

ORDINANCE NO. C34305

An ordinance establishing transportation impact fees; and adopting a new Chapter 17D.035 to Title 17 of the Spokane Municipal Code.

WHEREAS, in May 2001, the City of Spokane adopted its Comprehensive Plan under the Growth Management Act (Chapter 36.70A RCW or “GMA”); and

WHEREAS, the Comprehensive Plan and the entire legislative record relative to its initial adoption and subsequent amendments thereto, including environmental review documents and transportation studies, are incorporated into this Ordinance by reference; and

WHEREAS, GMA requires the City of Spokane to adopt development regulations that are consistent with and implement the City’s Comprehensive Plan; and

WHEREAS, GMA calls for comprehensive plans to include a transportation element that implements and is consistent with the land use element of the comprehensive plans. Transportation elements are required (1) to establish level of service standards for all locally owned arterials and transit routes, (2) to specify actions for improving the level of service of facilities that are operating below the adopted standards, (3) to forecast future traffic volumes to provide information on the location, timing, and capacity needs of future growth and development, and (4) to provide a discussion of how the future capacity needs will be financed; and

WHEREAS, the City of Spokane's Comprehensive Plan satisfies each of the foregoing elements, and, pursuant to the fourth element, identifies impact fees as a source of funding to finance the City's growth related transportation needs ("Capital Facilities Plan"); and

WHEREAS, currently, design and construction of growth related transportation projects depend heavily upon statewide competitive State and Federal grants. The grant application and funding process is lengthy and unpredictable. Growth related or capacity increasing projects often score poorly in this competitive process, particularly if local matching dollars are not available. As a result, the City lacks sufficient funds to construct growth related transportation projects on a timely basis. This results in frustration for both developers and for existing neighborhoods that are impacted by new growth and development that is occurring ahead of perceived needs for new transportation facilities; and

WHEREAS, the City annually updates its Six Year Comprehensive Street Program, which is an element of the Capital Facilities Plan; and

WHEREAS, GMA requires the City of Spokane to plan for future growth and to provide the facilities necessary for accommodating that growth; and

WHEREAS, the Comprehensive Plan and Capital Facilities Plan are the planning documents that help guide the City in fulfilling GMA's infrastructure planning requirements; and

WHEREAS, the City's Capital Facilities Plan identifies existing deficiencies in the City's public facilities and the means by which those deficiencies will be eliminated within a reasonable time; and

WHEREAS, the Capital Facilities Plan also identifies the additional demands that will be placed on the City's existing public facilities by new development and the additional public facilities that are necessary to accommodate the City's anticipated growth ("Growth Related Public Facilities"); and

WHEREAS, to assist cities in providing Growth Related Public Facilities, GMA and RCW 82.02.050 *et seq.* authorize cities to impose impact fees for (a) public streets and roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and (d) fire protection facilities in jurisdictions that are not part of a fire district ("Impact Fees"); and

WHEREAS, the legislature's intent in authorizing Impact Fees was (a) to ensure that adequate facilities are available to serve new growth and development; (b) to promote orderly growth and development by establishing standards by which cities may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development; and (c) to ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact; and

WHEREAS, Impact Fees may only be used for public facilities included in the Capital Facilities Plan that are designed to provide service to service areas within the community at large (*i.e.*, system improvements), in contrast to site improvements and facilities that are planned and designed to provide service for a particular development and that are necessary for the use and convenience of the occupants or users of a particular development (*i.e.*, project improvements); and

WHEREAS, said impact fees may not exceed a proportionate share of the costs of system improvements that are reasonably related to the service demands and needs of new development and that reasonably benefit the new development and may not be imposed to make up for any existing system improvement deficiencies; and

WHEREAS, the ordinance by which impact fees is imposed must include a schedule of impact fees for each type of development activity that is based on a formula or other method of calculating such impact fees that incorporates, among other things, (a) the cost of public facilities necessitated by new development; (b) an adjustment to the cost of such public facilities for past or future payments made by new development that are earmarked for or proratable to the particular system improvement; (c) the availability of other means of funding public facility improvements; and (d) the cost of existing public facilities improvements and how those facilities were financed; and

WHEREAS, the ordinance may provide an exemption for low-income housing and other development activities with broad public purposes, but the impact fees otherwise payable by such development activity must be paid from public funds other than impact fee accounts; and

WHEREAS, the ordinance must provide a credit for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the City's capital facilities plan and that are required by the City as a condition of approving the development activity; and

WHEREAS, the ordinance must also include a provision allowing a developer to perform an independent fee calculation; and

WHEREAS, the ordinance must establish one or more reasonable service areas within which the City shall calculate and impose impact fees for various land use categories per unit of development; and

WHEREAS, this Ordinance satisfies each of the requirements set forth above; and

WHEREAS, in cooperation with an External Working Group (EWG) appointed by the Mayor, City staff prepared Technical Memoranda No. 1 through 10. Thereafter, City staff prepared subsequent supplemental technical memorandums. Collectively, these technical memorandums and supporting attachments constitute the main body of work for the 2007 Transportation Impact Fee Rate Study ("Rate Study"); and

