



Center for
Local Planning

INSTITUTE for PUBLIC SERVICE

Policy Guide for Local Governments: Compliance with Public Chapter No. 140: *Documentation and Justification of Development Fees*

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Background

On April 3, 2025, Governor Bill Lee signed Public Chapter No. 140 into law. This Act amended Titles 5, 6, and 7 of the Tennessee Code by imposing new requirements related to development related fees assessed by local governments. The purpose of this new law is to ensure transparency, accountability, and consistency in how Tennessee's counties, cities, and metropolitan governments assess and document development-related fees. Public Chapter 140 continues the General Assembly's recent focus on ensuring that local governments comply with rational nexus and rough proportionality requirements established by the U.S. Supreme Court, which are commonly referred to as the "Nollan/Dolan test."

Applicability

These new requirements apply to all local government departments, agencies, and officials that assess or collect fees related to development whenever those fees exceed \$250. Development is defined by the statute as "*Any construction, building, or improvement to land or infrastructure supporting new structures.*"

Such development fees may include charges applied by local governments related to site plan, construction plan, and subdivision plat review, rezoning applications, conditional use permits, variances, building permits, inspection fees, land disturbance permits and numerous others. Utility connection fees are not included within the scope of the Act and must continue to satisfy existing requirements found at TCA § 65-5-401 and 402.

Effect

It is important to note that Public Chapter 140 does not mandate fees to be set at any particular level, and it does not establish any requirements related to excessive or inadequate fees. Instead, the statute only requires one-time public documentation, analysis and justification of development related fees. Upon satisfying the requirements of the statute, no additional action is required by the local government until such time as an existing fee is adjusted or a new one is imposed, at which time it must be justified and studied again. Public Chapter 140 will thereby ensure transparency and will assist local governments in satisfying rational nexus and rough proportionality tests.

It should be noted that local governments which maintain fees at an excessive level or that fail to provide reasonably adequate justification may be open to legal challenge. Alternatively, local governments that set development fees at a level they determine to be too low may consider adjusting them to recover expenses associated with the time intensive development review process.

Key Statutory Requirements

- For any development-related fee over \$250, local governments must create and maintain documentation that includes:
 - A justification of the fee, clarifying why it is necessary.
 - The rationale for the amount charged, providing a cost basis for how the fee relates to costs incurred by the local government.
- All documentation must be kept on file by the relevant department and must be treated as a public record under the Tennessee Public Records Act.
- All information produced and maintained by the local government pursuant to this new law is subject to annual audit by the Tennessee Comptroller of the Treasury.
- The local government need not provide a new cost basis calculation each time the fee is collected. The statute only requires that the basis for the fee be provided and maintained by the local government, and that it be made available upon request.

Effective Date

The statute establishes an effective date of July 1, 2026. To ensure compliance with the statute, local governments should review all applicable fees and prepare supporting justification and cost basis in advance of the effective date.

Recommended Best Practices

1. Conduct a Comprehensive Fee Review: Local governments should undertake a comprehensive review of all development related fees that they charge and should compile them into one publicly accessible document.

2. Take a Broad View of the Statute's Intent: Local governments should take a broad view of the spirit and intent of the statute. Many fees charged by local governments are variable and may depend on the number of lots on a plat, the square footage contained within a site plan, or the overall acreage under development. For example, for a preliminary plat review, a local government may assess a base fee of \$200, with an additional \$50 charged per lot. As such a fee would routinely exceed the \$250 threshold, the local government should provide a justification and analysis for it in accordance with Public Chapter 140.
3. Fees Established by Statute: Development related fees or taxes established by statute, such as adequate facilities taxes, need not be re-justified or re-examined. However, relevant enabling statutes and other policy documents should be maintained and made available for public review to meet Public Chapter 140's intent. Other items, such as impact fees, which have been established following a detailed study, need not be restudied, provided that supporting information produced as part of the fee's implementation remains current and is made available to the public.
4. Treat Compliance as an Opportunity to Improve: Local governments should treat Public Chapter 140 as an opportunity to learn more about the reasonableness, and in some cases the adequacy, of the development fees they charge. When fees are determined to be set too high, the local government should adjust them to correspond to actual costs. However, some local governments may learn that the fees they charge do not approach actual costs incurred in terms of staff time spent on plans review and inspections.
5. Establish a Reasonable and Defensible Cost Basis: List the staff positions and compensated boards that are typically involved in the development review and inspection process along with their total compensation, including their salary and benefits, as well as a defined overhead cost allocation. Determine what a typical review process for each application type might entail in terms of staff hours and individualized tasks. Consult with individual employees to ensure a full understanding of their role in the process. Additional costs for other required personnel involved in the review process should also be considered, such as compensated members of Planning Commissions, Boards of Zoning Appeals, Road Commissions, and others. Also often overlooked are the resources devoted to the development review process provided by government appointed attorneys, personnel within the offices of city managers and administrators, legislative body

members, etc. Finally, if the costs for any required advertisement of development-related applications such as rezonings and variances are borne by the local government, those should be considered as well.

6. Indexing for Inflation: The costs related to development review tend to increase over time due to inflationary pressures. However, development fee schedules are not regularly revisited by most local governments, and often remain fixed for years, and sometimes even decades, at a time. While not required by Public Chapter 140, local governments may wish to consider indexing development fees to an inflation barometer such as the Consumer Price Index to ensure that revenues remain comparable to costs over the longer term. Doing so would help ensure that fees charged more closely correspond to expenses incurred, but may require annual adjustments by the governing body, **and would also require that records maintained pursuant to Public Chapter 140 be updated each year.**
7. Coordinate with Finance Team: The documents required by Public Chapter 140 are subject to audit and review by the state comptroller. As such, it is important for the local government's finance department to play an integral role in accomplishing these required tasks. Departments involved in the development process should coordinate with their local government's finance team in studying the overall costs of their department.
8. Publish Information: Once the required information is compiled by the local government, it should be published and made available to the public for review. Again, the local government is not required to create a new set of cost basis calculations for each application received, but the information required by the statute must be made available as a public record per state open records law.
9. Keep Information Current: Any time the governing body adopts a new development related fee or adjusts an existing fee, the fee must be justified and its cost basis analyzed. This information should be kept in an updated overall spreadsheet or other database for ease of access and public distribution.

Conclusion

Public Chapter 140 imposes a new responsibility on local governments that will entail a degree of additional administrative analysis and record keeping. Its effect will be one of greater transparency and will likely result in local governments and the development community obtaining a better understanding of the tasks and costs associated with the development review process within their jurisdiction. The University of Tennessee Institute for Public Service stands ready to provide advice to local governments as they work to comply with these new statutory requirements.