

Instructions to reader: This is a new chapter in the Unified Development Code. This chapter has been recodified from [EMC 18.36](#). For a summary of the effect of the changes, please visit the Rethink Zoning Library at <https://everettwa.gov/2453/Rethink-Zoning-Library>.

Chapter 19.50 SMALL PROJECT IMPACT FEE

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19.50.010 Title, authority, and purpose.

- A. Title. The ordinance codified in this chapter may be referred to or cited as the small project impact fee ordinance, or “SPIFO,” and will be referred to herein as “this chapter.”
- B. Purpose and Authorization. The purpose of this chapter is to implement the city’s comprehensive plan including its transportation and capital facility elements. This chapter enables the city to collect impact fees from proposed projects that generate additional traffic and are not subject to the city’s transportation mitigation ordinance (TMO) (Chapter 19.51). The fees adopted under this chapter are authorized by and in accordance with the provisions of RCW 82.02.050 through 82.02.090.

19.50.020 Location of definitions and usage.

This chapter adopts by reference the definitions contained in RCW 82.02.090. For terms not defined therein, this chapter adopted by reference the definitions and used contained in Section 19.51.180.

19.50.030 When a transportation impact fee is required.

A project that is not subject to TMO and will generate ten or more average daily vehicle trips is required to pay a transportation impact fee as defined in Section 19.51.100(D), except as otherwise provided in this chapter. The fee assessed under this chapter is and shall be based on a method of calculation that takes into account the factors specified by RCW 82.02.060. There shall be one service area for purposes of this chapter; however, within the core area as defined in Section 19.51.180 trip generation shall be calculated as provided in Section 19.50.080.

19.50.040 Credit for improvements and nonduplication of mitigation.

- A. A person required to pay an impact fee for system improvements under this chapter shall not be required to pay a fee under RCW 43.21C.060, TMO, or any other development regulation for those same system improvements.
- B. The city traffic engineer shall take into consideration and give fair credit for an applicant’s contribution to transportation system improvements for facilities identified in the capital facilities plan that address some or all of a proposed project’s approval related to the proposed project. The city traffic engineer shall also take

into consideration and give fair credit for the contributions made by the subject property owner or his/her predecessor(s) in interest under any transportation funding device, such as a local improvement district (LID), transportation benefit district (TBD), development agreement, or similar mechanism. Any claim for credit made later than the time of application for a building permit shall be deemed to be waived.

- C. The prohibition on duplication limits the city from requiring an applicant to pay more than once for a transportation improvement to address the same environmental impact. It is not a duplicative requirement for an applicant to pay an impact fee for system improvements and to pay for or install transportation improvements that are otherwise authorized by law, provided these different mitigation obligations do not address the same, specific environmental impact resulting from the project.
- D. Agreements may provide for credit for future improvements if the city and applicant agree that the applicant is implementing transportation improvements beyond those required under this chapter.

19.50.050 Option to prepare traffic analysis.

In order to allow the impact fee to be adjusted to consider unusual circumstances in specific cases to ensure that impact fees are imposed fairly or to calculate an adjustment in the standard fee for a particular development that permits consideration of studies and data submitted by the applicant, the applicant has the option of preparing a traffic analysis at his expense to provide a basis for an adjustment in the standard fee. The traffic analysis shall meet the specifications for a traffic analysis called for in Sections 19.51.060 through 19.51.080 and as published in the standards and specifications manual, or as otherwise approved by the city traffic engineer.

