AFFORDABLE HOUSING IMPACT FEE PROGRAMS

THE PROBLEM

Across the country, particularly since the Great Recession, housing has become less affordable. Today, millions of families must pay more than half of their income in rent—leaving less and less money for other necessities like food, clothing, utilities, and transportation. Low income communities and communities of color are particularly vulnerable to these rising costs. Yet federal housing assistance for these populations has declined in recent years as the government has reduced funding for programs like public housing, Housing Choice Vouchers, and Home Investment Partnerships.

This situation has prompted many counties, cities, and towns to step up and take action. Many places have turned to inclusionary housing policies, which require developers to set aside a certain percentage of a new development's units as affordable. These policies leverage local governments' role as regulators of land use to ensure that new residential development includes, or supports the development of, new affordable residential units.

While more than 500 jurisdictions[1] across the country have successfully implemented some kind of inclusionary housing policy, some places have found challenges in implementing or adopting them. For example, in some states, prohibitions on rent control laws preclude local governments from adopting strong on-site inclusionary housing requirements.[2]

THE SOLUTION

Cities facing legal barriers to implementing inclusionary housing requirements have found an alternative way to support affordable housing: development impact fees, also known as linkage fees. Under these policies, a jurisdiction requires developers building new market rate developments to contribute to the affordable housing need by paying a fee. They can assess these fees on residential development, commercial development, or both. The city then uses the proceeds of that fee to build, restore, or repair housing that is priced to be affordable for families that cannot pay market prices.

Impact fees that apply to new residential development are easy to confuse with in-lieu fees, which are a component of many inclusionary housing programs. The two are actually different, particularly from a legal standpoint. Under residential impact fee programs, developers have a baseline requirement, or default option, to pay a fee. Some programs offer developers an alternative option to paying the fee. In **San Francisco, CA** for instance, under their impact fee program, developers can choose to construct affordable housing if they prefer to build a mixed-income development rather than pay the assessed affordable housing impact fee[3]. Inclusionary housing programs, on the other hand, operate in the reverse: inclusionary housing programs typically require that residential developers build mixed-income housing as the default option. Many inclusionary housing programs also offer developers an optional alternative to pay a fee in-lieu of construction, hence the term "In-Lieu Fee".

Another difference between impact fees and in-lieu fees is that impact fee programs may apply to either new commercial development, or new residential development, or both, whereas in-lieu fees, as an option under inclusionary housing ordinances, only apply to residential developments.

POLICY ISSUES

In impact fee programs, communities charge developers a fee for each unit or square foot of new market-rate construction and use the funds to pay for affordable housing. *Commercial* impact fees are sometimes called jobs-housing linkage fees. They help ensure that when jobs are created by new commercial development, there is also housing developed for those workers within the community. *Residential* impact fees support a healthy mix of housing by requiring that a portion of the profits generated by new market-rate residential development, which is typically higher-end housing, be reinvested into housing for lower-income earners.

Cities have a variety of options on how to spend the revenues from impact fees. Often, jurisdictions direct their fee revenue to Housing Trust Funds or Local Housing Funds that are dedicated to building affordable housing. Municipalities can use proceeds from these funds for direct loans or grants for low-income housing; to underwrite bonds sold to support low-income housing; or for direct low-income rental assistance or homebuyer subsidies.

Fee programs have grown in popularity in California in response to a statewide court decision that questions the legality of inclusionary housing requirements for rental developments[4]. According to a recent study by the Association of Bay Area Governments, among the cities and towns in **San Francisco** and the four surrounding counties, 16 cities have residential linkage fees and 13 cities have commercial linkage fees[5].

To enact an affordable housing linkage fee on commercial or residential development, cities generally conduct a "nexus" study, which evaluates the extent to which new development projects contribute to the local need for affordable housing and estimates the maximum level of fees that are legally allowable to offset the impact of these projects. For a variety of political, legal and practical, reasons, most cities choose to set their impact fees well below the maximum fee suggested by their nexus studies[6].

Unfortunately, political opposition and legal caution can result in low fee levels that do not substantially increase municipal affordable housing resources[7]. Nevertheless, some cities have passed more substantial fee levels that were both legally defensible and sensitive to the context of their local housing market. **Santa Monica**, for instance, charges approximately $28 per square foot. To keep its fee schedule current, the City also increases its fee automatically each year based on an index that accounts for the changes in the cost of construction and in land values in the city[8].

Basing its fee schedule on the affordability gap method, **Berkeley** takes a different approach. The City charges $34,000 for each new market rate home to fund affordable housing[9].

Several cities across the county also impose linkage fees on commercial developments. For example, **Boston** has one of the oldest commercial linkage programs in the country. It charges about $8.34 per square foot of new commercial development for the provision of affordable housing. Between 1986 and 2012, **Boston** has committed $133,804,969 in linkage funds. These funds have helped create or preserve 10,176 affordable housing units in 193 development projects. To address concerns over concentrations of poverty, Boston requires at least half of its fee revenues to be invested in neighborhoods that have less than the citywide average of affordable housing or have a demonstrated need for producing or preserving affordable housing[10].

Arlington County, Virginia assesses a commercial linkage fee of $1.91 per square foot for the first 1.0 Floor Area Ratio (FAR). To give its program more flexibility, Arlington also allows commercial developers to build units if they prefer[11].

LANDSCAPE AND RESOURCES

More information about inclusionary housing and linkage fees is available from **Grounded Solutions Network, Center for Housing Policy,** the **Lincoln Institute of Land Policy, Partnership for Working Families,** and the **Public Interest Law Project.**

Co-authored by the Grounded Solutions Network

GROUNDED SOLUTIONS NETWORK
strong communities from the ground up