WHEREAS, the Rate Study, its Executive Summary, and subsequent technical memorandums prepared by City staff provide an appropriate methodology for calculating and imposing transportation impact fees consistent with the requirements of Chapter 36.70A RCW and RCW 82.02.050 *et seq.*; and

WHEREAS, as set forth in the Rate Study, the Growth Management Act and RCW 82.02.050 specify that "Impact fees may be collected and spent only for the public facilities defined in RCW 82.02.090 which are addressed by a capital facilities plan element of a comprehensive land use plan adopted pursuant to the provisions of RCW 36.70A.070; and

WHEREAS, the Rate Study and proposed impact fee ordinance satisfy this requirement as follows, as documented in Impact Fee Technical Memorandum #7: (i) Started with the

Transportation Element (Chapter 4) of the Comprehensive Plan (adopted 2005, updated January 2007); (ii) the Transportation Element followed the GMA-required process to define a transportation system needed for a 20-year period; (iii) the identified 20-year transportation CIP projects (Section 4.8) formed the initial basis for developing the impact fee program; (iv) identified projects from the City's Transportation Capital Facilities program; (v) the Capital Facilities and Utilities Element of the Comprehensive Plan specifies that street facility improvements are addressed in the annually adopted six-year capital improvement program (CIP); (vi) this element states that "These CIP programs are reviewed for consistency with the Comprehensive Plan and are updated by the Plan Commission and adopted by the City Council" (Comprehensive Plan Chapter 5, p. 6); (vii) similarly, the Transportation Element (Chapter 4) identifies the six-year Comprehensive Street Program as the official source of transportation capital facilities; (viii) the Transportation Capital Facilities Program (section 4.7) specifies that the Comprehensive Street Program is "adopted by reference as a part of the Comprehensive Plan" (p. 84); in January 2007, the Six-Year Comprehensive Street Program was physically removed from the Comprehensive Plan and put online at www.spokancity.org/services/documents; (ix) selected impact fee projects and costs from the City's Six-Year Comprehensive Street Program (adopted as part of the 2007-13 Capital Facilities Plan); (x) in selecting these projects, City staff identified only those projects that provide street 'capacity' to serve new growth; (xi) conducted level of service (LOS) analyses to determine that these projects are needed to accommodate new growth within the region; first, a comprehensive analysis of LOS was conducted in 2000 as part of the *City of Spokane Levels of Service Standards/Concurrency Management System* (Huckell/Weinman Associates and The TRANSCO Group, April 12, 2000); (xii) this study confirmed that many City arterials would require improvements to meet the City's LOS standards by 2020 in response to expected growth projections; (xiii) second, the SRTC conducted a modeling analysis in 2007 to determine the degree of existing deficiencies and future transportation needs; (xiv) this analysis indicated that the proposed impact fee projects would address some existing deficiencies but also provide capacity to meet new growth demands; (xv) the SRTC 2015 model was used for this analysis (SRTC Memo from Deborah LaCombe to Glenn Miles, *City of Spokane Traffic Impact Fee Modeling Results*, June 7, 2007); and

WHEREAS, the City has followed a logical sequence of steps to arrive at the impact fee project list. As required by the GMA, the projects are grounded in the adopted Transportation Element of the Comprehensive Plan and are further specified within the Capital Facilities and Utilities Plan Element. The City has a process in place to update the specific Six-year street projects on an annual basis, including a provision that this annual update serves as an update to the Comprehensive Plan; and

WHEREAS, an ongoing Baseline Study commissioned by the City will provide useful information to the City to update the short and long-range transportation project needs. These needs would likely result in a future update to the Transportation Element of the Comprehensive Plan, and a revision to the Six-Year Street Program. At that point, it would be logical to reexamine the impact fee project list and make appropriate revisions to the program. This reexamination process is typical for agencies as they update their impact fee programs over time in response to new information; and

WHEREAS, the City conducted a detailed analysis of new development's share of impact fee project costs (Technical Memorandum #8.1). As cited in RCW 82.02.050, cities cannot rely solely on impact fees to finance system improvements and must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees; and

WHEREAS, thereafter the City satisfied this limitation as follows:

(i) By statute, the City may expend impact fee revenues on any project listed in its capital facilities plan that will provide additional capacity for new growth and development. In developing the current impact fee proposal, City staff identified approximately \$47 million of such growth related projects in the capital facilities element of the Comprehensive Plan ("Growth Related System Improvements"). These Growth Related System Improvements form the basis for the City's proposed transportation impact fee funding program which includes public and private sources. See Technical Memorandum No. 8.1;

(ii) The City analyzed each of the \$47 million in Growth Related System Improvements using recent data from the SRTC model which disclosed that approximately \$11 million in project costs will correct existing deficiencies while the remaining \$36 million in project cost will provide additional capacity for new growth and development. From the \$36 million in impact fee eligible Growth Related System Improvement costs, the City selected approximately \$17 million in project costs on which the base the cost per trip for purposes of calculating impact fees. Technical Memorandum 7;

(iii) By statute, the City is not limited to spending impact fee revenues on this priority list but may instead expend impact fee revenue on any Growth Related System Improvements in the City's capital facilities plan, as amended from time to time. Priorities may change and the list of priority capacity enhancing projects may also change with corresponding changes in the priority list upon which impact fees are calculated. Some projects may be added while others may be eliminated.

