

**FINANCIAL INSTITUTIONS
REFORM AND EXPANSION PROJECT**

Debt Market / Infrastructure Component

**NON-TAX INCOME GENERATION
INNOVATIVE APPROACHES TO
MUNICIPAL REVENUE GENERATION**

Richard D. Oldham, III
Chief Assistant City Attorney
City of Orlando, Florida, USA
and
TSS Senior Associate

November, 1996

Community Consulting International (CCI)
in association with
Technical Support Services (TSS)

Funded by
United States Agency for International Development

A

NON-TAX INCOME GENERATION

INNOVATIVE APPROACHES TO MUNICIPAL REVENUE GENERATION

	Executive Summary	1
I.	Introduction and Scope	1
II.	Background - City of Orlando, Florida (USA)	2
	A. Geographical/Environmental	2
	B. Financial	3
III.	Proposition 13 - California	5
IV.	Impact Fees	6
	A. General	6
	1. Definition and Description	6
	2. Impact Fee Divisions	7
	a. Water Pollution Control Charge	7
	b. Sewage Collection System Charge	8
	c. Sewer Connection Charges	8
	B. Components - What to Include (What Cannot be Included)	8
	1. Factors Considered	8
	2. Prohibited Factors	8
	C. Utilizing Impact Fees to Finance Construction of Infrastructure	9
	D. How Much to Include	10
	1. Full Cost	10
	2. Less Than Full Cost	10
	a. "Desirable" Growth	10
	b. "Worthy" Growth	11
	c. Property Owner/Developer Improvements	11
	E. Calculation Formula Options	12
	1. Approaches	12
	2. Credits	13
	a. Conservation Design or Construction	13
	b. Existing Uses	13
	F. Timing of Payment	14
	1. Entry Points	14
	2. Payment Over Time Mechanisms	14
	G. Refunding of Impact Fees	15
	1. Voluntary Request by Owner	15
	2. Recapture (Involuntary) by Utility	15
	H. Other Issues	15

	1.	Underpayment of Impact Fees	15
	2.	Ownership of Capacity	16
	3.	Allocation of Dwindling Capacity	16
I.		Collection and Enforcement	16
J.		Caveat and Conclusion	17
V.		Other Funding Mechanisms	18
	A.	Owner-Built Components	18
		1. Exactions	18
		2. "Pioneer Line"	19
		3. Oversized Pipe or Equipment	19
	B.	Special Assessments	19
	C.	High-Strength Surcharges	20
	D.	User Charges	21
	E.	Stormwater and Other Non-Traditional Utility Fees	22
		1. Stormwater	22
		2. Other Utility Fees	23
	F.	Franchises	23
VI.		Miscellaneous	24
	A.	Development and Licensing of Software	24
	B.	Airport Charges	25
	C.	Income-Generating Uses For Municipal Property	25
	D.	Utility Privatization	26
	E.	Public-Private Partnerships	28
	F.	Additional Opportunities	28
		1. "CityStuff"	29
		2. Sale of surplus books by the public library	29
		3. Sale of surplus equipment	29
		4. Bus company activities	29
		5. Utility line locate charges	29
		6. Vehicle maintenance services	29
		7. Charges to prisoners	30
		8. Permit fees	30
		9. Traffic signalization agreements	30
		10. Recreational athletic league fees	30
		11. Sale of alcoholic beverages	30
		12. Government lotteries	30
		13. Leasing of air rights for buildings	30
		14. Rental of facilities	31
		15. Parking facilities	31
		Conclusion	32

INNOVATIVE APPROACHES TO MUNICIPAL REVENUE GENERATION

RICHARD D. OLDHAM III

Executive Summary

The search for new sources of income by local governments in the United States has been challenged by legal constraints imposed by voters. As a result, less reliance on taxes and increased use of charges on individual parties demanding particular services has become commonplace. Widespread acceptance of impact fees for many different capital needs caused by new customers, as well as innovative applications of traditional funding formulas such as special assessments, user charges and fees has occurred. Novel applications for utility formats, a more entrepreneurial attitude by local officials towards increasing income from government-owned property and less distrust of the private sector has also resulted in new projects that hold promise to significantly supplement local governments' historic dependence on tax codes.

This paper examines the background and causes of this shift in financing attitudes by U.S. cities and counties and further uses the example of Orlando, Florida (USA) as a proxy for similar growth-driven communities. Specific case studies of actual financial decisions are given, with positive and negative characteristics noted. Examples of implementing local laws, regulations and policies are found in the Appendixes. Finally, a list of 15 diverse income sources is included to illustrate the range of new funding opportunities that could be considered.

I. Introduction and Scope

A heightened interest in alternative sources of income to taxes has characterized U.S. local governments' financial discussions since the early 1970's. Reasons include high rates of growth in many parts of the country bringing with it a perception by many local residents that growth (and its attendant increased traffic, congestion, pollution, crowded schools and other externalities¹ imposed on the community) is not always beneficial. Increased replacement costs of existing infrastructure also strained the availability of monies for new or expanded facilities as well as a steady reduction in funding from the federal government for many types of capital-intensive projects (especially wastewater plants). Unfortunately, cities and counties saw no parallel diminution of environmental and social mandates imposed on them by the national government which then continued the upward cost spiral. Finally, stagnating personal incomes, statutory or constitutional limits on local governments' ability to issue

¹Externalities are those effects on society that occur when one party makes a decision about resource use without taking into account all the costs and benefits imposed on others external to the decision. Thomas W. Ledman, *NOTES, Local Government Environmental Mitigation Fees: Development Exactions, The Next Generation*, 45 Fla. L. Rev. 835, 836 (1993).

bonds and constitutional caps on real property taxes resulting from "taxpayer revolts"² all conspired to force local elected officials to seek out new (and revisit old) sources of revenue.

This paper will explore the above budgetary challenges and will offer some possible solutions, often using as a case study how the City of Orlando, Florida addressed these problems. Examples drawn from other areas will also be mentioned, but it should be noted that this does not intend to be a comprehensive discussion of either all of the options available or the universe of positive or negative characteristics of each. An emphasis on impact fees (especially utility impact fees) is deliberate as this financing mechanism has been increasingly used by Orlando and other local governments in the USA as income alternatives have been constrained or eliminated.

II. Background - City of Orlando, Florida (USA)

- A. **Geographical/Environmental.** The City of Orlando is located in the U.S. state of Florida, midway between Tampa/St. Petersburg and the Kennedy Space Center at Cape Canaveral. Since the location of Disney World in the area in 1971, the City of Orlando has grown from a then population of 99,000, to a current estimate of 175,000 based on official figures. This figure swells daily because of the influx of many office-workers, tourists and those doing business in the City. The greater Orlando area extends over 4 counties and contains about 1.4 million people (up from 560,000 in 1971).

The area is host to numerous tourist attractions (e.g. Walt Disney World, Sea World, Universal Studios and others) and contains 85,000 hotel/motel rooms which are more than are found in New York City or the entire Caribbean. The climate is semi-tropical, with many stormwater lakes, relatively flat sandy soils and a number of smaller streams that flow through the area.

The slow-moving, warm waterways make it difficult to adequately dispose of wastewater under current environmental thinking and practices. Added to this is the rapid growth over the past 25 years and especially the past decade³ which has necessitated⁴ a massive building program of wastewater projects⁵ consisting of 3 new

²See § III, *infra*

³Orlando has been the fastest growing (in percentage increase) of the top 50 markets in the United States from 1980-1991 with a population expanding by 57.8%. It is also projected to lead the nation in population growth (again in percentage terms) of the 50 largest markets through the year 2000 with the rate from 1990-2000 estimated to be 39.6%.

⁴The City experienced a building and sewer moratorium in the early 1980's because of an extremely high rate of growth combined with changing and increasingly stringent environmental

wastewater treatment plants, miles of interceptor pipe, and new and innovative ways to treat and dispose of effluent. These also include 1,200 acres of man-made wetlands, large percolation ponds and the largest public-private citrus irrigation system in the United States (involving 25-30 million gallons of highly-treated effluent per day sprayed over 4,500 acres of private orange groves). In addition, the development of public-private projects (e.g. privately-run golf courses on City-owned land as well as City provided reclaimed water on private property for irrigation of landscaping and sports facilities) has allowed Orlando to accommodate and anticipate the fast-paced growth.

