

Building Social Equity Through Value Capture

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ABSTRACT

Public infrastructure, including transit, roads, utilities, recreation facilities, and healthcare, is central to modern society and urban growth. Yet the United States faces a \$9 trillion infrastructure-maintenance backlog, and further investments are needed to support economic growth, technological advancement, and climate resilience. Financing and completing these projects present a formidable puzzle. However, such projects often generate private wealth by increasing land values; consequently, they enhance tax and fee revenues beyond their direct funding streams. When accounted for, spillover revenues can be reinvested in ways that advance social equity, such as providing free transit fares, building affordable housing, furthering public health, or supporting education.

Although economists and urban planning scholars have studied infrastructure's multiplier effect, legal scholarship has yet to examine whether and how the law facilitates or hinders it. This Article identifies three key state and federal legal barriers—tax and revenue limits, restrictions on development exactions, and prohibitions on legislative entrenchment—that prevent cities from fully realizing and allocating projects' secondary financial gains for social equity. Some value-capture tools currently exist and offer immediate, practical solutions, such as utilizing annual budgeting to allocate unpledged revenues. However, more transformative reforms, including relaxing tax limits or implementing special land-value taxing districts, could further improve outcomes. This Article offers a roadmap for growing unrestricted local revenues, building popular support for essential infrastructure, and ensuring fairness in returns on public investments.

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INTRODUCTION

Tucson's Sun Link streetcar is hardly a world-famous transit system.¹ Running for 3.9 miles between the University of Arizona and the city's downtown, the streetcar serves a mere handful of neighborhoods in a city of nearly 550,000 people.² Yet despite its relative anonymity, Sun Link, which opened to the public in 2014 and boasted a 2024 annual ridership of 1.6 million, is an economic boon: it has drawn consequential new employment, population, and real estate investment to the neighborhoods along its route.³ The value of real property in the area within one kilometer of its route has increased by an inflation-adjusted \$2.6 billion.⁴ The corresponding net increase in city property-tax revenues totals over \$750,000 and, when combined with sales,

¹ See *Sun Link Streetcar*, SUN TRAN, <https://www.suntran.com/routes-services/sunlink/> [<https://perma.cc/FVW7-7UPK>] (last visited June 11, 2025); Ben Jones, *The World's Best Subways: How These Metro Networks Keep Cities on the Move*, CNN (Mar. 1, 2024), <https://www.cnn.com/travel/worlds-best-subways-metros> [<https://perma.cc/7Z4S-KARW>] (identifying more widely known transit systems).

² See *Sun Tran*, SUN TRAN, <https://www.suntran.com/routes-services/find-my-bus/> [<https://perma.cc/6PQE-AFUD>] (last visited June 11, 2025) (mapping the Tucson streetcar system); U.S. Census Bureau *QuickFacts: Tucson City, Arizona*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/tucsoncityarizona/PST045224> [<https://perma.cc/U85Q-AXDA>] (last visited June 11, 2025) (providing population data on Tucson).

³ See RATP DEV ET AL., FY24 ANNUAL REPORT 8 (Aug. 12, 2025), <https://www.suntran.com/wp-content/uploads/2023/05/Annual-Report-FY24-REV-8-12-25.pdf> [<https://perma.cc/P7VT-M82M>]; ARTHUR C. NELSON & DANIEL LAWLOR, TRANSIT VALUE-ADDED MONITORING SYSTEM: ESTIMATING VALUE-ADDED OUTCOMES OF TUCSON'S STREETCAR i (2024), https://ppms.trec.pdx.edu/media/project_files/new_one.pdf [<https://perma.cc/2MK4-7YER>].

⁴ NELSON & LAWLOR, *supra* note 3, at 103.

use, income, and other tax and fee revenues along the route, Sun Link has boosted city revenues by over \$13 million.⁵

Owing in part to these revenues, Tucson has waived fares on Sun Link since the beginning of the COVID-19 pandemic.⁶ Waiving transit fares disproportionately benefits lower-income people, who are likelier than others to rely on transit to get to work, medical appointments, shopping, and elsewhere.⁷ Whereas Sun Link's pre-pandemic farebox collections totaled around \$800,000 in 2023 dollars, the city has realized \$1.5 million in new sales and property-tax receipts along the line since eliminating fares.⁸ Sun Link's benefits, quantified in a first-ever monitoring system for policymakers, public administrators, and the general public, illustrate how value is added as a result of public transit investments.⁹

Modern society and economies are built on infrastructure, from roads to transit, utilities, energy, and healthcare facilities.¹⁰ Cities in particular rely on infrastructure projects to foster urban growth, agglomeration economies, and efficient and sustainable living patterns.¹¹ Nevertheless, due to past disinvestment, the United States must spend an estimated \$9.1 trillion—much of which is presently unfunded—to bring its existing infrastructure into good repair.¹² This estimate does not include expansion and modernization needed to facilitate economic growth, advance technology, improve sustainability, and build climate resilience.¹³ There are now widespread calls to rapidly expand and improve public infrastructure to address the housing and climate crises.¹⁴

⁵ *Id.* at iii.

⁶ See Natalie Robbins, *Tucson City Council Votes to Rethink Free Sun Tran Bus Fares*, TUCSON SENTINEL (Apr. 8, 2025), http://www.tucsonsentinel.com/local/report/040825_free_bus_fares/ [<https://perma.cc/7PWS-HBPN>].

⁷ See generally Rebecca Brough et al., *Eliminating Fares to Expand Opportunities: Experimental Evidence on the Impacts of Free Public Transportation on Economic and Social Disparities*, 17 AM. ECON. J.: ECON. POL'Y 1 (2025) (discussing the benefits of transit fare waivers).

⁸ NELSON & LAWLOR, *supra* note 3, at iii.

⁹ See *id.* at 3.

¹⁰ See, e.g., Mary Bridges, *Infrastructure Is Remaking Geopolitics*, FOREIGN AFFS. (May 10, 2024), <https://www.foreignaffairs.com/united-states/infrastructure-remaking-geopolitics> [<https://perma.cc/ZA99-AZQ3>]; Robert Puentes, *Why Infrastructure Matters: Rotten Roads, Bum Economy*, BROOKINGS (Jan. 20, 2015), <https://www.brookings.edu/articles/why-infrastructure-matters-rotten-roads-bum-economy/> [<https://perma.cc/C6AS-HPJN>]; see also generally Massoud Amin, *Toward Secure and Resilient Interdependent Infrastructures*, 8 J. INFRASTRUCTURE SYS. 67 (2002). A wide array of public goods can be considered infrastructure. See COTTEN SEILER, WHITE CARE: THE IMPACT OF RACE ON AMERICAN INFRASTRUCTURE 13–14 (2026).

¹¹ See generally Morris A. Davis et al., *Macroeconomic Implications of Agglomeration*, 82 ECONOMETRICA 731 (2014) (discussing the importance of infrastructure to urban growth and development).

¹² This backlog is unfunded because money has not been allocated to needed projects, and because it is unavailable under current revenue projections. See AMERICAN SOCIETY OF CIVIL ENGINEERS, 2025 REPORT CARD FOR AMERICA'S INFRASTRUCTURE 7 (2024), <https://infrastructurereportcard.org/wp-content/uploads/2025/03/Full-Report-2025-Natl-IRC-WEB.pdf> [<https://perma.cc/CV56-YWDF>] [hereinafter ASCE].

¹³ *Id.* at 5; see also Zachary Liscow, *Getting Infrastructure Built: The Law and Economics of Permitting*, 39 J. ECON. PERSPS. 151, 152 (2025).

¹⁴ See, e.g., EZRA KLEIN & DEREK THOMPSON, ABUNDANCE 71–78 (2025) (discussing needed transportation improvements); *Massive Investment Is Needed in Sustainable Infrastructure to Build Climate Change Resilience*, ORG. FOR ECON. COOP. & DEV. (Apr. 9, 2024), <https://www.oecd.org/en/about/news/press-releases/2024/04/massive-investment-is-needed-in-sustainable-infrastructure-to-build-climate-change-resilience.html> [<https://perma.cc/XJ8B-3AXL>].

Although building public support for these investments will be a daunting task, Tucson's experience offers an important, quantifiable story about such projects' positive cascades.¹⁵

Quantifying these benefits demonstrates that infrastructure projects can generate knock-on returns beyond simply providing a necessary public service. It also raises important questions about who is entitled to these returns and how the law directs them. To date, however, legal scholarship has not surveyed the law's treatment of these questions. This Article does just that. It identifies the legal roadblocks that cities face in realizing secondary benefits of their infrastructure projects, and describes how cities can overcome these roadblocks. It then suggests legal reforms that would enable communities to earn greater returns on their infrastructure investments, which could be directed to a host of socially, economically, or environmentally important policy priorities.¹⁶ Although this Article uses transit as a primary example, its analysis applies equally to other projects, including parks, utilities, telecommunications, healthcare facilities, and sports stadiums.¹⁷

Whether and how infrastructure should be paid for, and who should benefit from it, is an evergreen subject of political debate.¹⁸ Take transit, for example. Riding transit costs less than owning and operating a car, and it offers transportation for people who cannot drive or afford to drive, reduces

(describing needed infrastructure investments to address the risks of climate change); Christian O. Deseglise & Louis Downing, *Why Investment in Sustainable Infrastructure Is Key to Financial Resilience in a Changing Climate*, WORLD ECON. F. (Apr. 24, 2025), <https://www.weforum.org/stories/2025/04/why-investment-in-sustainable-infrastructure-is-key-to-financial-resilience-in-a-changing-climate/> [https://perma.cc/JQC5-3FFJ]. See also generally Joseph W. Kane, *Seizing the U.S. Infrastructure Opportunity: Investing in Current and Future Workers*, BROOKINGS (Dec. 2022), <https://www.brookings.edu/articles/infrastructure-workforce/> [https://perma.cc/UDT2-K4JL]; Gregory H. Shill & Jonathan Levine, *Transportation for the Abundant Society*, 112 IOWA L. REV. (forthcoming 2026) (observing the Abundance Movement's focus on transportation and recommending a reorientation of transportation policy around accessibility).

¹⁵ See ASCE, *supra* note 12, at 12–19; James McBride et al., *The State of U.S. Infrastructure*, COUNCIL ON FOREIGN RELS. (Sept. 20, 2023), <https://www.cfr.org/background/state-us-infrastructure> [https://perma.cc/S34L-YUR3]; MUNICIPAL SECURITIES RULEMAKING BOARD, MUNICIPAL SECURITIES: FINANCING THE NATION'S INFRASTRUCTURE 2 (2021), <https://www.msrb.org/sites/default/files/MSRB-Infrastructure-Primer.pdf> [https://perma.cc/RE5K-ZY8D] [hereinafter MSRB].

¹⁶ See *infra* Parts II–IV.

¹⁷ For example, several studies indicate that parks improve surrounding property values. See, e.g., Nick Manes, *Joe Louis Greenway Could Bring a Big Boon for Nearby Homeowners*, CRAIN'S DETROIT BUSINESS (Mar. 25, 2026), <https://www.crainsdetroit.com/real-estate/residential/cdb-joe-louis-greenway-home-prices-20260326/> [https://perma.cc/B9A2-K874].

¹⁸ See, e.g., Kevin DeGood, *Infrastructure Investment Decisions Are Political, Not Technical*, CTR. FOR AM. PROGRESS (Apr. 14, 2020), <https://www.americanprogress.org/article/infrastructure-investment-decisions-political-not-technical/> [https://perma.cc/PT4D-8SB4]; Judge Glock, *We Don't Need This Much Infrastructure: Diminishing Returns & Increasing Political Demands on Infrastructure*, MANHATTAN INST. (Sept. 24, 2024), <https://manhattan.institute/article/diminishing-returns-and-increasing-political-demands-on-infrastructure> [https://perma.cc/UB87-UZ5H]; Stephen Collinson, *The Fight to Define Infrastructure Could Change America*, CNN (Apr. 6, 2021), <https://www.cnn.com/2021/04/06/politics/joe-biden-infrastructure-us-debate> [https://perma.cc/8GAB-NDS3]; Joshua Zeitz, *What the "Infrastructure" Fight Is Really About*, POLITICO (May 1, 2021), <https://www.politico.com/news/magazine/2021/05/01/what-the-infrastructure-fight-is-really-about-485107> [https://perma.cc/2G8B-GKML]; Martin Neil Bailly, *Wanted: A More Reasonable Debate on Infrastructure*, BROOKINGS (Oct. 6, 2016), <https://www.brookings.edu/articles/wanted-a-more-reasonable-debate-on-infrastructure/> [https://perma.cc/4VXR-2KHE].

vehicle traffic, and produces fewer greenhouse gas emissions on a per-rider basis than automobiles. Advocates thus tout transit's benefits for social equity, mobility, and environmental sustainability.¹⁹ In contrast, detractors emphasize the cost of building and operating transit, and argue it is unsafe, vulnerable to criminal activity, and reduces choice and freedom compared with automobile travel.²⁰

Like many other major infrastructure investments, transit projects are usually built with a combination of federal or state grants and debt obligations—mostly tax-advantaged bonds—issued by state or local agencies.²¹ These bonds are repaid pursuant to a revenue pledge, often from a special sales or use tax or, in some cases, project operating revenues.²² Project operations are typically funded through user fees, *i.e.*, rider fares, combined with general or special tax revenue, and some federal grant support.²³ Other revenues may support operations; for instance, transit systems' operations are also partly funded by proceeds from advertising, vehicle registrations or tolls, facility leases, parking charges, and other sources to make up the difference.²⁴

¹⁹ See, e.g., Irvin Dawid, *Phoenix Sales Tax Measure Key to County's Transit Future*, PLANETIZEN (July 29, 2015), <https://www.planetizen.com/node/79871/phoenix-sales-tax-measure-key-countys-transit-future> [https://perma.cc/53YD-8KF8]; Derek P. Jensen, *Roads or Rails? It's Both, and Soon*, THE SALT LAKE TRIB. (Dec. 20, 2006), <https://archive.slttrib.com/article.php?id=4870939&citytype=NGPSID> [https://perma.cc/6PWP-SFBW]; Nicole Warburton, *UTA Kicks off Campaign for Transit Tax Hike*, DESERET NEWS (Oct. 7, 2006), <https://www.deseret.com/2006/10/7/19978176/uta-kicks-off-campaign-for-transit-tax-hike/> [https://perma.cc/QQ3C-EX58]; FasTracks RTD, *FasTracks Plan ES-4-ES-8* (2004), https://wp-cpr.s3.amazonaws.com/uploads/2024/09/2004-FasTracks_Plan.pdf [https://perma.cc/C3J5-2QXX].

²⁰ Commentators often push the narrative that “transit does not pay for itself” on the premise that transit systems' operating costs usually exceed farebox revenue. See, e.g., Garry Pierre-Pierre, *Benefits From Transit Spending Said to Outweigh Costs by 5 to 1*, N.Y. TIMES (Apr. 16, 1996), <https://www.nytimes.com/1996/04/16/nyregion/benefits-from-transit-spending-said-to-outweigh-costs-by-5-to-1.html> [https://perma.cc/U5CU-WRQK]; Randal O'Toole, *Transit: The Urban Parasite*, CATO INST. (Apr. 20, 2020), <https://www.cato.org/policy-analysis/transit-urban-parasite> [https://perma.cc/3H25-HM5J].

²¹ See McBride et al., *supra* note 15; MSRB, *supra* note 15, at 4. However, federal and state grants often come with restrictions on their use. One example is the Federal Airport Improvement Program, managed by the Federal Aviation Administration. This program restricts the expenditure of federal money to airports' ground transportation infrastructure that is intended for exclusive use by passengers and airport employees, which effectively mandates the separation of airport transit systems from surrounding regions' transit systems. See GEOFFREY D. GOSLING ET AL., COLLABORATIVE FUNDING TO FACILITATE AIRPORT GROUND ACCESS 24–25 (June 2012), <https://transweb.sjsu.edu/sites/default/files/2503-collaborative-funding-airport-ground-access.pdf> [https://perma.cc/5HZK-DBBB] (identifying the AirTrain at John F. Kennedy International Airport in New York as one example of an on-airport transit system that is not integrated into the Metropolitan Transit Authority's surrounding subway and train systems).

²² See MSRB, *supra* note 15, at 6; Ctr. for Innovative Fin. Support, *Local Revenue*, U.S. FED. HIGHWAY ADMIN., DEP'T OF TRANSP., https://www.fhwa.dot.gov/ipd/value_capture/traditional_transportation_revenue/local.aspx [https://perma.cc/F2RY-MR5Z] (last visited July 11, 2025).

²³ See generally WILLIAM J. MALLET, CONG. RSCH. SERV., R47900, FEDERAL SUPPORT OF PUBLIC TRANSPORTATION OPERATING EXPENSES (2024), <https://www.congress.gov/crs-product/R47900> [https://perma.cc/M5G6-KLFC]; Ctr. for Innovative Fin. Support, *supra* note 22.

²⁴ See generally Anna Kustar et al., *A Fare Look: Funding Urban Public Transport Operations* (World Res. Inst., Working Paper, Dec. 11, 2024), <https://www.wri.org/research/fare-look-funding-urban-public-transport-operations> [https://perma.cc/Q5LF-RTE4].

Whereas these revenues fund the construction and operation of transit projects, infrastructure investments can generate secondary, *unpledged* public benefits.²⁵ Such projects boost nearby land values and economic activity, leading to job creation and more retail transactions.²⁶ As a result, infrastructure projects can generate derivative local property, income, and sales tax revenues that support local general funds and, unlike pledged revenues, are unrestricted.²⁷ While some scholars urge capturing the wealth generated from public projects to finance their construction,²⁸ a city could also direct such derivative revenues to other programs and activities that improve social equity; that is, it could distribute the resources and privileges attributable to infrastructure projects to the broadest possible segment of society.²⁹ Examples could include building parks or affordable housing to supporting social services.

Redistributing wealth attributed to public actions back to the public, often termed *land value-capture*, is not a new idea.³⁰ Henry George famously recommended taxing land value to recapture some of the economic rent created by the public's labor and investments.³¹ Others have argued that land-value increases caused by public actions like regulatory relief or infrastructure projects should be taxed—sometimes called betterment taxes—given that public

²⁵ See NELSON & LAWLOR, *supra* note 3, at i–iii.

²⁶ See, e.g., Gerald Korngold, *Land Value Capture in the United States*, LINCOLN INST. OF LAND POL'Y 5 (2022), <https://www.lincolnst.edu/publications/policy-focus-reports/land-value-capture-in-united-states/> [<https://perma.cc/EX6X-7VGK>]; see also generally J. Anthony Coughlan, *Land Value Taxation and Constitutional Uniformity*, 7 GEO. MASON L. REV. 261 (1999); SHISHIR MATHUR, INNOVATION IN PUBLIC TRANSPORT FINANCE: PROPERTY VALUE CAPTURE 22–24 (2014); Arthur C. Nelson & Robert Hibberd, Economic Development and Demographic Outcomes of Streetcar Station Proximity with Post-Pandemic Implications (Jan. 1, 2025) (unpublished manuscript) (available at SSRN), <https://papers.ssrn.com/abstract=5113417> [<https://perma.cc/R85V-DHC4>]; Blake Acton et al., *Impacts of Bus Rapid Transit (BRT) on Residential Property Values: A Comparative Analysis of 11 US BRT Systems*, 100 J. TRANSP. GEOGRAPHY 103324 (2022). Of course, some public infrastructure projects might reduce property values, say, where a property is located too close to the project such that the project's externalities—such as a highway's noise, a waste transfer facility's odor, or a transit station's nighttime lighting—negatively affect the property.

²⁷ See MATHUR, *supra* note 26, at 66.

²⁸ See *id.* at 195–202; Zhirong Jerry Zhao & Kerstin Larson, *Special Assessments as a Value Capture Strategy for Public Transit Finance*, 16 PUB. WORKS MGMT. & POL'Y 320, 335–36 (2011).

²⁹ Definitions of “social equity” are wide-ranging, yet in the urban planning field, they tend to coalesce around improving opportunity for all—particularly historically disadvantaged—population groups by ensuring the availability of public resources from quality education to housing, transportation, and environmental quality. See, e.g., *Social Equity*, AM. PLAN. ASS'N, <https://www.planning.org/knowledgebase/equity/> [<https://perma.cc/8AYG-BKZU>] (last visited Nov. 7, 2025).

³⁰ See Donald G. Hagman, *Windfalls and Their Recapture, in WINDFALLS FOR WIPEOUTS: LAND VALUE CAPTURE AND COMPENSATION* 16–18 (Donald G. Hagman & Dean J. Misczynski eds., 1978); Korngold, *supra* note 26, at 5; Michael Manville, *Value Capture Reconsidered: What If L.A. Was Actually Building Too Little?*, UCLA LEWIS CTR. FOR POL'Y STUD. 8 (2021), <https://www.lewis.ucla.edu/research/value-capture-reconsidered/> [<https://perma.cc/RP28-Y94J>]; Christopher S. Elmendorf & Darien Shanske, *Auctioning the Upzone*, 70 CASE W. RES. L. REV. 513, 525–27 (2020).