(iv) the City is not relying solely on impact fees to finance Growth Related System Improvements but is instead providing for a balance between impact fees and other sources of public funds by (a) collecting approximately 1/3 of the cost of Growth Related System Improvements via impact fees (*i.e.*, \$17 million of \$47 million); (b) leveraging impact fees and other local funds to obtain matching State and Federal grants to fund the difference – *i.e.*, in general, the impact fee cost for Growth Related System Improvements is equal to the total project costs minus costs attributable to outside city growth, other public funds including assumed grants, and other non-eligible costs.

WHEREAS, on October 26, 2007, the EWG reviewed the most recent draft of the proposed Ordinance Establishing Transportation Impact Fees and, after lengthy debate, concluded that the draft ordinance represented a reasonable compromise in implementing the methodology set forth in the Rate Study; and

WHEREAS, the EWG then took action recommending that City staff forward the Ordinance to the Plan Commission for public workshops, hearings and deliberation to advance the

City's objective of adding a New Chapter 17D.030 pertaining to transportation impact fees to the Spokane Municipal Code; and

WHEREAS, the Plan Commission formed a sub-committee to examine various aspects of the Rate Study and proposed ordinance together with its related fee schedules; and

WHEREAS, the work of the Plan Commission sub-committee resulted in recommendations to (i) reduce the proposed number of service areas from five to four, each of which is comprised of a geographic area designated on the basis of sound planning or engineering principles as set forth in the Rate Study, as amended; (ii) incorporate additional pass-by trip information as applied by the City of Olympia in recognition that, consistent with local experience in Spokane, the number of trips assigned to certain land uses by the ITE manual are pass-by and not new trips; and (iii) incorporation of trip length adjustment factors in recognition that the relative length of trips generated by various land uses is not equal and that corresponding impact fee assessments should reflect the relative distance in the trips generated by various land uses; and

WHEREAS, in incorporating trip length adjustment factors, the City relied on data gathered by the City of Olympia and determined, with the assistance of its consultant, that said data would reasonably apply to the City's designated service areas; and

WHEREAS, as outlined in the Supplemental Technical Memorandum, the service areas identified in the Ordinance are based on sound planning and engineering principles; and

WHEREAS, a majority of the Plan Commission thereafter voted in favor of moving the proposed impact fee ordinance to City Council and opted to defer to the Council with respect to the fee schedules accompanying the ordinance; and

WHEREAS, on or about March 27, the responsible official issued a determination of non-significance (DNS) under SEPA (Chapter 43.21C RCW) relating to this Ordinance and notice of said DNS was published in the Spokesman Review on March 28 and April 2, 2008; and

WHEREAS, the City's proposal to implement transportation impact fees has been the subject of a thorough public notice and participation process with multiple opportunities for input from the public and stakeholder groups, including open house events, Plan Commission workshops and hearings, City Council workshops and hearings, presentations to and meetings with various stakeholder groups including, without limitation, Greater Spokane, Inc. and the Spokane Homebuilders Associations; and

WHEREAS, due to concerns about the national and local economy, the City's administration has proposed implementation of transportation impact fees in phases; and

WHEREAS, this implementation schedule may be adjusted from time to time pursuant to the required review provisions set forth in the ordinance, and depending on the findings of the ongoing transportation baseline analysis; and

WHEREAS, the City Council adopts the foregoing, together with the Rate Study and its supporting documentation as supplemented by the work of the Plan Commission and its sub-committee, as its findings of fact justifying its adoption of this ordinance; Now, Therefore

The City of Spokane does ordain:

Section 1 - Findings of Fact. That the Rate Study and the preambles to this Ordinance are adopted as the City Council's findings of fact in support of its adoption of this Ordinance.

