

**Instructions to reader:** This is a new chapter in the Unified Development Code. This chapter has been recodified from [EMC 18.40](#). For a summary of the effect of the changes, please visit the Rethink Zoning Library at <https://everettwa.gov/2453/Rethink-Zoning-Library>.

## Chapter 19.51 TRANSPORTATION MITIGATION

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#### **19.51.010 Title, authority, and purpose.**

- A. Title. The ordinance codified in this chapter may be referred to or cited as the transportation mitigation ordinance, or “TMO,” and will be referred to herein as “this chapter.”
- B. SEPA Policies. This chapter is adopted as a policy under SEPA for the purpose of articulating and implementing the city’s SEPA transportation policies, as authorized by RCW 43.21C.060 and Chapter 197-11 WAC. In addition to the policies in this chapter, the city’s SEPA transportation policies include policies in the comprehensive plan (and its land use, shoreline and transportation elements) and other SEPA policies affecting transportation, which have previously been adopted as SEPA policies in EMC 19.43. This chapter is a compilation of and replaces existing previously adopted traffic mitigation ordinances as provided by Section 19 of Ordinance 3387-14.
- C. Purpose and Authorization. This chapter enables the city to: (1) study transportation impacts of proposed private and public projects; (2) identify mitigation measures or other alternatives that would avoid potentially significant adverse environmental impacts of proposed projects; and (3) address any adverse impacts of proposed projects to the transportation system and to local transportation networks.
- D. Fees for System Improvements. This chapter also provides a method of fairly distributing the costs of transportation system improvements in accordance with the impacts resulting from proposed projects. Fees collected under this chapter are intended to mitigate impacts to the transportation system that are reasonably related to new development and may be collected and spent only for public facilities, traffic management, and traffic mitigation programs needed to accommodate new development.

**19.51.020 Location of definitions and usage.**

Definitions and usage for purposes of this chapter are found in Section 19.51.180. Table 1 indicates when a traffic analysis or fee payment is required.

**Table 1: General Requirements to Prepare a Traffic Analysis and/or Pay a Fee to Mitigate Traffic Impacts\***

Number of trips generated	Prepare traffic analysis?	Pay fee for system improvements?
Fewer than 10 new trips per day	No	No
10 or more new trips per day	No	Yes
More than 50 additional peak hour trips	Yes	Yes

\*Any exceptions to these general rules are specified in Sections 19.51.030 through 19.51.050 and 19.51.100 through 19.51.120. Definitions of these terms are found in Section 19.51.180.

**19.51.030 When a fee to mitigate transportation impacts is required.**

A project that will generate ten or more average daily vehicle trips is required to pay a fee to mitigate for its impacts on the transportation system, as summarized on Table 2 and specified in Sections 19.51.100 through 19.51.140.

**19.51.040 When a traffic analysis is required.**

The applicant shall provide the city traffic engineer with a written traffic analysis as part of the city’s project review process whenever a proposed project will generate fifty or more additional peak hour trips, or if deemed necessary by the city traffic engineer. The traffic analysis shall be paid for by the applicant and shall be prepared by a licensed professional engineer or transportation planner with standing in the Institute of Transportation Engineers or is acceptable to the city traffic engineer.

**19.51.050 When a traffic analysis is not required.**

- A. The requirement to submit a traffic analysis does not apply to:
  - 1. Proposed projects that generate fewer than fifty additional peak hour trips, except if deemed necessary by the city traffic engineer;
  - 2. Proposals where SEPA review has already addressed project impacts or is not otherwise required under Chapter 43.21C RCW, Chapter 197-11 WAC, and EMC 19.43; or
  - 3. Projects proposed as “planned actions,” as defined in Section 19.51.180(C), as long as: (a) project-level environmental review confirms that traffic generation is within the thresholds set for the specific planned action, as provided by WAC 197-11-172, Chapter 15.02.500, and the specific planned action ordinance relating to the proposed project, and (b) mitigation elements of the planned action are implemented.
- B. An existing traffic analysis may be adopted or used by the city to determine an applicant’s responsibility for transportation improvements, in accordance with project review and SEPA procedures for the use of and reliance upon existing environmental documents.
- C. Proposed projects on which a traffic analysis is not prepared conform to the provisions of Section 19.51.110.