³¹ HENRY GEORGE, PROGRESS AND POVERTY: AN INQUIRY INTO THE CAUSE OF INDUSTRIAL DEPRESSIONS AND OF INCREASE OF WANT WITH INCREASE OF WEALTH; THE REMEDY 411–12 (Doubleday 1905).

decisions cause these windfalls.³² American localities³³ have, by and large, not implemented pure land-value or betterment taxes, yet they can and do capture some of the wealth generated from their infrastructure projects through *ad valorem* property taxes, special assessments, and real estate transfer taxes.³⁴ And their sales and income taxes enable them to earn spin-off revenues from increased economic activity near their infrastructure investments. Moreover, U.S. cities sometimes capture incremental value from these investments through development charges, including fees or public improvements obligations, on new real estate projects built nearby.³⁵

Although localities have some value-capture tools at their disposal, this Article identifies three state and federal constitutional limits that directly handicap their returns from their infrastructure investments. First, most states limit localities' ability to levy taxes, generate revenue, or expend public dollars.³⁶ Second, courts apply the judicially created unconstitutional conditions doctrine to limit exactions—that is, conditions imposed on government

³² See generally, e.g., Coughlan, *supra* note 26; Zhao & Larson, *supra* note 28; Korngold, *supra* note 26; Nathaniel Lichfield & Owen Connellan, *Land Value and Community Betterment Taxation in Britain*, LINCOLN INST. OF LAND POL'Y (2020), <https://www.lincolninst.edu/publications/working-papers/land-value-community-betterment-taxation-britain/> [<https://perma.cc/G92G-SM8V>]; Rachelle Alterman, *Land-Use Regulations and Property Values: The "Windfalls Capture" Idea Revisited*, in THE OXFORD HANDBOOK OF URBAN ECONOMICS AND PLANNING 755, 759–62 (Nancy Brooks et al. eds., 2011). Michael Manville observes that "land value is publicly created." Manville, *supra* note 30, at 20. Arguments against betterment levies tend to focus on issues of economic competitiveness, potential negative effects on developers, the difficulty of calculating betterment, and concerns about liquidity-challenged landowners' ability to pay. See, e.g., FRANCES PLIMMER & GREG MCGILL, LAND VALUE TAXATION: BETTERMENT TAXATION IN ENGLAND AND THE POTENTIAL FOR CHANGE 13 (Int'l Fed'n of Surveyors (FIG), Working Paper No. TS9, 2003), https://www.fig.net/resources/proceedings/fig_proceedings/fig_2003/TS_9/TS9_4_Plimmer_McGill.pdf [<https://perma.cc/6DUY-MK4H>].

³³ Throughout this Article, the terms "locality," "local government," "municipality," "city," and "community" are used interchangeably. Unless otherwise noted, these terms are intended to reference general-purpose local governments.

³⁴ See Ctr. for Innovative Fin. Support, *Land Value Tax*, FED. HIGHWAY ADMIN., https://www.fhwa.dot.gov/ipd/value_capture/defined/land_value_tax.aspx [<https://perma.cc/ZE4N-S3EM>] (last visited June 13, 2025); Elizabeth Kepner & Rick Mattoon, *Land Value Taxes—What They Are and Where They Come From*, FED. RSRV. BANK OF CHI. (Nov. 2023), <https://www.chicagofed.org/publications/chicago-fed-letter/2023/489> [<https://perma.cc/29AH-VPQP>]; Harrison Clanton, *Detroit, MI: A Case Study on Taxing Land Instead of Property*, BIPARTISAN POL'Y CTR. (Dec. 6, 2023), <https://bipartisanpolicy.org/blog/detroit-mi-a-case-study-on-taxing-land-instead-of-property/> [<https://perma.cc/4WNS-QWKM>] (reviewing Detroit's efforts to impose a land-value tax in 2023, which failed in the Michigan legislature); WILLIAM A. FISCHEL, ZONING RULES: THE ECONOMICS OF LAND USE REGULATION 132 (2015); Steven C. Bourassa, *The U.S. Experience*, in LAND VALUE TAXATION: THEORY, EVIDENCE, AND PRACTICE 11 (Richard F. Dye & Richard W. England, eds., 2009); Alterman, *supra* note 32, at 768, 775; Dean J. Misczynski, *Special Assessments*, in WINDFALLS FOR WIPEOUTS: LAND VALUE CAPTURE AND COMPENSATION 334–35 (1978); Dean J. Misczynski, *Transfer Taxes*, in WINDFALLS FOR WIPEOUTS: LAND VALUE CAPTURE AND COMPENSATION 427–30 (1978) (noting that some cities, mainly in Pennsylvania, have utilized split-rate property tax systems where a land value component is included in the tax). Instead of relying on land-value taxes, most American cities rely on some combination of *ad valorem* property taxes (which tax the value of land plus improvements on it), sales taxes, and income taxes, along with fees, charges and intergovernmental transfers. See Jaebeum Cho et al., *Land Value Capture Across the Globe*, 24 CITYSCAPE 231, 250–52 (2022); ALAN A. ALTSHULER ET AL., REGULATION FOR REVENUE: THE POLITICAL ECONOMY OF LAND USE EXACTIONS 3–4 (1993).

³⁵ See Elmendorf & Shanske, *supra* note 30, at 525–27 (identifying value capture as one potential aim of exactions).

³⁶ See *infra* Section II.A.

real estate development permits.³⁷ This doctrine technically prevents cities from imposing fees or in-kind development charges as a pure value-capture tool, instead allowing them only when they offset identifiable impacts of a project.³⁸ And third, federal and state constitutional limits on entrenching legislation—such as making it difficult or impossible for future legislatures to repeal or modify a law—mean that cities cannot guarantee that unpledged revenue from an infrastructure investment will be directed to a particular purpose.³⁹ As we discuss below, relaxing these limitations could aid communities in improving returns on their infrastructure investments and might lead to greater public acceptance of transit and other major infrastructure projects.

Given the significant backlog of U.S. infrastructure needs and the inadequacy of current infrastructure to facilitate future growth, advance sustainability, and build climate resilience,⁴⁰ addressing legal roadblocks to the public's return on its infrastructure projects is of great importance. Tucson's and other cities' stories also challenge the proposition that infrastructure projects do not pay for themselves.⁴¹ If Tucson's transit investment can deliver robust, unpledged revenue and public benefits under current law, then legal reforms aimed at maximizing the public's return on such projects would provide an even greater impetus to make these necessary investments.

Moreover, addressing the legal roadblocks identified in this Article carries important distributive and fairness consequences. Infrastructure projects produce windfalls for small groups of landowners with nearby properties, yet these windfalls are generated at the public's expense.⁴² Numerous scholars agree that fairness demands that the government should be allowed to share in these windfalls, to reinvest them into public goods, or to compensate the public for the projects themselves.⁴³ Yet current law often precludes this outcome, protecting landowners' windfalls while depriving the public of returns on taxpayer investments. Although this Article describes existing tools that cities can use to capture returns from their projects, it also suggests reforms that would get the public more bang for its buck.

At the outset, there are two important caveats. This Article generally assumes the policy wisdom of public infrastructure investments and that such investments will produce the sorts of positive fiscal outcomes presented here.⁴⁴

³⁷ See *infra* Section II.B.

³⁸ See *infra* Section II.B.

³⁹ See *infra* Section II.C.

⁴⁰ See ASCE, *supra* note 12, at 7.

⁴¹ For emblematic arguments about transit not paying for itself, see generally O'Toole, *supra* note 20, and Randal O'Toole, *Fixing Transit: The Case for Privatization*, CATO INSTITUTE (Nov. 10, 2010), <https://www.cato.org/policy-analysis/fixing-transit-case-privatization> [https://perma.cc/7BSJ-HG72].

⁴² See generally Jeffery J. Smith & Thomas A. Gihring, *Financing Transit Systems Through Value Capture: An Annotated Bibliography*, 65 AM. J. ECON. & SOCIO. 751 (2006).

⁴³ See, e.g., Manville, *supra* note 30; Korngold, *supra* note 26, at 5; MATHUR, *supra* note 26, at 12–13; Smith & Gihring, *supra* note 42, at 784; Rachelle Alterman, *Evaluating Linkage and Beyond: Letting the Windfall Recapture Genie Out of the Exactions Bottle*, 34 WASH. U. J. URB. & CONTEMP. L. 3, 44 (1988); Hagman & Mischynski, *supra* note 30, at 17–18.

⁴⁴ We also acknowledge that choices around infrastructure provision, design, and construction in the United States have long had social—especially racial—dimensions. See SEILER, *supra* note 10, at 23 (discussing historical and present-day inequity in infrastructure provision and repair in white and non-white communities).

Nevertheless, popular media and political advocates routinely challenge infrastructure investments as wasteful, and there are myriad examples of infrastructure projects that were either ill-conceived or failed to deliver promised benefits.⁴⁵ However, the policy, planning, economic, engineering, and other rationales that drive public decision-making around these investments are outside the scope of this analysis. This Article's purpose is instead to evaluate whether and how the law facilitates the public's returns on these projects, and how it could maximize such returns irrespective of any particular project's rationale.

Second, although this Article relies on transit as a primary example of how infrastructure projects could produce value-captured revenues, it does not advocate any particular types of infrastructure investments. Choices around how to spend public infrastructure dollars abound, and legislators and other policymakers are routinely faced with questions of whether to, say, fund transit or highways. Moreover, several commentators have observed that some infrastructure investments—namely, highways—produce negative externalities that reduce property values and produce other negative environmental and social outcomes. This Article avoids these debates by generally focusing on infrastructure projects with positive land-value spillovers. By definition, where projects negatively impact property values, there is no value to be captured. Thus, this Article simply analyzes how the law presently treats, and should treat, value capture; it is otherwise up to policymakers to decide whether to make value-adding, rather than value-reducing, infrastructure investments.

This Article is organized in four Parts. Part I presents an overview of the value-added concept and value-capture, with a particular focus on Tucson's transit experiment. Part II analyzes three important constitutional barriers to value-capture associated with infrastructure projects in the United States: state limits on tax and revenue increases, the application of the unconstitutional conditions doctrine to exactions, and constitutional prohibitions on legislative entrenchment limit the effectiveness and efficacy of value-capture efforts. Part III discusses how, even in spite of the limits discussed in Part II, localities can obtain incremental unpledged revenue from their infrastructure investments.

Finally, Part IV offers normative suggestions for how the law might better facilitate returns on these investments, to ensure fairness to the public.

⁴⁵ See, e.g., Jawad Mahmud Hoque et al., *Are Public Transit Investments Based on Accurate Forecasts? An Analysis of the Improving Trend of Transit Ridership Forecasts in the United States*, 186 TRANSP. RES. PART A: POLY AND PRACTICE 104142, 1–2 (2024); James Horrox & Andre Delattre, *Highway Boondoggles*, U.S. PIRG (Oct. 9, 2025), <https://pirg.org/edfund/resources/highway-boondoggles/> [<https://perma.cc/6MLC-WF2E>]; Steve Quinn, *Alaska's 'Bridge to Nowhere' Plan Finally Scrapped*, REUTERS (Oct. 23, 2015), <https://www.reuters.com/article/world/us/alaskas-bridge-to-nowhere-plan-finally-scrapped-idUSKCN0SI000/> [<https://perma.cc/D4SW-WSUB>].

I. THE VALUE-ADDED CONCEPT AND VALUE CAPTURE, EXPLAINED

This Part reviews the value-added concept and outlines the rationale for value-capture. It then describes value-capture techniques, noting that many of them require pledging revenue for specific purposes, and discusses how unpledged value-added revenue can be quantified and allocated through the standard budget process to meet local policy objectives, such as advancing social equity.

A. *Creating Value Through Public Decision-Making*

Basic real estate economics holds that the market accounts for factors that influence land values by internalizing externalities.⁴⁶ Externalities can be positive or negative. A property with publicly provided sewer access is more valuable for urban development than one without, because it internalizes the positive externality of public sewer access.⁴⁷ On the other hand, a property near a landfill is less valuable for residential development than one farther away, because it internalizes the negative externality of landfill proximity.⁴⁸ Externality value can change through public actions, leading to “windfalls” and “wipeouts.”⁴⁹ Rezoning land from an agricultural to residential designation can generate windfalls to landowners, yet this windfall is not necessarily attributable to their efforts.⁵⁰ Likewise, the reverse zoning decision might generate wipeouts to landowners over their objections.⁵¹ Although negative externalities from government actions are important problems, this Article focuses on positive externalities and their role in adding value to the community, bolstering government revenues, and achieving certain public purposes.

Representing an interplay of private and public actions, real estate value-added can be separated into four components.⁵² First, land has some intrinsic value.⁵³ Second, value is created by private investment such as adding roads, installing on-site utilities, and so forth, but without much government involvement.⁵⁴ Third, value is created by increasing demand for location

⁴⁶ See generally MICHAEL A. GOLDBERG & PETER CHINLOY, *URBAN LAND ECONOMICS* (1984); see generally Arthur C. Nelson et al., *Price Effects of Road and Other Impact Fees on Urban Land*, 1350 *TRANSP. RSCH. REC.* 36 (1992).

⁴⁷ See Arthur C. Nelson & Gerrit J. Knaap, *A Theoretical and Empirical Argument for Centralized Regional Sewer Planning*, 53 *J. AM. PLAN. ASS'N* 479, 480–81 (1987).

⁴⁸ See Arthur C. Nelson et al., *Price Effects of Landfills on House Values*, 68 *LAND ECON.* 359, 364 (1992).

⁴⁹ Donald G. Hagman & Dean J. Mischynski, *Introduction*, in *WINDFALLS FOR WIPEOUTS: LAND VALUE CAPTURE AND COMPENSATION* 1 (1978).

⁵⁰ See Hagman & Mischynski, *supra* note 30, at 16.

⁵¹ See Brad Kuhn & Jillian Friess Leivas, *The Legal Consequences of Downzoning*, NAIOP (2023), <https://www.naiop.org/research-and-publications/magazine/2023/Spring-2023/development-ownership/the-legal-consequences-of-downzoning/> [https://perma.cc/C6AH-CGVQ]. Whether such an action comports with regulatory takings law is, of course, another question.

⁵² ARTHUR C. NELSON ET AL., *PROPORTIONATE SHARE IMPACT FEES AND DEVELOPMENT MITIGATION* 238–39 (2022).

⁵³ *Id.*

⁵⁴ *Id.*

through regional population and economic growth that elevates the site's attractiveness to development.⁵⁵ Fourth, value is added through public-sector decisions such as changes in land use regulations, infrastructure investments, and the provision of services, whether or not such value enhancements are captured by public agencies.⁵⁶

Tucson's streetcar, discussed in the Introduction, exemplifies the fourth component. From the early 2010s into the early 2020s, the streetcar corridor accounted for about half of the city's population and a third of its household growth, attracted about half of all new housing units in the city, and gained a third of a billion dollars in household income after inflation.⁵⁷ The corridor also added hundreds of jobs with a quarter of a billion dollars in new wages; saw more than forty percent of corridor residents commute to work via something other than a car (compared to twenty percent city-wide); increased real estate investment by \$2.5 billion; and boosted the city's annual fiscal revenues by \$13 million, or thirty percent, which, if capitalized, would finance debt of about \$400 million.⁵⁸ Although this analysis does not isolate Tucson's streetcar from other factors that may have contributed to the corridor's economic boom—such as its proximity to the University of Arizona and other regional economic drivers, broader market conditions, or other planning decisions—it stands to reason that this growth would not have happened without this significant infrastructure investment.

During the COVID-19 pandemic, streetcar ridership fell from nearly 900,000 in 2019 to just under 440,000 in 2021. In 2020, the city council waived transit fares.⁵⁹ Streetcar ridership gradually increased, reaching a record 1.7 million riders in fiscal year 2023.⁶⁰ How much did the city lose in foregone streetcar fares? In 2019, fare revenue was about \$800,000, adjusted for inflation.⁶¹ Because transit costs tend to be fixed, they are mostly unchanged whether ridership halves or doubles.⁶² Yet research shows that free fares increase ridership, and more riders means more consumer spending along transit corridors.⁶³ In Tucson, overall streetcar corridor *tax* revenues—excluding all other city revenues—increased by \$2.3 million in 2023 compared to 2019, adjusted for inflation.⁶⁴ Even if this change is likely not entirely attributable to free fares, the tradeoff seems good.

In effect, by waiving \$800,000 in streetcar fares, the city gained up to \$2.3 million in new tax revenue, a net gain of \$1.5 million. Put differently,

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ NELSON & LAWLOR, *supra* note 3, at i–iii.

⁵⁸ *Id.*

⁵⁹ Robbins, *supra* note 6.

⁶⁰ RATP DEV ET AL., *supra* note 3.

⁶¹ *Id.*

⁶² See generally JEAN-PAUL RODRIGUE, THE GEOGRAPHY OF TRANSPORT SYSTEMS (6th ed. 2024); *Public Transit Operating Expenses – 2022*, U.S. DEPT. OF TRANSP. (2023), [https://data.transportation.gov/stories/s/2022-NTD-Data-Summary-Operating-Expenses/py8m-wb7u/\[https://perma.cc/P5XQ-C5FP\]](https://data.transportation.gov/stories/s/2022-NTD-Data-Summary-Operating-Expenses/py8m-wb7u/[https://perma.cc/P5XQ-C5FP]).

⁶³ Brough et al., *supra* note 7, at 20; Roanne Neuwirth, *Economic Impacts of Transit on Cities*, 1274 TRANSP. RSCH. REC. 142, 149 (1990).

⁶⁴ NELSON & LAWLOR, *supra* note 3, at 142.

each dollar of waived fares is associated with up to \$2.88 in new tax revenue. This “quiet money” slides into the general fund mostly unnoticed.⁶⁵ While Tucson officials have debated reinstating transit fares, these findings suggest that doing so might reduce ridership, which would also reduce collateral unpledged revenues accordingly.⁶⁶ Measuring value added from infrastructure and making decisions based on such measurements confounds cities and other public agencies nationwide.

The last phase of the real estate value-added process is value-capture. Logic and fairness suggest that, if a public investment improves property values, the public may legitimately seek reimbursement by capturing a share of the incremental value sufficient to cover the public’s costs.⁶⁷ Otherwise, perverse land use outcomes, like urban sprawl, could ensue.⁶⁸ Where public actions add value, the public’s recovery of its costs occurs through *value-capture*, a concept that dates to David Ricardo and Henry George.⁶⁹ The United Nations recommends that countries impose value-capture as a matter of human rights.⁷⁰

Practically, value-capture is limited by whether or not it prevents development. In the extreme, capturing all economic rent from a land-use change or public infrastructure investment would likely discourage the private investment that such decisions are supposed to encourage.⁷¹ More practically, in the context of value-capture offsetting infrastructure costs, if one development project cannot afford to pay a value-capture assessment but another can, the result will be a Pareto-efficient outcome.⁷²

B. How Value is Captured

There are three broad ways in which value attributable to public investments can be captured: betterment taxes and assessments grounded in planning gain theory, enhanced local tax revenues associated with new growth and development, and development charges. Each is discussed in turn below.

⁶⁵ Arthur Nelson, *Local Opinion: Streetcar Benefits Offset Free Fares*, TUCSON OP. (Nov. 19, 2024), https://tucson.com/opinion/column/local-opinion-streetcar-benefits-offset-free-fares/article_267a4da6-a5d9-11ef-8a86-0361b8d030a2.html [https://perma.cc/AH3T-3CTY].

⁶⁶ See Brough et al., *supra* note 7, at 20.

⁶⁷ See Korngold, *supra* note 26, at 5; Manville, *supra* note 30, at 20.

⁶⁸ See PAMELA BLAIS, *PERVERSE CITIES: HIDDEN SUBSIDIES, WONKY POLICY, AND URBAN SPRAWL* 221–23 (2010). Of course, if new infrastructure causes property values in its vicinity to rise, that alone could have a compacting, rather than sprawling effect.

⁶⁹ See generally DAVID RICARDO, *ON THE PRINCIPLES OF POLITICAL ECONOMY, AND TAXATION* (1817); GEORGE ET AL., *supra* note 31. The term “value-capture” is sometimes used interchangeably with “value-recapture.”

⁷⁰ UNITED NATIONS CONF. ON HUM. SETTLEMENTS, VANCOUVER, CAN., *THE VANCOUVER ACTION PLAN Recommendation D.3*, at 30–31 (1976), https://sdgs.un.org/sites/default/files/documents/7252The_Vancouver_Declaration_1976.pdf [https://perma.cc/85Z5-MMZS].

⁷¹ William A. Fischel, *The Economics of Land Use Exactions: A Property Rights Analysis*, 50 L. & CONTEMP. PROBS. 101, 110 (1987).

⁷² Pareto efficiency references a state of resource allocation such that no person can be made better off without making someone else worse off. BLACK’S LAW DICTIONARY (8th ed., 2012). This insight is based on an international study of value-capture transfer between mature and early national development. See generally Klaas Kresse et al., *Value Capture Ideals and Practice – Development Stages and the Evolution of Value Capture Policies*, 106 CITIES 102861 (2020).

The first method, betterment taxes and assessments, is well developed among Commonwealth countries.⁷³ Betterment is defined as:

[T]he increase in value of land which results from actions other than those of the land owner, i.e., the increase in land which is created by the community and which can be positive, e.g., in the grant of planning permission or the provision of infrastructure and other environmental benefits, or negative, e.g., in the imposition of development restrictions on adjoining land.⁷⁴

A betterment tax recoups costs incurred by the government to create value.⁷⁵ It derives from the concept of “planning gain,” which, in its logical extreme, posits that the government should receive all net profits of a development project, because public allocations of property rights and infrastructure construction create such private gains.⁷⁶ Betterment taxation is not practiced officially in the United States.⁷⁷

The second method of value-capture is enhanced tax revenue. Subject to the legal limits discussed in Section II.A, *infra*, new developments increase local property taxes, sales and excise taxes, various fees and assessments, and, in some cases, intergovernmental transfer revenues.⁷⁸ These can be measured directly based on new infrastructure projects and indirectly based on collateral development or enhanced local economic exchange that follows.⁷⁹

Nevertheless, growth does not *per se* generate more local revenues than service costs.⁸⁰ Instead, more compact and integrated land-use patterns are less costly to serve and tend to generate more net revenues compared with sprawl.⁸¹ By itself, incremental fiscal revenue generated from new development

⁷³ See Lichfield & Connellan, *supra* note 32, at 27–31.