Section 2. Transportation Impact Fees. That there is adopted a new Chapter 17D.035 to title 17 of the Spokane Municipal Code to read as follows:

CHAPTER 17D.035

Transportation Impact Fees

Sections:

- 17D.035.010 Findings and Authority
- 17D.035.020 Definitions
- 17D.035.030 Concurrency
- 17D.035.040 Assessment of Impact Fees
- 17D.035.050 Independent Fee Calculations
- 17D.035.060 Exemptions
- 17D.035.070 Credits
- 17D.035.080 Administrative Costs
- 17D.035.090 Appeals
- 17D.035.100 Establishment of Impact Fee Account
- 17D.035.110 Refunds
- 17D.035.120 Use of Funds
- 17D.035.130 Administrative Guidelines
- 17D.035.140 Review
- 17D.035.150 Authorization for Interlocal Agreements
- 17D.035.160 Existing Authority Unimpaired
- 17D.035.170 Severability
- 17D.035.180 Appendix A – Impact Fee Schedule
- 17D.035.190 Appendix B – Service Area Maps
- 17D.035.200 Appendix C – Trip Rates, Pass-by Trips, and Trip Length Adjustment Factors

17D.035.010 Findings and Authority

The City Council finds and ordains as follows:

- A. That new growth and development, including but not limited to new residential, commercial, retail, office, industrial and institutional development, in the City of Spokane will create additional demand and need for public transportation facilities (public streets and public roadways) in the City of Spokane.
- B. That new growth and development should pay a proportionate share of the cost of new public transportation facilities needed to serve the new growth and development.
- C. That transportation impact fees are a lawful and commonly used instrument to aid in meeting capacity related Growth Management Act transportation concurrency requirements.
- D. The City has conducted extensive studies documenting the procedures for measuring the impact of new growth and development on public facilities, has prepared the rate study, and has reviewed the rate study, and hereby incorporates these studies into this title by reference. Based on the foregoing, the City has prepared a formula and method of calculating transportation impact fees to serve new development that provides a balance between impact fees and other sources of public funds. The data and method of calculating contained in the rate study is consistent with the data collected as part of the development of the comprehensive plan, the traffic impact analysis completed for projects since the creation of that data and the studies and data collection accumulated by Spokane Regional Transportation Council and other jurisdictions;

- E. That the provision for low-income housing is a factor that should be considered in mitigation of an impact fee.
- F. That whenever impact fees are imposed, the director of engineering services, or the director's designee, shall make the following findings:
1. That the impact fees are imposed for system improvements that are reasonably related to the new development.
 2. That the fees do not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and
 3. That the fees will be used for system improvements that will reasonably benefit the new development.

Now, therefore, pursuant to chapter 82.02 RCW, the city council adopts this chapter to authorize appropriate and lawful impact fees for public transportation facilities. The provisions of this title shall be liberally construed in order to carry out the purposes of the city council in establishing a transportation impact fee program.

17D.035.020 Definitions

As used in this chapter, the following words and terms shall have the following meanings unless the context clearly requires otherwise. Terms otherwise not defined herein shall be defined pursuant to RCW 82.02.090, or given their usual and customary meaning.

- A. "Accessory dwelling unit" means a dwelling unit that has been added onto, created within, or separated from a single-family detached dwelling for use as a complete independent living unit with provisions for cooking, eating, sanitation, and sleeping.
- B. "Act" means the Growth Management Act, as codified in chapter 36.70A RCW, as now in existence or as hereafter amended.
- C. "Applicant" means the owner of real property according to the records of the Spokane County, or the applicant's authorized agent.
- D. "Baseline study" means the 2008 transportation baseline study that is being developed by HDR Engineering and planning, City project mo. 2005155.
- E. "Building permit" means the official document or certification that is issued by the building department and that authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, tenant improvement, demolition, moving, or repair of a building or structure.
- F. "Capital facilities" means the facilities or improvements included in the capital facilities plan.
- G. "Capital facilities plan" means the capital facilities plan element of the City's comprehensive plan adopted pursuant to chapter 36.70A RCW, as amended from time to time.
- H. "Certificate of occupancy" means the term as defined in the International Building Code. In the case of a change in use or occupancy of an existing building or structure which may not require a building permit, the term shall specifically include certificate of occupancy and for residential development the final inspection, as those permits are defined or required by this code.
- I. "City" means the City of Spokane.
- J. "City council" means the city council of the City of Spokane.
- K. "Comprehensive plan" means the City of Spokane comprehensive plan adopted pursuant to chapter 46.70A RCW, as amended from time to time.
- L. "Concurrent" or "concurrency" means that the public facilities are in place at the time the impacts of development occur, or that the necessary financial commitments are in place, which shall include the impacts fees anticipated to be generated by the development, to complete the public facilities necessary to meet the specified standards of service defined in the comprehensive plan within six years of the time the impacts of development occur.
- M. "Department" means the department of engineering services.
- N. "Development activity" means any construction or expansion of a building, structure, or use, or any change in use of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities.
- O. "Development approval" means any written authorization from the City that authorizes the commencement of development activity.
- P. "Director" means the director of engineering services or the director's designee.
- Q. "Dwelling unit" means a single unit providing complete and independent living facilities for one or more persons, including permanent facilities for living, sleeping, eating, cooking, and sanitation needs.
- R. "Encumbered" means to have reserved, set aside or otherwise earmarked the impact fees in order to pay for commitments, contractual obligations or other liabilities incurred for public facilities.
- S. "Feepayer" is a person, corporation, partnership, an incorporated association, or any other similar entity, or department or bureau of any governmental entity or municipal corporation commencing a land development activity that creates the demand for additional public facilities, and which requires the issuance of a building permit. "Feepayer" includes an applicant for an impact fee credit.
- T. "Green streets" mean well-landscaped, tree-lined corridors designed for both pedestrian and vehicular use as defined in SMC 11.19.194(J).
- U. "Gross floor area" is the total square footage of all floors in a structure as defined in chapter 17A.020 SMC.
- V. "Hearing examiner" means the person who exercises the authority of chapter 17G.050 SMC.
- W. "Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and

