

Appendix V: Adequate Public Facilities Ordinances (APFO) Research Citations

South Carolina Department of Health and Environmental Control. n.d. "Adequate Public Facilities Ordinance." (APFO Background and Model Ordinance) PDF available at: <http://www.scdhec.net/environment/baq/docs/ModelOrdinances/AdequatePublicFacilitiesOrdinance.pdf>.

Definitions:

- The APFO is linked to the Capital Improvements Program

Pros:

- Allows control over timing and sequence of new development
- Forces a link from the comp plan to the CIP
- Can encourage contiguous or infill development because of its proximity to existing infrastructure and services

Cons:

- May increase the complexity of the development process and the cost of processing proposals

Limitations:

- May increase the complexity of the development process and the cost of processing proposal
- Does not stop growth
- Law may provide too much flexibility so that communities can ignore the concurrency mandate

Best Practices in Growth Mgmt with Recommendations, Delaware, Franklin County. Final Report. Duncan Associates Mid-Ohio Regional Planning Commission. 2003.

Definitions:

- Applications for new dev must meet concurrency standards within compact deferral areas - CDA is an area extending for one mile on either side of an overcapacity road link, and 1/2 mile beyond each link

Pros:

- Should ensure that public facilities are never seriously over-loaded
- Can encourage growth that is contiguous to existing communities and other growth centers

Cons:

- APF for roads are complex to implement because of the peak nature of travel demand

- Implementation of APF controls based on school capacities is difficult from both policy and legal perspectives

Limitations:

- Most major transportation concerns are regional and local APFO controls will do little to address those concerns even when they are meant to encourage higher density and infill
- Neighbors who prefer lower density use it to fight some development projects

Applicability:

- Most effective use is through regional cooperation
- Local implementation by some jurisdictions may simply encourage some development to go to other (neighboring) jurisdictions that have fewer controls

Growing Smart Legislative Guidebook, Chapter 8. Local Land Development Regulation Section 8-603 Concurrency; Provision of Adequate Public Facilities. Chicago, IL: American Planning Association, 2002.

STATE OF FLORIDA:

Pros:

- Allows control over the timing of development
- Creates a direct linkage between the local government's comp plan, CIP and capital budget

Cons:

- Might encourage development in rural and exurban areas where excess road capacity exists

Limitations:

- One criticism in Florida's case has been the state's failure to provide adequate monies for infrastructure funding particularly transportation
- One concern is that it uses a one size fits all approach for the diversity of communities across the state

Notes:

- Capacity standards are rather subjective determinations based to some extent on scientific data and to a greater degree on local experience

STATE OF WASHINGTON:

Definitions:

- Requires concurrency but only for transportation, once a plan is adopted
- The locality must adopt and enforce ordinances which prohibit development approval if the development causes the level of services on a locally owned (not state)

transportation facilities to decline below standards set in their comp plan unless improvements are planned concurrently with the development

- Can be non-infrastructure-related improvements like ridesharing, public transportation services

Limitations:

- These are guidelines rather than directives

STATES OF MARYLAND AND NEW HAMPSHIRE

Definitions:

- Both states authorize but do not require public facilities ordinances

Limitations:

- MD - state office of planning publishes a monograph that describes typical state practices and steps in designing a program
- NH - Describes APF ordinances as innovative land use controls that require the adoption of a master plan and a CIP in order to use them

Maricopa Association of Governments: "Adequate Public Facilities Ordinances." Best Practices Paper #1: Growing Smarter Implementation Project. Prepared by Corey Cox, 2001.

Definitions:

- APFOs: ordinances that act as a means of controlling the timing of development in direct relationship to a government's ability to provide public services to said development
- Concurrency: having the facilities to serve new development in place either before or at the time that the development is constructed
- Taking: depriving a property owner of Constitutionally entitled use of property

Pros:

- Useful in ensuring that growth does not erode existing community facilities and services in regard to long-term community quality
- Can be applied to regional systems (such as transportation)
- APFOs can differ in approach: For a variety of facilities or for a specific development project area such as schools
- Streamlines the development approval process regarding public facilities

Cons:

- APFOs are not widely used in regional applications because of Constitutional issues.
- Some of the issues involve the legal challenge of a taking
- There is difficulty in programming a regional facility in a timely manner in relation to a single project

Limitations:

- Local governments often do not have the authority to implement APFOs without enabling legislation

Cost Benefits:

- Timing infrastructure phasing with development is improved through APFOs, including instances where prior exactions and development fees have failed

Applicability:

- The purpose of an APFO is: "The ability to provide public facilities and services essential to individual health, safety, and welfare, and to maintain a balance between development and infrastructure that ensures the overall economic, environmental, and psychological well being of a community."
- Planning directors who valued the APFO research were often from communities with little previous development, but with development coming soon.