**19.51.060 Scope of traffic analysis.**

The traffic analysis should include the following, as further specified in this chapter: (A) traffic generated by the project; (B) transportation effects of the project; and (C) measures to avoid or otherwise mitigate adverse transportation effects of the project, which consist of transportation system improvements and/or local transportation improvements.

**19.51.070 Impact analysis.**

Analysis of traffic generation and transportation effects shall use the following methodology:

- A. **Study Area.** The study area shall be defined as the area that includes all of the transportation system that is projected to be used by a minimum threshold of fifty new peak hour trips. The study area shall not be limited to the city limits, but shall include the county, state, and other city roadways. For projects that have region wide traffic impacts, the city traffic engineer may limit the scope of the study area. Region wide impacts will be determined on a case-by-case basis in consultation with the county, state, tribal, and other appropriate jurisdictions.
- B. **Horizon Year.** The traffic analysis shall include impacts for the future horizon year. The horizon year shall generally be based on the year the proposed project is expected to be completed, but shall be:
  - 1. The horizon year shall generally be based on the year the proposed project is expected to be completed.
  - 2. The horizon year shall be no earlier than the final year of the city's adopted capital improvement plan (six years).
  - 3. The horizon year shall be no earlier than six years from the date of the completed project application.
  - 4. If a project will generate new traffic for more than six years, the horizon year shall be the planning horizon for the land use and transportation elements in the comprehensive plan that is in effect at the time of the complete application (i.e., the years remaining between the time of the complete application and the end of the planning horizon used for the adopted comprehensive plan).
  - 5. For any project, the city traffic engineer may make a case-by-case determination of the horizon year, including extension of the horizon year, or the requirement for intermediate analysis years, for projects that are built in phases or designed to be built over a number of years.
- C. **Base Traffic and Growth Factor.** The base traffic for the traffic analysis shall include existing traffic plus traffic generated by any project in the study area that has been previously reviewed under SEPA, any proposed project currently under review by the city, and any additional traffic reasonably foreseeable as deemed appropriate by the city traffic engineer. This additional traffic may include trips generated in other jurisdictions. The applicant may request to use a specific growth factor if the applicant can demonstrate with analysis that such a growth factor is appropriate for the project location and is not inconsistent with the comprehensive plan (including SEPA or other traffic analysis supporting the comprehensive plan). The city traffic engineer may require that a different background growth factor be used when site specific information supports a different factor. Where there is no area specific information, a four percent background growth factor compounded annually shall be used to project the existing traffic to the required horizon year.
- D. **Trip Generation and Distribution.** The traffic analysis shall assign and distribute the proposed project's peak hour trips down to and including the minimum threshold level of fifty new project-generated peak hour trips. Unless otherwise required or approved by the city traffic engineer, trip generation rates shall conform to the latest edition of Institute of Transportation Engineers (ITE) Trip Generation Manual. Where proposed traffic or transportation impacts are not predominantly automobile (for example, trucks, trailers, rail, air or waterborne traffic), the analysis shall identify the type of traffic and mode split in the generation and distribution analysis. Directional distribution shall be determined in consultation with the city traffic engineer. For large projects or in areas experiencing substantial development activity, the city traffic engineer may require directional distribution and trip assignment to be performed using computerized model.
- E. **Level of Service.** The method for analyzing the level of service when required (see Section 19.51.090) shall be the current edition of the Transportation Research Board Highway Capacity Manual and its related computer software, or a method otherwise approved by the city traffic engineer.
- F. **Other Items.** The traffic analysis shall include applicable items in sections of Exhibit 1, attached to the ordinance codified in this chapter, as well as other items relevant to the particular project being reviewed, as determined by the city traffic engineer.

#### **19.51.080 Mitigation analysis and plan.**

The traffic analysis shall identify and/or include the following elements with respect to transportation improvements to mitigate the project's likely transportation impacts: improvements required to maintain level of

service standards, local frontage improvements, proportionate share for planned improvements as identified in this chapter, and any other elements required by the city traffic engineer to adequately mitigate traffic impacts from the project.

The city traffic engineer may promulgate additional rules and standards regarding mitigation analysis and plans. These additional rules shall be published in the city of Everett standards and specifications manual. The city traffic engineer will consult with the responsible official as necessary to ensure that the traffic analysis guidelines provide adequate information on environmental impacts.

