

When Should an Impact Fee Be Challenged?

A municipality charging an impact fee generally should follow the guidelines listed in this document. After reviewing this list, if you believe your municipality has not followed the rules, you may wish to consult with legal experts to determine if the impact fee should be challenged.

All answers to the following questions should be a **yes**. A **no** answer indicates a potential problem with the impact fee.

1. Did the municipality conduct a thorough public facilities needs assessment prior to passing the impact fee ordinance to determine what municipal facilities need to be expanded to accommodate new development?
2. Is a copy of that assessment available for your review?
3. Does the needs assessment take excess capacity into consideration? If you are being assessed an impact fee for sewage treatment plant expansion, yet the plant has adequate excess capacity to serve your development, the municipality may have a hard time proving in court that the impact fee is needed.
4. Does the needs assessment include a capital improvements plan, clearly indicating when and how much the city will be spending to address the facilities' needs?
5. Does the capital improvements plan include an accurate accounting or estimate of the expected cost of the needed improvements?
6. Are those costs fairly allocated? In other words, is the proposed development paying only its share of the cost of the improvement? How did the municipality calculate the amount of the impact fee? If it simply took an average of what other municipalities are charging, that impact fee may not meet the fairness test.
7. Is the amount of the fee based on the proportional impact your units create? A simple per-unit impact fee that doesn't recognize the difference between the impact of larger homes and efficiency apartments may not stand the fairness test.

Note: The ordinance should assess impact fees on all types of development that create the impact. Ordinances that charge only residential development may be subject to challenge if other types of development also create the impact.

8. Will the improvement that your impact fee is paying for benefit primarily the new development? You shouldn't be paying an impact fee to build parks on the other side of town.