Notes:

- This paper was prepared by a planning and research corporation for an association of governments. Many who read it have found particular interest in those sections dealing with the regional practices of APFOs.

<p><i>Adequate Public Facilities Ordinances and Transportation Management</i> White, Mark S. <i>American Planning Association, August, 1996.</i></p>
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Definitions:

- Level of Service (LOS): a developed standard that acts as the cornerstone of concurrency management; it will dictate such items as capacity needed for a project to be completed
- Concurrency Management System: also known as an Adequate Public Facility Ordinance; (APFO) ties or conditions development approvals to the availability and adequacy of public facilities
- Capital Improvement Program (CIP): a multi-year schedule of public physical improvement that normally spans 5-6 years; has a large impact on the rate of growth in a jurisdiction using concurrency
- Essential nexus: the connection between expected impacts and pending development, required before an exaction may be levied
- Rough proportionality: related to essential nexus, this is a demonstration that a given exaction is roughly equal to the impact of the proposed development

Pros:

- APFOs force the private sector to react to public facility investments of safety, welfare, individual health, and overall well-being of the community

- Tying development approvals to LOS standards relates capital improvements to community wide population and development, whereas a point system only applies to an individual development project in relation to nearby public facilities

Cons:

- APFOs are rarely explicitly enabled by state legislation. Instead, they are usually implied by zoning or subdivision enabling legislation
- An APFO may be viewed as an “extortion”- designed to shift an inappropriate/disproportionate amount of public facility costs to the developer- if this is successfully demonstrated in court, it may be considered a taking
- Equal protection issues may arise if different standards are imposed on different properties or developments that are similarly situated
- APFOs have been criticized for their potentially exclusionary effects, including rudimentary ordinances which exclude residential development that affects schools and services, but which do not affect commercial or office developments
- Critics of concurrency argue that the timing and sequencing of new development with infrastructure improvement will drive up the cost of housing

Limitations:

- Concurrency only applies to new development projects
- APFOs are primarily useful for regulating the timing of new development. Regulation of location and quality can be effected by the ordinance inadvertently but are more appropriately regulated by other land-use controls
- APFOs enacted for the aesthetic goal of combating premature urbanization are not justifiable

Costs:

- An APFO may require compensation as a taking if it is deemed an economic regulation, meaning that “it imposes too heavy a burden on property rights to be sustained as a police power regulation”
- Where local government schedule capital improvements needed to accommodate new growth, adequate funds must be found to finance the facilities
- Developers may seek reimbursement from localities for advancing or over-sizing facilities that they develop

Cost Benefits:

- Developers who are facing denial of their projects may be willing to advance facilities in order to mitigate the effects of the project instead
- Developers may have to pay an impact or reservation fee to fund new development and its impact on the community

Applicability:

- The original *Golden v. Planning Board of the Town of Ramapo* concept of APFOs has since been refined through “tier” systems that use developmental controls at increasingly

stringent levels from the urban core to outlying areas- this allows development to occur in planned or future urbanizing areas

Notes:

- This literature was created by the American Planning Association. It places an emphasis on APFOs in regard to transportation issues such as congestion.

Adequate Public Facilities Ordinances – Maryland Inappropriate Use, Inconsistent Standards, Unintended Consequences. A report prepared for the Home Builders Association of Maryland and the Maryland National Capital Building Industry Association, by the University of Maryland, April 2006.

Pros:

- Growth can be favored within growth-designated areas; APFO feedback informs the Capital Improvement Program

Cons:

- Growth is deflected into more rural areas of the locality; growth is deflected from areas intended for growth
- Inconsistent standards across localities, and even across a single county over time
- Counties often make it difficult for developers to pay for infrastructure themselves

Limitations:

- APFO consistency with comprehensive plans only works if adequate funding is allocated to provide the infrastructure needed

Costs:

- Developers pass extra costs onto homebuyers
- Homebuyers of new and newer homes pay a disproportionate cost of new infrastructure
- Higher home costs in areas with APFO's in place
- Costs of additional infrastructure to lift moratoriums in areas with APFO's in place
- Tendency to become the dominant planning tool in counties using them, preventing creative “outside-the-box” thinking and problem-solving

Notes:

- *Golden v. Planning Board of the Town of Ramapo* - upheld the constitutionality of APFO's - New York Supreme Court, 1969
- The lack of school adequacy is the leading cause of growth moratoria