⁷⁴ PLIMMER & MCGILL, *supra* note 32, at 2–3.

⁷⁵ *Id.* at 3.

⁷⁶ For details of the evolution of the planning gain concept, and its evolution into an American style impact fee system, see Christine Whitehead, *The Economics of Development Value and Planning Gain*, in PLANNING GAIN: PROVIDING INFRASTRUCTURE & AFFORDABLE HOUSING 20, 20 (Tony Crook et al. eds., 2015). The United Kingdom's Town and Country Planning Act of 1947 acquired development rights to most rural and agricultural land through a compensation scheme, thereby enabling national and local authorities to negotiate the sale of development rights, which, in theory, could be equivalent to the entire real estate market gain realized by the development, net of costs.

⁷⁷ See NELSON ET AL., *supra* note 52, at 239–40 (observing, however, that U.S. jurisdictions rely heavily on the special assessment as a means of financing public improvements).

⁷⁸ See ROBERT BURCHELL ET AL., SPRAWL COSTS: ECONOMIC IMPACTS OF UNCHECKED DEVELOPMENT 74–77 (2005) (ebook) (discussing tax, non-tax, and intergovernmental transfer revenues).

⁷⁹ See generally L. Carson Bise & Colin McAweeney, *The Evolution of Fiscal Impact Analysis and Where It Needs to Go*, 5 J. COMPAR. URB. L. & POL'Y 425 (2022).

⁸⁰ For an extensive literature review showing the mismatch between new development revenues and costs incurred by local government, see generally ROBERT W. BURCHELL ET AL., TRANSPORTATION COSTS OF NEW DEVELOPMENT: PROCEDURAL GUIDE, USER GUIDE, AND MODEL (2011), https://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP08-59_FR.pdf [<https://perma.cc/7TES-NB86>].

⁸¹ For a recent study, see generally URBAN3, ECONOMICS OF COMMUNITY DEVELOPMENT: ANNAPOLIS MARYLAND (2024), <https://www.annapolis.gov/DocumentCenter/View/32692/Urban3—Annapolis-Report> [<https://perma.cc/QUL8-WA52>].

facilitated by public investment will not always offset public costs, including social ones.⁸²

One subset of value-capture through enhanced taxation are special taxing or assessment districts. Special districts involve assessments or taxes on property within a designated area whose properties are the principal beneficiaries of infrastructure improvements or other services.⁸³ Every state enables them, though there are differences in purposes, formation, governance, and financing options.⁸⁴

Special districts usually entail compulsory levies against property owners to finance specified public improvements. They are typically used only to fund local improvements which provide benefits within the designated assessment zone, and assessments are only charged to those properties that receive a “special benefit” from the improvement. Although legal requirements vary between states, assessments must usually bear a reasonable relationship to the value of the benefits the property receives. As discussed below in Section II.A, special assessments are usually exempt from caps on tax levels and aid localities that otherwise need supplemental revenue. In most cases, special districts require a vote of the local governing body or sometimes the electorate to be created.⁸⁵

A variation of the special district is the tax-increment financing (TIF) district. A local government creates a district, adopts a redevelopment plan, and implements it in part by improving infrastructure, acquiring property, clearing title, and facilitating real estate development. The local government uses the incremental property taxes generated above a base year to finance the improvements in a TIF district. Where those improvements are financed from debt, the tax increment revenues are pledged to debt service.⁸⁶ In practice, state laws largely limit the use of TIF to urban redevelopment projects. Localities identify areas of the community that are blighted and include them within urban renewal districts that allow TIF. The law may also limit the use of TIF to improvements that are of a public or quasi-public nature; for instance, a housing developer might be able to use TIF to aid in the construction of a

⁸² See generally Adam Found, *Development Charges in Ontario: Is Growth Paying for Growth?*, 41 IMFG PAPERS ON MUN. FIN. & GOVERNANCE 1 (2019); Siba Sankar Mohanty & Annie Rath, *Capturing Social Cost in Construction Sector: A Review of Literature through Meta-Analysis*, 8 J. STUD. DYNAMICS & CHANGE 17 (2021). For instance, if highway-building encourages urban sprawl, the property tax revenues from new development on the urban fringe may be insufficient to account for the environmental and social costs of that type of growth.

⁸³ See Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365, 414–15 (1999).

⁸⁴ See *About Special Districts*, NAT'L SPECIAL DIST. ASS'N, <https://www.nationalspecialdistricts.org/about-special-districts> [https://perma.cc/3Q25-BDWF] (last visited July 11, 2025).

⁸⁵ See generally JENNIFER AHLIN ET AL., *VALUE CAPTURE: CAPITALIZING ON THE VALUE CREATED BY TRANSPORTATION* (2019), https://www.fhwa.dot.gov/ipd/value_capture/resources/value_capture_resources/value_capture_implementation_manual/ [https://perma.cc/AQZ5-CHGB].

⁸⁶ See generally DAVID MERRIMAN, LINCOLN INST. OF LAND POL'Y, *IMPROVING TAX INCREMENT FINANCING (TIF) FOR ECONOMIC DEVELOPMENT* (2018), <https://www.lincolninst.edu/publications/policy-focus-reports/improving-tax-increment-financing-tif-economic-development/> [https://perma.cc/C46N-76PE].

parking structure or sidewalk improvements, but may not be able to use it to construct internal building improvements.

The third method of capturing value is by charging fees or requiring landowners and developers to build infrastructure or support public services in-kind to capture value, mostly in connection with new development.⁸⁷ These methods of value capture are usually called *exactions*, *development charges*, or *development mitigation*.⁸⁸ For example, a locality could capture some of the value generated by the construction of a new transit line by requiring developers along the line to provide affordable housing or by entering into agreements with developers requiring them to provide various other public improvements.⁸⁹ These requirements could be imposed on a negotiated, project-by-project basis or based upon a legislated schedule of fees or other requirements.⁹⁰

The use of exactions, now standard in many states and localities, has expanded in response to anti-growth attitudes, declining intergovernmental transfers to local governments, and funding shortages stemming from the limits on taxation described in the preceding subpart.⁹¹ Compared to the mid-twentieth century, localities now have a much greater reliance on exactions as a share of their revenue, as their reliance on tax revenue has decreased, and they increasingly rely on developers to build their infrastructure.⁹²

Individual development projects are often held accountable for their impact through land dedications, negotiated development agreements, and impact fees.⁹³ Mandatory dedications commonly include land for parks, public access or utility easements, or open space.⁹⁴ They also include the installation and dedication of onsite infrastructure and occasional offsite improvements such as traffic signals on roads entering projects.⁹⁵

Development agreements are contracts between developers and local governments to reduce uncertainty surrounding proposed developments and

⁸⁷ Elmendorf & Shanske, *supra* note 30, at 521.

⁸⁸ Another version of an exaction is a “linkage fee,” where commercial projects pay for things like affordable housing on the premise that they create demand for it. Alterman, *supra* note 43.

⁸⁹ Elizabeth Elia, *Perpetual Affordability Covenants: Can These Land Use Tools Solve the Affordable Housing Crisis?*, 124 PENN STATE L. REV. 57, 103 (2019); Elmendorf & Shanske, *supra* note 30, at 522.

⁹⁰ Elmendorf & Shanske, *supra* note 30, at 523; Ronald H. Rosenberg, *The Changing Culture of American Land Use Regulation: Paying for Growth with Impact Fees*, 59 SMU L. REV. 177, 190 (2006).

⁹¹ Rosenberg, *supra* note 90, at 179–80, 186; Laurie Reynolds, *Taxes, Fees, Assessments, Dues, and the “Get What You Pay For” Model of Local Government*, 56 FLA. L. REV. 373, 377–78, 416 (2004); ALTSHULER & GÓMEZ-IBÁÑEZ, *supra* note 34, at 8–10.

⁹² Rosenberg, *supra* note 90, at 188.

⁹³ Reynolds, *supra* note 91, at 416–17; ALTSHULER & GÓMEZ-IBÁÑEZ, *supra* note 34, at 3–5.

⁹⁴ See generally Agustin Leon-Moreta, *Land Dedications as Local Government Requirement for Open Space: Results from US Surveys of Cities*, 157 CITIES 105625 (2025); David L. Callies, *Mandatory Set-Asides as Land Development Conditions*, 42 URB. LAW. 307 (2010).

⁹⁵ For a review of the law and applications, see generally J. CRAIG SMITH & SCOTT M. ELLSWORTH, THE UTAH LAND USE INST., LAND DEVELOPMENT DEDICATIONS/EXACTIONS (2023), <https://utahlanduse.org/wp-content/uploads/2023/11/Dedications-Exactions-v.-6-2023-11-01-v.-2.pdf> [https://perma.cc/6PFD-WP25].

ensure the provision of public benefits.⁹⁶ They set out the responsibilities, rights, and obligations of the parties and other stakeholders who are affected by the development, including remedies in case of agreement violations.⁹⁷ These agreements can address social equity concerns, but usually do so only on a case-by-case basis.

Impact fees are one-time charges on new development to mitigate its proportionate share impact on public facilities.⁹⁸ Variations of impact fees, called linkage fees, can address such social equity issues as housing affordability and social services.⁹⁹

Exactions serve several purposes. They shift the cost of developing infrastructure from the incumbent public to developers and new residents, increase the efficiency of infrastructure usage, mitigate negative externalities of new development, improve political acceptance of new development (or discourage growth in some or all areas, if exactions appropriate too much value from projects).¹⁰⁰ Despite their occasional use for value-capture, as discussed in Section II.B, *infra*, development charges are subject to important legal limitations. And as described in Section III.A.4, *infra*, development project mitigation does not systematically address social equity, as this purpose is usually not enabled by legislation.

The foregoing U.S. value-capture techniques share several common characteristics. They are (1) usually designed to serve specific geographic areas, such as impact-fee service areas or special districts with prescribed boundaries; (2) typically enabled by state statute;¹⁰¹ and (3) required to be created by local government acts that sometimes require voter approval.¹⁰² Value-capture is accomplished through assessments that are compulsory against property owners, as a condition of development approval, to finance specified public improvements. Value-capture assessments can only be used to fund local improvements that provide benefits to property within the assessment area, and as such the assessment, in the form of a fee or tax, is charged only to those

⁹⁶ See generally JULIE A. TAPPENDORF ET AL., *DEVELOPMENT BY AGREEMENT: A TOOL KIT FOR LAND DEVELOPERS AND LOCAL GOVERNMENTS* (2nd ed. 2024).

⁹⁷ See generally DAVID L. CALLIES ET AL., *BARGAINING FOR DEVELOPMENT: A HANDBOOK ON DEVELOPMENT AGREEMENTS, ANNEXATION AGREEMENTS, LAND DEVELOPMENT CONDITIONS, VESTED RIGHTS AND THE PROVISION OF PUBLIC FACILITIES* (2003).

⁹⁸ See generally ARTHUR C. NELSON ET AL., *IMPACT FEES: PRINCIPLES AND PRACTICE OF PROPORTIONATE-SHARE DEVELOPMENT FEES* (2009).

⁹⁹ LILLIAN MURPHY ET AL., *CTR. FOR SOC. DEV., BROWN SCHOOL AT WASH. UNIV., LINKAGE FEES: A VEHICLE FOR FINANCING AFFORDABLE HOUSING 1* (2023), https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1944&context=csd_research [<https://perma.cc/ZS45-FPJY>].

¹⁰⁰ Vicki Been, *"Exit" as a Constraint on Land Use Exactions: Rethinking the Unconstitutional Conditions Doctrine*, 91 COLUM. L. REV. 473, 482–83 (1991).

¹⁰¹ In the case of impact fees, in the absence of express state enablement they are nonetheless allowed under home rule and police power authority. See NELSON ET AL., *supra* note 98. Indeed, the role of impact fee enabling legislation is usually to restrict impact fee scope. See generally CLANCY MULLEN, DUNCAN ASSOCIATES, *STATE IMPACT FEE ENABLING ACTS* (2025), <https://www.impactfees.com/wp-content/uploads/1stateacts2025.pdf> [<https://perma.cc/SHU9-PHEB>].

¹⁰² CTR. FOR ACCELERATING INNOVATION, FED. HIGHWAY ADMIN., *INTRODUCTION TO SPECIAL ASSESSMENTS*, https://www.fhwa.dot.gov/ipd/pdfs/value_capture/intro_special_assessments.pdf [<https://perma.cc/Z3QG-CW63>] (last visited July 30, 2025).

properties that benefit from the improvement. The amount of the assessment is reasonably related to the value of the benefits received.¹⁰³

Given these limitations, local governments such as Tucson would not be able to pledge value-added tax revenue associated with transit to, say, waive transit fares, without forming an entity to do so, perhaps with a public vote. But there is another way, discussed next.

C. Quantifying Unpledged Value-Added Revenues

In all cases where taxes are assessed, the value-added increment associated with public action can be measured and, in turn, factored into local policymaking. Measuring value-added fee increment is more challenging, however, where assessments are not linked to property value or transactions but rather to the apportionment of costs through some proportionate-share formula.¹⁰⁴

In Tucson's case, eliminating transit fares cost \$800,000 per year yet may have generated up to \$2.3 million per year in value-added revenues.¹⁰⁵ Because the transit system is not run by or within a special district, the city's budget process recognizes the lost revenue but does not account for increased revenue associated with its secondary effects.¹⁰⁶ Owing to a lack of data on the benefits of fare waivers, some city officials might have been inclined to cut losses by reinstating fares after COVID-19 subsided. But, as discussed above, this move could have reduced ridership and economic transactions along the streetcar corridor, perhaps eliminating all the fiscal gains.¹⁰⁷

Public investments such as transit systems are costly to build and maintain. In the case of transit, fares are needed to offset operating costs. Literature shows that transit fares impose higher economic burdens on lower-income riders than those with higher-income.¹⁰⁸ A perverse outcome occurs when fares are raised, as lower-income riders have no choice but to pay them, while higher-income riders often choose alternatives such as automobiles. A vicious cycle emerges where reduced ridership leads to ever-higher fares to cover costs.

¹⁰³ NELSON ET AL., *supra* note 98, at 97.

¹⁰⁴ For an example, see generally AM. WATER WORKS ASS'N, M1 PRINCIPLES OF WATER RATES, FEES AND CHARGES (7th ed. 2012).

¹⁰⁵ NELSON & LAWLOR, *supra* note 3, at 142.

¹⁰⁶ *Id.* at 144. Using value-added property tax revenues to support the transit fare waiver was easy in Tucson's case, because Sun Link is operated by the city. In a scenario where a separate agency operates the transit system, this type of value capture would likely necessitate an inter-governmental agreement, which could prove more politically challenging. Moreover, Tucson's Sun Link system is not subject to farebox recovery requirements, which in some states would require the transit system to collect a minimum percentage of its operating costs from fares. See REGIONAL TRANSP. AUTH., *Illinois Transit Farebox Recovery Ratio Requirement is Uniquely High and Harms Riders* (Oct. 9, 2025), <https://www.rtachicago.org/blog/2025/10/09/illinois-transit-farebox-recovery-ratio-requirement-is-uniquely-high-and-harms-riders> [<https://perma.cc/D7TP-B2LZ>].

¹⁰⁷ See Brough et al., *supra* note 7, at 20.

¹⁰⁸ See generally *id.*

In Tucson's case, however, eliminating fares—and monitoring the results of the program—led to multiple public policy wins.

The next Parts describe the nature of the legal limits on cities like Tucson, and then discuss how, despite these limits, such cities can realize the benefits of their infrastructure investments.

II. THE LAW OF VALUE CAPTURE

This Part discusses three significant legal limitations on the value-capture mechanisms described in Part I. First, most U.S. states limit cities' ability to realize additional revenue, whether via caps on property-tax increases or restrictions on revenue. Second, federal constitutional law restricts localities' ability to capture incremental value through fees or in-kind provision of public amenities. And third, state and federal constitutional and statutory restrictions on entrenching legislation mean that cities may not usually allocate unpledged revenue toward particular programs in perpetuity. Each of these limitations is discussed below.

A. Taxation, Revenue, and Expenditure Limitations

Localities derive their taxing and spending powers from their respective states.¹⁰⁹ In a handful of states, home rule cities have some fiscal autonomy, but in most states, local authority to tax or otherwise raise revenue is circumscribed.¹¹⁰ Because property taxes are often cities' largest revenue source and most effective value-capture vehicle, the most consequential limits on cities' revenues are restrictions on their imposition of property taxes.¹¹¹ Forty-six states limit property taxes, local revenues from them or other sources, or both.¹¹² Most of these restrictions are found in state constitutions.¹¹³

¹⁰⁹ See Erin Adele Scharff, *Powerful Cities?: Limits on Municipal Taxing Authority and What to Do About Them*, 91 N.Y.U. L. REV. 292, 295–96, 301 (2016); CTR. FOR CITY SOLS. & APPLIED RSCH., NAT'L LEAGUE OF CITIES, CITIES AND STATE FISCAL STRUCTURE 11–12 (2015), https://www.nlc.org/wp-content/uploads/2015/01/NLC_CSFS_Report_WEB.pdf [<https://perma.cc/ZTE6-SVU4>] [hereinafter NLC Report].

¹¹⁰ See Scharff, *supra* note 109, at 302; Clayton P. Gillette, *Fiscal Home Rule*, 86 DENV. U. L. REV. 1241, 1245–46 (2009); Richard Briffault, *The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 RUTGERS L.J. 907, 908–09 (2003).

¹¹¹ *What Are the Sources of Revenue for State and Local Governments?*, TAX POL'Y CTR., URB. INST. & BROOKINGS INST. (Jan. 2024), <https://taxpolicycenter.org/briefing-book/what-are-sources-revenue-state-and-local-governments> [<https://perma.cc/K22C-VNNY>]; Scharff, *supra* note 109, at 303–04; Briffault, *supra* note 110, at 928.

¹¹² Ariel Jurow Kleiman, *Tax Limits and the Future of Local Democracy*, 133 HARV. L. REV. 1884, 1887 (2020); ADVISORY COMM'N ON INTERGOVERNMENTAL RELS., CTR. FOR URB. POL'Y & THE ENV'T, TAX AND EXPENDITURE LIMITS ON LOCAL GOVERNMENTS 1 (1995), https://www.lincolnst.edu/app/uploads/legacy-files/gwipp/upload/sources/Alabama/2006/ACIR_Tax_and_Expenditure_Limits_on_Local_Governments_M-194_1995.pdf [<https://perma.cc/6TEW-UUB3>] [hereinafter Advisory Comm'n].

¹¹³ See Briffault, *supra* note 110, at 928.

Such restrictions come in five general varieties.¹¹⁴ First, property tax-rate limits cap the total tax levy on parcels based on their fair market value.¹¹⁵ Examples of such limits include Arizona's and California's limits on overall property taxes to one percent of a property's fair market value.¹¹⁶ These limits may apply to all property, but some, like Arizona's, apply only to residential property.¹¹⁷ Debt service is regularly excluded from these limits.¹¹⁸

Second, a majority of states impose limits on the rates of specific types of property taxes, such as county or school taxes.¹¹⁹ These are usually expressed as a specific mill levy limit, such as, for example, Florida's limit of ten mills on county or municipal taxes.¹²⁰ These first two types of limits are usually imposed irrespective of a taxpayer's income; however, some states have "circuit-breaker" laws that limit a property taxpayer's burden based on their income.¹²¹

Third, some states restrict cities' overall property-tax revenue, capping annual increases.¹²² In these systems, tax rates are often adjusted—"rolled back"—to prevent localities from exceeding the increase limit.¹²³ Fourth, a handful of states cap increases in general government revenue or expenditures, including property and other tax revenues, for some or all governmental entities.¹²⁴

Fifth, over a quarter of states limit assessed-value increases.¹²⁵ These systems establish a base-year value for a parcel and tie assessed-value increases to inflation or a fixed percentage until the parcel is sold.¹²⁶ Then, the base-year value is reset to market value, which restarts the cycle of limits on assessed valuation increases.¹²⁷ For example, California allows assessments to increase at the same rate as the consumer price index, up to two percent, while other states impose fixed limits on the rate of increase.¹²⁸ Some states, including Arizona and California, limit assessment increases on a parcel-by-parcel basis,

¹¹⁴ A sixth category requires local governments to provide public notice or disclosure of proposed tax increases, but this category is less relevant to this Article's discussion of value-capture. See ADVISORY COMM'N, *supra* note 112, at 49. Not included in this list are balanced budget laws, which typically apply at the state level and also sometimes apply to local governments. See Harold W. Elder, *Exploring the Tax Revolt: An Analysis of the Effects of State Tax and Expenditure Limitation Laws*, 20 PUB. FIN. Q. 47, 51 (1992) (noting that forty-nine states maintain balanced-budget laws).

¹¹⁵ ADVISORY COMM'N, *supra* note 112, at 11.

¹¹⁶ CAL. CONST. art. XIII A, § 1; ARIZ. CONST. art. IX, § 18.

¹¹⁷ See ADVISORY COMM'N, *supra* note 112, at 13; ARIZ. CONST. art. IX, § 18.

¹¹⁸ ADVISORY COMM'N, *supra* note 112, at 13.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 17.