- B. **Financial.** Financing all of these projects has required a substantial investment by the City on behalf of its citizens. It has also involved a major decision as to how to pay for the bonds that were issued to fund the construction. Previously, Orlando and other local governments would pay all or most of those types of costs through taxes or the monthly rates the utility's customers were charged⁶. New growth was subsidized by the existing tax or utility rate base as a policy decision to encourage the increase in the local economy. In some instances national government (primarily through the U.S. Environmental Protection Agency) or state funds have been available in the form of grants or loans.

After many years of increases attributable to growth, elected officials were encouraged by voters to develop another source of funding. The new philosophy was changed to "new growth pays for itself" (or at least paid more than it did previously). This became especially crucial when the actual environmental treatment costs escalated as a result of sweeping new laws imposed by the U.S. Congress. Almost overnight the price of wastewater treatment rapidly increased so that the previous costs paled by comparison. Also, the public's attitude and perception of environmental challenges started to change and it became less difficult for utilities to

requirements.

⁵The Orlando cost of these contracts was approximately \$275 Million (U.S.). Other local governments also shared in some of these projects and their costs and payments were separately accounted for.

⁶ Sources of money to pay for new growth infrastructure costs can come essentially from a relatively limited number of sources: national or state government taxes; local government taxes; ratepayers (utility customers); parties that actually use the services (e.g., developers) or some combination thereof. The first two involve a subsidy from all of the country or state's citizens while local taxes are a subsidy by the local taxpayers. Charging all of the utility's customers is a system-wide subsidy for new growth, while shifting to the user expenses incurred on their account is the only option to charge for the use of the treatment system that reflects on the demand made on the utility or community services.

convince their ratepayers of the problems faced in attempting to confront and pay for environmental solutions.

The major difficulty was, of course, how to convince developers and property owners to agree to share a radically-increased (and ever-increasing) portion of the costs. One solution was found in "phasing-in" impact fees (See IV. below) over a period of years which encouraged payment at an earlier time to take advantage of less expensive rates. In addition, the ordinances (city laws) could be structured so that the impact fees covered a 5-year period and increased each year. The value in this was to allow the elected officials to consider the merits of the program and to seek citizen input, but only twice each 10 years. It also had the advantage of giving the local government administrative staff an impact fee schedule that was predictable and would allow planning by developers as to what their costs would be in the near future. One common characteristic of many developers is that they will complain about costs and will attempt to get excused from the payment obligation, but once it is apparent that the fees must be complied with, they value the stability of a price formula, especially if it is applicable to all other similarly-situated parties.

The income generated by impact fees, while substantial, was nowhere near enough to fund all of the needed additional capital improvements required by Orlando.⁷ Other funding tools included the use of special assessments, stormwater utility fees, franchise fees, municipal property lease payments, electric utility profit dividends and user charges (monthly utility charges and parking fees plus short-term rental of city facilities). Orlando even had its old City Hall, which was slated for the wrecker's ball, demolished at the expense of a movie production company as the opening scene of the film "Lethal Weapon II."

Partly because of the use of these innovative financial approaches, *Money* magazine has rated Orlando as one of the top 5 metropolitan areas in the United States with the lowest state and local tax burdens of the country's 100 largest metropolitan areas.⁸

III. Proposition 13 - California.

⁷ These included a new city hall (almost \$32 million); arena (\$65 million); sports stadium improvements (\$31 million); 6 parking garages (\$36 million total) as well as stormwater and lake improvements and a downtown rehabilitation program that witnessed numerous projects over 10 years.

⁸The State of Florida (and its local governments) is prohibited by its constitution from imposing a personal income tax and therefore there is a heavy reliance on real property taxes, sales taxes and other forms of income.

In 1978 California voters staged what has been described as a "property tax revolt" by approving an amendment to its State constitution that limited ad valorem (real property) taxes and limited (or "capped") the increases from year to year. Known for the enacting procedural method as Proposition 13, this statewide citizen initiative was enacted as Article XIII A of the California Constitution. It limited real property taxes⁹ to 1% of a property's "full cash value", which was defined as the assessed valuation in fiscal year 1975-1976. § 1(a).

Two major exceptions to this standard were established. First, a property's assessment could increase annually at the inflation rate, but not to exceed 2% for any given year. § 2(b). The second exception allowed the current appraised value to be applied to property that was newly constructed or had changed ownership. § 2(a). The law, in short, combines a 1% ceiling on the property tax rate with a 2% cap on yearly increases in property assessments, subject to a full value appraisal for new construction or when property was sold to new owners.

According to the U.S. Supreme Court, which upheld the amendment against a U.S. Constitutional challenge, property taxes were cut approximately \$7 billion in the first year.¹⁰ As a result of this success in California, other states also soon followed with their own versions of Proposition 13.¹¹ Not to be outdone, California voters passed Proposition 62 in 1986 which required a two-thirds voter approval of general taxes. This further limitation on local governments' ability to raise taxes to fund facilities and services has forced California cities and counties to place increasing reliance on impact fees¹² to provide for needed capital improvements.¹³

⁹Proposition 13 also required a city, county or special district that wanted to impose a "special tax" (e.g., income, liquor, sales, use, vehicles, and property transfer) to receive the approval of two-thirds of the voters in a special election. CAL. CONST. art. XIII A, § 4.

¹⁰*Nordlinger v. Hahn*, 505 U.S. 1, 112 S.Ct. 2326, 120 L. Ed. 2d 1 at 9 (1992).

¹¹*See, e.g.* FLA. CONST. art. VII, § 4, adopted in 1992, restricts yearly increases in assessments on homestead (primary residence of qualified owner) to the lower of 3% of the assessment for the prior year or the percentage increase in the Consumer Price Index for all urban customers (a U.S. government price index of representative consumer items); MO. CONST. art. X, § 22, adopted by Missouri voters in 1980; Measure 5, OR. CONST. art. XI, § 11b, adopted in 1990; and Ann. Laws Mass c 59 § 21C (1980) which was enacted by Massachusetts voters as part of Proposition 2 1/2.

¹²*See § IV, infra*

¹³Jane H. Lillydahl et al., *The Need for a Standard State Impact Fee Enabling Act*, in DEVELOPMENT IMPACT FEES: POLICY RATIONALE, PRACTICE, THEORY & ISSUES

These fiscal restrictions led to significant changes not only in revenue collection, but also in budget priority choices. For example, it is reported that California closed 1,100 of its 2,150 library branches; that special district assessments rose by more than 2,000% between 1978 and 1990; and that property owners are billed separately by "benefit assessment districts" for items as diverse as street lights and community college sports fields.¹⁴ As a result of Proposition 13, Californians pay an average of \$666 in property taxes (Fiscal Year 1992-93), compared to \$678 in fees and assessments.¹⁵

In early November, 1996, California will consider yet another initiative, Proposition 218, which will attempt to even further constrain local governments' ability to raise taxes or impose assessments by special districts (without a majority of property owners' support).¹⁶

IV. Impact Fees.

A. General

1. **Definition and Description.** Impact fees are based on capacity needs created by new development. They are charges imposed on customers which represent the capital costs associated with their proportionate share of the public wastewater (or water) system (or other public improvements). In traditional usage, they may also be called hook-up or connection charges or tap fees.

The City of Orlando sets out in its City Code¹⁷ that the intent of its impact fees "shall be to establish and regulate fees for the purpose of compensating the City, in part, for costs incurred in providing Water Pollution Control facilities for the prevention of pollution of the area's

123-125 (Arthur C. Nelson ed., 1988).

¹⁴*Rating News: Credit Implications of California's Proposition 218 May Not Be Clear For Years, Moody's Reports*, 11 Bus. Wire 47 (9/27/96).

¹⁵*Id.*

¹⁶*Id.*

¹⁷ Section 30.17(1).

ground and surface waters and in extending lateral sewers¹⁸ to a point of reasonable availability for service to the City's sewerage system."