19.50.060 Administrative procedures and appeals.

- A. RCW 82.02.070 and 82.02.080 are hereby adopted by reference into this chapter as the administrative procedures for collection and refunding of impact fees under this chapter.
- B. Payment of all transportation impact fees shall be made prior to building permit issuance, except as provided in subsection C of this section.
- C. The deferral of transportation impact fees shall be allowed only for single-family attached and detached construction being constructed by an applicant having a contractor registration number or other unique identification number and in accordance with the following:
 - 1. For this subsection:
 - a. "Applicant" includes an entity that controls, is controlled by, or is under common control with the applicant.
 - b. "Common control" means two or more entities controlled by the same person or entity.
 - c. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise.
 - 2. An applicant wishing to defer the payment of transportation impact fees shall:
 - a. Submit a signed and notarized deferred fee application and completed lien form concurrent with the building permit application for the building subject to the fee; and
 - b. Submit a certification that the applicant has requested no more than a total of twenty deferred impact fee requests in the calendar year within the city; and
 - c. Pay a nonrefundable two hundred fifty dollar administration fee for each unit or lot of a single development project for which the deferral of the fee is requested. Beginning January 1, 2018, and each January 1st thereafter, this fee shall be adjusted in accordance with the most recent change in the Consumer Price Index (CPI) or other official measurement of inflation used by the city. If the change in the CPI or other official measurement of inflation used by the city indicates an increase of less than one percent since the last adjustment of the fees listed herein, there shall be no increase for that year. At such time that the change in the CPI or other official measurement of inflation used by the city for one or more years indicates an increase of one percent or more since the last adjustment of the fees, the cumulative percentage increase since the last adjustment of fees shall be applied.

3. The lien shall:
 - a. Be in a form approved and provided by the city;
 - b. Be signed by all owners of the property, with all signatures acknowledged as required for a deed;
 - c. Include the legal description, property tax account number, and address for each lot or unit the lien will encumber;
 - d. Be binding and subordinate on all successors in title after the recording;
 - e. Be junior and subordinate to a first mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees, but in no case shall the lien be in less than second place.
4. The lien shall be recorded by the applicant, at their own expense, and a conformed copy of the recorded document shall be provided to the city prior to the issuance of the building permit that is subject to the transportation impact fee.
5. Each applicant eligible to defer impact fees shall only be entitled to annually receive deferrals for no more than a total of twenty building permits within the city.
6. The applicant shall be responsible for the payment of all recording fees.
7. The deferred transportation impact fee shall be paid in full prior to whichever of the following occurs first:
 - a. Issuance of a certificate of occupancy;
 - b. The closing of the first sale of the property occurring after the issuance of the applicable building permit for which the fees were deferred; or
 - c. Eighteen months from the date of building permit issuance.
8. If the building for which the deferral of the transportation impact fee is requested is located within a subdivision, unit lot subdivision or short subdivision, the subdivision, unit lot subdivision or short subdivision shall be recorded prior to recording the lien for impact fees and issuance of the building permit.
9. After the applicant has paid all deferred transportation impact fees, the applicant is responsible for submitting a lien release application to the city. The applicant, at their own expense, will be responsible for recording lien releases.
10. Compliance with the requirements of the deferral option shall constitute compliance with subdivision or short subdivision conditions pertaining to the timing of the transportation impact fee payment.
11. If deferred transportation impact fees are not paid in accordance with terms authorized by state law and this section, the city may initiate foreclosure proceedings for the unpaid transportation impact fees and all costs associated with the collection of the unpaid transportation impact fees.
12. A request to defer transportation impact fees under this section may be combined in one application with a request to defer school impact fees under Section 19.52.090.
- D. All fees collected under this chapter shall be obligated or expended on public facilities that are addressed by an adopted capital facilities plan element of a comprehensive land use plan. If fees are earmarked for a specific project, and the city determines that it is not feasible to implement that project within six years (or such other time period established pursuant to RCW 82.02.070(3) on public facilities intended to benefit the development activity for which the impact fees were paid), the fees may be expended or encumbered on a replacement project that provides similar or greater improvement to the transportation system.
- E. The city engineer or designee shall be the official responsible for preparing the annual reports required under RCW 82.02.070.
- F. An applicant's commitment to specific performance to construct a transportation improvement, including any bonds or financial assurance associated with the improvement, shall not be considered a fee under this chapter, regardless of whether a monetary value has been assigned to the improvement in the traffic analysis or other project review documents or agreements.
- G. An applicant may appeal the city traffic engineer's determination of the impact fee required under this chapter by following the administrative appeal procedures for the underlying development approval. If there are no administrative appeal procedures for the underlying development approval, the appeal shall follow the

administrative appeal procedures in EMC 15.02.060 and 15.02.600 for the appeal of minor administration decisions.