¹²¹ See Kleiman, *supra* note 112, at 1895–96; CLARENCE Y.H. LO, SMALL PROPERTY VERSUS BIG GOVERNMENT: SOCIAL ORIGINS OF THE PROPERTY TAX REVOLT 18–20 (1990). One example of a circuit-breaker law is in Michigan, where elderly taxpayers earning less than a certain amount are exempt from paying property taxes. See MICH. COMP. LAWS § 206.520 (2025).

¹²² See ADVISORY COMM'N, *supra* note 112, at 27.

¹²³ *Id.*

¹²⁴ *Id.* at 43.

¹²⁵ See JOAN YOUNGMAN, A GOOD TAX: LEGAL AND POLICY ISSUES FOR THE PROPERTY TAX IN THE UNITED STATES 196 (2016); ADVISORY COMM'N, *supra* note 112, at 2.

¹²⁶ YOUNGMAN, *supra* note 125, at 196.

¹²⁷ *Id.*

¹²⁸ See CAL. CONST. art. XIII A, § 2(b); ADVISORY COMM'N, *supra* note 112, at 39.

while others, such as Iowa, impose a limit on the increase in overall assessed valuation on a statewide basis.¹²⁹

In addition to the foregoing limits, some states cap cities' ability to impose other types of taxes or fees, including sales, income, and real estate transfer taxes.¹³⁰ Although sales and income taxes are not technically forms of value-capture (i.e., they don't raise revenues from growth in land wealth), they are a means by which cities collect revenue that stems from their infrastructure investments.¹³¹ Real estate transfer taxes, while not usually considered property taxes, capture some value from growth in land values, but impose a percentage tax on the entire market value of the transacted property.¹³²

States that impose overall revenue limits on local governments indirectly control their ability to impose non-property taxes.¹³³ For instance, in 1996, California voters approved Proposition 218, which requires voter approval for any new tax, including those such as sales or income taxes.¹³⁴ Missouri maintains a similar rule.¹³⁵ Other states maintain constitutional caps on sales taxes, or have limited their localities' authority to impose other revenue measures like fees, as a belt-and-suspenders means of ensuring that localities do not circumvent taxation limits.¹³⁶ And several states prohibit local governments from collecting real estate transfer taxes.¹³⁷

Most of the foregoing tax limits were enacted in the late 1970s,¹³⁸ originating as part of an anti-tax social movement focused specifically on property taxes.¹³⁹ This "tax revolt" followed a period when home values rose faster than inflation, thus increasing property taxes; moreover, states had recently attempted to rein in the practice of "fractional assessment," whereby local assessors valued real property lower than its fair market value, subsidizing homeowners.¹⁴⁰ The result of these limits has been to effectively remove property taxes (and some other taxes) from the normal political process,

¹²⁹ *Id.*

¹³⁰ See Briffault, *supra* note 110, at 931–32.

¹³¹ See Lawrence C. Walters, *Are Property-Related Taxes Effective Value Capture Instruments?*, in *VALUE CAPTURE AND LAND POLICIES* 189 (Gregory K. Ingram & Yu-Hung Hong eds., 2012).

¹³² See *id.*

¹³³ See Briffault, *supra* note 110, at 931.

¹³⁴ CAL. CONST. art. XIII C, §§ 1–3; see also Lauren Shores Pelikan, *State Constitutional Limitations to Cities Taxing the Digital Economy*, 43 VA. TAX REV. 469, 500 (2024).

¹³⁵ MO. CONST. art. X, § 18; Pelikan, *supra* note 134, at 497.

¹³⁶ See Gillette, *supra* note 110, at 1246; Briffault, *supra* note 110, at 936–37.

¹³⁷ See generally Charles Allen Szypszak, *The Legal History, Incongruous Variations, and Outer Reaches of the Real Estate Transfer Tax*, 57 REAL PROP., TR. & EST. L.J. 275 (2022).

¹³⁸ See Kleiman, *supra* note 112, at 1893; YOUNGMAN, *supra* note 125, at 194; Kirk J. Stark, *The Right to Vote on Taxes*, 96 NW. U. L. REV. 191, 192 (2001); ISAAC WILLIAM MARTIN, *THE PERMANENT TAX REVOLT: HOW THE PROPERTY TAX TRANSFORMED AMERICAN POLITICS* 2 (2008); Elder, *supra* note 114, at 48.

¹³⁹ See MARTIN, *supra* note 138, at 2; Advisory Comm'n, *supra* note 112, at 1.

¹⁴⁰ See Elmendorf & Shanske, *supra* note 30, at 521; MARTIN, *supra* note 138, at 6–9 (describing the practice of fractional assessment as "the largest single government housing subsidy in the postwar era and . . . among the largest categories of social expenditure of any kind, direct or indirect"). The economist William Fischel has also pointed to California's Proposition 13 as a response to earlier California court decisions that effectively withdrew local decision-making related to school finance. See WILLIAM A. FISCHEL, *THE HOMEVOTER HYPOTHESIS* 108–18 (2001) (citing *Serrano v. Priest*, 5 Cal. 3d 584 (1971)).

imposing hard caps and requiring voter approval for new or increased taxes or revenues.¹⁴¹

Tax and revenue limits have several social, economic, and fiscal consequences. First, they benefit homeowners and long-term landowners by restricting tax-bill increases from the time of purchase.¹⁴² This benefit accrues especially to businesses and wealthy residents, as more valuable properties—and properties that rapidly increase in value—typically receive larger tax breaks over long periods.¹⁴³ Second, these laws can diminish public services and amenities.¹⁴⁴ Third, tax and revenue limits require cities to identify alternative revenue sources that, in some instances, are more regressive or elastic than property taxation.¹⁴⁵ For instance, some places may become more reliant on sales tax or fee revenue, both of which tend to be regressive, if property-tax revenues are reduced.¹⁴⁶ Consumption taxes and fee-for-service revenues also tend to benefit and attract wealthy residents.¹⁴⁷

Fourth, these laws often result in pushing local government functions to special districts, which are usually formed to finance and operate specific government functions or manage local government amenities and services across smaller geographies than general-purpose municipal governments.¹⁴⁸ Indeed, the number of special districts in the United States has grown sharply since the enactment of property-tax limits.¹⁴⁹ Despite tax-limit advocates'

¹⁴¹ See MARTIN, *supra* note 138, at 3.

¹⁴² See *id.* at 13–14.

¹⁴³ See *id.* at 14; Kleiman, *supra* note 112, at 1896.

¹⁴⁴ See Iris J. Lav & Michael Leachman, *State Limits on Property Taxes Hamstring Local Services and Should Be Relaxed or Repealed*, CTR. ON BUDGET & POL'Y PRIORITIES (July 18, 2018), <https://www.cbpp.org/research/state-budget-and-tax/state-limits-on-property-taxes-hamstring-local-services-and-should-be> [<https://perma.cc/4MMS-S9V3>]; MARTIN, *supra* note 138, at 14; Iris J. Lav & Erica Williams, *A Formula for Decline: Lessons from Colorado for States Considering TABOR*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 15, 2010), <https://www.cbpp.org/research/a-formula-for-decline-lessons-from-colorado-for-states-considering-tabor> [<https://perma.cc/Y2MU-69KL>].

¹⁴⁵ See FARHAD KAAB OMEYR ET AL., CITY FISCAL CONDITIONS 2022 12 (2022), <https://www.nlc.org/wp-content/uploads/2022/10/2022-City-Fiscal-Conditions-Report.pdf> [<https://perma.cc/G7RL-Z3MC>]; NLC REPORT, *supra* note 109, at 7; Elmendorf & Shanske, *supra* note 30, at 521; Kleiman, *supra* note 112, at 1887–88; Scharff, *supra* note 109, at 300, 314–16; Lav & Leachman, *supra* note 144, at 12; Gillette, *supra* note 110, at 1242; Reynolds, *supra* note 91, at 376–77; Briffault, *supra* note 110, at 932. Regressive taxes place greater burdens on poorer taxpayers; in comparison, a progressive tax takes higher percentages of income and wealth as they increase. See YOUNGMAN, *supra* note 125, at 19. The shift to other revenue sources, such as sales taxes, also drives development decision-making: cities reliant on sales taxes tend to prioritize commercial retail development over housing or other construction. See Scharff, *supra* note 109, at 312–13.

¹⁴⁶ See YOUNGMAN, *supra* note 125, at 32 (describing sales taxes as “the most politically palatable replacement” for property taxes); Lav & Leachman, *supra* note 144 at 1; Advisory Comm'n, *supra* note 112, at 1.

¹⁴⁷ See Gillette, *supra* note 110, at 1248–49 (asserting that wealthier people support exactions because they deliver community benefits and sales taxes as they are less redistributive than property taxes).

¹⁴⁸ See Briffault, *supra* note 110, at 938; Advisory Comm'n, *supra* note 112, at 1 (noting that special districts are often formed to enable small geographies to receive a defined set of public services).

¹⁴⁹ See Jeremy L. Hall & Michael W. Hail, *Special Districts*, CTR. FOR THE STUDY OF FEDERALISM (2006), <https://federalism.org/encyclopedia/no-topic/special-districts/> [<https://perma.cc/VS86-TNL6>].

goals of reducing taxes and government spending, research suggests these measures have not conclusively reduced the size of government.¹⁵⁰

Finally, tax limits have implications for local control and democracy. In many instances, tax and revenue limits may be overridden—at least temporarily—with voter approval.¹⁵¹ Although some scholars argue that tax limits reduce local control by shifting power to states,¹⁵² others argue that such limits—particularly those that allow for voter overrides—empower voters, improve government responsiveness, encourage disclosure of public information, and increase voter satisfaction with government.¹⁵³ Yet voters may not always understand taxes and public financing, and tax plebiscites are susceptible to special-interest influences.¹⁵⁴ Moreover, placing tax or revenue increases on local ballots is a fiscal burden, as local governments must conduct more elections and distribute required information to voters.¹⁵⁵ And where voters are asked to approve new taxes, they may naturally favor those, like sales taxes, that tend to export tax burdens to non-resident taxpayers compared with property taxes on residents.¹⁵⁶

Thus, for cities that make wealth-generating infrastructure investments, tax and revenue limits may cap their derivative benefits. Tax-rate limits allow localities to receive some benefit from their investments, subject to the cap. However, in states that cap assessed valuation or overall revenue, localities may be particularly constrained in their ability to realize a return on their investments. These laws incentivize long-term landownership and simultaneously disincentivize redevelopment that could increase transit usage, transit-oriented economic development, and produce additional tax revenue. Meanwhile, such limits secure “double” windfalls for incumbent landowners—increased land values *and* low taxes—at the public’s expense. Given property-tax limits’ implications for value-capture, cities could look to fees or exactions, but as the next section details, legal limits in that area compound the challenge.

B. Exactions and the Unconstitutional Conditions Doctrine

Exactions, including property dedications, in-kind public improvements, and fees charged to developers, could, as discussed in Section I.B, serve as a value-capture mechanism. However, three important and interrelated legal

¹⁵⁰ Colin H. McCubbins & Mathew D. McCubbins, *Cheating on Their Taxes: When Are Tax Limitations Effective at Limiting State Taxes, Expenditures, and Budgets?*, 67 TAX L. REV. 507, 542 (2014); Elder, *supra* note 114, at 49.

¹⁵¹ Kleiman, *supra* note 112, at 1922; Briffault, *supra* note 110, at 929; Stark, *supra* note 138, at 193.

¹⁵² See, e.g., Scharff, *supra* note 109, at 300, 314–16 (observing that revenue limits preclude voters from holding their elected leaders to account, and further noting that such limits restrict innovation in municipal fiscal policy); Gillette, *supra* note 110, at 1254; Briffault, *supra* note 110, at 950–54; Advisory Comm’n, *supra* note 112, at 1.

¹⁵³ See, e.g., Kleiman, *supra* note 112, at 1888, 1899–1901.

¹⁵⁴ *Id.* at 1901, 1934.

¹⁵⁵ *Id.* at 1937–38; Stark, *supra* note 138, at 202.

¹⁵⁶ Stark, *supra* note 138, at 220–21, 230–31.

mechanisms restrain the use of exactions for value-capture, including state enabling laws, restrictions on unlawful taxes, and the unconstitutional conditions doctrine. Each of these limits is discussed in turn below.

First, local exactions are an exercise of the police power authorized by state enabling laws and constrained by state courts.¹⁵⁷ State courts reviewing the legality of local exactions tend to focus on whether they are authorized under these enabling laws.¹⁵⁸ Whereas most state courts have held obligations to make on-site improvements in connection with new subdivisions to be lawful exercises of the police power, they have differed in their analysis of off-site requirements, cash-in-lieu alternatives, and impact fees.¹⁵⁹

Today, state enabling laws may prohibit exactions' use for value-capture and social betterment purposes. In Colorado, for example, localities may collect impact fees only to defray the cost of capital facilities necessitated by new development.¹⁶⁰ Colorado law requires cities to determine the cost of required facilities, expressly prohibiting them from using fees to remedy pre-existing deficiencies.¹⁶¹ It also provides detailed standards for collecting and accounting for fees, including that they be maintained in a separate, interest-bearing account and used only for the purpose for which they were initially collected.¹⁶² Similarly, California's Mitigation Fee Act requires localities to make findings regarding capital improvement needs every five years, specifically obligates them to identify a nexus between required fees and their purposes, and expressly prohibits the use of impact fees for general-revenue purposes.¹⁶³

Colorado also requires any individualized, discretionary condition on a land-use approval to bear an essential nexus between the condition and a legitimate governmental purpose, and to be roughly proportional to the anticipated impact of the proposed development.¹⁶⁴ Colorado authorizes localities to offer a cash-in-lieu option for developers, and further restricts localities from imposing discretionary conditions unless the condition "is based on duly adopted standards that are sufficiently specific to ensure that the condition is imposed in a rational and consistent manner."¹⁶⁵ Taken together, these types of enabling-law limits preclude their use for value-capture and social-equity expenditures.

Second, the delineation between exactions and taxes affects whether exactions may be used for value-capture and public benefit.¹⁶⁶ Exactions are sometimes challenged as improper taxes if they are imposed without voter approval

¹⁵⁷ See Rosenberg, *supra* note 90, at 207–08.

¹⁵⁸ See *id.* at 218; R. Marlin Smith, *From Subdivision Improvement Requirements to Community Benefit Assessments and Linkage Payments: A Brief History of Land Development Exactions*, 50 L. & CONTEMP. PROBS. 5, 10 (1987).

¹⁵⁹ See Smith, *supra* note 158, at 7–9, 10, 14–15.

¹⁶⁰ See COLO. REV. STAT. § 29-20-104.5(1) (2025).

¹⁶¹ See COLO. REV. STAT. § 29-20-104.5(2) (2025).

¹⁶² See COLO. REV. STAT. §§ 29-1-801–803 (2025).

¹⁶³ See CAL. GOV'T CODE § 66001(d)(1) (2025).

¹⁶⁴ See COLO. REV. STAT. § 29-20-203(1) (2025).

¹⁶⁵ See COLO. REV. STAT. § 29-20-203(1.5)–(2) (2025).

¹⁶⁶ See Smith, *supra* note 158, at 15.

as may be required by state law for new taxes.¹⁶⁷ In these cases, courts consider whether exactions are imposed for general-revenue raising and deposited into general funds, or instead, intended to offset development impacts or benefits to the payor.¹⁶⁸ The former are usually found to be taxes, whereas the latter are not. However, this delineation between exactions and taxes means that exactions usually cannot be assessed for general public benefit, as they must bear a relationship to a particular development project's impact, effectively negating exactions' prospective use for value-capture and its attendant government expenditures.

Third, the unconstitutional conditions doctrine, which is generally concerned with whether the government may require a party to relinquish a constitutional right in exchange for a discretionary benefit, circumscribes exactions' use for anything but impact mitigation.¹⁶⁹ The problem of unconstitutional conditions regularly arises in land use when the government requires a landowner to dedicate land, provide public amenities, or pay money in exchange for development permission.¹⁷⁰ For example, cities often condition their issuance of a building permit on the landowner's uncompensated conveyance of land to expand an adjacent street.¹⁷¹ In this instance, the landowner must forego her right to compensation for the government's acquisition of her property to receive the benefit of the building permit.¹⁷² Other types of exactions that have been drawn within the ambit of the doctrine include cash-in-lieu payments,¹⁷³ public improvements requirements,¹⁷⁴ and even generally applicable impact fees.¹⁷⁵

Courts carefully scrutinize these requirements.¹⁷⁶ In *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*, the Supreme Court articulated a two-part test requiring the government to demonstrate, first, an essential nexus between the requested condition and the purpose of the underlying

¹⁶⁷ See *supra* notes 144–147 and accompanying text.

¹⁶⁸ See, e.g., *Home Builders Ass'n of Cent. Ariz. v. Riddell*, 510 P.2d 376 (Ariz. 1977); *Lafferty v. Payson City*, 642 P.2d 376 (Utah 1982); *Greater Franklin Developers Ass'n v. Town of Franklin*, 730 N.E.2d 900 (Mass. 2000).

¹⁶⁹ See Richard A. Epstein, *Forward: Unconstitutional Conditions, State Power, and the Limits of Consent*, 102 HARV. L. REV. 4, 6–7, 10 (1988).

¹⁷⁰ See *Sheetz v. County of El Dorado*, 601 U.S. 267, 275 (2024).

¹⁷¹ See *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 605 (2013).

¹⁷² See *id.*

¹⁷³ See *id.* at 612.

¹⁷⁴ See *id.* at 614.

¹⁷⁵ See *Sheetz v. County of El Dorado*, 601 U.S. 267, 274 (2024) (acknowledging local permitting authority); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 605 (2013) (“Insisting that landowners internalize the negative externalities of their conduct is a hallmark of responsible land-use policy, and we have long sustained such regulations against constitutional attack.”). For purposes of this Article, an “impact fee” is a fee—usually one-time—charged to offset a given real estate development project's impact on one or more public services or amenities. Examples of such fees include school impact fees, calculated based on anticipated student generation from a project, which are used to expand schools; or traffic impact fees, calculated based on the project's anticipated traffic generation, which are used to improve roads and transit systems.

¹⁷⁶ See, e.g., *Sheetz v. County of El Dorado*, 601 U.S. 267, 274 (2024) (generally describing localities' authorities to regulate land use).

restriction, and second, rough proportionality between the condition and the anticipated impact of the subject development.¹⁷⁷ Even where the landowner refuses to accept conditions, the government may be liable for an uncompensated taking.¹⁷⁸ Whereas other types of regulatory takings cases require the claimant to prove an uncompensated taking, in exactions cases, the government bears the burden of proving constitutional propriety.¹⁷⁹

The Supreme Court has not definitively concluded that generally applicable impact fees are subject to heightened scrutiny, but the recent case of *Sheetz v. County of El Dorado* suggests as much.¹⁸⁰ There, the Court held that legislatively adopted exactions, such as a fee or public-improvements schedule, are subject to *Nollan* and *Dolan*, although the justices disagreed on the predicate question of whether fees can be takings in the first instance.¹⁸¹ Given that *user* fees, which users pay to offset the administrative costs of a government service, are not takings, this question remains unsettled.¹⁸² Nevertheless, state courts have conclusively found impact fees to be exactions subject to the unconstitutional conditions doctrine. For example, the North Carolina Supreme Court recently held that impact fees are exactions under the *Nollan-Dolan* framework.¹⁸³

Scholars have probed why courts care about exactions and bargaining away of constitutional rights in the first instance. The unconstitutional conditions doctrine's application to takings is arguably awkward, given that the Constitution only outlaws *uncompensated* takings, courts have upheld in-kind compensation, and a developer's consent to land-use exactions usually means it agrees that permit approval constitutes sufficient in-kind compensation.¹⁸⁴

¹⁷⁷ See *Sheetz v. County of El Dorado*, 601 U.S. 267, 275-76 (2024); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 605-06 (2013); *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994) (discussing the proportionality requirement of the analysis); *Nollan v. Calif. Coastal Comm'n*, 483 U.S. 825, 837 (1987) (referencing the required "essential nexus").

¹⁷⁸ See *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 606-07 (2013).

¹⁷⁹ See Timothy M. Mulvaney, *The State of Exactions*, 61 WM. & MARY L. REV. 169, 177-78 (2019).

¹⁸⁰ See *Sheetz v. County of El Dorado*, 601 U.S. 267, 279 (2024).

¹⁸¹ *Id.* Prior to *Sheetz*, there was disagreement among state and lower federal courts as to whether only adjudicative exactions, which are negotiated individually between developers and governments, should be subject to heightened scrutiny. Compare, e.g., *Ehrlich v. City of Culver City*, 911 P.2d 429 (Cal. 1996) (finding legislatively adopted monetary exaction exempt from *Nollan-Dolan* scrutiny) with *Town of Flower Mound v. Stafford Estates Ltd. Partnership*, 135 S.W.3d 620 (Tex. 2004) (finding legislatively mandated road-improvement requirement to be subject to *Nollan-Dolan* scrutiny). In a concurring opinion in *Sheetz*, Justices Sotomayor and Jackson questioned whether impact fees would be takings if required outside of the permitting context, see *Sheetz*, 601 U.S. at 280-81 (Sotomayor, J., concurring), and Chief Justice Roberts expressed skepticism on this question at oral argument, see Transcript of Oral Argument at 6. On remand at the California Court of Appeals, the impact fees at issue in *Sheetz* were held to be subject to the *Nollan-Dolan* framework. *Sheetz v. Cty. of El Dorado*, 113 Cal. App. 5th 113, 136 (Cal. App. 2025). A petition for certiorari before the U.S. Supreme Court on the question of whether the impact fees are proper under *Nollan* and *Dolan* is pending as of this writing.

¹⁸² See *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 615 (2013).