- development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit fee, an application fee, or the cost for reviewing independent fee calculations.
- X. "Impact fee account" or "account" means the account(s) established for each service area for the system improvements for which impact fees are collected. The accounts shall be established pursuant to this chapter, and shall comply with the requirements of RCW 82.02.070.
- Y. "Independent fee calculation" means the impact fee calculation and or economic documentation prepared by a fee payer to support the assessment of an impact fee other than by the use of schedule set forth in SMC 17D.035.180, or the calculations prepared by the director where none of the fee categories or fee amounts in the schedules in this chapter accurately describe or capture the impacts of the new development on public facilities.
- Z. "Interest" means the interest rate earned by local jurisdictions in the State of Washington local government investment pool, if not otherwise defined.
- AA. "Interlocal agreement" or "agreement" means a transportation interlocal agreement, authorized in this chapter, by and between the City and other government agencies concerning the collection and expenditure of impact fees, or any other interlocal agreement entered by and between the City and another municipality, public agency or governmental body to implement the provisions of this chapter.
- AB. "ITE Manual" means Institute of Transportation Engineers (ITE) Trip Generation Manual (7th Edition), as amended from time to time.
- AC. "Low-income housing" means any unit of housing where the eligibility requirements for rental or purchase require the renter or purchaser to have certified household income equal to or less than fifty percent of area median income, adjusted for household size ("AMI"), and where the eligibility requirements for homeownership require the purchaser to have certified household income equal to or less than eighty percent of AMI. In addition, the developer and/or owner shall have entered into a binding, irrevocable programmatic commitment with one or more of the agencies listed below (as evidenced at the time of qualification for the transportation impact fee exemption by recorded deed restriction or such other documentation as may be reasonably required by the City). The agencies shall include the United States department of housing and urban development, Washington State housing finance commission, Washington State department of community trade and economic development, City of Spokane community development department, Northeast Washington Housing Solutions, and such other federal, state, or local governmental or non-profit agencies which shall offer like programs at the time of exemption application. Development activity that is comprised of a mix of affordable and market rate housing and/or affordable housing and commercial space shall be defined as low-income housing only for those specific units that are set aside as low-income housing with the aforementioned income limits. Programs that may otherwise be defined elsewhere as "low-income housing" and/or "affordable housing," but have income eligibility limits above those described above or no income limits, shall not be defined as low-income housing for purposes of this chapter.
- AD. "Owner" means the owner of real property according to the records of the Spokane County department of records and elections; provided that if the real property is being purchased under a recorded real estate contract, the purchaser shall be considered the owner of the real property.
- AE. "Pass-by trip rates" means those rate study pass-by rates set forth in SMC 17D.035.200.
- AF. "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in the City's capital facilities plan shall be considered a project improvement.
- AG. "Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.
- AH. "Public facilities" means publicly owned streets and roads, including related sidewalk and streetscape improvements required by the City's comprehensive plan and related development regulations.
- AI. "Rate study" means the 2007 transportation impact fee rate study, dated October 26, 2007, as updated and amended from time to time.
- AJ. "Residential" means housing, such as single-family dwellings, accessory dwelling units, apartments, condominiums, mobile homes, and/or manufactured homes intended for occupancy by one or more persons and not offering other services.
- AK. "Service area" means one of the ~~five~~ four geographic areas defined by the City in which a defined set of public facilities provide service to development within each of the identified areas. The City has identified the service areas, based on sound planning and engineering principles. These service areas are generally referred to as the downtown service area, the northwest service area, the northeast service area, and the south service area. Maps depicting the service areas are set forth in SMC 17D.035.190 and shall also be maintained by the director in the offices of the engineering services department and shall be available for public inspection during regular business hours.
- AL. "Square footage" means the square footage of the gross floor area of the development as defined chapter 17A.020 SMC.
- AM. "System improvements" means public facilities included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements.
- AN. "Trip length adjustment factor" means the trip length adjustment factors identified in Section 17D.035.200.
- 17D.035.030 Concurrency**
- A. Pursuant to chapter 36.7A RCW and chapter 17D.010 SMC, development approval is prohibited if the

development activity will cause the level of service of public facilities to decline below the standards adopted in the transportation element of the comprehensive plan, unless system improvements or strategies to accommodate the impacts of the development activity are made concurrent with the development activity. The concurrency requirement is satisfied if the required system improvements are in place at the time of development activity, or that a financial commitment is in place, which shall include the impact fees anticipated to be generated by the development, to complete the system improvements or strategies required to meet the specified standards of service defined in the comprehensive plan within six years of development approval. Any combination of the following shall constitute a "financial commitment" for the purposes of this chapter and chapter 17D.010 SMC:

1. The City has received voter approval of and/or has bonding authority.
2. The City has received approval for federal, state, or other fund.
3. The City has received a secured commitment from a feepayer that the feepayer will construct the required public facilities and/or system improvement(s) and the City has found such public facilities and/or system improvement(s) to be acceptable and consistent with its capital facilities plan; and/or
4. The City has other assured funding, including but not limited to impact fees that have been paid or that shall be payable as a result of the development approval

17D.035.040 Assessment of Impact Fees

A. The City shall collect impact fees, based on the schedules in SMC 17D.035.180, or an independent fee calculation as provided for in SMC 17D.035.050, from any applicant seeking development approval from the City. The impact fees in SMC 17D.035.180 are generated from the formula for calculating impact fees set forth in the rate study, one copy of which shall be kept on file with the office of the city clerk and which is adopted and incorporated herein by reference. Except as otherwise provided in this chapter, all new development approval in the City will be charged the transportation impact fees in SMC 17D.035.180. Subject to the review provisions set forth in SMC 17D.035.140 below, the transportation impact fees in SMC 17D.035.180 will be adjusted annually in accordance with the Washington State department of transportation construction cost index ("CCI"), with the first such increase taking effect within two years of adoption of this chapter and with subsequent increases to coincide with the City's annual adoption of its six-year street plan; provided, the impact fees shall never be reduced solely because of a decline in the CCI. Provided further, for purposes of this chapter only, the following shall not constitute development activity:

1. Replacement of a commercial structure with a new structure of the same size and use or a residential structure with the same number of residential units, both at the same site or lot, where demolition of the prior commercial or residential structure occurred after May 2001. Replacement of a commercial structure with a new commercial structure of the same size shall be interpreted to include any structure for which the gross square footage of the building will not be increased by more than one hundred twenty square

feet. It shall be the feepayer's responsibility to establish the existence of a qualifying prior use to the director's reasonable satisfaction.

2. Expansions of existing residential structures that do not add residential dwelling units.
3. Alteration of an existing nonresidential structure that does not expand the usable space, add any residential units, or result in a change in use.
4. Miscellaneous improvements that do not create additional demand and need for public facilities, including, but not limited to, fences, walls, swimming pools, and signs.
5. Demolition or moving of a structure.
6. Re-use or change in use of existing structure.
 - a. Re-use or change in use of an existing structure that does not create additional demand and need for public facilities (*i.e.*, where the trip generation of the re-use is equal to or less than trip generation of prior use) shall not constitute development activity for purposes of this chapter.
 - b. It shall be the feepayer's responsibility to establish the existence of a qualifying prior use to the director's reasonable satisfaction.
 - c. For a change in use of an existing structure that does create additional demand and need for public facilities (*i.e.*, where the trip generation of the re-use is greater than the trip generation of the prior use), the City shall collect impact fees for the new use based on the schedules in SMC 17D.035.180, less the fees that would have been payable as a result of the prior use.

B. The director shall be authorized to determine whether a particular development activity constitutes development activity subject to the payment of impact fees under this chapter. Determinations of the director shall be in writing issued within fourteen days of submitting a complete application and shall be subject to the appeals procedures set forth in SMC 17D.035.090.

C. ~~Impact fees shall be assessed and collected prior to issuance of a building permit for each unit in a development, using either the impact fee schedules then in effect or an independent fee calculation, at the election of the applicant and pursuant to the requirements set forth in SMC 17D.030.050. Impact fees shall be assessed prior to the issuance of a building permit for each unit in a development, using either the impact fee schedules then in effect or an independent fee calculation, at the election of the applicant and pursuant to the requirements set forth in SMC 17D.035.050. The impact fees shall be paid at the issuance of a building permit or at the completion of construction. To defer the payment of the impact fee to the end of construction, the developer shall provide prior to issuance of a building permit a recorded "Certificate of Title Notice" evidencing an encumbrance on the title for each parcel of land, on forms provided by the city attorney's office, recorded with the Spokane County auditor's office which requires that the impact fee be paid as part of the closing of the construction financing, transfer of title to another party or issuance of a certificate of occupancy, whichever shall first occur. For commercial~~

development involving multiple users, impact fees shall be assessed and collected prior to issuance of building permits that authorize completion of tenant improvements for each use. ~~The City shall not accept an application for a building permit if other land use approvals are required and have not yet been granted by the City.~~ Furthermore, the City shall not accept an application for a building permit unless, prior to submittal or concurrent with submittal, the feepayer submits complete applications for all other discretionary reviews needed, including, but not limited to, design review, the environmental determination, and the accompanying checklist.