- A. Improvements Required by Regulations and Level of Service Standards. Principal improvements needed to comply with city regulations and requirements (including frontage and traffic safety improvements under Chapter 13.68), and improvements proposed to maintain an acceptable level of service under Sections 19.51.090 and 19.51.100.
- B. Transportation Demand Management Analysis. An evaluation of all practical measures that could be included in a transportation demand management (TDM) program to further reduce traffic impacts, for those projects where the city traffic engineer or the responsible official determine under Section 19.51.090 that transportation improvements that could attain level of service "D" may not be practical (i.e., reasonable and capable of being accomplished). TDM program analysis shall also be required for any project in the core area to reduce vehicle trips below seventy-five percent of the standard ITE trip generation rate.
- C. Other Improvements to Address Project Impacts. Improvements proposed or under consideration to address adverse transportation impacts, if any, identified in the traffic analysis, such as bicycle and pedestrian safety, freight mobility, or other measures.
- D. Consistency with Development Regulations or Comprehensive Plan. A proposed analysis of consistency with development regulations or, in their absence, comprehensive plan provisions relating to transportation infrastructure and characteristics of development, for those projects where the city engineer or responsible official concludes that this analysis is needed to assist the city to determine consistency under Title 15, Local Project Review Procedures.
- E. Cost Estimates. Associated planning level cost estimates for the above improvements, including the estimated fair share cost of transportation system improvements calculated under Section 19.51.100, if required by the city traffic engineer or if an applicant does not accept the city's analysis of reasonable mitigation measures.
- F. Proposed Mitigation Plan and Mitigation Commitments. A proposed mitigation plan, which lists, summarizes, or clearly illustrates on figures and/or tables the improvements that the applicant is committed to implement. The proposed mitigation plan shall state whether the applicant: (1) will construct specific transportation improvements or pay the city for the cost of constructing improvements; and (2) will contribute the identified fair share of traffic system improvements.
- G. Identification of Local and System Improvements. The mitigation analysis or plan shall clearly distinguish among:
  - 1. Local transportation improvements (such as site access, sidewalk/curb and gutter, nearby transit stops);
  - 2. Transportation system improvements (such as off-site capacity improvements, or the fair share cost of transportation system improvements as required by Section 19.51.100); and
  - 3. Improvements that are designed to provide both local and system improvements (such as additional lanes or signalization for improving area wide as well as local transportation networks).

#### **19.51.090 Requirements for transportation improvements.**

- A. The city may require the applicant to implement or pay for transportation improvements to address the adverse impacts of a project, including: (1) to meet development regulations or other applicable standards for transportation improvements; (2) to meet adopted level of service standards; and (3) to implement other reasonable measures to avoid or otherwise mitigate adverse impacts to public safety, human health and the environment based on the traffic analysis and project review process.

- B. Nonduplication. An applicant shall not be required to implement or pay for a mitigation measure more than once to address the same specific environmental impact, as provided by Section 19.51.120. This does not preclude the city from requiring a local traffic improvement and the payment of a fee for system improvements if the project impacts occur in a different time or place, or if the local improvement does not address the system impact. For example, if a project would cause congestion and degradation of level of service both locally and system wide, an applicant could be required to mitigate the local impact by providing a turning pocket at an access point, while also paying a fee to make improvements to address level of service impacts on other intersections not addressed by the turning pocket.
- C. Level of Service Improvements. The applicant is required to mitigate the project's transportation impacts to an acceptable level of service through the horizon year.
- D. Acceptable Level of Service. The acceptability of levels of service is defined in subsections (D)(1), (2), and (3) of this section:
  1. Level of service "A" through "D" is considered acceptable.
  2. When the city engineer and the responsible official determine that it is practical to create or maintain a level of service of "D" or better, level of service "E" or "F" is considered not acceptable.
  3. When the city engineer and the responsible official determine that it is not practical to create or maintain a level of service of "D" or better, then the applicant is required to use all practical measures to mitigate the impact on facilities, including all practical transportation improvements and TDM measures. The city will determine on a case-by-case basis whether the resulting level of service is acceptable. The city shall maintain a list of intersections where it has been determined that level of service "E" or "F" is considered acceptable, and will identify the lowest acceptable level of service for each of these intersections. If the adverse impact to level of service is likely to be significant, a detailed alternative analysis is required (see subsection E of this section). The city may recommend alternatives or modifications to the proposed project or may deny the project if the city determines that reasonable mitigation measures are insufficient to mitigate the project's impacts.
- E. Detailed Alternatives Analysis. When the responsible official finds that, despite the incorporation of reasonable mitigation measures, the proposal is likely to have a significant adverse environmental impact on level of service or other aspects of the transportation network, the responsible official shall issue a determination of significance. If the sole issue is traffic, the applicant shall prepare a limited scope EIS on traffic. If there are other probable significant adverse environment impacts, the EIS will be scoped accordingly.