¹⁸³ See *Anderson Creek Partners, L.P. v. Cty. of Harnett*, 876 S.E.2d 476, 490 (N.C. 2022) (holding that generally applicable water and sewer capacity fees were impact, not user, fees and that they constituted exactions within the *Nollan-Dolan* framework).

¹⁸⁴ See Mulvaney, *supra* note 179, at 182-83.

Yet some courts seem concerned that exactions leave landowners susceptible to extortion and illicit governmental motives, that they surreptitiously redistribute wealth, or that they encourage rent-seeking governments to over-regulate.¹⁸⁵ Moreover, where local governments are captured by dominant factions—such as incumbent residents or businesses—their exactions could be used to benefit such factions at the expense of weaker groups.¹⁸⁶ And where exactions are not comprehensively applied in a jurisdiction, they may undermine planning, compound factional rent-seeking, and result in non-uniform application of the law.¹⁸⁷

Restricting exactions has drawn scholarly criticism. William Fischel asserts, for instance, that unconstrained free bargaining for land-use entitlements would improve efficiency and produce socially beneficial outcomes.¹⁸⁸ He argues that requiring developers to offset impacts, particularly when communities might prefer smaller, unrestricted cash payments, reduces exactions' social utility, and that developers will be less likely to pursue socially and economically beneficial real estate projects because they are deprived of economic rent.¹⁸⁹ He also asserts that formal rules around exactions lead communities to adopt inflexible regulations.¹⁹⁰ Fischel advocates for allowing developers to pay into unrestricted community funds in exchange for more favorable regulation.¹⁹¹ Other scholars assert that, in addition to increasing overall efficiency, exactions better address new development's positive and negative externalities, while formalistic requirements restrict governments' and developers' ability to respond to changing market conditions.¹⁹²

Some also question whether legal constraints on exactions are necessary. Vicki Been has asserted that markets might effectively control exactions, as developers will simply build in places where exactions are lower.¹⁹³ She argues that cities might be pressured to accept new development because of interjurisdictional competition, the possibility that developers might use the initiative system to seek approvals, state strong-arming, and competition from other, non-real estate private-sector investment vehicles.¹⁹⁴ Nevertheless, Stewart Sterk observed that markets may be less effective controls on exaction, as localities do not always compete for new development; they maintain monopolistic control over development due to their unique locational features, and developers' exiting does not address constitutional concerns over government rent-seeking.¹⁹⁵

¹⁸⁵ See Been, *supra* note 100, at 504.

¹⁸⁶ See Epstein, *supra* note 169, at 23–24, 59.

¹⁸⁷ See Stewart E. Sterk, *Nollan, Henry George, and Exactions*, 88 COLUM. L. REV. 1731, 1742–51 (1988).

¹⁸⁸ See Fischel, *supra* note 71, at 104.

¹⁸⁹ See *id.* at 104–05.

¹⁹⁰ See *id.* at 109–11.

¹⁹¹ See *id.*

¹⁹² See, e.g., Rosenberg, *supra* note 90, at 239–40; Sterk, *supra* note 187, at 1734; Mark Fenster, *Takings Formalism and Regulatory Formulas: Exactions and the Consequences of Clarity*, 92 CALIF. L. REV. 609, 662 (2004).

¹⁹³ See Been, *supra* note 100, at 476, 509–10.

¹⁹⁴ See *id.*

¹⁹⁵ See Stewart E. Sterk, *Competition Among Municipalities as a Constraint on Land Use Exactions*, 45 VAND. L. REV. 831, 834 (1992).

Despite these legal constraints, exactions might still offer some value-capture opportunity.¹⁹⁶ They are more popular than taxes because they are perceived by incumbent community members as exporting the cost of public amenities to developers.¹⁹⁷ And whatever their drawbacks, any amount exacted transfers at least some economic rent to the public.¹⁹⁸

C. *Anti-Entrenchment Laws and Norms*

Whereas the two preceding sections described legal restrictions on localities' authority to capture value, this section addresses the primary restriction on their authority to direct what value they capture. Generally, under federal and state constitutions, legislation may not be *entrenched*—that is, the legislature may not bind or restrict a future legislature's action on a given issue.¹⁹⁹ Thus, even if a city committed secondary, unpledged revenues toward a specific program—like Tucson's free transit fares—it cannot guarantee future city legislatures will continue to do so.

Entrenchment comes in several varieties, including prohibiting statutory modification—whether permanently or for a given period—or adding such conditions it as a supermajority or other voting requirement.²⁰⁰ Beyond legal entrenchment, other factors may entrench legislation in practice, ranging from budgeting to physical infrastructure construction or buying or selling government property.²⁰¹ Some of these factors may have a greater entrenching effect than others.²⁰²

Entrenching legislation has some benefits. It avoids the roller-coaster of sudden majoritarian impulses, induces reliance from private parties and other government entities, gives predictability and confidence to markets, and makes it easier for the public to know and understand the law.²⁰³ By offering certainty, entrenched legislation might also increase property values and reduce the government's borrowing costs by giving creditors sufficient confidence so as to reduce interest rates.²⁰⁴

¹⁹⁶ Stewart E. Sterk, Nollan, *Henry George, and Exactions*, 88 COLUM. L. REV. 1731, 1732–34 (1988).

¹⁹⁷ Rosenberg, *supra* note 90, at 208–09. As discussed in Section III.A.4, *supra*, exactions' cost is usually passed either to land sellers or the end-users of a developer's project.

¹⁹⁸ See Mulvaney, *supra* note 179, at 180; Been, *supra* note 100, at 511–12.

¹⁹⁹ See, e.g., Christopher Serkin, *Public Entrenchment Through Private Law: Binding Local Governments*, 78 U. CHI. L. REV. 879, 881 (2011); Eric Posner & Adrian Vermeule, *Legislative Entrenchment: A Reappraisal*, 111 YALE L.J. 1665, 1665–66 (2002); John C. Roberts & Erwin Chemerinsky, *Entrenchment of Ordinary Legislation: A Reply to Professors Posner and Vermeule*, 91 CALIF. L. REV. 1773, 1777–78 (2003); see also *United States v. Winstar Corp.*, 518 U.S. 839, 872 (1996) (approvingly citing Blackstone for the notion that one Congress may not bind a future Congress).

²⁰⁰ See Julian N. Eule, *Temporal Limits on the Legislative Mandate: Entrenchment and Retroactivity*, 12 AM. BAR FOUND. RSCH. J. 379, 384–85 (1987); Roberts & Chemerinsky, *supra* note 199, at 1778.

²⁰¹ See Serkin, *supra* note 199, at 888.

²⁰² See *id.*; Michael J. Klarman, *Majoritarian Judicial Review: The Entrenchment Problem*, 85 GEO. L.J. 491, 542 (1997).

²⁰³ See, e.g., Eule, *supra* note 200, at 391; Serkin, *supra* note 199, at 884, 890, 936–37; Posner & Vermeule, *supra* note 199, at 1671.

²⁰⁴ See Serkin, *supra* note 199, at 890; Roberts & Chemerinsky, *supra* note 199, at 1806–07.

But entrenchment also poses problems. For one, it is antidemocratic in that it effectively removes power from future legislatures and the voters who elect them.²⁰⁵ It is doubtful that one legislature's election authorizes it to withdraw voters' ability to express changed preferences through future elections.²⁰⁶ Moreover, because entrenchment necessarily entails a legislature acting without knowledge of future events that might influence decision-making or public sentiment, it can hamstring the government's ability to respond to changed conditions or public preferences, and impose costs on future generations to pay for present benefits.²⁰⁷ The obvious, more democratic alternative to legislative entrenchment is a legislator winning reelection.²⁰⁸

Anti-entrenchment norms come from English political theory,²⁰⁹ and the Framers generally understood this concept.²¹⁰ The Supreme Court has endorsed the position that state and federal legislative acts may not constrain the power of subsequent legislatures.²¹¹ Nevertheless, scholars debate whether the federal Constitution precludes entrenching legislation. Julian Eule argued that, although the Constitution is silent on entrenchment, its spirit dictates that legislators not extend their influence through entrenching legislation.²¹² Instead, he asserted that the constitutional amendment process exists as the exclusive means to establish rules immune from future legislative interference.²¹³ Similarly, others argue that one of the very purposes of a constitution is to entrench norms,²¹⁴ while some scholars point to the "last in time" principle of statutory interpretation—that later-enacted statutes control

²⁰⁵ See, e.g., Serkin, *supra* note 199, at 885–86; Klarman, *supra* note 202, at 502; Roberts & Chemerinsky, *supra* note 199, at 1796.

²⁰⁶ See Eule, *supra* note 200, at 396; Klarman, *supra* note 202, at 505–06; Roberts & Chemerinsky, *supra* note 199, at 1797.

²⁰⁷ See Stewart E. Sterk, *Retrenchment on Entrenchment*, 71 GEO. WASH. L. REV. 231, 240, 244 (2003); Eule, *supra* note 200, at 387–88.

²⁰⁸ See Eule, *supra* note 200, at 388.

²⁰⁹ See, e.g., FRANCIS BACON, BACON'S HISTORY OF THE REIGN OF KING HENRY VII 133–34 (1901); SIR EDWARD COKE, THE FOURTH PART OF THE INSTITUTES OF THE LAWS OF ENGLAND: CONCERNING THE JURISDICTION OF COURTS 41 (W. Clarke 1817); THOMAS HOBBS, HOBBS'S LEVIATHAN: REPRINTED FROM THE EDITION OF 1651 128, 204 (photo. rept. 1929); HENRY WINTHROP BALLANTINE ET AL., BLACKSTONE'S COMMENTARIES 480 (1915).

²¹⁰ See John David Ohlendorf, *Against Coherence in Statutory Interpretation*, 90 NOTRE DAME L. REV. 735, 757 n.123 (2014).

²¹¹ See, e.g., *United States v. Winstar Corp.*, 518 U.S. 839, 872 (1996) (approvingly citing Blackstone for the proposition that one legislature may not bind a future legislature); *Manigault v. Springs*, 199 U.S. 473, 487 (1905) ("As this is not a constitutional provision, but a general law enacted by the legislature, it may be repealed, amended[,] or disregarded by the legislature which enacted it."); *Ohio Life Ins. & Trust Co. v. Debolt*, 57 U.S. 416, 431 (1853) ("The powers of sovereignty confided to the legislative body of a State are undoubtedly a trust committed to them, to be executed to the best of their judgment for the public good; and no one legislature can, by its own act, disarm their successors of any of the powers or rights of sovereignty confided by the people to the legislative body, unless they are authorized to do so by the constitution under which they are elected."); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). State supreme courts have agreed. See, e.g., *League of Women Voters of Utah v. Utah State Leg.*, 554 P.3d 872, 896 (Utah 2024); *Snell v. Walz*, 6 N.W.3d 458, 470 (Minn. 2024); *City of Dallas v. Employees' Retirement Fund of City of Dallas*, 687 S.W.3d 55, 62 (Tex. 2024); *Pinckney v. Peeler*, 862 S.E.2d 906, 913–14 (S.C. 2021); *Dabbs v. Anne Arundel Cty.*, 182 A.2d 798, 817–18 (Md. 2018).

²¹² Eule, *supra* note 200, at 404.

²¹³ *Id.* at 415.

²¹⁴ See Roberts & Chemerinsky, *supra* note 199, at 1786–87.

over earlier, contradictory statutes—as a recognition of anti-entrenchment principles.²¹⁵ Nevertheless, Eric Posner and Adrian Vermeule argued in an influential article that the Constitution does not expressly prohibit entrenchment and that, because of the benefits discussed above, it should be allowed.²¹⁶

Despite questions about its legality, some examples of entrenchment exist in practice. Governments routinely enter into contracts with private parties and other governmental entities, sometimes even agreeing to maintain particular regulations.²¹⁷ Although courts tend not to order specific performance against governmental entities, damages available as remedies under contract law can have an entrenching effect.²¹⁸ In some cases, state laws sanction entrenchment through contract, as in the case of development agreements that vest, sometimes for decades, a landowner's rights in particular zoning rules.²¹⁹ Sunset provisions in temporary legislation may have some entrenching effect, as they commit future legislatures to deciding whether to reauthorize or modify a program or allow it to lapse.²²⁰ Moreover, alienating public properties precludes future legislatures from controlling their use and disposition; legislatures must service government debts or suffer the consequences of default, and long-term tax abatements are usually enforced against the government.²²¹ In instances involving popular initiatives or referenda, the law specifically allows for entrenchment, as is the situation in many states for voter-approved, multiple-year, fiscal obligations.²²²

In the value-capture context, anti-entrenchment principles might preclude a local government from promising its constituents particular benefits from an infrastructure investment. For example, even if a locality seeks voter approval to build a transit system premised on the idea that any secondary, incremental, unpledged revenues will be used for affordable housing, the anti-entrenchment doctrine would ensure that a future legislature could change course and use the incremental revenues to maintain streets and sidewalks. Although there would likely be political incentives to use incremental revenue as promised, such a promise is not legally enforceable.

Having reviewed the legal limits applicable to value-capture and its use for various public purposes, the next Part discusses how cities can manage some value-capture in the current legal context.

²¹⁵ See Sterk, *supra* note 207, at 233–34 (observing the problem faced by the judiciary when trying to sort out whether a prior legislature's enactment should control over a later-enacted law). This rule was acknowledged by Hamilton in Federalist No. 78. See THE FEDERALIST No. 78 (Alexander Hamilton).

²¹⁶ Posner & Vermeule, *supra* note 199, at 1674–85.

²¹⁷ See *id.* at 1700; Serkin, *supra* note 199, at 892; David Dana & Susan P. Koniak, *Bargaining in the Shadow of Democracy*, 148 U. PA. L. REV. 473, 538 (1999).

²¹⁸ See Dana & Koniak, *supra* note 217, at 538; Serkin, *supra* note 199, at 893.

²¹⁹ See Serkin, *supra* note 199, at 893–94.

²²⁰ See Rebecca M. Kysar, *Lasting Legislation*, 159 U. PA. L. REV. 1007, 1009 (2011). Nevertheless, other scholars disagree with this position. See Roberts & Chemerinsky, *supra* note 199, at 1784.

²²¹ See Serkin, *supra* note 199, at 898–908.

²²² See *id.* at 926–27.

III. CAPTURING AND SUSTAINING VALUE FROM INFRASTRUCTURE INVESTMENTS UNDER CURRENT LAW

For the reasons discussed in the preceding Part, cities have limited options for capturing and pledging a portion of value-added revenue to finance socially equitable activities, like transit fare waivers. To use Tucson's example, the city could create a special taxing district under Arizona's municipal improvement district law, but state law does not presently authorize it to do so.²²³ It could also create an enterprise agency within local government, like a water or sewer system, and levy a transportation utility fee, but that would also require a statutory amendment.²²⁴ What is more, the city's other means of raising new revenue to offset lost fares are impractical; for example, Tucson's existing sales taxes, hotel and motel surcharge, and public utility taxes are among the highest in Arizona.²²⁵

If securing special district authorization from the legislature or increasing taxes is not feasible, then the city could simply calculate the value-added tax revenues attributable to its streetcar system and budget those funds for a variety of legal purposes on an annual basis.²²⁶ To the authors' knowledge, no U.S. city presently does this.²²⁷ If Tucson were to employ this approach, annually updated streetcar value-added revenues would underline the city's annual general fund allocation process.²²⁸ Transit-associated value-added revenues could be reported annually as a line item revenue entry²²⁹ based on all sources generated from all developments along the streetcar corridor. Once identified, the city could use the funds for a variety of community reinvestment and development purposes, such as free transit, below-market loans to expand housing supply along transit corridors, and expanded transit systems elsewhere in the city, among other uses.²³⁰ However, in Tucson's case, the city could not officially bind such revenues to underwrite transit fares, because doing so could contravene state statute.²³¹

²²³ See ARIZ. REV. STAT. § 48-501-48-729 (2025).

²²⁴ For an overview, see FED. HIGHWAY ADMIN., U.S. DEPT. OF TRANSP., VALUE CAPTURE: CAPITALIZING ON THE VALUE CREATED BY TRANSPORTATION – FREQUENTLY ASKED QUESTIONS – TRANSPORTATION UTILITY FEES (2020), https://www.fhwa.dot.gov/ipd/pdfs/value_capture/value_cap_faq_transportation_utility_fees.pdf [<https://perma.cc/3FBJ-UH69>].

²²⁵ ARIZ. TAX RSCH. ASS'N, STATE AND LOCAL LODGING TPT RATES BY CITY (2025), <https://www.arizonatax.org/publication/sales-tax-rates/looding> [<https://perma.cc/2XE7-T8BJ>]; ARIZ. TAX RSCH. ASS'N, STATE AND LOCAL RETAIL TPT RATES BY CITY (2025), <https://www.arizonatax.org/publication/sales-tax-rates/retail> [<https://perma.cc/HG49-TGAW>]; ARIZ. TAX RSCH. ASS'N, STATE AND LOCAL UTILITY SERVICE TPT RATES BY CITY (2025), <https://www.arizonatax.org/publication/sales-tax-rates/utility> [<https://perma.cc/C75F-3KQU>].

²²⁶ A method for creating these estimates annually has been developed by Nelson and Lawlor and can be adapted elsewhere.

²²⁷ NELSON & LAWLOR, *supra* note 3.

²²⁸ City of Tucson, Off. of the City Att'y, Opinion Letter (Jan. 30, 2024).

²²⁹ For the full range of direct and indirect revenues, see, *e.g.*, CITY OF TUCSON, ANNUAL COMPREHENSIVE FINANCIAL REPORT (2024), <https://www.tucsonaz.gov/files/sharedassets/public/v/1/bsd/documents/finance-documents/cot-2024-annual-comprehensive-financial-report.pdf> [<https://perma.cc/FY4Z-4E4R>].

²³⁰ NELSON & LAWLOR, *supra* note 3, at 10.

²³¹ Increased costs associated with increased revenue along the corridor are not considered in this application for several reasons. First, unless analysis shows otherwise, it is assumed that there

Thus, cities are not powerless to obtain some fiscal—and by extension, social—benefits from their infrastructure investments. This Part details in what ways, despite legal roadblocks, cities can capture value and earn a return on their infrastructure investments, and what policy drawbacks exist under the current system. Subsection A discusses how cities can overcome limits on capturing value, while Subsection B addresses how they can continue these benefits. Subsection C offers some observations on how cities' value-capture works in concert with their regulatory approach to development in infrastructure-served areas.

A. Capturing Value Under Current Law

1. Property Taxes

Despite property-tax limits, infrastructure investments can and do generate incremental unpledged property-tax revenues, depending on the nature of the tax limit. Assume a property's value increases by fifty percent because of a nearby transit project. In states like Ohio that impose rate or levy limits, where the overall property-tax rate cannot exceed one percent of a property's fair market value, the subject property's valuation increase could still contribute a fifty percent increase in property-tax receipts from it, albeit limited to the overall rate cap.²³² Similarly, in states like Colorado that cap local revenue growth relative to inflation, the city might receive less than a fifty percent increase in property-tax revenues, but property value increases near the transit line, combined with inflation, might still allow for some incremental property-tax receipts.²³³ However, in states like Michigan or California

is sufficient excess service capacity in existing facilities to accommodate new development; thus, there is little or no marginal effect of new development on existing facilities. If existing facilities have the capacity to serve new development, because they have what is termed "excess capacity," new development imposes no new marginal costs on the city. Indeed, if new development does not absorb excess capacity, the average cost of operations, maintenance, and debt service increases for existing users; bringing excess capacity to zero also minimizes average costs paid by all development. *See generally* ROBERT BURCHELL & DAVID LISTOKIN, *THE FISCAL IMPACT HANDBOOK: ESTIMATING LOCAL COSTS AND REVENUES OF LAND DEVELOPMENT* (2017).

Second, impacts on utilities, such as water, sewer, power, gas, and so forth, are assumed to be mitigated by new revenue generated by new development dedicated for those facilities. These facilities are often financed through enterprise accounts designed to ensure that all costs are borne by users of the system through user fees and not from general taxes paid by all taxpayers even if they do not use the services. *See generally* Theodore J. Stumm & Aman Khan, *Effects of Utility Enterprise Fund Subsidization on Municipal Taxes and Expenditures*, 28 STATE & LOC. GOV'T REV. 103 (1996). Third, social and environmental benefits, *see generally* Paulo Anciaes & Jacob Albin Korem Alhassan, *Chapter Seven - Economic and Social Impacts of Public Transport Investments: A Scoping Literature Review*, in 13 ADVANCES TRANSP. POL'Y & PLAN. 227 (Jennifer S. Mindell & Stephen J. Watkins eds., 2024), offset much of the concern about costs even in the presence of sunk costs. Sunk costs occur when investments do not generate expected returns, but decision-makers continue to make them. There is some concern that the sunk cost literature focuses mostly on economic and not social and environmental returns. For a review of the economic bias of sunk cost literature, *see generally* Yizi Chen et al., *Toward a Deeper Understanding of Optimism Bias and Transport Project Cost Overrun*, 54 PROJECT MGMT. J. 561 (2023).

²³² *See* OHIO CONST. art. XII, § 2(D).