- D. Applicants that have been awarded credits prior to the submittal of the complete building permit application pursuant to SMC 17D.035.070 shall submit, along with the complete building permit application, a copy of the letter or certificate prepared by the director pursuant to SMC 17D.035.070 setting forth the dollar amount of the credit awarded. Impact fees, as determined after the application of appropriate credits, shall be collected from the feepayer at the time the building permit is issued for each unit in the development.
- E. For mixed-use buildings or development, impact fees shall be imposed for the proportionate share of each land use based on the applicable unit of measurement found on the schedule in SMC 17D.035.180.
- F. The department shall place a hold on permits for development approval unless and until the impact fees required by this chapter, less any permitted exemptions, credits, or deductions, have been paid.

17D.035.050 Independent Fee Calculations

- A. If in the reasonable judgment of the director, a proposed development activity does not fall under one of the fee categories set forth in SMC 17D.035.180, the department may prepare independent fee calculations and the director may impose alternative fees on a specific development based on those calculations; provided, the director's fee calculations shall be limited as provided in subsection (C) of this section, and shall incorporate applicable rate study pass-by trip rates and trip length adjustment factors as set forth in SMC 17D.035.200. The alternative fees and the calculations shall be set forth in writing and shall be mailed to the feepayer.
- B. Alternatively, if an applicant believes that the applicant's proposed development activity does not fall under one of the fee categories set forth in SMC 17D.035.180, the applicant may, at the applicant's option, identify a development activity or land use code in the ITE Manual that most closely resembles the applicant's proposed development activity and calculate the applicant's fees based on the number of trips assigned to that development activity by the ITE Manual. In calculating such fees, the applicant shall incorporate applicable pass-by trip rates and trip length adjustment factors set forth in SMC 17D.035.200.
- C. In addition to the options described in subsections (A) and (B) of this section, an applicant may elect to have impact fees determined according to SMC 17D.035.180 or in the alternative, if an applicant opts not to have the impact fees determined according to SMC 17D.035.180, the applicant may elect an independent fee calculation for the development activity for which a building permit is sought. In that event, the applicant may prepare and submit his/her own independent fee calculation. The applicant must

make the election between fees calculated under SMC 17D.035.180 and an independent fee calculation prior to issuance of the building permit for the development. If the applicant elects to prepare its own independent fee calculation, the applicant must submit documentation showing the basis upon which the independent fee calculation was made. Provided, independent fee calculations shall use the same formulas and methodology and cost per trip used to establish the impact fees set forth in SMC 17D.035.180 and shall be limited to adjustments in trip generation rates used in the rate study, and shall not include travel demand forecasts, trip distribution, transportation service areas, costs of road projects, or cost allocation procedures.

- D. Any applicant electing an independent fee calculation pursuant to subsection (C) of this section shall be required to pay the City of Spokane a fee to cover the cost of reviewing the independent fee calculation, as follows: Two hundred fifty dollars plus a deposit of two hundred fifty dollars towards the City's actual costs incurred in reviewing the independent fee calculation; no such fee shall apply to calculations performed under subsections (A) and (B) of this section. The applicant shall remit all remaining actual costs of the City's review of the independent fee calculation prior to and as a precondition of the City's issuance of the building permit. If the City's actual costs are lower than the deposit amount, the difference shall be remitted to the applicant.
- E. While there is a presumption that the calculations set forth in the rate study are valid, the director shall consider the documentation submitted by a feepayer pursuant to subsections (B) and (C) of this section, but is not required to accept such documentation or analysis which the director reasonably deems to be inaccurate or not reliable, and may modify or deny the request, or, in the alternative, require the feepayer to submit additional or different documentation for consideration. The director is authorized to adjust the impact fees on a case-by-case basis based on the independent fee calculation, the specific characteristics of the development, and/or principles of fairness. The director's decision shall be set forth in writing and shall be mailed to the feepayer.
- F. Determinations made by the director pursuant to this section may be appealed to the office of the hearing examiner subject to the procedures set forth in chapter 17G.050 SMC.

17D.035.060 Exemptions

- A. Low-income housing, as defined in this chapter, shall be exempted from the payment of impact fees.
- B. The city council finds that the following development activities have broad public purposes and shall be exempted from the payment of impact fees:
 1. Public transportation facilities.
 2. Public parks and recreational facilities.
 3. Public libraries.
 4. ~~Publicly operated elementary, middle, junior high and senior high schools, and administrative, maintenance and other facilities of a school district. Schools, Colleges, and Universities.~~
 - a. Publicly-operated schools, colleges, and universities and associated support facilities.