They are designed to reimburse the City for the "impact" of any new development in the service area and the required facilities (new or expanded) put in place to serve it. If a property owner does not use the sewer system (e.g., the property is on a septic tank or has been approved for a self-contained treatment plant), then the payment of wastewater impact fees is not required. In that case, the City does charge a "sewer availability fee" of a nominal monthly amount which is to ensure that sewer capacity will be available when the property desires to connect. It should be noted that, by law, all wastewater produced in the City (both domestic and industrial) must be treated by some acceptable method. Impact fees can also be used to help pay for the capital costs of schools, police and fire services, library, water and electric, streets and highways, solid waste and other areas where one-time facilities' expansion can be attributable to new growth.

2. **Impact Fee Divisions.** The City's wastewater impact fee is broken down as follows:
 - a. **Water Pollution Control Charge.** This component is for the costs of the new wastewater treatment plant construction or expansion required by new customers and not covered by the other charges discussed below. It is the "treatment and disposal" portion of the system.
 - b. **Sewage Collection System Charge.** Payment of the large sewer lines (interceptors) and pumping stations is addressed by this fee. This is the "conveyance and transportation" portion.
 - c. **Sewer Connection Charges.** This pays for the physical connection of the property's sewer line (lateral) to the City wastewater line in front of the property.

The reason the impact fee is broken down into separate parts is because different projects may have off-set or paid for these factors by

¹⁸Lateral sewers are sewer lines that connect a structure (e.g., house or building) to the sewer line that is closest to it (usually located in the street in front of the property).

other means, and because the costs may vary significantly, depending on where the customer's property is located.

B. Components - What to Include (What Cannot be Included).

1. **Factors Considered.** In Florida, as in many other states in the United States, statutory law or judicial decision¹⁹ requires that impact fees be imposed only to pay for new permanent or long-term capital improvements to the infrastructure (e.g., collection, conveyance, treatment and disposal costs, interceptors, etc.) required by the new growth. Also included are the component costs of these particular items such as engineering design, property acquisition, construction and financing. In short, it consists of the expenses necessary to handle expansion caused by new growth as opposed to the existing customer base. Phrases such as "New growth pays its own way," "Polluter pays" or "Fair Share Assessment Fees" have been used to convey the idea that existing ~~tax~~ or utility ratepayers should not have to subsidize new development. Citizens in Orlando have found this to be a fair way to apportion the large upfront fiscal impacts that fast-growing development has had on the city.
2. **Prohibited Factors.** Items not included are expenditures for the current customers for consumption factors including repair, reconstruction, operational costs (such as utilities, salaries, chemicals & other treatment costs) plus other changes that might be needed such as improving the facility to a higher level of treatment, reliability, etc. These must be paid from other sources such as monthly sewer rates (user charges), taxes or other funds.

The major difference then, is between a capital-related new capacity cost usually represented by a long-term fixed improvement ("concrete and steel") and a consumption-related component that is often variable (e.g., chemicals) and is non-permanent in nature.

C. Utilizing Impact Fees to Finance Construction of Infrastructure.

A governmental body that incorporates impact fees into its income structure can enjoy some added financial flexibility and possible cost savings. Impact fees have been pledged in the U.S. to pay municipal bonds with the benefit that the bonds

¹⁹See, e.g., *Contractors and Builders Association of Pinellas County v. City of Dunedin*, 329 So.2d 314 (Fla. 1976), cert. denied, 444 U.S. 867, 100 S. Ct. 140, 62 L. Ed. 2d 91 (1979).

may enjoy a better rating (and hence a lower interest rate) especially if the local government's impact fee collection mechanism requires payment before construction can be started. This "comfort level" that the fees will be paid translates into a favorable evaluation by the lenders. In addition, since impact fees are paid before the service is required, the government utility enjoys a somewhat advantageous time value of money position.

The use of impact fees as part of public-private partnerships can be structured to encourage the private sector to help develop the system. For example, Orlando annexed a large (approximately 4,000 acres) tract of partially-developed land from the county. A sewer treatment plant had been built to service the property by the developer because the county found it impractical to extend its utilities the significant distance required. As part of this development agreement, the county (and subsequently the City) was to "buy" the treatment plant by collecting impact fees as the project was built out and, in turn, paying them over to the developer. A protective factor was the requirement that no payment need be made to the developer until the impact fees had actually been made to the public utility. The irony was that the developer was paying most of the impact fees (at least initially) as he constructed homes and thus was essentially paying himself.

A third advantage of impact fees in conjunction with the construction of public facilities might be to delay the start of construction of the public improvements until a significant number of potential users are identified and have obligated themselves to pay (or have already paid) the fees. Care must be exercised in this type of situation so as to not discourage or alienate utility applicants. An inducement to early customer payment might be to offer a reduction in the amount of the fee for full advance payment to offset borrowing costs that the utility might otherwise face.

D. How Much to Include.

Should the impact fee require the "full cost" (i.e., 100%) of the estimated price of the new improvements attributable to new growth or should there be some sort of a discount or subsidy to recognize that government wants or needs growth (or certain types of growth) to locate in its jurisdiction and, therefore, is willing to pay or subsidize some or all of the costs in order to have the new development? The answer to this is a policy decision that will need to be made by the local officials.

1. **Full Cost.** Under some circumstances factors such as legal or financial requirements or policy (or political) constraints may necessitate charging the full cost. Also, imposing the complete cost is sometimes the easiest defense to irate voters and ratepayers who are already on the system. It is, however, the least palatable to those responsible for its payment because they will argue

that they are bringing jobs to the area, increasing the tax base and contributing to the economic vitality of the community.

2. **Less Than Full Cost.** Charging less than the total cost may be justifiable in certain circumstances suggested below. The recognition however, needs to be made by the government that the remaining funds to pay for the system expansion must still come from somewhere else.²⁰
 - a. **"Desirable" Growth.** A number of situations may encourage a local government to evaluate a potential customer and make a judgment decision that the particular development or business is desirable for the local community. Certain types of businesses that may attract a large number of jobs or that may offer to locate in certain areas that need to be developed or redeveloped (e.g., central city core) may be examples of these. In addition, a local government utility may be competing with another public or private utility for the business of a customer (especially in an environment of deregulation). All of these factors may combine to encourage a decision to charge less than the full cost to the new user. This is especially true where a local government may recover some of the lost impact fees from taxes (e.g. property, income, etc.) resulting or generated from the business later. Also a factor in this decision may be whether the business has wastewater treatment alternatives such as septic tanks, self-contained treatment plants or technology that may allow it to reduce its wastewater output to a public facility to zero, and that may give it the flexibility to locate where it chooses.
 - b. **"Worthy" Growth.** In addition to the above situations, a number of other circumstances may justify a reduction or elimination of the impact fee for certain applicants. For example, non-profit institutions such as schools, hospitals, or orphanages and the like may ask to have the impact fee cost eliminated or reduced so as to lower their construction or expansion costs. In order to encourage the building of affordable housing, the local government may need to either subsidize the impact fee for this type of development or eliminate it completely. Finally, although Orlando charges itself for its own

²⁰It should be noted that some authorities have observed that impact fees in practice usually do not exceed 25% of the total cost of new facilities needed to handle new development. Arthur C. Nelson, *Development Impact Fees: The Next Generation*, in EXACTIONS, IMPACT FEES AND DEDICATIONS: SHAPING LAND-USE DEVELOPMENT AND FUNDING INFRASTRUCTURE IN THE DOLAN ERA 95 (Robert H. Freilich and David W. Bushek, eds., 1995). [hereinafter "EXACTIONS"].

government buildings, an argument could be made for eliminating this type of structure from the impact fee formula. The Florida legislature has declared by statute²¹ that public school construction is exempt from the payment of utility impact fees, although ironically there appears no such hesitation on the school districts' part in requesting local government authorities to impose school impact fees on new development in their communities (school boards being a separate legal entity and not having that power themselves).

Despite all of the above, it is still inescapable that the uncharged or reduced cost of the new development must still be paid from some account. The City of Orlando has established certain categories in this regard (affordable housing, its own buildings, etc.), and actually transfers monies from its general fund (i.e. non-sewer fund) to cover the cost.

