

with the requirements of this title as it presently is or is hereafter amended and state law. All other completed applications for divisions of land or boundary line adjustments which were filed prior to the fifteenth day following the validation date of this title shall comply with the requirements of the appropriate regulations that were in effect immediately prior to the adoption of the ordinance codified in this title. (Ord. 2328-98 § 8(F), 1998)

18.32.070 Effect of noncompliance.

No building permit or other development permit including approvals for preliminary division of land or boundary line adjustment shall be issued for any lot or parcel of land divided in violation of Chapter 58.17 RCW or this title. All purchases or transfers of property shall comply with the provisions of Chapter 58.17 RCW and this title, and each purchaser or transferee may recover damages from any person, firm, corporation or agent selling or transferring land in violation of Chapter 58.17 RCW or this title, including any amount reasonably spent as a result of an inability to obtain any development permit and spent to conform to the requirements of Chapter 58.17 RCW and this title as well as the cost of investigation, suit and reasonable attorney's fees. A purchaser or transferee may, as an alternative to conforming the property to these requirements, rescind the sale or transfer and recover the cost of investigation, suit and reasonable attorney's fees. (Ord. 2328-98 § 8(G), 1998)

18.32.080 Illegal transfers—Filing unapproved division of land or boundary line adjustment.

The county auditor shall refuse to accept the recording of any division, redivision, alteration or vacation of land or boundary line adjustment that has not been approved by the city in accordance with the provisions of this title. Should any division, redivision, alteration or vacation of land or boundary line adjustment be filed without such certification as set forth in this title, the city attorney may apply for a writ of mandate on behalf of the city directing the auditor to remove the unapproved division of land, alteration or vacation, or boundary line adjustment from the auditor's files. (Ord. 2328-98 § 8(H), 1998)

18.32.090 Violation—Penalty.

A. Violation.

1. Any person, firm, corporation, or association, or any agent of any person, firm, corporation or association, who violates any provision of this title shall be subject to the enforcement procedures provided by Chapter 1.20 of this code, as amended.

2. Any violation of the provisions of this title constitutes a public nuisance which the city can abate by an

action in Snohomish County superior court. The cost of such action shall be assessed against the violator.

B. Exception. If performance of an offer or agreement to sell, lease, or otherwise transfer a lot, tract, or parcel of land following preliminary approval of a division of land is expressly conditioned on the recording of the final maps containing the lot, tract, or parcel under this title, the offer or agreement is not a violation of any provisions of this title. All payments on account of an offer or agreement conditioned as provided in this section shall be deposited in an escrow or other regulated trust account and no disbursement to sellers shall be permitted until the final maps are recorded. (Ord. 2328-98 § 8(I), 1998)

18.32.100 Nonexclusive provisions.

Penalty and enforcement provisions provided in this title are not exclusive, and the city may pursue any remedy or relief it deems appropriate or as otherwise provided by law. (Ord. 2328-98 § 8(J), 1998)

Chapter 18.36

SMALL PROJECT IMPACT FEE

Sections:

- 18.36.010 Title, authority, and purpose.
- 18.36.020 Location of definitions and usage.
- 18.36.030 When a transportation impact fee is required.
- 18.36.040 Credit for improvements and nonduplication of mitigation.
- 18.36.050 Option to prepare traffic analysis.
- 18.36.060 Administrative procedures and appeals.
- 18.36.065 Fee exemptions.
- 18.36.070 Application to projects currently underway.
- 18.36.080 Projects in core area.
- 18.36.090 Interpretation and implementation.

18.36.010 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 18.40). The fees adopted under this chapter are authorized by and in accordance with the provisions of RCW 82.02.050 through 82.02.090. (Ord. 3504-16 § 1, 2016; Ord. 3389-14 § 1, 2014)

18.36.020 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 18.40.180. (Ord. 3389-14 § 2, 2014)

18.36.030 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 18.40.100(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

18.40.180 trip generation shall be calculated as provided in Section 18.36.080. (Ord. 3389-14 § 3, 2014)

18.36.040 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. (Ord. 3389-14 § 4, 2014)

18.36.050 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 18.40.060 through 18.40.080 and as published in the standards and specifications manual, or as otherwise approved by the city traffic engineer. (Ord. 3389-14 § 5, 2014)

18.36.060 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 18.44.090.

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 Section 15.24.010 for the appeal of minor administration decisions. (Ord. 3504-16 § 2, 2016; Ord. 3389-14 § 6, 2014)

18.36.065 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. (Ord. 3504-16 § 3, 2016)

18.36.070 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). (Ord. 3389-14 § 7, 2014)

18.36.080 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 18.40.180. (Ord. 3389-14 § 8, 2014)

18.36.090 Interpretation and implementation.

A. This chapter shall be liberally construed to achieve the purposes set forth in Section 18.36.010.

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 18.36.070, 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 18.36.010. The city traffic engineer and responsible

official are authorized to promulgate rules and regulations consistent with the terms of this policy. (Ord. 3389-14 § 9, 2014)

Chapter 18.40

TRANSPORTATION MITIGATION

Sections:

- 18.40.010 Title, authority, and purpose.**
- 18.40.020 Location of definitions and usage.**
- 18.40.030 When a fee to mitigate transportation impacts is required.**
- 18.40.040 When a traffic analysis is required.**
- 18.40.050 When a traffic analysis is not required.**
- 18.40.060 Scope of traffic analysis.**
- 18.40.070 Impact analysis.**
- 18.40.080 Mitigation analysis and plan.**
- 18.40.090 Requirements for transportation improvements.**
- 18.40.100 Fair share for system improvements.**
- 18.40.110 Requirements for transportation improvements when traffic analysis is not required.**
- 18.40.120 Credit for improvements and nonduplication of mitigation.**
- 18.40.130 Form of commitment.**
- 18.40.140 Procedure for payment and use of fees.**
- 18.40.145 Fee exemptions.**
- 18.40.150 Application to projects currently underway.**
- 18.40.160 Projects in core area.**
- 18.40.170 Interpretation and implementation.**
- 18.40.180 Definitions and usage.**

18.40.010 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 Chapter 20.04. 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. (Ord. 3387-14 § 1, 2014)

18.40.020 Location of definitions and usage.

Definitions and usage for purposes of this chapter are found in Section 18.40.180. 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 18.40.030 through 18.40.050 and 18.40.100 through 18.40.120. Definitions of these terms are found in Section 18.40.180. (Ord. 3387-14 § 2, 2014)

18.40.030 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 18.40.100 through 18.40.140. (Ord. 3387-14 § 3, 2014)

18.40.040 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. (Ord. 3504-16 § 4, 2016; Ord. 3387-14 § 4, 2014)

18.40.050 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 Chapter 20.04; or

3. Projects proposed as "planned actions," as defined in Section 18.40.180(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 15.16, 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 18.40.110. (Ord. 3387-14 § 5, 2014)

18.40.060 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. (Ord. 3387-14 § 6, 2014)

18.40.070 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