The EIS scope with respect to transportation shall contain an analysis of all reasonable courses of action and mitigation measures, including TDM measures, that would avoid or otherwise mitigate the probable significant environmental impact related to transportation. On the basis of this analysis, the responsible official, upon review and analysis by the city engineer, shall determine whether reasonable mitigation measures are sufficient to mitigate the identified significant adverse transportation impact.

- F. Applicant's Options. At any time in the project review process, the applicant may:
  1. Choose not to proceed with the project.
  2. Implement measures identified by the city to address the adverse transportation impacts.
  3. Propose revisions to the project to avoid or reduce the identified impacts and document the revisions in accordance with the city's project review procedures (see EMC 19.43) and Section 19.51.130. The modifications must be approved by the city engineer and the responsible official. Possible measures include van/car pooling programs, pedestrians and bicycle improvements, incentives to encourage public transportation ridership, or other measures that, in the opinion of the city engineer and the responsible official, would adequately address the transportation impact.
- G. Table 2 summarizes the requirements for payment of fees for transportation system improvements to mitigate impacts of proposed projects, as specified in Sections 19.51.100 and 19.51.110.

**Table 2: General Requirements for Fees Related to System Improvements**

<b>Number of Trips Generated</b>	<b>Level of Service at Horizon Year</b>	<b>Fee Calculation</b>
Fewer than 10 new vehicle trips per day	(not applicable; no traffic study)	0
10 or more new vehicle trips per day, and not more than 50 additional peak hour trips*	(not applicable; no traffic study)	Fee for each peak hour trip per Section 19.51.100(D)
More than 50 additional peak hour trips*	1. Fee for fair share of planned system improvements (e.g., identified in the city's six-year transportation improvement program)	Fee for each peak hour trip per Section 19.51.100(D)
	<i>plus:</i>	<i>plus:</i>
	2. Fair share of additional improvements, if any, to maintain acceptable levels of service as a result of the proposed project, as follows:	
	If "D" or better at horizon year and no need for additional improvements (taking growth into account)	0
	Project alone causes need for additional improvements at horizon year (no need if project did not occur, taking growth into account)	100% of cost of improvements
	Additional improvements needed to maintain "D" or better at horizon year, due to project and growth	Project's % of total peak hour trips at horizon year, minus existing peak hour volume
	Additional improvements needed at horizon year due to project and growth, but current level of service is "E" or "F"	Project's % of total peak hour trips at horizon year

Number of Trips Generated	Level of Service at Horizon Year	Fee Calculation
*For proposed projects in core area, trip calculation at 75% of ITE Trip Generation Manual or as justified in a traffic analysis		

**19.51.100 Fair share for system improvements.**

- A. Two Components of Fair Share. This section specifies the mitigation for transportation system improvements, unless otherwise agreed by the city traffic engineer. The fair share shall consist of two components:
  1. A fee for each peak hour trip calculated to provide a fair share, attributed to new development, of the cost of “planned system improvements” (see subsection D of this section for fee amount); plus
  2. Responsibility for a fair share of cost of additional improvements, if any, to maintain acceptable levels of service as a result of the proposed project (see Table 2 and subsection B of this section for method of calculating the fair share).

When level of service “D” or better will be met at the horizon year with the project, the applicant shall not be required to pay a fair share contribution for additional transportation system improvements. This section does not duplicate, replace, or substitute for any local transportation improvements for which an applicant is responsible.