- c. **Property Owner/Developer Improvements.** Can the development provide some of the requirements that otherwise would be needed to serve them? It may be possible to have the developer reduce the cost of the utility system improvements caused by its growth by building some of the items that may be necessary in order to service the property. For example, Orlando has been successful in having property owners build some of the interceptors, pump stations, and other items that the City otherwise would have to finance and then charge for. On a number of occasions, it has been possible for the construction of these types of items to be done on a less-costly basis than if the City itself had the work done. It should be noted that any type of construction such as this will ultimately be turned over (i.e., dedicated) to the City which will then own it and maintain it for the future. All design and construction must still meet government building codes and requirements and will be accepted only after comprehensive inspection and testing has been done in order to determine its compatibility with the existing system and reliability.

E. Calculation Formula Options

1. **Approaches.** The technical/financial/hydraulic impact formulas that are utilized to calculate sewer impact fees can range from an estimate based on a structure's bedrooms, (dwelling units) bathrooms, or seats (as in a restaurant), to fixture units (such as lavatories, urinals, toilets, laundry facilities, etc.) (see for example Appendixes B and C) and can also take into account similar uses that are

²¹Fla. Stat. § 235.26 (1)(a) (1995).

found in different types of developments (e.g., 2 bedroom/2 bath, single-family home versus 2 bedroom/2 bath apartment). It is imperative that whatever formula is used is based on some empirical data that is fair to all concerned. Fairness, however, does not require preciseness in these calculations so long as there is general overall accuracy by classification. This is usually accomplished by having studies or surveys done to determine the average wastewater flow produced by the individual classification (e.g., hotel room of average size).

Also keep in mind that the impact fee is calculated based on the structure's average potential impact, not what is likely to result based on an individual or particular usage. As an example, a 3 bedroom/1 bath home occupied by a family of 4 will, most likely, produce less wastewater flows than the same house occupied by a family of 8. The fee, however, would be charged based on the average projected flows, which would be at the lower figure. Certainly, the more precise the estimate the more equitable the system will be perceived by its customers (and the courts).

2. Credits

- a. **Conservation Design or Construction.** A credit may be given for the use of water-saving devices or designs that are not used or were not contemplated in the calculation formula applied to the average or typical structure. If, for example, an applicant wants to implement the use of ultra low-flush or water-saving toilets that go substantially beyond a building code requirement, it may be appropriate that these efforts should be recognized because of the reduced impact on the system.

NOTE: It has been unfortunately discovered that building owners will propose to use water-saving programs that are temporary in nature or that can be easily modified. For instance, restaurants have offered to take out a number of seats in order to reduce the number of people utilizing the facilities at any one time (the number of seats being one way to calculate estimated restaurant flows). Obviously, putting the seats back (this covers chairs and bar stools, not more structurally permanent items such as booths, etc.) would be extremely easy and you may, therefore, be disinclined to recognize these types of proposals.

- b. **Existing Uses.** Another type of credit that can be utilized is where an existing building has been rehabilitated for another use (e.g., warehouse converted to an office building) or where the previous building has been totally demolished and a new structure put in its place. In these situations, the local government may grant either a full or partial credit for the pre-existing capacity utilized in the new structure depending on the circumstances (the theory being that the old flows do not require any new capacity). Any extra capacity needed above this amount would be charged at the then current rate²².

²² The use to which an older structure is put will determine whether an additional impact fee is due. If the new use is more intensive (i.e., will require more sewer capacity than previously) then the impact is higher and funds are due. If the requirements are less, than no extra monies are charged. Please note that Orlando does not usually refund for a less-intensive use unless extraordinary factors are found (e.g., previous structure in use only for a very short period of time). Also historical usage credit should be subject to a termination (or at least phase out) date after the expiration of some period of time (at least where wastewater service had previously been discontinued to the property).

F. **Timing of Payment.**

1. **Entry Points.** There are a number of entry points into the system when an impact fee could be paid. For example, approval of the project's plans, building permit issuance, Certificate of Occupancy issuance (where the city inspects the completed building for final approval and just prior to occupancy for its intended use) or some other time. It may be found that the earlier in the project schedule the impact fee is paid the more "serious" the developer is. Obviously, the developer would prefer to delay paying the charge as long as possible. This really has a harmful impact on the local government in some situations because of the need to set aside or obligate a certain amount of sewer capacity for this project to ensure that it will be available when the project finally is completed. With some large projects (e.g., office buildings) this may be years away. In the interim, the local government is incapable of making this capacity available to any other applicant and, at the same time, has not been paid for it (although they may be continuing to pay debt service on the bonds or loans used to build the treatment plant or public improvement).

Some local communities in the U.S. however have gone to the other extreme and collected fees from developers and then either never built the needed improvements or commenced construction beyond what reviewing courts considered a reasonable period of time.²³ A six year time frame is often used in the State of Florida after which collected impact fees are returned to the developer.

2. **Payment Over Time Mechanisms.** As the Orlando Sewer Service Policy Handbook indicates (See Appendix E), we do allow a 1/3 payment of the total amount to be paid at application for capacity (and which "freezes" the fee against price increases) with the remainder due at a later date (i.e., before obtaining a building permit). This reduces the immediate financial impact on a developer while, at the same time, requiring the developer to commit himself and his sincerity in developing the project. Other payment over time mechanisms allow property owners with failing septic tanks to extend payments (with interest) as well as businesses in the downtown core area (which has been targeted for redevelopment). It must be strongly emphasized that any time payment program must have an adequate enforcement mechanism to ensure collection. This will become especially critical if impact fees are pledged toward bond repayments. One solution may be to make the impact fee debt a lien on the underlying real property. If not paid, the

²³See *City of Fayetteville v. IBI Inc.*, 659 S.W. 2d 505 (Ark. 1983).

capacity can be withdrawn rendering the property useless or the lien foreclosed on.

G. Refunding of Impact Fees.

1. **Voluntary Request by Owner.** Until recently, requests for refunding of impact fees have been very infrequent. When sewer capacity is scarce, developers are very reluctant to give up what to them is a valuable commodity (especially if it is the only way they can build their project). If, however, a project does not go forward, or the developer goes into bankruptcy, or some other financial problem takes place, then the impact fee is refunded to the party that has paid it to the City. Some difficulty may be found in new parties laying claim to impact fees stating that they have taken over the right to the money by some legal entitlement. This could occur where the developer has pledged the impact fee as security or collateral for a bank loan that goes into foreclosure. The local government may want to require a court order or the equivalent legal document before the impact fee is refunded in these circumstances. It should also be noted that a government utility that does not use the fees within a reasonable period of time may be forced to refund them. (See F.1., above).
2. **Recapture (Involuntary) by Utility.** An additional problem is to prevent a developer from stockpiling capacity by securing reservations and maintaining these for a long period of time on property. In an attempt to prevent this, the local government should require certain definite steps to be taken or accomplished within a maximum time schedule or the sewer capacity previously reserved can be recaptured or taken back (and, of course, refunding any monies already paid). (See Appendix E).

H. Other Issues.

A number of different issues may arise as the local government has more experience with impact fees. Some of these are:

1. **Underpayment of Impact Fees.** What if a developer seriously underestimates the amount of sewer capacity that his development needs and thus pays an impact fee that is much too small? This may be addressed by comparing and recalculating the usage after the building has been completed (and any modifications to its original design accomplished). Any extra impact fee based on additional capacity needed will be paid by the developer at that time and at the price then in effect. Applicants should be encouraged to be conservative in their estimates and to over-reserve capacity initially and secure

a refund after the project is finished when a more accurate calculation could be made.

2. **Ownership of Capacity.** Problems have arisen as to how sewer capacity is to be treated for ownership purposes. Orlando's solution is to treat it as "running with the land" which means that, once reserved for a specific property, it is not portable (transferable to other properties in the City). One exception might be where capacity is reserved for a large tract of land (e.g., proposed industrial estate) by the developer and is then moved around within the estate as individual parcels are sold.

It should be noted that sewer capacity is sold/reserved subject to the applicant agreeing to the City's rules set out in our Sewer Service Policy. This then becomes part of the utility contract between the City and the applicant.

