF's

- Local government must complete thorough SDF analysis, which, among other requirements, must:
  - Be conducted by a licensed professional engineer or qualified financial expert
  - Use generally accepted accounting, engineering, and planning methodologies to calculate SDF
  - Employ one of the following recognized methods tailored to the specific utility system:
    - Buy-in method
    - Marginal (incremental) cost method
    - Combined cost method
  - Project infrastructure needs for the next 5 to 20 years
  - Seek public input

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## Calculating SDF's

- Final adopted SDF fees cannot exceed the maximum amount justified by the analysis
- SDF schedule must be adopted through a public hearing in either the annual budget ordinance or separate water and wastewater rate ordinance
- Analysis must be updated at least once every 5 years; however, may have to be redone more frequently

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## Methods of Calculating SDF

Method	How Does It Work	Use of Fees
Buy-in Method	• Charges new users based on value of existing, unused system capacity	• Recoup the cost of existing facilities with available capacity • Fund capital rehabilitation projects
Marginal/ Incremental Cost Method	• Focuses on cost to expand system capacity to accommodate growth	• Capital improvements directly tied to serving the new development <i>that triggered the fee</i>
Hybrid/ Combined Method	• Combines elements of both methods, above	• Combines elements of both methods, above

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## Assessment of SDFs

- SDFs are assessed on “new development”
- New development falls into one of three categories:
  1. Subdividing land (most common)
  2. Changing/enlarging structures in way that increases number of service units
  3. Changing/expanding how land is used in way that increases service demand
- If property triggers more than one category over time, assessed SDF is limited to net increase resulting from the change

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## Other Lawful Water/Sewer Fees

Fee	Use						
Connection/Tap Fees	A fee assessed to cover the actual cost of physically connecting a new service unit to the water or sewer system.						
User Fees	Charges for the actual use of the water and sewer services.						
Contractual Payments	Local government extends water and sewer lines, or other water/sewer infrastructure projects, through a contractual arrangement with developer or property owner.						
Availability Fees	Charges on properties with access to the utility system but not actually connected.						
Assessments/ Taxing Districts	<table border="0"> <tr> <td>Municipality</td> <td>County</td> </tr> <tr> <td>• Special or critical infrastructure assessments</td> <td>• Special or critical infrastructure assessments</td> </tr> <tr> <td>• Service district – sewer</td> <td>• Service district – water and/or sewer</td> </tr> </table>	Municipality	County	• Special or critical infrastructure assessments	• Special or critical infrastructure assessments	• Service district – sewer	• Service district – water and/or sewer
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## Local Acts

- Limited number of local acts still on the books
- Local acts still provide authority to impose impact fees for purposes other than water and sewer
- Impact fees pertaining to water and sewer must abide by SDF rules

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Questions?



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