

# Exactions and Proportionality: Trends in Dedication Requirements

Kimberley Mickelson, AICP  
Sr. Ass't City Attorney  
City of Houston  
Kim.mickelson@houstontx.gov

1

## What is an “exaction”?

- An **exaction** is a concept in real property law, where a condition for development is imposed on a parcel of land that requires the developer to mitigate anticipated negative impacts of the development. This is in the form of dedication of land, payment of a fee-in-lieu, or construction of improvements—or a combination thereof.
- Impact fees are direct payments to cities, based on engineering calculations. Parks are not included in the definition in the Texas Impact Fee Statute, Ch. 395, Tex. Local Gov't Code.

2

## What is a "taking" of private property?

- Types of takings:
  - Physical
  - Regulatory
  - *Per se*
  - Temporary
  - Eminent Domain/Condemnation

3

## The Constitution

- The 5th Amendment: "No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."
- **Direct takings (Eminent Domain)**
  - Government takes private property for public use
  - requires the payment of just compensation--
    - **Except when it doesn't (exactions that meet the constitutional test).**
- **Indirect taking (Inverse Condemnation)**
  - Governmental regulation or action "goes too far" and
  - Thus this may become a "taking" of property rights without compensation have been paid.

4

## Park Dedication—Texas Supreme Court

*City of College Station v. Turtle Rock Development Corp.*, 680 S.W.2d 802 (Tex. 1984)

- Parks Master Plan
  - Analysis of need based on comp plan and national parks standards, census data, cost of land for park purposes, and need generated by new residents.
  - Applied going forward—funds not to be used for operations and maintenance or improvements in existing parks.
- Fee-in-lieu-of option
- Credit for private amenities on-site (e.g., Multi-family uses)
- Parks sectors, separate accounting, refund option.
- "...necessitated by and attributable to..."

5

## Takings Cases—Exactions—US Supreme Ct.

- *Nollan v. California Coastal Commission* (1987)
  - Property owner sought permit to demolish small beach home and build a new, larger one.
  - Coastal Commission required a public access easement adjacent to new house as a condition of the building permit for the residence.
- Established "rational nexus" test.
- If the government wants property or a fee-in-lieu-of, it must be rationally related to the permit being requested.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Exactions and Proportionality: Trends in Dedication Requirements

Also available as part of the eCourse

[Public Improvement Districts, Parkland Dedications, and Other Economic Development Success Stories](#)

First appeared as part of the conference materials for the  
27<sup>th</sup> Annual Land Use Conference session  
"Parkland Dedications and More"