3. **Allocation of Dwindling Capacity.** A utility may face short-term capacity problems while in the process of expanding its system to accommodate new growth or it may find itself flooded with applications for a particular type of construction (e.g., high-rise office buildings) that will tie up large amounts of capacity for extended periods (and may never be built because of excessive speculation in the market). An option that could be considered is to have the utility annually release a certain amount of capacity (e.g., "x" quantity or "x" percentage of remaining system capacity) and allocate that total amount to different use categories (e.g., industrial, single-family, multi-family, etc.) A publicly-posted waiting list could be incorporated to show where every applicant ranks and to reduce criticism of favoritism.

- I. **Collection and Enforcement.** One key element in a utility rate structure, whether it incorporates impact fees or not, is a mechanism for ensuring widespread participation by property owners in the system and ultimately enforcing the payment of fees and charges by customers who do participate. Perhaps the simplest way to make sure that potential customers take part is to have a local requirement that all structures (existing or new) that produce wastewater or require drinking water (defined broadly) must connect if a line or facility is reasonably available to the property (considering factors such as distance from the line, capacity, physical or topographical characteristics, etc.). No permit or approval to build will be issued unless plans show how and when the building will be connected to the system (and impact fees, if appropriate, paid) or at least that the issue was addressed. If a line is not currently available, an agreement to connect should be signed so that when it has been constructed, the septic tank or other temporary treatment facility can be disconnected.

In addition to a requirement that all structures be connected to the system, there should be an enforcement mechanism to collect the user charges incurred by the customers who are served by the utility. Although it is customary to have available some type of judicial procedure to collect from those who do not pay, it may even be more effective (if legally allowed) to be able to terminate the utility service. This is especially so if a property's water or electricity service can be shut off if either the water or sewer bill has not been paid. Further, if the local government can prevent the property from being occupied because it has no utility service (often referred to as "unfit for human habitation"), this gives one more tool to enforce the payment of the charges. It should be emphasized that these are serious measures and should be used only as a final step and after all other means have been tried.

Finally, a utility deposit by the customer may help to make sure payment of utility charges is made. After the customer has demonstrated a satisfactory payment history, a refund of all (or most) of the deposit could be considered.

J. Caveat and Conclusion.

Impact fees have increasingly become the financing tool of choice for many communities hard pressed for income. A number of those governments have learned that this area is not a panacea for all money problems however. Excessively high impact fees may drive development away or may stall needed growth in an area.²⁴ Even if the fee is reasonable by itself, if combined with other costs imposed on a project, the total amount may discourage developers (or that may be the perception).²⁵

A negative reaction may also result if excessive time delays caused by government regulation are viewed as a cost by developers. Interestingly, some local communities may be accused of having used expensive impact fees and other regulatory costs as a *de facto* building moratorium or brake (at least as to low end housing projects).²⁶ However, so long as the use of this mechanism is balanced by a recognition that it does not exist in a decision-making vacuum by property owners, developers, bankers, citizens and political leaders, it merits serious consideration.

In conclusion, impact fees, if properly structured and implemented may produce the following results:

²⁴See Martin L. Leitner, *The "Gameboard" and the Rules of the Game*, in EXACTIONS 54.

²⁵*Builders Say Regulatory Load Varies*, The Wall Street Journal (Florida Journal) F1 (10/23/96).

²⁶James C. Nicholas, Arthur C. Nelson, and Julian C. Juergensmyer, *A Practitioner's Guide to Development Impact Fees* 17-18 (1991).

1. A system that pays for capital growth (new and expansions) caused by new development;
2. Municipal financing that is reasonably predictable;
3. A system that treats customers and citizens fairly with minimum opportunity for favoritism and abuse;
4. As part of a long-term strategy for financing, it uses the shortest pay-back time period possible;
5. The cost of demand for the utility service is imposed on the party that requests it;
6. The formula identifies and isolates the expensive capital costs required by new development and generally leaves other budget items (e.g., administrative support) alone;
7. The system results in "responsible" development; and
8. It is a program that allows property developers to plan on a reasonably firm and easily calculable utility cost for their project.

V. Other Funding Mechanisms

A local government may also utilize other payment mechanisms and types depending on the circumstances to address specific areas of need.

A. Owner-Built Components.

1. **Exactions.** As mentioned previously (See §IV. D. 2.c above), a developer might reduce costs allocated to his project by providing parts of the utility or service mechanism in question. For example, it has been traditional in the United States for many years for developers of residential subdivisions and industrial/office estates to install all of the needed infrastructure (e.g., roads, sewers, sidewalks, etc.) and to turn over ownership to the local government for control, operation and maintenance. Although these items are installed by the developer, their design and construction must meet appropriate government standards and specifications. If a developer is unable or unwilling to provide this infrastructure (sometimes referred to as "exactions"²⁷) the

²⁷David L. Callies and Malcolm Grant, *Paying for Growth and Planning Gain: An Anglo-American Comparison of Development Conditions, Impact Fees, and Development Agreements*, in EXACTIONS, 357-358.

development may not be approved or may be seriously delayed as the government works through its list of previously-budgeted capital projects.

2. **"Pioneer Line."** Orlando has also utilized the concept of a "pioneer line" where a property owner wants to develop a project further out than our current service area extends. Since the City may have no need or plans to lay lines, build pump stations, etc., in or to this location, we allow the developer to construct the necessary improvements (according to City design specifications and approvals) and, as new customers connect in the future, we escrow (set aside in a special account) and then refund to the developer a proportionate amount of the impact fees paid by the connecting parties to help pay for the infrastructure that was installed. Although this requires the developer to initially invest the money for the required improvements, it does allow him to start the project at an earlier time than otherwise might be possible if he had to wait for the City to fund and complete the project. It also allows reimbursement of some costs to him that otherwise he might have to pay totally by himself if he had to build his own small self-contained treatment plant.
3. **Oversized Pipe or Equipment.** A local government may also utilize a procedure in which a developer installs a larger line or pump station than would be needed by the particular property or project and the local government pays the difference. The line or equipment can then be used for other customers as well as the property for which it was built. This turns out to be a fairly economical way of having work done as the only real increase in cost that the government faces is the incremental difference in the cost of the larger pipe or pump (the regular-sized line being the responsibility of the developer to pay for). All or most other major expenses such as opening and closing the trench, securing permits, etc., are taken care of by the developer.

- B. **Special Assessments.** These have been traditionally used for some time to finance improvements such as street sewer lines (as opposed to the large transmission lines known as interceptors) that are installed in residential neighborhoods or in front of smaller office buildings. Additionally, special assessments will often be used to pay for the paving of dirt streets or the installation of sidewalks in areas where these components were not installed by a developer.

One common legal requirement for special assessments, regardless of the improvement proposed, is that the local government must be able to show some type of special benefit unique to that particular property as opposed to the public at large. As a result, this type of financing mechanism does not lend itself as well to a project whose use is predominantly shared by the overall system or community (e.g., large sewer or water lines, treatment plants, regional highways, etc.).

So long as the cost of the unique benefit is reasonably allocated to those properties that benefit from the improvement, court cases have been fairly liberal in accepting different apportionment approaches. One very common formula that is often used is to impose a charge for the improvement based on the front footage (or distance) of the property along which the line, road, or sidewalk will run.²⁸ Special assessments are now being pressed into service to help pay for such diverse goals as landscaping of common areas requested by a neighborhood association; street lighting; storm drains; street curbs and parks. Orlando now uses the special assessment mechanism to pay for the installation of brick streets as an aesthetic upgrade over regular paved streets.

Special assessments are usually imposed after a series of public hearings during which the property owners of the target area proposed for construction of the improvement have the right to be heard. Ultimately, the vote of the property owners is taken with a simple majority being necessary to approve the project. Estimated cost of the entire project and a pro-rata breakdown per property will have been made available to the owners before the vote. If the referendum is successful, property owners will be given the opportunity to pay in a lump sum or can pay their obligation over a period of years with interest. The special assessment will be recorded as a lien against the property and will be applicable if the property is sold. If not paid within the appropriate time period, the government has the right to foreclose on its lien, selling the property to recover the amount due.