²³³ *See* COLO. CONST. art. X, § 20(7)(c).

that cap assessed valuations, the fifty percent property-value hike would probably only negligibly impact local revenues, except in the event the property is conveyed and the property's taxable basis is adjusted to present-day fair market value.²³⁴

In most states with these laws, voters can waive these restrictions to allow cities to collect more taxes.²³⁵ However, the authors are unaware of any U.S. city lifting a cap on taxes or revenues to capture unpledged revenue from infrastructure projects. Moreover, because many states require property-tax rates to be uniform among classes of property and within jurisdictions, voter approval for increasing property taxes or waiving revenue limits might apply jurisdiction-wide rather than in the area specifically benefited by an infrastructure investment, and might therefore prove politically unpopular.²³⁶

2. Other Real Property Levies

As described in Section I.B, two other levies on real property—special assessments and transfer taxes—can capture value, with some limitations. Special assessments may be levied on classes of properties to fund infrastructure projects; however, state laws usually require that properties subject to such assessments proportionately benefit from them.²³⁷ Special assessments are often exempt from constitutional limits on property taxes, although they usually require approval by taxpayers who will be subject to them.²³⁸ Their use has grown since the mid-Twentieth Century, in partial response to tax limits and the perceived efficiency and fairness of requiring a project's beneficiaries to pay for it.²³⁹ Nevertheless, although special assessments capture landowners' economic rent to *fund* infrastructure projects, the requirement that they return a direct benefit to their payors means they are less well-suited to deliver public benefits beyond supporting such projects themselves.

Moreover, at least concerning transit, special assessments have had mixed popularity. In the 1920s, landowners near proposed subway lines—along with their business allies—defeated efforts by New York City to use special assessments to finance their construction.²⁴⁰ However, more recently in Seattle,

²³⁴ See MICH. CONST. art. IX, § 3; CAL. CONST. art. XIII A, § 2(b); YOUNGMAN, *supra* note 125 at 196. In these states, if a transit project generated significant redevelopment, more uncapping might occur as a result of land conveyances, although such limits disincentivize landowners from selling. See Les Picker, *The Lock-in Effect of California's Proposition 13*, NAT'L BUREAU ECON. RSCH. (Apr. 1, 2005), <https://www.nber.org/digest/apr05/lock-effect-californias-proposition-13> [https://perma.cc/NM5S-LVRT].

²³⁵ Kleiman, *supra* note 112, at 1922; Briffault, *supra* note 110, at 929; Stark, *supra* note 138, at 193.

²³⁶ See *The Road to Uniformity in Real Estate Taxation: Valuation and Appeal*, 124 U. PA. L. REV. 1418, 1420 (1976); WADE J. NEWHOUSE, CONSTITUTIONAL UNIFORMITY AND EQUALITY IN STATE TAXATION 9–11 (1959) (discussing various state-law uniformity requirements).

²³⁷ See Briffault, *supra* note 110, at 934; Reynolds, *supra* note 91, at 398.

²³⁸ See *The Problem of Ad Valorem Special Assessments Continues to Grow*, CITIZENS RSCH. COUNCIL MICH. (May 11, 2021), <https://csrcmich.org/the-problem-of-ad-valorem-special-assessments-continues-to-grow> [https://perma.cc/Q2ZU-9TLR]; Briffault, *supra* note 110, at 933.

²³⁹ See Briffault, *supra* note 110, at 933; Reynolds, *supra* note 91, at 399.

²⁴⁰ Mischynski, *Special Assessments*, *supra* note 34, at 315–18.

landowners near a proposed streetcar line provided just over half of the financing for the line's construction by creating a special taxing district that imposes assessments in a graduated fashion based on proximity to the line.²⁴¹ These landowners supported the imposition of the tax because they recognized the wealth-creation potential of the streetcar line.²⁴² Similar measures have been documented in Washington, D.C., relating to the New York Avenue station on the Metro Red Line, and the benefits assessment districts created during the construction of the Los Angeles Metrorail system.²⁴³ Nevertheless, state special-assessment laws differ in what constitutes a benefit, how to measure benefits, and what improvements may be paid for with special assessments, contributing to special assessments' limited use in the transit context.²⁴⁴

Real estate transfer taxes are another means of capturing increases in land values for public benefit. These taxes, levied in most states whether directly or as a documentary fee at the recordation of a deed, are collected when a property is conveyed and typically expressed as a percentage of the total sale price.²⁴⁵ Thus, if property near infrastructure projects transacts for higher values, transfer taxes capture such gains. Despite their widespread usage, transfer taxes have not been closely studied.²⁴⁶ Some studies conducted outside the United States suggest that transfer taxes reduce sales prices and transaction volumes.²⁴⁷ Whereas these levies are more obscure than property or sales taxes regularly incurred by taxpayers, they are usually politically unpopular.²⁴⁸ Moreover, real estate transfer taxes raise fairness questions, as little evidence suggests that the mere conveyance of real property imposes direct costs on the public; however, some advocates suggest they offer a means for the government to capture some benefit from escalating property values.

Yet, like special assessments, transfer taxes are an imperfect value-capture tool. For one, they are levied on the *full value* of transactions, not just the wealth generated from a specific public investment.²⁴⁹ Transfer taxes apply equally whether a seller profits or sells at a loss.²⁵⁰ What is more, because they are incurred only when property is conveyed, transfer taxes are an inconsistent revenue source. Even if landowners experience significant land-value gains from infrastructure projects, they can avoid transfer taxes by holding their properties indefinitely, while realizing gains through leases, joint ventures, or

²⁴¹ See MATHUR, *supra* note 26, at 87–90.

²⁴² See *id.* at 91.

²⁴³ See *id.* at 92–104.

²⁴⁴ See Mischynski, *Special Assessments*, *supra* note 34, at 319–24.

²⁴⁵ *Real Estate Transfer Charges*, LINCOLN INST. OF LAND POL'Y, <https://www.lincolninst.edu/data/significant-features-property-tax/access-database/real-estate-transfer-charges/> [https://perma.cc/8K5S-99MX] (last visited July 30, 2025); Szypszak, *supra* note 137, at 285.

²⁴⁶ See Szypszak, *supra* note 137, at 276.

²⁴⁷ See, e.g., Ben Dachis et al., *The Effects of Land Transfer Taxes on Real Estate Markets: Evidence from a Natural Experiment in Toronto*, 12 J. ECON. GEOGRAPHY 327 (2012); see generally Carolin Fritzsche & Lars Vandrei, *The German Real Estate Transfer Tax: Evidence for Single-Family Home Transactions*, 74 REG'L SCI. & URB. ECON. 131 (2019); see generally Ian Davidoff & Andrew Leigh, *How Do Stamp Duties Affect the Housing Market?*, 89 ECON. REC. 396 (2013).

²⁴⁸ Szypszak, *supra* note 137, at 292–94.

²⁴⁹ *Id.* at 287–88.

²⁵⁰ *Id.* at 288.

leveraging property to secure loans and other value.²⁵¹ Nevertheless, transfer tax receipts are usually unrestricted in their use, and cities that collect them can direct them to a variety of public purposes. Still, however, given their potential to reduce property values and transaction volumes, like special assessments, transfer taxes are likely to be of limited value in generating unpledged revenue.

3. Sales and Income Taxes

Because tax limits mostly relate to property taxes, cities often face fewer restrictions on generating value-added revenues from other taxes, such as sales or income taxes. In Tucson, Sun Link produced an incremental \$5.8 million in sales tax revenues and significant growth in use taxes in the adjacent area.²⁵² Whereas Arizona law restricts property taxes, it does not cap sales or use taxes, meaning Tucson can freely generate revenue from economic activity in the transit corridor.²⁵³ Moreover, although Arizona prohibits cities from levying income taxes, in a state that allowed them, Tucson's employment growth in the transit corridor would have resulted in even more tax receipts.²⁵⁴ Of course, in states that restrict localities' imposition or collection of sales or income taxes, cities' ability to generate these unpledged revenues will be constrained.²⁵⁵ For instance, in Michigan, cities cannot impose and collect most sales taxes, and state law restricts income taxes to a handful of large cities; these would bar Michigan cities from receiving such benefits.²⁵⁶

Although these alternative tax mechanisms might increase cities' returns on their infrastructure projects, they have important drawbacks. First, sales and income taxes are more elastic than property taxes because retail sales and wages suffer during economic downturns.²⁵⁷ Relying on these revenue sources exposes cities to market cycles, meaning unpledged revenues and attendant public benefits might be inconsistent.²⁵⁸ Second, sales taxes are regarded as more regressive than property taxes because lower-income households spend

²⁵¹ *Id.* at 299, 301, 316–20.

²⁵² NELSON & LAWLOR, *supra* note 3, at 114, 120. Tucson's sales taxes are made up of a business transaction privilege tax (a general sales tax), transient occupancy tax (tax on hotel guests), and hotel surcharge taxes. See *Tax Rate Table*, ARIZ. DEPT OF REVENUE, <https://azdor.gov/business/transaction-privilege-tax/tax-rate-table> [<https://perma.cc/2862-N7L5>] (last visited June 20, 2025); NELSON & LAWLOR, *supra* note 3, at 113.

²⁵³ Nevertheless, the Arizona Constitution provides for expenditure limits on local governments that impose caps on their spending based on population change and inflation. ARIZ. CONST. art. IX, § 20(1). The cap can be waived via a local election or supermajority vote of the local governing body. ARIZ. CONST. art. IX, § 20(2).

²⁵⁴ See NELSON & LAWLOR, *supra* note 3, at 26, 121. Arizona has an income-tax sharing system in which it distributes some state income tax receipts to local governments, but these are based on a city's population. See ARIZ. REV. STAT. § 43-206 (2025).

²⁵⁵ See *supra* notes 124–131 and accompanying text.

²⁵⁶ See MICH. CONST. art. IX, §§ 8, 10, 11 (imposing state sales tax and providing for distribution of the same to local governments); MICH. COMP. LAWS §§ 141.502–03 (2025) (authorizing cities, but not villages or other localities, to levy an income tax only if they did so prior to 1995 or if authorized by a public vote).

²⁵⁷ See PELIKAN, *supra* note 134, at 479; OMEYR ET AL., *supra* note 145, at 7.

²⁵⁸ See OMEYR ET AL., *supra* note 145, at 7.

larger shares of their income on consumer goods.²⁵⁹ And because many cities levy income taxes proportionally rather than progressively, they too can be less progressive than property taxes.²⁶⁰

Third, sales and income taxes can distort regional economic development and pose problems for government accountability. Sales taxes are often popular because they push tax burdens onto non-residents, instead of internalizing community revenue needs.²⁶¹ However, high sales taxes can make a community less competitive by discouraging businesses that pay them from locating there or disproportionately driving up the cost of goods.²⁶² Moreover, exporting tax burdens reduces government accountability and efficiency, as non-residents cannot vote in the taxing jurisdiction, and a jurisdiction that exports tax burdens might overdeliver services to its residents.²⁶³ The same problem arises with income taxes on non-residents who commute from other jurisdictions to work in the levying jurisdiction.²⁶⁴

Fourth and finally, sales and income taxes do not address the redistributive premise of value-capture; in fact, they are not really “value-capture” tools at all.²⁶⁵ Sales and income taxes do little to capture infrastructure-generated windfalls for small classes of landowners.²⁶⁶ Although these levies might have negative downstream effects on property values, such effects are attenuated and indirect compared to property taxes’ effects.²⁶⁷ Indeed, if sales and income taxes replaced property taxes, lower property-tax bills could provide an even greater windfall, as low property taxes tend to directly inflate land values.²⁶⁸

Therefore, although cities can and do use sales and income taxes to generate unpledged revenue from their infrastructure investments, these revenue sources have limitations and may produce unintended consequences.

²⁵⁹ See, e.g., Pelikan, *supra* note 134, at 479; See generally *How Sales and Excise Taxes Work*, INST. ON TAX’N & ECON. POL’Y (2011), <https://itep.org/how-sales-and-excise-taxes-work/> [<https://perma.cc/RJ8-WWJH>]; YOUNGMAN, *supra* note 125, at 20. Property taxes are generally considered progressive, since they are effectively taxes on land-based wealth. See generally Rita Jefferson, *The (Mostly Untapped) Power of Local Income Taxes*, INST. ON TAX’N & ECON. POL’Y (2025), <https://itep.org/the-mostly-untapped-power-of-local-income-taxes/> [<https://perma.cc/MD7U-USPP>].

²⁶⁰ See Jefferson, *supra* note 259; Elizabeth Plummer, *Fairness and Distributional Issues*, in *LAND VALUE TAXATION: THEORY, EVIDENCE, AND PRACTICE* 74 (Richard F. Dye & Richard W. England, eds., 2009).

²⁶¹ See Stark, *supra* note 138, at 230; GEORGE R. ZODROW, *STATE SALES AND INCOME TAXES: AN ECONOMIC ANALYSIS* 18–19 (1999) (discussing sales taxes’ popularity when new taxes require a public vote). For this reason, sales taxes are often popular in tourist destinations. See Stark, *supra* note 138, at 231.

²⁶² See Stark, *supra* note 138, at 232.

²⁶³ See CHARLES E. McLURE, JR., *THE TAX ASSIGNMENT PROBLEM: CONCEPTUAL AND ADMINISTRATIVE CONSIDERATIONS IN ACHIEVING SUBNATIONAL FISCAL AUTONOMY* 48 (1999), <https://documents1.worldbank.org/curated/en/817561468329437517/pdf/938830WP0Box380ent0problem00PUBLIC0.pdf> [<https://perma.cc/J3QT-DHPH>]; ZODROW, *supra* note 261, at 18.

²⁶⁴ Nevertheless, where cities impose income taxes on their residents, they often push high earners to other jurisdictions. See FISCHER, *supra* note 34, at 134–35.

²⁶⁵ Hagman & Misczynski, *supra* note 30, at 16.

²⁶⁶ See Korngold, *supra* note 26, at 5; Hagman & Misczynski, *supra* note 30, at 16–18.

²⁶⁷ See Joyce Y. Man & Michael E. Bell, *The Impact of Local Sales Tax on the Value of Owner-Occupied Housing*, 39 J. URB. ECON. 114, 128 (1996).

²⁶⁸ See *id.* at 127.

4. Exactions and Incentive Zoning

Despite the legal rules around exactions, they are an important capital-improvement revenue source for many localities and may allow for some value-capture near infrastructure investments.²⁶⁹ Land-value increases near these projects are sometimes used to justify requiring developers to provide additional amenities that benefit the public at large.²⁷⁰ For example, a city might require developments near a transit station to improve street and sidewalk infrastructure, dedicate land or pay for park improvements, or provide affordable housing units to mitigate gentrification and displacement concerns.²⁷¹ Even if they simply mitigate a given development's impact, these requirements allow the community to capture some of the economic rent from an infrastructure investment that preceded the development project.

Relatedly, some jurisdictions use incentive zoning, deliberately maintaining restrictive zoning and inviting developers to bargain for more permissive regulations.²⁷² Through these bargains, developers offer benefits like parks, transportation improvements, or affordable housing in exchange for a city allowing taller or bulkier buildings or uses not permitted by prevailing zoning.²⁷³ In some cases, cities maintain bonus systems or schedules allowing developers to exceed zoning limits in exchange for predefined public benefits.²⁷⁴

Although most exactions redistribute some value from a developer (or, more usually, new residents and businesses) to the public, their effectiveness in delivering returns on infrastructure investments is, at best, varied.²⁷⁵ Competition from other jurisdictions, political pressures, or liability concerns might drive some cities to exact less than the law allows by, for example, setting impact fees lower than needed to fully offset new developments' impacts.²⁷⁶ Thus, cities that presently undercharge developers could simply charge more to achieve greater value-capture.

²⁶⁹ See, e.g., Elmendorf & Shanske, *supra* note 30, at 525–26; Rosenberg, *supra* note 90, at 179–80, 209; Reynolds, *supra* note 91, at 416–17; ALTSHULER ET AL., *supra* note 34, at 8–10; NELSON ET AL., *supra* note 52, at 66–72.

²⁷⁰ See Been, *supra* note 100, at 483.

²⁷¹ See Elmendorf & Shanske, *supra* note 30, at 521.

²⁷² See, e.g., Manville, *supra* note 30, at 5–6; Jerold S. Kayden, *Zoning for Dollars: New Rules for an Old Game? Comments on the Municipal Art Society and Nollan Cases*, 39 WASH. U. J. URB. & CONTEMP. L. 3, 3–4 (1991); Robert C. Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 YALE L.J. 385, 427–28 (1977).

²⁷³ See Manville, *supra* note 30, at 5–6.

²⁷⁴ See Elmendorf & Shanske, *supra* note 30, at 523. An example is Denver's adoption of incentive zoning around one of its new transit stations to encourage developers to provide affordable housing. See generally Kathleen McCormick, *The 38th and Blake Incentive Overlay: How Denver Used Land Value Capture to Create Affordable Housing in a Redeveloping, Transit-Oriented Neighborhood*, LINCOLN INST. OF LAND POL'Y (2022), <https://www.lincolninst.edu/publications/working-papers/38th-blake-incentive-overlay/> [<https://perma.cc/PPC9-CU4B>].

²⁷⁵ See Ellickson, *supra* note 272, at 400 (describing how existing community members benefit from development charges).

²⁷⁶ See Mulvaney, *supra* note 179, at 180; Been, *supra* note 100, at 511–12; Gregory S. Burge, *The Effects of Development Impact Fees on Local Fiscal Conditions*, in MUNICIPAL REVENUES AND LAND POLICIES 209 (Gregory K. Ingram & Yu-Hung Hong eds., 2010); ALTSHULER ET AL., *supra* note 34, at 114–15.

Of course, some cities might use exactions more aggressively as a value-capture instrument by exacting *more* than a project's impact necessitates and the law technically allows.²⁷⁷ Rational developers are loath to bear the cost, uncertainty, and political backlash of suing a city where they want to build, enabling communities to rent-seek.²⁷⁸ Overcharging is even easier where exactions are negotiated on a project-by-project basis, as developers spend time and capital negotiating to an agreeable outcome and often lack information about the city's treatment of other projects.²⁷⁹ In cities with rent-seeking aims, political support for value-capture might outweigh the downside risk of a successful unconstitutional-conditions claim.²⁸⁰ Alternatively, some cities could reduce base zoning standards to force developers to bargain for zoning relief, entering into development agreements and providing public benefits above constitutionally permissible limits.²⁸¹

Yet exactions also have drawbacks as a value-capture tool. First, their efficacy depends on development occurring.²⁸² Whereas property taxes are consistently generated and relatively inelastic, real estate development is affected by a complex web of factors like market cycles, interest rates, financing and credit availability, labor and materials supplies, regional demand, land availability, and permitting and approval procedures.²⁸³ Although a new infrastructure investment could encourage development, exactions will likely be an inconsistent and highly elastic source of revenue and benefits.

Second, value-capturing exactions generate legal risk. Although some developers may not challenge excessive exactions, higher development charges are likelier to draw legal challenges, which often succeed.²⁸⁴ For some cities, this risk is too great to bear.²⁸⁵

Third, using exactions for value-capture risks suppressing land values and pushing development elsewhere, undermining cities' policy and fiscal goals, such as encouraging transit-oriented development or more efficient infrastructure usage.²⁸⁶ Thus, when employed as a value-capture mechanism, exactions could both fail to yield public benefits and result in underutilization of the infrastructure from which the community desires to capture value.²⁸⁷

²⁷⁷ See Fenster, *supra* note 192, at 666–67; Elmendorf & Shanske, *supra* note 30, at 525–26; Sterk, *supra* note 187, at 1749–50; Fischel, *supra* note 71, at 111; Ellickson, *supra* note 272, at 400.

²⁷⁸ See Fenster, *supra* note 192, at 666–67; Elmendorf & Shanske, *supra* note 30, at 525–26; Fischel, *supra* note 71, at 111.

²⁷⁹ See ALTSHULER ET AL., *supra* note 34, at 54–57.

²⁸⁰ See Fenster, *supra* note 192, at 666–67.

²⁸¹ See Elmendorf & Shanske, *supra* note 30, at 526; Kayden, *supra* note 272, at 3–4.

²⁸² See ALTSHULER ET AL., *supra* note 34, at 3; Vicki Been, *Impact Fees and Housing Affordability*, 8 CITYSCAPE 139, 140 (2005).

²⁸³ See PETER HENDEE BROWN, *HOW REAL ESTATE DEVELOPERS THINK: DESIGN, PROFITS, AND COMMUNITY* 189–210 (2015).

²⁸⁴ See ALTSHULER ET AL., *supra* note 34, at 114–15.

²⁸⁵ See *id.*

²⁸⁶ See Been, *supra* note 282, at 146; Sterk, *supra* note 195, at 845–46; Been, *supra* note 100, at 483; Ellickson, *supra* note 272, at 395–96.

²⁸⁷ See Smith, *supra* note 158, at 30.

Cities must therefore tailor their development charges to their risk tolerance, desired benefits, and optimal development patterns, which may in turn mean foregoing some return on investment.

Fourth, exactions, like sales taxes, tend to be regressive.²⁸⁸ Exactions' cost is mostly borne by either land sellers or the end-users of the developer's project, rather than developers.²⁸⁹ For instance, exactions tend to increase new-house prices, in turn increasing prices for existing homes.²⁹⁰ This pattern disproportionately affects poor households because they spend more of their income on housing.²⁹¹ Moreover, because exactions tend to be levied on housing units irrespective of their sale price, exactions are likelier to suppress the development of lower-priced homes.²⁹² Thus, to the extent cities wish to advance social equity, pursue economic development, or spend on other public policy priorities, exactions may be a counterproductive means of doing so.

Fifth, because most exactions are assessed in-kind, they risk inefficiency.²⁹³ In-kind exactions ensure a community gets what it bargained for, avoid the need for forecasting about uncertain future impacts, and allow land-rich but cash-poor landowners to keep their money.²⁹⁴ They also obscure differential treatment between applicants and aid cities in negotiating for greater benefits.²⁹⁵ However, whereas unrestricted cash payments give cities flexibility to respond to changing community needs, in-kind exactions do not offer such flexibility and may result in a developer oversupplying a public good.²⁹⁶ Given in-kind exactions' prevalence, this problem may be widespread.