- B. Fair Share Cost of Additional Improvements. Based on the actual traffic projected to be generated by a project onto the transportation system and the consequent need to make system improvements to maintain acceptable levels of service and address the impacts resulting from the project, the project’s fair share cost to the city for the any transportation system improvements—in addition to the applicant’s fair share of planned system improvements—shall be determined by the following (inclusion of county, state, and/or other city facilities shall be required when the city traffic engineer deems it appropriate):
  1. Where the need for transportation system improvements to mitigate a project’s impacts would not be required at the horizon year if the development were not constructed, the cost for the system improvements will be entirely borne by the project.
  2. Where the need to provide transportation system improvements to mitigate a project’s impacts by the horizon year would be required regardless of the proposed project, but the project will increase the traffic and add to the need for improvements now or in the future, and:
    - a. The current level of service is “D” or better, the traffic impacts of the project will be considered mitigated by a contribution of a share of the costs for the improvements based on the project’s percentage of the total peak hour traffic trips at the horizon year on the facility to be improved less existing peak hour traffic volume; or
    - b. The current level of service is “E” or “F,” the traffic impacts of the project will be considered mitigated by a contribution of a share of the costs for the improvements based on the project’s percentage of the total peak hour traffic trips at the horizon year on the facility to be improved.
- C. Generally, an applicant should expect to pay the fair share fee in accordance with the formula in this section along with any local improvements that may be needed. Further explanation on whether improvements or fees in fact address all or part of a project’s local and systemwide impacts can be found in Sections 19.51.080(G), 19.51.090(A) and (B), and 19.51.120, and associated definitions in Section 19.51.180.
- D. Traffic Mitigation Fee. The current traffic mitigation fee rate shall be calculated as follows and published in the city of Everett’s standards and specifications manual section on traffic impact analysis. The initial traffic mitigation fee at the implementation of the ordinance codified in this chapter shall be two thousand four hundred dollars per PM peak hour trip. This rate shall be adjusted annually to account for inflation based on the official Washington State Department of Transportation (WSDOT) Construction Cost Index (CCI), using the year of implementation of the ordinance codified in this chapter as the base year.

Subsequent to the adoption of any updates to transportation element of the city of Everett's comprehensive plan a study may be undertaken to reevaluate the city of Everett's traffic mitigation fee. If it is determined that an update is appropriate the initial traffic mitigation fee shall be revised and the base year for calculating inflation shall be the year of that fee's implementation.

**19.51.110 Requirements for transportation improvements when traffic analysis is not required.**

- A. If a traffic analysis is not required under Section 19.51.040, but the proposed project would generate ten or more vehicle trips per day, the applicant shall mitigate the project's transportation impacts as follows.
- B. The applicant shall implement, or pay the city the cost of implementing, local transportation improvements as required by the city code and the city traffic engineer to meet street standards, safety requirements, or other localized impacts on or in close proximity to the project site that have been identified in the project review process.
- C. The applicant shall pay a fee for transportation system improvements as defined in Section 19.51.100(D) for each PM peak hour trip that the project will produce, as determined in the latest edition of the ITE Trip Generation Manual or as otherwise approved by the city traffic engineer. Any agreement to pay in accordance with the provisions of this section shall be in a form provided in Section 19.51.130.
- D. For projects within the core area (see Section 19.51.180), the fee shall be calculated by using seventy-five percent of projected trip generation using the ITE Trip Generation Manual, or as otherwise approved by the city traffic engineer based on reasonable trip generation assumptions and transportation demand management (TDM) plans as detailed in an approved traffic study.
- E. If an applicant disputes the fee described in this section, the applicant has the option of preparing a traffic analysis at its expense, as described in this chapter and as approved by the city traffic engineer, to demonstrate a lesser impact and to mitigate the transportation impacts in accordance with Section 19.51.090.

**19.51.120 Credit for improvements and nonduplication of mitigation.**

- A. When determining the mitigation costs attributable to the proposed project, the city traffic engineer shall take into consideration and give fair credit for transportation improvements, including dedication land, that: (1) address some or all of a proposed project's impacts; and/or (2) have previously been imposed and fulfilled as a condition of a prior land use 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.
- B. A person required to pay a fee for system improvements under RCW 82.02.050 through 82.02.090 shall not be required to pay a fee under SEPA and this chapter for those same system improvements.
- C. The prohibition on nonduplication 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 a fee for system improvements and to pay or install local transportation improvement, 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 the applicant agree that the applicant is implementing transportation improvements beyond those required under this chapter.

**19.51.130 Form of commitment.**

The applicant may enter into contractual and financing arrangements, including latecomer agreements, development agreements, or other agreements, in any form that is satisfactory to the city and is legally binding and enforceable on the applicant. Any agreement must bind the applicant's successors in interest, at least until

such time as the improvements have been paid for or are operational. Any agreements must be in a form approved by the city attorney.