C. High-Strength Surcharges.

In addition to monthly sewer fees, the City also imposes an industrial waste surcharge for those industries that contribute wastewater with physical or chemical characteristics that exceed certain levels considered normal or average in the treatment field (usually referred to as "domestic strength waste"). This surcharge addresses the fact that the City's plants will need to spend additional funds to accommodate these particular uses that our regular customers would not otherwise demand. Besides this fee, the City utility also requires a pretreatment process from a number of businesses with extraordinarily strong waste so that they will reduce their high-strength contribution to the system to a point that it can more readily accept it without damaging the plant or lines, pumps, etc.

NOTE: A number of our treatment plants use biological methods to handle the wastewater flow. A serious chemical imbalance in the wastewater that they receive can easily reduce their ability to stay within our permits (which contain discharge limits) issued by various

²⁸Other measurement formulas used include square acreage or footage, or by zone or per unit. Marc N. Melnick, *New Avenues for Special Assessment Financing*, in EXACTIONS, 169.

environmental regulatory agencies. Reducing the designed-in capability of the treatment plant to handle extremely hazardous or toxic waste also reduces the initial and ongoing cost to the utility in designing and operating the plant which otherwise would have to be shared by all of the system's ratepayers and would constitute a subsidy to the particular discharger.

D. User Charges.

Most customers of a utility are familiar with these monthly charges. They include expenses (usually variable) for costs such as personnel, maintenance, utilities, chemicals, and other items that are utilized (or consumed) on a daily or regular basis in order to actually treat or produce the utility's product. To the degree that impact fees are not available to fund 100% of the actual structures at the plant, user charges are often used to make up the difference. User charges can also be used in many other areas which are well known such as toll roads, park entrance fees, solid waste collection, as well as bus ridership charges. As income from other sources has declined, U.S. local governments have increasingly expanded the application of user charges for services previously thought of as "free" and increased amounts previously charged at nominal levels.

One advantage of a user charge is that it reinforces in the customer's or citizen's mind that there is a cost for services provided by government. In addition, user charges are a positive allocation of resources tool as the party that desires the service pays for it and, in the case of utilities, has more incentive to reduce the use of a scarce and expensive asset in order to avoid paying an increased fee.

Imposing the cost of the item or service utilized has taken a new twist in California: There, the state has allowed a privately-financed toll road to charge a higher fee based on a time of usage factor. This will result in commuters paying an increased amount when the road is used during the most intense period (i.e., rush hour).

E. Stormwater and Other Non-Traditional Utility Fees.

1. **Stormwater.** Another recent trend in local government financing has been the implementation in a relatively short period of time of stormwater utilities. Florida especially has been a leader in this area because of its semi-tropical weather which can result in a substantial amount of rainfall in a relatively short time. Also because the state periodically faces the chance of hurricanes (typhoons), many cities in Florida have a significant stormwater problem. This is exacerbated by the topography which is essentially flat and therefore does not lend itself to a quick run-off from a rainstorm.

The creation of a stormwater utility by Orlando resulted in a fee on all property within the City²⁹. It is a charge included on the annual property tax bill³⁰ and is apportioned based on an estimate of different properties' contribution to the stormwater system. The formula used incorporates factors such as the total area of the property; the amount of that area covered by structures, parking lots, etc.; the types of on-site structures that the property owner has installed to minimize stormwater run-off or directed away from the City's system (e.g., holding ponds or maintaining pre-existing wetlands); and the use of the property (e.g., residential, commercial, industrial or agricultural). It should be noted that Orlando has separate wastewater and stormwater lines, and this dual system more easily allows for this type of financing program. A combined wastewater-stormwater system would produce more complexities, at least in utilizing the above formula.

Orlando's Stormwater Utility Code and Stormwater Utility Policies and Procedures Manual are included in these materials at Appendix E.

2. **Other Utility Fees.** Other local governments in the United States have established transportation utilities which were designed to defray the cost of the service provided by a local government. Any formula used in this type of system must of course, bear a reasonable relationship between the estimated facility demand and the rate charged. Use of vehicle trip generation rates put out by the Institute of Transportation Engineers are widely used.³¹

²⁹Approximate income of \$6.5 million (1995-96 Fiscal Year, increasing to an estimated \$8.2 million in 1996-97).

³⁰An alternative to using the property tax bill, by many cities and counties has been to include a monthly stormwater fee as part of the utility bill sent to customers within the governmental jurisdiction. One practical drawback of this method is the difficulty in charging undeveloped pieces of property that are not served by other utilities (and therefore are not normally billed). A parallel negative on using the property tax bill is that certain properties are exempt from taxation in the United States (e.g., churches, public schools and colleges, government-owned buildings, etc.). These properties require customized billing. Once the initial billing program has been set up, further difficulties are minimized.

³¹INSTITUTE OF TRANSPORTATION ENGINEERS, TRIP GENERATION: AN INFORMATIONAL REPORT (5th ed. 1991). See also Susan P. Schoettle and David G. Richardson, *Non Traditional Uses of the Utility Concept to Fund Public Facilities*, in EXACTIONS, 215-232. It should be noted that many local governments have, in lieu of a transportation utility, established transportation impact fees to accomplish the same thing. Most of the general rules and requirements applicable to wastewater impact fees discussed above are applicable to transportation impact fees but obviously, the calculation formulas are different.

F. **Franchises.**

Local governments in the United States have the ability to award franchises (i.e., a right granted by government to engage in some activity or business that is not normally available to citizens) for a number of reasons. Franchises (or their equivalent) are often awarded for exclusive or non-exclusive items such as taxis and bus service, and the provision of private utilities, (e.g., electric, gas, telephone, cable t.v., garbage collection, etc.). This is a recognition that the local government has the legal authority to allow certain businesses to have a monopoly or quasi-monopoly in their jurisdiction. In conjunction with the granting of a franchise, certain service standards are required of the business and the local government is obligated to regulate and inspect the franchisee so as to ensure that the levels of service are in fact, carried out. In return for granting of the franchise, the franchisee compensates the city or county under some payment formula. Unless prescribed by statute, the compensation formula can take many shapes. For example, it may be based on a percentage of gross or net income; flat fee; number of trips made; or other formula. Obviously, all franchisees within a certain business or classification should have the same formula applied to their franchise.

Many utility franchises are granted upon the theory that the utility must locate its lines in the right of way of the locality's streets and highways which are owned or controlled by the local jurisdiction. The charges paid by utilities in these types of franchises may have a component which is based on the total length of the rights of way utilized by the utility.

The City of Orlando has entered into full or partial franchises with electric, telephone, telecommunications, and natural gas utilities. Additionally, the City recognizes only certain taxi companies as having the legal right to pick up passengers within the city limits and we have also awarded non-exclusive franchises for "roll off companies" (which are solid waste businesses that use large bins that "roll off" a flatbed truck to collect construction debris and similar items). Other local governments in our area have awarded exclusive geographical franchises to solid waste companies for residential collection as well as dumpster (commercial) services.

In order to be successful, a local government must have some knowledge of the franchisee's business and how it operates. In addition, a fairly sophisticated auditing capability is essential to ensure that the franchisee does not escape payment of their required fees. Finally, a number of franchisees in the United States are also regulated by other levels of government (especially utilities). As a result, there often is a certain "tension" as to the proper role of local government in carrying out its franchising powers. The potential for abuse by granting monopolies or near-monopolies to companies that are politically well-connected has made this area highly visible and the media are often very interested in decisions made whether to grant or withdraw

franchises. Finally, some local governments have seen an influx of companies controlled by organized crime syndicates in this area, and review and qualification standards for obtaining a franchise should address this potential problem.

VI. **Miscellaneous.**

The following areas are discussed to give an idea of what other types of non-tax income might be generated by a local government. It should be obvious that income generation is limited only by the imagination of local officials and constraints imposed upon them by law (whether in the form of lack of authority or specific prohibitions).