Sixth, the universe of possible public benefits available from exactions is comparatively narrow. The law requires that the proceeds of development charges—whether fee or in-kind—go toward mitigating specific impacts.²⁹⁷ Conversely, taxes may be put to any lawful purpose for which general fund revenues may be expended.²⁹⁸ Unrestricted value-capture revenues enable cities to better respond to public needs; for example, a low-income community might desperately need a children's literacy program, yet using exactions to capture incremental land value might produce only new sidewalks or small open spaces.²⁹⁹

²⁸⁸ See ALTSHULER ET AL., *supra* note 34, at 108–09; Been, *supra* note 282, at 146–47; Reynolds, *supra* note 91, at 441.

²⁸⁹ See ALTSHULER ET AL., *supra* note 34, at 98; Fischel, *supra* note 71, at 112. Empirical evidence suggests that these costs are, in most cases, passed on to end users, whether buyers or renters of housing in a residential project, or businesses and their workers or customers. ALTSHULER ET AL., *supra* note 34, at 98–99.

²⁹⁰ NELSON ET AL., *supra* note 52, at 206.

²⁹¹ ALTSHULER ET AL., *supra* note 34, at 108–09.

²⁹² *Id.*

²⁹³ Alterman, *supra* note 32, at 775; Fischel, *supra* note 71, at 75–101; Ellickson, *supra* note 272, at 427, n. 109.

²⁹⁴ Elmendorf & Shanske, *supra* note 30, at 564.

²⁹⁵ Ellickson, *supra* note 272, at 429.

²⁹⁶ Fischel, *supra* note 71, at 101–06.

²⁹⁷ See *supra* Section II.B.

²⁹⁸ 16 McQUILLIN: THE LAW OF MUNICIPAL CORPORATIONS §§ 44:33, 44:240 (3d ed., 2025).

²⁹⁹ Fischel, *supra* note 71, at 101–06; Ellickson, *supra* note 272, at 427.

Taking these drawbacks together, cities could elect to limit their use of exactions as a value-capture tool in infrastructure-served areas and focus instead on encouraging desirable development. While exactions can encourage growth by making it physically possible and more politically acceptable, they risk increasing development costs, potentially rendering some projects infeasible or causing developers to exit the market.³⁰⁰ Exactions are usually not needed to physically enable growth in infrastructure-served areas, but as described above, they could deter development, suppress property-value gains, overdeliver unneeded public goods, and increase housing and real estate costs for prospective residents and businesses.³⁰¹ Thus, cities might instead choose to *relax* exactions in these areas and zone them for more development density.³⁰² This approach might better maximize public benefits of development like vibrant streets and public spaces, more efficient infrastructure usage, more housing units and greater affordability, and growing property-, sales-, and income-tax revenue.³⁰³

Relaxing exactions while allowing more development might seem counterintuitive, given that it would arguably transfer even more wealth to the owners of infrastructure-adjacent properties.³⁰⁴ Nevertheless, the benefits of new development in infrastructure-served areas could outstrip whatever social utility might materialize from requiring developers in infrastructure-rich neighborhoods to provide expensive, yet potentially unneeded public goods to offset their projects' impacts. In any event, cities must weigh their use of exactions for value-capture against other important policy goals, like encouraging transit-oriented and other infrastructure-served development.

B. Sustaining Value

Whereas the preceding section considered how cities can, under current law, derive secondary revenue from their infrastructure projects to support social benefits, this section considers how they can sustain those benefits. Although the anti-entrenchment doctrine generally means that governments cannot guarantee that unpledged revenues generated from infrastructure projects will be directed to particular initiatives,³⁰⁵ this restriction does not

³⁰⁰ See Rosenberg, *supra* note 90, at 210–11; Been, *supra* note 282, at 145–46; Been, *supra* note 100, at 483.

³⁰¹ See Been, *supra* note 282, at 145; Fischel, *supra* note 71, at 104–05.

³⁰² This scenario contrasts with development on the urban fringe, where exactions are often necessary to ensure infrastructure availability, build public support for development, and where their availability could inflate undeveloped property values. See Been, *supra* note 282, at 145.

³⁰³ See, e.g., SHANE PHILLIPS ET AL., UCLA LEWIS CTR. FOR REG'L POLY STUD., THE EFFECT OF MARKET-RATE DEVELOPMENT ON NEIGHBORHOOD RENTS (2021), <https://www.lewis.ucla.edu/research/market-rate-development-impacts/> [<https://perma.cc/8ZSP-ZKXP>]; see also generally Hongwei Dong, *Higher Density Development for Lower Cost Housing? Understanding the Multifamily Housing Market and the Role of Density in Multifamily Home Prices*, 43 J. PLAN. EDUC. & RSCH. 617 (2020); Evan Mast, *The Effect of New Market-Rate Housing Construction on the Low-Income Housing Market*, 133 J. URB. ECON. 103383 (2023); Neuwirth, *supra* note 63.

³⁰⁴ See Michael Manville et al., *It's Time to End Single-Family Zoning*, 86 J. AM. PLAN. ASS'N 106, 109 (2020) (describing how upzoning inflates property values).

³⁰⁵ See Section II.C, *supra*.

preclude localities from getting returns on their infrastructure investments. Instead, as described below, the anti-entrenchment doctrine might actually help them get *better* returns on these investments.

Some benefit could accrue from entrenching how secondary, unpledged revenues from infrastructure investments are spent. It might help garner support for such investments across diverse interest groups.³⁰⁶ For example, if the legislature could guarantee that unpledged revenues from a transit project would be directed to a local free-school-lunch program, transit advocates might receive support from teachers' unions and other education supporters.³⁰⁷ Similarly, entrenching unpledged-revenue expenditures could also induce private investment if the government uses them to provide grants to developers who build affordable housing.³⁰⁸

These benefits are overshadowed, however, by the downsides of entrenching unpledged-revenue spending. For one, it would preclude a city from responding to changing economic and fiscal conditions, technology, and preferences among its electorate.³⁰⁹ Redirecting unpledged revenues from free school lunches to, say, paying snowplow drivers' wages might reflect changing community consensus. Technological change may also merit changes in how unpledged revenues are spent. Moreover, allowing unrestricted changes in the expenditure of unpledged revenues ensures communities will maximize the utility of their infrastructure investments and their reinvested revenues from them.³¹⁰ All of these are good reasons to allow unpledged revenues to be freely redirected as legislatures change over time. The anti-entrenchment doctrine can thus be viewed as a benefit for capturing value from infrastructure investments, not a limitation, rather than a detriment.

C. Zoning as an Unpledged Revenue-Generation Tool

Whereas this Article mostly focuses on cities' fiscal powers, they also have important regulatory powers—namely, zoning authority—that influence whether and how they generate public benefits from their infrastructure projects. Cities' power to regulate land use through zoning is well-documented in legal and planning scholarship.³¹¹ Although local zoning authority is subject to some limits—for instance, zoning cannot be so confiscatory as to constitute a taking of private property—this power is relatively unconstrained compared

³⁰⁶ Sterk, *supra* note 207, at 236.

³⁰⁷ *See id.*

³⁰⁸ *See* Serkin, *supra* note 199, at 936.

³⁰⁹ *See* Roberts & Chemerinsky, *supra* note 199, at 1810–12.

³¹⁰ *See* Fischel, *supra* note 71.

³¹¹ *See, e.g.,* Brian J. Connolly, *The Black Box of Single-Family Zoning Reform*, 65 B.C. L. REV. 2327, 2354–66 (2024); M. NOLAN GRAY, *ARBITRARY LINES: HOW ZONING BROKE THE AMERICAN CITY AND HOW TO FIX IT* 11–47 (2022); SONIA A. HIRT, *ZONED IN THE USA: THE ORIGINS AND IMPLICATIONS OF AMERICAN LAND-USE REGULATION* 31–59, 111–32 (2014); Sara C. Bronin, *Zoning by a Thousand Cuts*, 50 PEPP. L. REV. 719, 727–31 (2023).

with cities' taxing and spending powers.³¹² As such, localities could use their zoning powers to maximize their returns on infrastructure projects.

Transit-oriented development offers a good example of how cities can and do achieve greater returns on infrastructure projects. In connection with new transit systems, some cities have zoned areas near transit stations for higher residential density and a broad mix of land uses.³¹³ Transit-oriented development is usually billed as a means to achieve greater efficiency; encouraging transit ridership reduces commuting costs and lessens traffic congestion by enabling people to live, work, shop, and recreate in more compact, urban places.³¹⁴ In Tucson, for example, since Sun Link opened, the city has seen over 2,000 new housing units constructed along the line and has also experienced significant employment growth attributable in part to new commercial development in the streetcar corridor.³¹⁵

Transit-oriented development also enhances unpledged revenue.³¹⁶ Increasing zoning density boosts land values, and new development increases parcels' improvement value.³¹⁷ Subject to the limits discussed in Section II.A, these things can still result in incremental unpledged revenue. Moreover, construction activity brings use taxes and permitting fee revenues to cities.³¹⁸ And once a project is completed, new residents and businesses contribute sales and income taxes to cities. In places with strong demand for new residential or commercial development, increasing zoning density along a transit line grows local revenues.

Nevertheless, for political reasons, some cities opt not to zone for high-density development near transit. Zoning politics often suppresses, rather than facilitates, new development.³¹⁹ The immediate neighbors of property

³¹² See Connolly, *supra* note 311, at 2364; Sarah J. Adams-Schoen, *The White Supremacist Structure of American Zoning Law*, 88 BROOK. L. REV. 1225, 1275–76 (2023); Scharff, *supra* note 109, at 301–03.; *Sheetz v. County of El Dorado*, 601 U.S. 267, 274 (2024) (citing *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 123, 127 (1978); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1016 (1992)) (“A use restriction that is ‘reasonably necessary to the effectuation of a substantial government purpose’ is not a taking unless it saps too much of the property’s value or frustrates the owner’s investment-backed expectations.”)

³¹³ See, e.g., Rae Zimmerman, *The Transit-Jobs Nexus: Insights for Transit-Oriented Development*, 44 FORDHAM URB. L.J. 1131, 1132 (2017); David S. Silverman, *Green Transportation: Roadblocks and Avenues for Promoting Low-Impact Transportation Choices*, 43 URB. LAW. 775, 775–76 (2011); Robert H. Freilich, *The Land-Use Implications of Transit-Oriented Development: Controlling the Demand Side of Transportation Congestion and Urban Sprawl*, 30 URB. LAW. 547, 549–50 (1998).

³¹⁴ See Freilich, *supra* note 313, at 550.

³¹⁵ See NELSON & LAWLOR, *supra* note 3, at i–iii.

³¹⁶ See Franklyn Salimbene & William P. Wiggins, *Transit-Oriented Development: The Quest for Sustainable Cities in the Age of the Automobile*, 45 WM. & MARY ENV'T L. & POL'Y REV. 51, 101 (2020); DEAN D. BELLAS, FISCAL IMPACTS OF TRANSIT-ORIENTED DEVELOPMENT PROJECTS 18 (Dec. 2016), <https://todresources.org/wp-content/uploads/2017/02/fiscal-impacts-report.pdf> [<https://perma.cc/QE8F-6MK3>].

³¹⁷ See Manville et al., *supra* note 304, at 109; Yonah Freemark, *Upzoning Chicago: Impacts of a Zoning Reform on Property Values and Housing Construction*, 56 URB. AFFS. REV. 758, 771 (2020).

³¹⁸ See *How Do State and Local General Sales and Gross Receipts Taxes Work?*, TAX POL'Y CTR. (Jan. 2024), <https://taxpolicycenter.org/briefing-book/how-do-state-and-local-general-sales-and-gross-receipts-taxes-work> [<https://perma.cc/LJD9-7MGJ>].

³¹⁹ See, e.g., Brian J. Connolly, *Putting The “Why” In YIMBY*, 57 ARIZ. STATE L.J. 443, 472–73 (2025); KATHERINE LEVINE EINSTEIN ET AL., NEIGHBORHOOD DEFENDERS 81 (2020);

proposed for upzoning often rally together to protest things like the prospective construction impacts, increased traffic, aesthetic incursions, and other effects of new development.³²⁰ Despite the unproven nature of such claims, some residents protest transit improvements and related development, arguing they might serve poor people, bring in non-White people to the community, or invite crime.³²¹

In some cases, anti-density attitudes prompt city officials to zone transit-adjacent properties for lower density. For example, along a light-rail line that is part of Denver's Regional Transportation District, Greenwood Village, Colorado, maintains a planning policy of not allowing new residential development.³²² Instances of low-density zoning near transit stations exist across the United States, suggesting these are not isolated policy choices.³²³ Yet these decisions reduce the unpledged revenue these cities might realize from new development near the transit system and make it less likely that larger numbers of people will use the system.³²⁴

In some circumstances, states have stepped in to preempt local zoning that fails to encourage denser development near transit stations. In Massachusetts, the MBTA Communities Act requires localities to zone areas near Boston-area rail transit stations to allow multi-family apartment buildings.³²⁵ In Colorado, a transit-oriented communities law similarly requires urban jurisdictions to permit up to forty dwelling units per acre in transit-station areas.³²⁶ Although these laws were largely driven by their respective state legislatures' concerns about housing affordability, traffic congestion, and

Roderick M. Hills, Jr. & David Schleicher, *Balancing the "Zoning Budget"*, 62 CASE W. RES. L. REV. 81, 91–96 (2011); WILLIAM A. FISCHER, *THE HOMEVOTER HYPOTHESIS* 8–12 (2001).

³²⁰ See Hills, Jr. & Schleicher, *supra* note 319, at 90–93.

³²¹ See, e.g., ROBERT C. ELLICKSON, *AMERICA'S FROZEN NEIGHBORHOODS: THE ABUSE OF ZONING 194–96* (2022); RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 53 (2017); Sarah Schindler, *Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 YALE L.J. 1934, 1962 (2015); Catherine L. Ross & Nancy Green Leigh, *Planning, Urban Revitalization, and the Inner City: An Exploration of Structural Racism*, 14 J. PLAN. LITERATURE 367, 376–77 (2000); JAMES W. LOEWEN, *SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM* 254–55 (2005).

³²² See GREENWOOD VILL., COLO., *COMPREHENSIVE PLAN 137* (2018), <https://www.greenwoodvillage.com/DocumentCenter/View/18538/2018-Final-Comprehensive-Plan> [<https://perma.cc/JR8W-EPCF>].

³²³ See, e.g., Yonah Freemark, *Spurring Housing Development Near Transit through Federally Funded Land Acquisition*, URB. WIRE (Feb. 27, 2024), <https://www.urban.org/urban-wire/spurring-housing-development-near-transit-through-federally-funded-land-acquisition> [<https://perma.cc/LT7T-HRWX>]; Wesley Jenkins, *America Has a Housing Shortage. Zoning Changes Near Transit Could Help*, URB. INST. (June 2023), <https://apps.urban.org/features/affordable-housing-shortage-and-zoning> [<https://perma.cc/48G2-LLA7>]; MARCEL NEGRET ET AL., REG'L PLAN ASS'N, *HOMES ON TRACK* (2024), <https://rpa.org/work/reports/homes-on-track> [<https://perma.cc/TB5E-KCUV>] (noting that thirty-nine percent of New York-area transit station areas are zoned for low density).

³²⁴ See GRAY, *supra* note 311, at 101 (observing that lower-density zoning reduces transit ridership). Using a monitoring system like Tucson's can demonstrate the revenue implications of transit-oriented development.

³²⁵ See MASS. GEN. LAWS ch. 40A, § 3A (2025).

³²⁶ See COLO. REV. STAT. §§ 29-37-101–210 (2024).

environmental trade-offs between automobile and transit usage, they may also generate increased unpledged revenues to local governments.³²⁷

Outside the transit context, cities have similar opportunities to use their regulatory powers to maximize the unpledged revenue accruing from other infrastructure investments, such as utilities, healthcare facilities, and parks. Nevertheless, given the imperfections of value-capture under current law, some changes may be merited. The next Part discusses two alternatives.

IV. EXPANDING VALUE CAPTURE: A WAY FORWARD

This Part offers a normative take on the question of how cities can increase returns on their infrastructure projects. It recommends relaxing property-tax limits and revenue caps that make it difficult for localities to receive knock-on benefits from their projects. It also sketches out a suggested approach that, with more constrained tax-limit reforms, might more effectively enable cities to deliver benefits from their infrastructure projects to a broader class of residents.

A. Reforming Property Tax and Revenue Limits

To gain better returns on cities' and states' infrastructure limits, states should relax their property-tax and revenue caps. Scholarly debates about property-tax limits typically focus on institutional questions, such as whether such limits and their attendant procedures are normatively good for democracy or government accountability, the optimal taxes for local referenda, and the federalism implications of these limits in the realm of state versus local control.³²⁸ Legal scholarship has additionally explored the implications of these limits for local policy experimentation and physical development.³²⁹ Other scholars have also analyzed property-tax limits as a social movement and their implications for the provision of public services, alternative revenue sources, and whether or not such limits have led to contractions in the size and expenditures of government.³³⁰ Although these debates are important, they cloud the serious practical implications of tax limits for cities' policy choices relating to the built environment and how those choices advance social welfare.

³²⁷ See Andrew Kenney, *Transit-Oriented Communities Bill Passes Colorado Legislature*, COLO. PUB. RADIO (May 7, 2024), <https://www.cpr.org/2024/05/07/transit-oriented-communities-bill-passes-colorado-legislature/> [<https://perma.cc/9PHT-CQ8U>]; Andrew Brinker, *An Ambitious Mass. Housing Law Is Coming to Your Town: A Handbook to the Much-Debated Housing Law That's Upending Town Meetings All over Eastern Massachusetts This Year*, BOS. GLOBE, Apr. 29, 2024, at D.1.

³²⁸ See, e.g., Kleiman, *supra* note 112, at 1890; Scharff, *supra* note 109, at 314–15; Stark, *supra* note 138, at 233–50; MARTIN, *supra* note 138.

³²⁹ See Scharff, *supra* note 109, at 312–17.

³³⁰ See Lav & Leachman, *supra* note 144; Lav & Williams, *supra* note 144; see generally Charles K. Coe, *Preventing Local Government Fiscal Crises: Emerging Best Practices*, 68 PUB. ADMIN. REV. 759 (2008); Elder, *supra* note 114.

Notwithstanding voters' frustrations with them, property taxes are "the most widely used property value-capture tool in the U.S.," and they capture value particularly effectively.³³¹ They are progressive, as the owners of larger and more valuable properties tend to pay more.³³² Because they are levied on a large share of the incumbent population in a jurisdiction, property taxes avoid the fairness concerns associated with exporting tax burdens to non-residents.³³³ Economists generally agree that property taxes are efficient because they align with benefits enjoyed by property owners, they offer fewer opportunities for circumvention, and they tend to distort behavior less than other revenue sources.³³⁴ Moreover, property taxes are relatively easy to administer and understand, particularly compared with other taxes,³³⁵ and they are comparatively inelastic, making them a dependable government revenue source.³³⁶

By effectively capping property taxes' value-capture potential, property-tax limits have unquestionably aided in concentrating wealth among landowners and reducing these taxes' progressivity.³³⁷ In states with rate limits, all landowners benefit, while cities are restricted in their ability to recapture the wealth generated by infrastructure investments.³³⁸ But because rate caps are proportional, landowners with more valuable properties save larger absolute amounts on their property-tax bills. Progressivity is further reduced in states that constrain assessed valuation, where long-term landowners' taxes remain exceptionally low despite potentially rapid increases in their property values, starving the government of any benefit from these increases.³³⁹ Meanwhile, more recent purchasers, their tenants, and customers are left to supply a greater share of local revenue.³⁴⁰

³³¹ MATHUR, *supra* note 26, at 65; YOUNGMAN, *supra* note 125, at 13–14. *But cf.* Hagman & Mischynski, *supra* note 30, at 16 (asserting that property taxes are not a windfall recapture technique because they are tailored specifically to the incremental increase in land value attributable to public investments).

³³² See MATHUR, *supra* note 26, at 65. Whereas some argue that property taxes are regressive, economists tend to disagree; they may contain some regressive elements, but the taxation of land value is nearly universally understood to be progressive. See YOUNGMAN, *supra* note 125, at 19, 28; Plummer, *supra* note 260, at 90 (observing that land ownership is highly concentrated among wealthy people). For a relatively recent example of a counterargument, see Arik Levinson, *America's Regressive Wealth Tax: State and Local Property Taxes*, 28 APPLIED ECON. LETTERS 1234, 1234–35 (2021) (asserting that property taxes are regressive because home values reflect a larger portion of lower-income homeowner households' wealth, other capital assets that form smaller shares of household wealth are not subject to wealth taxes, and younger homeowners who owe more on their mortgages and have higher wealth concentrations in housing are more affected by them).

³³³ See MATHUR, *supra* note 26, at 65; McLURE, JR., *supra* note 263.

³³⁴ See Jared Walczak, *Confronting the New Property Tax Revolt*, TAX FOUND. (Nov. 5, 2024), <https://taxfoundation.org/research/all/state/property-tax-relief-reform-options/> [<https://perma.cc/X8EG-4A7G>]; YOUNGMAN, *supra* note 125, at 3; MATHUR, *supra* note 26, at 65; FISCHER, *supra* note 34, at 160–61.

³³⁵ See YOUNGMAN, *supra* note 125, at 1.

³³⁶ See NLC REPORT, *supra* note 109, at 12–13.