**19.51.140 Procedure for payment and use of fees.**

- A. Payment of all transportation fees shall be made prior to building permit issuance, except as provided in subsection B of this section.
- B. The deferral of transportation 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 fees for transportation system improvements 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 transportation system improvement 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 fee for transportation improvements.
  - 5. Each applicant eligible to defer transportation 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 fee for transportation improvements 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 fee for transportation improvements 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 fees and issuance of the building permit.
- 9. After the applicant has paid all deferred fees for transportation improvements, 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 fee payment.
- 11. If deferred fees for transportation improvements are not paid in accordance with terms authorized by state law and this section, the city may initiate foreclosure proceedings for the unpaid impact fees and all costs associated with the collection of the unpaid fees.
- 12. A request to defer transportation fees under this section may be combined in one application with a request to defer school impact fees under Section 19.52.090.
- C. All fees collected under this chapter shall be obligated or expended on transportation improvements. Fees collected for specific projects shall be expended on those projects or may be expended on replacement projects that provide similar or greater improvements.
- D. The fees shall be obligated or expended in all cases within five years of collection. Any fees not so obligated or expended shall be refunded with interest at the rate applied to judgments to the property owners of record at the time of refund; however, if the payment is not obligated or expended within five years due to delay attributable to the project applicant, the payment shall be refunded without interest.
- E. An applicant's commitment to specific performance to construct or to pay a fair share of a transportation improvement (as specified in Section 19.51.100(A)(2)), including any bonds or financial assurance associated with the improvement, shall not be considered a fee, regardless of whether a monetary value has been assigned to the improvements in the traffic analysis or other project review documents or agreements.

**19.51.145 Fee exemptions.**

- A. The city may, on a case-by-case basis, grant exemptions to the application of the fee for planned system improvements (as specified in Section 19.51.100(A)(1)) 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 fees for planned system improvements (as specified in Section 19.51.100(A)(1)), 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 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 fees for transportation improvements 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.

#### **19.51.150 Application to projects currently underway.**

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 withdraw a SEPA threshold determination as provided in WAC 197-11-340(3)(a).

#### **19.51.160 Projects in core area.**

Proposed projects located entirely or partially within the core area shall be governed by Section 19.51.110(D). For purposes of this chapter the core area is defined in Section 19.51.180.

#### **19.51.170 Interpretation and implementation.**

- A. This chapter shall be liberally construed to achieve the purposes set forth in Section 19.51.010.
- B. Compilation and Update. This chapter is a compilation of and replaced existing previously adopted traffic mitigation ordinances (Ordinance Nos. 1670-89, 1773-90, 1754-90, 1781-91, 2425-99, 2496-00 and related ordinances that extended these ordinances). The ordinance codified in this chapter repeals and supersedes prior ordinances and updates them in order to be consistent with and implement the city's comprehensive plan, as well as the improved permit processing requirements and maintains standards governing use of the environment substantially similar to those in existing plans and laws. Section 19 of Ordinance 3387-14 repeals the previous interim traffic mitigation ordinances.
- C. Savings. Except as specifically provided in Section 19.51.150, the enactment of this chapter shall not affect any case, proceeding, appeal, or other matter in any court of law 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. Third Party Liability. 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. Interpretation. 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 19.51.010. The city engineer and responsible official are authorized to promulgate rules and regulations consistent with the terms of this policy.
- F. In the event that transportation impact fee or other mitigation programs are otherwise adopted by the city council under other authorization and requirements such as Chapter 36.73 or 39.92 RCW or the Growth Management Act, Chapters 36.70A and 36.70B RCW, et seq., mitigation of the traffic and transportation impacts within the scope of those programs will be required under those programs and shall supersede this chapter. The incorporation by reference and supplementation of certain definitions from RCW 82.02.090 in this chapter shall not be construed as the adoption of an impact fee program under the Growth Management Act. Avoidance of duplication between the requirements of this chapter and those programs shall be governed by RCW 82.02.100 and 43.21C.065 and Section 19.51.120.