- A. **Development and Licensing of Software.** As local governments in the United States have become more sophisticated in "doing more with less," they have turned increasingly to the use of computers to process large amounts of information quickly and at reasonable cost. Because many of the software programs available in the general market do not lend themselves readily to use by local government, software programs have been developed either in-house or with the help of consultants who have produced customized packages. Some governments are now marketing these programs by selling licenses to other governmental entities that have similar software needs. A related practice is in the area of GIS (Geographic Information Systems) in which local governments have developed sophisticated and valuable planning information that is much sought after by property owners, developers and other businesses. Once again, cities and counties have taken to selling this information, sometimes at a profit, not only to help offset the initial cost of its development, but also to supplement the general budget.
- B. **Airport Charges.** As airports have become the new transportation lifeline for many communities, the cities in which those airports are located have attempted to maximize their income from the departing and arriving passengers (which are often non-residents). Landing fees assessed against airlines, passenger fees, charges imposed on rental car and bus service companies (both on and off airport), leasing of surrounding property for aircraft repair and hangar space as well as construction of business parks that need direct access to large runways have been implemented.

The Greater Orlando Aviation Authority (a separate legal entity in our community) has even leased airport-owned property that is adjacent to the airport but also fronts on a major highway for shopping centers. Care must be exercised, however, in order to ensure that all airport uses are consistent with the special safety requirements of aviation use (e.g., avoidance of activities that would attract large numbers of birds).

Orlando International Airport is also the site of a large wastewater treatment plant with its many percolation ponds which pays rent to the airport for the use of the land. The airport authority was even creative enough to sell dirt from a "borrow" pit to be

used in the construction of the berms surrounding the percolation ponds. Essentially, the dirt never left the airport's property and it still got paid for it.

- C **Income-Generating Uses For Municipal Property.** Many municipalities are "land rich" but traditionally have been unable to realize the value represented by their real estate. This problem is compounded further by the fact that real property owned by government in the United States is exempt from real property taxation. Here again, local governments have become increasingly creative in their attempts to convert this asset into money. One example includes leasing of property in downtown areas for the development of office and hotel construction.

Another way to maximize this asset is to view the city property the way a developer might. For example, approximately 5 years ago, Orlando found itself owning a substantial tract of valuable land in the downtown core during the time when office construction had driven property values up considerably. As a result of a publicly-advertised Request For Proposals, Orlando ultimately entered into a contract with a major property developer that gave the developer the option to build 2 office towers on the property owned by the City in return for the rent to be generated by the office buildings which would pay for a new City Hall which also was to be located on the same property. The agreement was structured, so that at the end of 75 years the City Hall costs would be paid and the ownership of the two office towers would be transferred to the City. Also as part of the agreement, the developer constructed the new City Hall according to agreed-upon design standards and quality levels. Although the economy for office construction in the City soon thereafter plateaued, (and the office towers were not constructed) the value of existing office space has recently begun to rise and the developer still retains the right to start construction.

Although the above is obviously an example of a unique situation, it illustrates the type of creative negotiations that may be applied by local government officials to their particular property inventory. Another example of real property income generation has been Orlando's municipal cemetery. Although restricted to City residents, long time employees or their family relations, this particular use, while not normally thought of as maximizing real estate values, has combined a needed service with otherwise unproductive real property assets.

As part of a joint wastewater disposal project with the local county, the City has currently entered into a long-term lease for the development of a world class golf course development. The property in question had originally been bought for wastewater disposal purposes (i.e., percolation ponds) and the lease negotiations require the golf course developer to incorporate the percolation ponds into the design of the course (as water hazards). Also as part of the lease the developer is required to provide children of low-income families free or reduced-cost golf lessons.

- D. **Utility Privatization.** The privatization of publicly-owned utilities has become a much talked about topic in the United States in the past 10 years (as well as many areas of the world). The realization that competition often brings out efficiencies in an organization, as well as lower costs, has caused even the most fervent supporter of publicly-run utilities to at least think about the issue. Added to this is the ability of many private enterprises to tap funding sources either unavailable to governmental bodies by law or because of resulting improvement in their credit ratings. Whatever the reason, privatization of everything from utilities and schools to prisons now at least merits an examination by local authorities.

In fairness, it should be pointed out that many public utilities have always had some aspect of their mission which has been privatized. For example, services as simple as lawn maintenance or custodial functions that are often viewed as collateral to the core utility were often contracted out. Increasingly however, the actual business of the utility itself is being considered for privatization.

The secret to a successful privatization effort is often the realization that there is no one perfect solution or formula. Each local government must evaluate its unique circumstances and challenges and determine whether privatization can supply the solution or answer.

Before a study of this nature should be undertaken, it must be emphasized that local officials and utility employees understand what is it that they are seeking to accomplish. Efficiencies of operations, modernization of facilities, possibly lower costs of service, acceleration of new generating capacity, resolution of outstanding union problems, etc., may each require a differently structured contract package to achieve. "All of the above" as desired goals will probably indicate a local community that will soon not realize any of them well.

Three major approaches to privatization are: re-engineering public management; private contract operation of publicly-owned facilities; and private ownership and operation of the utility. Each one of these potential formats has advantages and disadvantages to the local community.

Re-engineering public ownership and operation involves forcing the governmental utility to compete by systematically evaluating its operations with an eye towards improving performance and reducing costs. Comparison with the latest techniques in the private utility field often turns up new methods, especially in the area of technology improvements.

Private contract operation of publicly-owned facilities is essentially a contracted-out service agreement. Here, private contractors bid against each other to operate (but not own) the public utility. This option would be of value to a community whose

utility employees and management were felt to be seriously inefficient and where personnel costs were felt to be substantially out of line with the norm in private industry practice. Some communities have even forced their utility to "bid" for continued services to the city as part of their request for proposals which makes them compete against privately-run utilities. This process is referred to as "managed competition". In many situations, these bidding processes are real-life exercises with the governmental utility having been advised that its existence is at risk. Significant reductions in expenditures and efficiencies in personnel utilization rates often result from this type of competition.

Private ownership and operation of the entire utility is perhaps the ultimate privatization option. Here everything is owned and operated by an outside private firm. Cities that opt for this solution must have (or can obtain) a level of sophistication that will enable them to negotiate contracts dealing with such issues as minimum levels of utility service, acceptable utility rates (or range or rates), and acceptable levels of capital investment (as well as re-investment, repair and other areas where cost could be shaved to the detriment of the local community). Consultants are available to combine the engineering, financial and legal needs of a local government that wish to explore and implement this option. A major advantage to this type of program is having someone else invest the large sums of funds necessary to build (or expand) the utility. Communities facing significant infrastructure needs, but that do not have the necessary financial backing to construct these facilities, should seriously view this as one realistic option. It should be noted however, that a certain loss of control of a community's destiny is part of this package as well as some resistance by ratepayers to the possibility that utility rates will increase.

- E. **Public-Private Partnerships.** The marriage of the government sector with private enterprise has also recently become much more attractive to local governments as the search for sources of new funding has continued. The discovery has been made that the private sector has a number of positive characteristics to bring to the operation of many programs of local communities as well as that all-important factor of access to new funding sources. Previous discussions in this paper have addressed how Orlando has structured public-private partnerships to build golf courses on public land, construct a new City Hall, spray reclaimed wastewater on private citrus groves and others. Leasing of publicly-owned property to private developers as well as the granting of franchises can also be viewed in this vein. A variation on this theme in the area of pollution control is a three way agreement between the City of Orlando, the State of Florida and the local newspaper to clean up three plumes of hazardous waste that threatened to pollute a downtown city lake. An agreement was negotiated with the newspaper that it would design and construct a pollution control facility that would clean up one plume (attributed to the newspaper at 60% of the total project) and the two governments would pay the remaining 40% of costs for the other two

plumes. Although the State and the City had no obligations for the two plumes, the responsible parties could not be found and the property values in the local area had dropped by one-half. Therefore, it was in the City's best interest to have the site remediated and the property values restored to their previous levels (with the accompanying increase in property taxes available to the City). This project represents the first joint state, community and private party funded program of its type in the State of Florida.

F. **Additional Opportunities.** The following is a list of unrelated activities that have also been used to increase non-tax income. Please note that some programs may accomplish no more than a cost break-even result.