³³⁷ See, e.g., MARTIN, *supra* note 138, at 13–14; Walczak, *supra* note 334; YOUNGMAN, *supra* note 125, at 197–98.

³³⁸ See Walczak, *supra* note 334. Of course, if the rate cap only applies to, say, residential properties, commercial landowners may be penalized.

³³⁹ See YOUNGMAN, *supra* note 125, at 210.

³⁴⁰ See *id.* at 211. This problem was the subject of the Supreme Court's review in *Nordlinger v. Hahn*, in which it held that California's Proposition 13's uncapping of assessed valuation at the

Moreover, because cities ameliorate the effects of property-tax limits by adopting sales taxes and relying on exactions for revenue, they further distort the inherent progressivity and fairness of the property tax, enabling wealthier landowners to capture publicly generated wealth and exporting tax burdens to non-voters.³⁴¹ And by limiting the public's capture of more land-value increment from infrastructure projects, fares paid by transit riders and sales taxes paid by consumers to support transit systems' construction effectuate a wealth transfer from these (often poorer) system users and consumers to a narrow class of landowners.³⁴² What is more, absent these limits, the government could use incremental unpledged revenue to provide amenities or services that, in addition to the transit system, disproportionately benefit poor and middle-class households.³⁴³ But such limits artificially reduce what the government can collect and spend.

Property-tax limits also distort government decisions regarding infrastructure investments and the built environment. If the public received greater returns from these projects, agencies might be better positioned to win political support for them. Given America's backlog of infrastructure needs and the necessity for infrastructure that will mitigate climate change's effects and increase economic development, encouraging support for such projects is critical.³⁴⁴ Relaxing such limits would also provide incentives for cities to adopt zoning and other regulations that maximize the use of infrastructure projects. For instance, if cities did not need to pursue sales and income tax receipts, they might be more inclined to zone for more housing or other, more urgently needed uses near transit, utilities, or other infrastructure, which would help them address housing demand while improving infrastructure usage efficiencies and government service delivery.³⁴⁵

Irrespective of their benefits for other purposes, property-tax limits are particularly detrimental to efficient investment returns from public infrastructure. Although property-tax limits are rarely repealed once enacted by voters,³⁴⁶ states and localities could experiment with narrow geographic exceptions to such limits around particular types of infrastructure projects, like transit. To the extent such exceptions could be characterized as ensuring

time of a property's sale—and subsequently high tax rates for newer landowners—did not violate the Equal Protection Clause. 505 U.S. 1, 11–16 (1992).

³⁴¹ See, e.g., *id.* at 20, 211; McLURE, JR., *supra* note 263, at 48; ZODROW, *supra* note 261, at 18.

³⁴² One possible argument for why landowners should be entitled to this value increment is that such increases are, in effect, compensation for the impacts of a nearby transit system; however, the negative externalities of transit are belied by the fact that these systems usually increase land values. See *supra* note 25 and accompanying text.

³⁴³ NELSON & LAWLOR, *supra* note 3, at 18.

³⁴⁴ ASCE, *supra* note 12.

³⁴⁵ Scharff, *supra* note 109, at 312–13; FISCHER, *supra* note 34, at 133; see generally Jeremy Mattson, *Relationships between Density, Transit, and Household Expenditures in Small Urban Areas*, 8 TRANSP. RSCH. INTERDISC. PERSPS. 100260 (2020).

³⁴⁶ One of these rare examples was Colorado voters' repeal in 2020 of the Gallagher Amendment, which restricted residential property taxation as a share of overall, statewide property taxation. See Andrew Kenney, *Four Years after Its Repeal, the Gallagher Amendment Still Over-shadows Colorado Politics*, COLO. PUB. RADIO (Aug. 29, 2024), <https://www.cpr.org/2024/08/29/gallagher-amendment-property-taxes-special-session/> [<https://perma.cc/YVR7-ABHM>]. The impetus for the repeal was a dearth of funding for local governments, particularly in rural areas.

that public infrastructure investments deliver maximum public benefit—with specific benefits enumerated—and avoid unfairly enriching narrow classes of landowners, they might enjoy broader public support than the complete elimination of property-tax limits.

B. A Thought Experiment: The Infrastructure-Increment Tax Zone

Given the presumptive difficulty of wholesale property-tax limit repeals, states could enable local governments to create a form of hybrid special taxing district in areas surrounding infrastructure projects. In these districts, taxes on building improvements could be wholly or partially abated, resulting in what is effectively a land-value or dual-rate tax. In exchange, such districts would be subject to no property-tax limits.³⁴⁷ We call these districts *infrastructure-increment tax zones* (IITZs). This Subsection sketches out how this proposal might work and how the law might facilitate it.

In most localities, property taxes are levied equally on the value of land and improvements.³⁴⁸ Taxing improvements, in addition to land, is sometimes justified because improved properties can impose greater burdens on the government, such as increasing the number of students in local schools or the amount of traffic on local streets.³⁴⁹ However, several scholars, advocates, and policymakers have argued for land-value taxation—which only or mostly taxes land-value, rather than improvement-value.³⁵⁰ Calls for land-value taxation have grown recently in response to the ongoing U.S. housing affordability crisis.³⁵¹ In particular, land-value taxation is advocated as a counterweight to land-banking and speculation, as it tends to penalize landowners who make less than full use of their properties.³⁵²

³⁴⁷ See *infra* note 354 and accompanying text. Pittsburgh, Pennsylvania, uses this abatement approach, and a version of this approach was proposed in a Strong Towns blog post by Rick Rybeck, who called for abating improvements taxes as a backdoor way of introducing land-value taxation. See Bourassa, *supra* note 34, at 17; Rick Rybeck, *If the Land Tax Is Such A Good Idea, Why Isn't It Being Implemented?*, STRONG TOWNS (Mar. 8, 2019), <https://www.strongtowns.org/journal/2019/3/8/if-the-land-tax-is-such-a-good-idea-why-isnt-it-being-implemented> [https://perma.cc/VGK4-W5EA].

³⁴⁸ Joan M. Youngman, *Defining and Valuing the Base of the Property Tax*, 58 WASH. L. REV. 713, 715 (1983).

³⁴⁹ Coughlan, *supra* note 26, at 267.

³⁵⁰ See Jan K. Brueckner, *A Modern Analysis of the Effects of Site Value Taxation*, 39 NAT'L TAX J. 49, 49 (1986).

³⁵¹ See, e.g., Josie F., *How Popular Is Land Value Tax in 2024?*, PROGRESS & POVERTY INST., <https://progressandpovertyinstitute.org/how-popular-is-land-value-tax-in-2024/> [https://perma.cc/KK46-S9EQ] (last visited Nov. 16, 2025); Girard Miller, *A 19th-Century Property Tax Idea Is Back. Can It Revive a Blighted City?*, GOVERNING (Feb. 13, 2024), <https://www.governing.com/finance/a-19th-century-property-tax-idea-is-back-can-it-revive-a-blighted-city> [https://perma.cc/7SNU-R9EF]; Conor Dougherty, *The 'Georgists' Are Out There, and They Want to Tax Your Land*, N.Y. TIMES (Nov. 12, 2023), <https://www.nytimes.com/2023/11/12/business/georgism-land-tax-housing.html> [https://perma.cc/YFP9-UCUS]; Manville, *supra* note 30, at 24.

³⁵² See, e.g., Clanton, *supra* note 34; Manville, *supra* note 30, at 21–22; GEORGE ET AL., *supra* note 31, at 28.

Land-value taxes are rarely used in the United States.³⁵³ Some Pennsylvania cities have used dual-rate systems—where land is taxed at a higher rate than improvements—for many years.³⁵⁴ In 2023, Detroit’s mayor proposed imposing a citywide dual-rate system to combat land speculation that was blamed for driving up housing costs.³⁵⁵ Objections to land-value taxes focus primarily on the difficulty of valuing land independent of its improvements and these taxes’ potential to contribute to the displacement of landowners who lack the liquidity to pay them.³⁵⁶ However, evidence demonstrates that, in places that have adopted dual-rate taxes, with substantially higher levies on land compared with improvements, there is more building construction and lower vacancy.³⁵⁷ Furthermore, compared with customary property taxation, land-value taxes tend to increase land values.³⁵⁸ Where land-value taxes are implemented in small tax zones, they will generally increase development activity and land values.³⁵⁹

With IITZs, cities could encourage efficient development around infrastructure by trading partial or full abatements on improvement taxes for uncapped land-value taxes. Because choices around how to develop land would not affect taxes, such a system, which would effectively be a land-value or dual-rate tax, would encourage full utilization of development rights and reduce vacancy and underutilization in infrastructure-served areas, and would also encourage greater utilization of the infrastructure itself.³⁶⁰ If paired with permissive zoning in infrastructure-served areas, such an approach would advance value-capture while encouraging efficient development patterns. Whereas Henry George advocated land-value taxes to expropriate *all* economic rent attributable to public inputs,³⁶¹ a land-value tax in an IITZ should reflect a considered balance between recouping public investment in infrastructure and delivering on policy priorities, while returning some economic rent to infrastructure-served landowners to encourage investment and development.

³⁵³ See FISCHEL, *supra* note 34, at 132; Bourassa, *supra* note 34, at 11; Rybeck, *supra* note 347. Nevertheless, it is used more extensively in some other countries. Riel C.D. Franzsen, *International Experience*, in LAND VALUE TAXATION: THEORY, EVIDENCE, AND PRACTICE 28 (Richard F. Dye & Richard W. England eds., 2009).

³⁵⁴ Coughlan, *supra* note 26; Wallace E. Oates & Robert M. Schwab, *The Simple Analytics of Land Value Taxation*, in LAND VALUE TAXATION: THEORY, EVIDENCE, AND PRACTICE 60 (Richard F. Dye & Richard W. England eds., 2009).

³⁵⁵ Clanton, *supra* note 33.

³⁵⁶ *Id.*

³⁵⁷ See, e.g., Florenz Plassmann & T. Nicolaus Tideman, *A Markov Chain Monte Carlo Analysis of the Effect of Two-Rate Property Taxes on Construction*, 47 J. URB. ECON. 216, 217 (2000); Wallace E. Oates & Robert M. Schwab, *The Impact of Urban Land Taxation: The Pittsburgh Experience*, 50 NAT’L TAX J. 1, 17 (1997); Steven C. Bourassa, *Land Value Taxation and Housing Development: Effects of the Property Tax Reform in Three Types of Cities*, 49 AM. J. ECON. & SOCIO. 101, 109 (1990).

³⁵⁸ See Zhou Yang, *Differential Effects of Land Value Taxation*, 39 J. HOUS. ECON. 33, 38 (2018).

³⁵⁹ Brueckner, *supra* note 350, at 56.

³⁶⁰ See Coughlan, *supra* note 26; Clanton, *supra* note 34; Brueckner, *supra* note 350, at 56; FISCHEL, *supra* note 34, at 131–32.

³⁶¹ See GEORGE, *supra* note 31, at 36.

Of course, even if IITZs commenced with revenue-neutral land-value taxes, uncapping tax-rate growth might mean that IITZ tax rates might eventually exceed those outside them, pushing investors—and speculators—who hold vacant or underutilized land away from infrastructure-served properties.³⁶² As a normative matter, this is good public policy, as it encourages efficient development patterns. Further, assuming cities pair IITZs with permissive zoning, landowners in IITZs could offset their higher land taxes with larger, more profitable projects. While one might object that such a system would discourage investment and development in the IITZ, if investors drove up market demand outside IITZs, those properties would be subject to higher land-and-improvements property taxes, and transactions on such properties would uncap their assessed values.

To generate support from IITZ landowners, this proposal could also draw on some features of TIF, discussed in Section I.B, *supra*. As they do under TIF, cities could implement a base value for IITZ properties—established before an infrastructure project’s announcement, when the market prices the proposal into land values—and then use incremental revenues for projects that advance community priorities. Like TIF, cities could return a portion of the increment to projects in the IITZ, and could even use it to support beneficial development projects such as those that create affordable housing or provide public amenities. The key difference from a TIF is that, under this proposal, the city would not be obligated to return all—or even some—of the captured tax increment to a developer; instead, the increment could be pledged to social equity-oriented policies and programs.³⁶³

Three legal hurdles might prevent such an approach from becoming a reality. The first is the uniformity principle in property taxation, usually embedded in state constitutions, that generally requires governments to tax similarly situated or like properties within a jurisdiction identically.³⁶⁴ Rooted in equal protection and substantive due process, uniformity requirements are intended to ensure impartiality in taxation and to avoid unfairness between taxpayers.³⁶⁵ Uniformity does not necessarily mean that all properties pay the same amount of taxes, but rather that they have equal tax burdens as a share of properties’ value.³⁶⁶

Nevertheless, in states with uniformity laws, properties are not necessarily taxed equally as a share of their market values. Many states employ

³⁶² See generally Philip Bess, *Henry George’s Land Value Tax: An Idea Whose Time Has Come?*, 2 AM. AFFS. 56 (2018) (arguing that small-area land-value taxation could create value in areas outside of the land-value tax zone).

³⁶³ As of this writing, Colorado’s legislature is considering a bill to allow a sales tax TIF, along with income tax credits for affordable housing projects, in transit-served areas to fund infrastructure and other improvements. Although this proposal is not identical to ours, it includes some similar features: namely, the use of tax increment from real estate development in transit-oriented areas to fund public amenities and return value to the community. H.B. 26-1065, 2026 Reg. Sess. (Colo. 2026).

³⁶⁴ See, e.g., Coughlan, *supra* note 26; U. PA. L. REV. *supra* note 236; NEWHOUSE, *supra* note 236, at 9–11.

³⁶⁵ Philip M. Tatarowicz & Rebecca F. Mims-Velarde, *An Analytical Approach to State Tax Discrimination Under the Commerce Clause*, 39 VAND. L. REV. 879, 959 (1986).

³⁶⁶ See C.J.S. TAXATION § 28 (2024).

fractional assessment, where the taxable value of property is some proportion of, rather than its full, fair market value.³⁶⁷ Among these states, several classify properties according to use or other characteristics and apply differential ratios between their taxable and market values.³⁶⁸ For example, in many states, owner-occupied residential properties are assessed at lower shares of their market values than commercial properties, leading to lower overall property-tax burdens on homeowners.³⁶⁹ Other legal principles operate to differentiate property-tax burdens between different classes of properties. In many states, properties used for charitable purposes are exempt from taxation, and most states also limit taxation of agricultural property.³⁷⁰ Courts have generally upheld differential treatment of properties based on use, location, and other characteristics.³⁷¹

A special taxing area around infrastructure could be attacked as violating uniformity requirements, because it would necessarily mean that properties within the IITZ wouldn't be taxed at the same rates—and under an entirely different structure—than properties outside of it.³⁷² Although this distinction between properties isn't the same as treating them differently according to their use, it would not violate uniformity principles. For one, assuming the establishment of small-area land-value taxes likely will require voter approval in many states, and further assuming that allowing these actions might entail constitutional amendments, such amendments could prevail over pre-existing uniformity requirements. Moreover, property near an infrastructure project is uniquely situated compared to other property.³⁷³ Under these circumstances, differential taxation in a special taxing area hardly violates the principles of equal protection and substantive due process that animate uniformity requirements, as it is not improper discrimination.³⁷⁴ Concerning the land-value tax element of the proposal, Pennsylvania courts have not directly considered the state's longstanding dual-rate and land-value taxation systems under uniformity requirements, but appear to accept that land and improvements could be different classes of property.³⁷⁵ Applying a land-value tax in an IITZ would not irrationally discriminate between properties or taxpayers, but would instead be premised on a parcel's proximity to infrastructure and the government's

³⁶⁷ YOUNGMAN, *supra* note 125, at 102–03.

³⁶⁸ *Id.* at 91.

³⁶⁹ *Id.*

³⁷⁰ *Id.* at 134–35.

³⁷¹ See C.J.S. TAXATION § 51 (2025).

³⁷² Early cases suggested that differential taxation according to a property's location within a jurisdiction might violate uniformity requirements. See, e.g., *Phila., Balt. & Wash. R.R. Co. v. Mayor of Wilmington*, 57 A.2d 759 (Del Ct. Ch. 1948) (citing *Essex Cty. Park Comm. v. West Orange*, 73 A. 511 (N.J. 1909); *In Re State Taxation*, 55 A. 827 (Me. 1903); *Monaghan v. Lewis*, 59 A. 948 (Del. 1905)).

³⁷³ See C.J.S. TAXATION § 28 (2025) (noting the requirement that taxation between equal among similarly situated properties).

³⁷⁴ See *DeKalb Cty. Bd. of Tax Assessors v. CWS SGARR Brookhaven, LLC*, 836 S.E.2d 729, 856 (Ga. Ct. App. 2019) (observing that improper discrimination would violate Georgia's uniformity requirement); *Roque Island Gardner Homestead Corp. v. Town of Jonesport*, 167 A.3d 564, 568 (Me. 2017) (requiring unjust discrimination to find a violation of constitutional uniformity).

³⁷⁵ See Coughlan, *supra* note 26.

legitimate interest in ensuring that value-added accruing from such projects is adequately distributed to the public.

The second hurdle is the likely need for voter support, and thus political feasibility. Many states' property-tax limits are constitutional and would require voter approval to eliminate property-tax limits in IITZs.³⁷⁶ Yet, because IITZs would be geographically circumscribed, this approach may be more politically palatable than the wholesale repeal of tax limits and institution of land-value taxes. Most voters support property-tax limits for self-interested reasons, as repealing them might increase their tax bills, or because they desire greater control over local taxing decisions.³⁷⁷ But, as discussed in Sections II.A and III.A.3, *supra*, voters are often willing to export tax burdens to non-residents. In infrastructure-served areas like transit corridors, a higher proportion of properties may be owned by commercial interests, meaning most voters would not bear the cost of uncapped increases in land-value taxes. Moreover, assuming IITZs represent a small share of the overall number of parcels in a city or state, most voters' tax bills would be unaffected by changes to the tax structure in these areas. Even affected landowners may accept higher land-value taxes, just as transit-adjacent owners have accepted special assessments, on the premise that improvements on their properties would go untaxed or minimally taxed.³⁷⁸

The third hurdle is that, in most cases, cities cannot control the tax levies of overlapping jurisdictions. In most cases, landowners pay property taxes to multiple taxing entities: cities, counties, school districts, water and sewer districts, fire districts, and other special taxing districts.³⁷⁹ Except in the cases of TIF, where cities can usually redirect incremental tax revenue to an urban renewal authority or developer, and tax exemptions for non-profit and charitable uses of property, general-purpose local governments cannot exert control over the imposition of taxes by other taxing entities.³⁸⁰

Under an IITZ system, states would need to decide whether to allow extensions of improvements-tax abatements to overlapping jurisdictions. With TIF, this question is fraught because cities can in most cases unilaterally deny incremental revenue from development projects to school districts, counties, and other overlapping jurisdictions.³⁸¹ However, it need not be as problematic under an IITZ, because the uncapping of land-value taxes would mean that overlapping jurisdictions could share in incremental increases in land-value tax revenues. Given that an IITZ would entail uncapping those increases, overlapping jurisdictions might benefit even more than they would under a traditional property-tax system.

³⁷⁶ See John Dinan, *Constitutional Amendment Processes in the 50 States*, STATE CT. REP., BRENNAN CTR. FOR JUST. AT NYU (July 24, 2023), <https://statecourtreport.org/our-work/analysis-opinion/constitutional-amendment-processes-50-states> [<https://perma.cc/VF94-2EUZ>]. Even if constitutional amendments were unnecessary, in some states, any tax increase requires voter approval. See *supra* notes 151–156 and accompanying text.

³⁷⁷ See Kleiman, *supra* note 112, at 1913–16.

³⁷⁸ See *supra* notes 241–243 and accompanying text.

³⁷⁹ See YOUNGMAN, *supra* note 125, at 76 (describing overlapping jurisdictions).

³⁸⁰ *Id.* at 73, 172–73.

³⁸¹ *Id.* at 73.

Although the foregoing is a simple sketch, subject to further refinement, of one possible response to the problem of capturing value from public infrastructure projects, it may address some of the fairness problems created by current law. Under current law, the construction and operation of major infrastructure projects, like transit, multiply public cost: taxation to construct and operate projects; cost to use the project, which tends to more heavily impact poorer households; and limitations on the secondary, unpledged revenues that can be derived from the project to support other community priorities. Meanwhile, a small class of infrastructure-adjacent landowners receives a windfall. Our proposal highlights states' and cities' opportunity to expand their pools of unpledged revenues and to offer greater returns to their constituents on their infrastructure investments.

CONCLUSION

Current law often means that constructing and operating public infrastructure projects, such as transit, results in a "triple-whammy" of public cost: direct taxes for these projects' development and operation, user fees that disproportionately affect lower-income people, and limited returns on investment that might otherwise serve broader community priorities. Meanwhile, these same laws ensure that a narrow set of landowners receive considerable windfalls. This Article has identified three important legal limits—restrictive state tax and revenue limits, the unconstitutional conditions doctrine impacting exactions, and prohibitions on legislative entrenchment—that collectively operate to lock in this system, hindering cities from fully realizing the secondary, unpledged financial gains from their infrastructure investments.

Amid a pressing national need for infrastructure upgrades and modernization to combat economic stagnation and address the housing and climate crises, states and cities have an opportunity to reconsider their approach to urban infrastructure finance. Tools for value-capture currently exist, but their effectiveness is often curtailed by the above-described limitations. This Article suggests both immediate and longer-term reforms that could expand cities' pools of unrestricted revenues, build public support for critical infrastructure and efficient development patterns, and ensure that taxpayers receive fair returns on their investments.