19.50.065 Fee exemptions.

- A. The city may, on a case-by-case basis, grant exemptions to the application of the transportation impact fee for new low income housing units in accordance with the conditions specified under RCW 82.02.060(2). To qualify for the exemption, the developer shall submit an application to the planning and community development director for consideration by the city prior to application for building permit. Conditions for such approvals shall meet the requirements of RCW 82.02.060(2), which includes payment of the fee from public funds other than the fee for transportation improvement account. In addition, any approved exemption will require a covenant that will assure the project's continued use for low income housing. The covenant shall be an obligation that runs with the land upon which the housing is located, and shall be recorded against the title of the real property.
- B. The city may, on a case-by-case basis, grant a partial exemption of not more than eighty percent of transportation impact fees, with no explicit requirement to pay the exempted portion of the fee from public funds, for low income housing units, pursuant to the following:
 - 1. The mayor, or designee, may grant an exemption to a low income housing project for each low income unit.
 - 2. The decision to grant, partially grant or deny an exemption shall be based on the public benefit of the specific project, the extent to which the applicant has sought other funding sources, the financial hardship to the project of paying the transportation impact fees, the impacts of the project on public facilities and services, and the consistency of the project with adopted city plans and policies relating to low income housing.
 - 3. An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the director of planning and community development that prohibits using the property for any purpose other than for low income housing. At a minimum, the covenant must address price restrictions and household income limits for the low income housing, and require that, if the property is converted to a use other than for low income housing as defined in the covenant, the property owner must pay the applicable transportation impact fees in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Snohomish County auditor.
 - 4. For purposes of this section, low income housing is defined as any housing with a monthly housing expense that is no greater than thirty percent of fifty percent of the median family income adjusted for family size, for Everett, as reported by the United States Department of Housing and Urban Development.

19.50.070 Application to projects currently underway.

This chapter applies to a subsequent phase of a project for which an application for project level review of the subsequent phase has not been deemed complete as of the effective date of the ordinance codified in this chapter. If a mitigation commitment has been made but has not been fully met by an applicant, the applicant is required to fulfill the commitment and, in addition, may be responsible for complying with the traffic study and mitigation requirements of this chapter. Nothing in this chapter shall be construed to contravene the authority of the responsible official to require or withdraw a SEPA threshold determination as provided in WAC 197-11-310 and 197-11-340(3)(a).

19.50.080 Projects in core area.

For projects within the core area, the fee shall be calculated by using seventy-five percent of project trip generation using the ITE Trip General Manual. If an applicant feels that this results in an overestimate of traffic from their site they have the option to hire a traffic engineer to justify a greater credit based on reasonable trip generation assumptions and analysis of TDM measures.

For purposes of this chapter, the core area is defined in Section 19.51.180.

19.50.090 Interpretation and implementation.

- A. This chapter shall be liberally construed to achieve the purposes set forth in Section 19.50.010.
- B. Nothing in this chapter shall affect the ability of the city to require nonduplicative mitigation of transportation impacts, including collection of fees, under other ordinances and development regulations.
- C. Except as specifically provided in Section 19.50.070, the enactment of this chapter shall not affect any case, proceeding, appeal, or other matter in any court or before the city or in any way modify any obligation, right or liability, civil, or criminal, which may be in existence on the effective date of the ordinance codified in this chapter or as may exist by virtue of any of the ordinances herein superseded or repealed.
- D. This chapter is intended to provide for and promote the health, safety and welfare of the general public, and is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter. It is the specific intent of this chapter to place the obligation of complying with its requirements upon the applicant.

It is the specific intent of this chapter that no provision nor any term used in this chapter is intended to impose any duty whatsoever upon the city or any of its officers or employees, for whom the implementation and enforcement of this chapter shall be discretionary and not mandatory.

Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the city, or its officers, employees or agents, for any injury or damage resulting from the failure of an applicant to comply with the provisions of this chapter, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or done in connection with the implementation or enforcement pursuant to this chapter, or by reason of any action or inaction on the part of the city related in any manner to the enforcement of this chapter by its officers, employees or agents.

- E. The city traffic engineer may interpret the requirements of this chapter on a case-by-case basis, consistent with the purposes set forth in Section 19.50.010. The city traffic engineer and responsible official are authorized to promulgate rules and regulations consistent with the terms of this policy.