1. **"CityStuff"** - A store operated by volunteers and located in the Orlando City Hall. It sells used City equipment (e.g., old street lights and traffic lights) at bargain prices, custom street signs (you can have your name printed on a City street sign) as well as certain materials on consignment from other local suppliers. Custom photographs of the City and souvenirs are also available. Our Police Department also has a gift store that sells various items with Orlando Police Department emblems, etc.
2. **Sale of surplus books by the public library.** The local main library in Orlando has a bookstore that sells publications that are no longer needed. In addition, an annual large book sale is conducted which raises substantial amounts of money for the system. These programs are all staffed by volunteers and so there is relatively little cost to the governmental unit.
3. **Sale of surplus equipment** - The City of Orlando conducts semi-annual sales of surplus equipment no longer needed by the City. Everything from police motorcycles to lawnmowers is auctioned off.
4. **Bus company activities** - The local public bus service has a number of income-producing programs that are utilized to produce extra returns. For example, the provision of buses for sporting events or large trade shows or conventions in the Orlando area allows the use of equipment that might sit idle during off-hours. It also has pioneered the sale of advertising on its buses by painting the entire vehicle to support the message. This last activity raises approximately 5% of its annual budget needs.
5. **Utility line locate charges** - Contractors and others who need to discover where the City's utility lines are located in road and highway right of ways have been required to pay for this service. The amount of the charge is often dependent upon the extent to which the contractor needs assistance and the difficulty faced or time spent by the city's line locate team.

6. **Vehicle maintenance services** - A local community may contract out to other government services like motor vehicle maintenance facilities repair and preventative maintenance work. In addition, some local public wastewater treatment utilities contracted out the services of their laboratory to other utilities without these facilities. The City of Orlando provides a wholesale sewer service to other governments that either do not have their own wastewater facilities or do not have them in an area capable of servicing their citizens.
7. **Charges to prisoners** - The managers of the local jail charge prisoners in their facility for phone calls (pay phone), and also sell candy, cigarettes and other items to them in a jail commissary. Some local jails and prisons require their inmates to work on a facility farm and raise food for the other prisoners.
8. **Permit fees** - Local governments require a wide variety of permits that must be obtained by individuals or companies for the privilege of conducting business within the boundaries of the municipality or for specialized service requests. Examples include occupational licenses; building permits/plans review; rezoning application fees; peddler (door to door sales) fees; street closing fees (commercial events); sign permits; and traffic safety permits for construction projects that impact City streets. Individually, none of these permits generates a substantial amount of income, but they do have a cost-offsetting feature for the extra work involved.
9. **Traffic signalization agreements** - These are a variation on utility impact fees in that a developer, whose project will necessitate a traffic signal (or may require one in the future when combined with other projects in the immediate area), is required to pay a portion of the estimated cost of the traffic signal(s) required. Projects such as office buildings, shopping centers and residential subdivisions are the primary developments to which this program is applied.
10. **Recreational athletic league fees** - These are used to offset the cost of sports field maintenance, electricity, etc., and are collected from amateur sports teams that play on City facilities.
11. **Sale of alcoholic beverages** - Some states have the legal monopoly on the sale of alcoholic beverages in state-owned and run stores. A variation on this would be for the state to franchise out the operation of these types of stores.
12. **Government lotteries** - In several U.S. cities and states, gambling has been legalized and some government units run lotteries. Recent studies have indicated however, that many lottery or gambling opportunities have reduced

the income to governments as well as caused serious social problems for those citizens who become addicted to this activity.

13. **Leasing of air rights for buildings** - In highly urbanized areas it is sometimes cheaper and more efficient for a private developer to lease air rights over a government facility (e.g., highway, pump station, subway station, etc.) to build high rise construction projects. Orlando has used a variation of this by leasing air rights over a street in the downtown area for a pedestrian bridge from one tourist attraction to another.
14. **Rental of facilities** - Local governments with arenas, coliseums, sports fields, and other facilities are accustomed to renting out these venues for all manner of programs. In addition, some cities with gardens and parks will rent them out for the use of weddings, receptions, business parties and similar type events. Orlando periodically rents out part of its City Hall (and even streets and highways) for backdrops for the making of movies and advertisements.
15. **Parking facilities** - A significant source of income to Orlando is its parking system. This consists of 6 parking garages, surface lots and both metered and non-metered on-street parking spaces. The City collected over \$2.2 million in parking fines last year as well as approximately \$1.9 million in fees from its on and off-street meter program. A permit system for designated loading zones brings in about \$75 per vehicle per year. An aggressive enforcement and collection effort is necessary to ensure that returns remain high and patrons do not abuse the system.

Conclusion

Local governments in all countries face an increasingly challenging financial environment. Growth pressure, with its attendant cost for new infrastructure, is often balanced by voters' negative attitudes about paying more in taxes. Acknowledging this, cities have developed innovative sources of non-tax income, as well as developing novel variations and applications for traditional sources. A common characteristic of many of these new funding programs is the insistence that the citizen or developer that demands the service should pay for it (whether completely or partially). Cities and counties in the U.S. (especially in fast-growing states such as California and Florida) have developed experience with the impact fee financing technique with some success. Although not a complete solution in itself, impact fees have increasingly shown their worth to local communities whose taxing ability has been limited or capped. The philosophy of "New growth pays its way" appeals to existing citizens and is an equitable way of imposing the cost of new growth on those who cause it.

Charging for services rendered is also a common factor of other popular income sources such as user charges, special assessments, stormwater fees, and high-strength surcharges. Local governments have also become more adept at collecting income from those private companies that provide services. The granting of franchises, leasing of municipal property to private entities, and entering into public-private partnerships all have occurred because cities have concluded that they cannot be isolated anymore from the marketplace. Finally, some cities have decided to get completely out of (or at least partly out of) some aspects of the infrastructure business by privatizing all or part of their utilities.

A final note of caution is in order regarding the ideas and examples discussed in this paper. No one program, charge, creative contract, or other mechanism will work for all local governments in every situation. Each one must be structured to accommodate the needs and nuances of the community, as well as the political realities that the elected and appointed officials face. Perhaps the best investment that a local government leader can make is to devote time and effort initially to defining what the real problem is that they face. A failure to do this ensures a less than successful outcome.

A very positive aspect of this challenge is that there are now new opportunities for income generation by local governments that previously were not available. It will be up to the local government official to choose wisely from those already existing programs and develop new ones.

APPENDIX "A"

BIBLIOGRAPHY

BOOKS

Freilich, Robert H. and David W. Bushek, editors. *Exactions, Impact Fees and Dedications: Shaping Land-Use Development and Funding Infrastructure in the Dolan Era*. Chicago: American Bar Association, 1995.

Nelson, Arthur, C., editor. *Development Impact fees: Policy, Rationale, Practice, Theory & Issues*. Chicago: Planners Press, 1988.

Nicholas, James, C., Arthur C. Nelson, and Julian C. Juergensmeyer, editors. *A Practitioner's Guide To Development Impact Fees*. Chicago: Planners Press, 1991.

U.S. Department of Housing and Urban Development. *Impact Fees and the Role of the State: Guidance for Drafting Legislation*. 1993.

PERIODICALS

Business Wire. Vol. 11 (9/27/96).

Florida Law Review. Vol. 45 (1993).

Wall Street Journal (The) (Florida Journal). 10/23/96.

"APPENDIX "B"

Article on different impact fee formulae.

"APPENDIX "C"

Sample calculations for several kinds of impact fee calculation on overhead transparency format.

APPENDIX "D"

Exerpts from the official statement of the City of Orlando on Sewer Bond Issue Pledging Impact Fees.

APPENDIX "E"

Chapter 30. City of Orlando: Regulation of Services and Impact Fees.
One Page Check List / Form on How to Calculate Impact Fees.
City of Orlando Sewer Service Policy Handbook.
City of Orlando Storm Water Utility Code Policies and Procedures Manual.

APPENDIX "F"

Privatization Notes.

Since some of the items in the Appendix are quite long, they have not been circulated with every copy of this paper. Copies of all Appendix Materials can be requested from NIUA or from the Financial Institutions Reform and Expansion Project (FIRE-D).