**19.51.180 Definitions and usage.**

- A. Usage. For purposes of this chapter, unless the context clearly requires otherwise:
  - 1. Any official identified in this chapter includes any designee of or successor to that official.
  - 2. “Applicant” refers to the person or entity proposing a project. “Applicant” includes private or public entities. “Applicant” includes the entity for which an authorized representative is submitting an application. “Application” includes any project permit application under Chapter 15.01.
  - 3. “Environmental impact” has the same meaning as in SEPA and includes: (a) effects on transportation network; (b) physical effects on people using the transportation network, such as public health and safety; and (c) effects of traffic or of the location or operation of transportation facilities on people and the environment, such as noise, air quality, and critical areas.
  - 4. “Fee for transportation system improvements” refers to a fair share of regulatory fee that is placed in a dedicated fund and that helps to address and mitigate a proposed project’s impacts on the transportation system, as provided in this chapter, and does not refer to a method to raise revenue for the general fund to pay for transportation improvements.
  - 5. “Including” means including but not limited to.
  - 6. “May” is optional and permissive and does not impose a requirement.
  - 7. Section and paragraph titles are not intended to have regulatory effect.
  - 8. “Shall” is mandatory.
  - 9. Singular includes plural and conversely, unless context clearly requires otherwise.
- B. Definitions. Terms in this chapter shall have the same meaning as terms defined in: (1) Sections 19.43.030 (SEPA definitions incorporated by reference from Chapter 197-11 WAC) and 19.43.040 (additional SEPA definitions); and (2) RCW 82.02.090 (except that, as defined in subsection C of this section, “project improvements” shall be referred to as “local transportation improvements” and “system improvements” shall be referred to as “transportation system improvements” and are not limited to facilities identified in the capital facilities plan.
- C. Additional Definitions. In addition to the definitions referenced in subsection B of this section, when used in this chapter, the following terms shall have the following meaning:

**“Characteristics of development”** means the specific features of and effects caused by a proposed project, including its compliance with development standards.

**“Comprehensive plan”** means the city of Everett comprehensive plan adopted by the city council and existing at the time of project review. The term “comprehensive plan” includes adopted subarea plans.

**“Core area”** means the portion of the city of Everett defined as the UM, ULI, or UR zones in Title 19.

**“Fair share cost”** means the proportional share of the cost of transportation system improvements that is attributable to a project’s impacts on the transportation system, as required by Section 19.51.100.

**“Level of service”** or **“LOS”** standard means the acceptable service standard adopted by the city in its comprehensive plan, as described in Section 19.51.090. If the comprehensive plan is amended to revise the acceptable level of service standard, the standard stated in Section 19.51.090 shall be deemed to be the revised, adopted LOS standard.

**“Local transportation improvement”** means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not transportation system improvements. No specific improvement or facility included in the city’s capital facilities plan shall be considered a local transportation improvement.

**“Peak hour trips”** means total inbound and outbound trips during the PM peak period (commonly known as “rush hours”), as may be further defined by the city traffic engineer.

**“Planned action”** means a project that meets the criteria set forth in RCW 43.21C.031 and WAC 197-11-164 and whose probable significant adverse environmental impacts have previously been analyzed in an environmental impact statement, and that is authorized by Chapter 15.02 and the specific planned action ordinance relating to the project.

**“Planned system improvement”** means a transportation system improvement identified in the city’s six-year transportation improvement program and other transportation system improvements that are planned to occur, to the knowledge of the city engineer.

**“Practical”** means reasonable and capable of being accomplished, as provided by WAC 197-11-660.

**“Project”** means a development, construction, or management activity located in a defined geographic area, whether private or public. Proposed projects subject to this chapter are those that generate more than ten vehicle trips per day or require project review, including SEPA review, under Title 15 and EMC 19.43.

**“Project review process”** means the city process for considering and making decisions on proposed projects under Chapter 15.02, including staff, environmental and public review.

**“Traffic analysis”** means the study of transportation impacts and mitigation measures, as provided in Sections 19.51.060 through 19.51.090. A traffic analysis may be combined with other project review documents, as determined appropriate by the city engineer or responsible official.

**“Transportation improvement”** means either a local transportation improvement, a transportation system improvement, or an improvement that is both a local and system improvement.

**“Transportation network”** means all facilities and means of transportation used by the public in the city or in areas affected by project traffic, including land, air, and waterborne traffic.

**“Transportation system improvement”** means public facilities that are included in the capital facilities plan or identified by the traffic analysis and are designed to provide service to service areas within the community at large, in contrast to local transportation improvements.

**“Trips”** means inbound and outbound trips.