- b. Not-for-profit schools, colleges, and universities and associated support facilities.
5. Development activities of community-based human services agencies which meet the human services needs of the community such as providing employment assistance, food, shelter, clothing, or health services for low and moderate-income residents; and
6. Hospitals for the treatment of humans.
- C. Requests for the exemptions set forth in subsection (B) of this section shall be submitted to the department on such forms as the director may provide. The mayor shall review applications for exemption under subsection (B) of this section and shall advise the applicant, in writing, of the granting or denial of the application. In addition, the mayor shall notify the city council when such applications are granted or denied. The mayor's determination shall be subject to the appeals procedures set forth in SMC 17D.035.090.
- D. Any claim for an exemption under this SMC 17D.035.060 must be made before payment of the impact fee. Any claim not so made shall be deemed waived. The claim for exemption must be accompanied by a draft lien and covenant against the property guaranteeing that the low-income housing or other development having a broad public purpose will continue for a period of not less than fifteen years. Before final approval of the exemption, the department shall approve the form of the lien and covenant. Within ten days of the approval, the applicant shall execute and record the approved lien and covenant with the Spokane County auditor. The lien and covenant shall run with the land. In the event that the housing unit is not used for low-income housing for the prescribed period, or in the event that other exempted development activity is converted to a non-exempt use during the prescribed period, the current owner shall pay the impact fees then in effect plus interest to the date of the payment.
- E. The impact fee for an exempt development shall be calculated as provided for in this chapter and paid with public funds other than the impact fee account. Such payment may be made by including such amount(s) in the public share of system improvements undertaken within the applicable service area.
- 17D.030.070 Credits**
- A. A feepayer can request a credit for the total value of dedicated land or public facilities provided by the feepayer if the land and public facilities are identified as system improvements or in cases where the director, in the director's discretion, determines that such dedication of land or public facilities would serve the goals and objectives of the capital facilities plan.
- B. The city council finds that certain types of development activity (including development with the City's center and corridor zones) is likely to generate fewer p.m. peak hour vehicle trips than other development activity. Consistent with this finding, a feepayer may also request a partial credit for the following:
1. Development within center and corridor zones shall qualify for a partial credit of ten percent of the impact fees otherwise payable as a result of the development activity.
 2. Mixed use development incorporating an "active" first floor (e.g. office, retail) and residential shall qualify for a partial credit of ten percent of the impact fees otherwise payable as a result of the development activity.
3. Development of green streets, as defined in the Spokane Municipal Code, that provide pedestrian connections to surrounding neighborhoods and districts shall entitle a feepayer to a partial credit of ten percent of the impact fees otherwise payable as a result of the development activity. The credit provided for in this section shall only apply to the extent a feepayer is developing a green street on the entire length of the block on which the development activity is occurring. The credit provided for in this section shall be limited to the cost incurred by the feepayer in developing the green street.
4. The cumulative credits granted in subsections (B)(1) through (B)(3) of this section for in-fill center and corridor development, mixed-use development incorporating active first floors, and development of green streets, shall not exceed twenty percent of the impact fees otherwise payable as a result of the development activity.
5. The director shall be authorized to determine whether a particular development activity falls within a credit identified in subsection (B) of this section, in any other section, or under other applicable law. Determinations of the director shall be in writing issued within fourteen days of a complete application and shall be subject to the appeals procedures set forth in SMC 17D.035.090.
- C. For each request for a credit, under subsection (A) of this section, if appropriate, the director shall select an appraiser or the feepayer may select an independent appraiser acceptable to the director. The appraiser must be a Washington State certified appraiser or must possess other equivalent certification and shall not have a fiduciary or personal interest in the property being appraised. A description of the appraiser's certification shall be included with the appraisal, and the appraiser shall certify that he/she does not have a fiduciary or personal interest in the property being appraised.
- D. The appraiser shall be directed to determine the total value of the dedicated land and/or public facilities provided by the feepayer on a case-by-case basis.
- E. The feepayer shall pay for the cost of the appraisal. The feepayer may request that the cost of the appraisal be deducted from the credit which the director may be providing to the feepayer, in the event that a credit is awarded.
- F. After receiving the appraisal, and where consistent with the requirements of this section, the director shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, the legal description of the site donated where applicable, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter or certificate indicating his/her agreement to the terms of the letter or certificate, and return such signed document to the director before the impact fee credit will be awarded. The failure of the applicant to sign, date, and return such document within sixty calendar days shall

nullify the credit. The credit must be used within seventy-two months of the award of the credit.

- G. Any claim for credit must be made prior to issuance of a building permit; provided, any claim for credit submitted later than twenty calendar days after the submission of an application for a building permit shall constitute a waiver and suspension of timelines established by state and/or local law for processing of permit applications.
- H. In no event shall the credit exceed the amount of the impact fees that would have been due for the proposed development activity.
- I. No credit shall be given for project improvements.
- J. Determinations made by the director pursuant to this section shall be subject to the appeals procedures set forth in SMC 17D.035.090.

17D.035.080 Administrative Costs

- A. All development approvals subject to payment of impact fees under this chapter shall pay an administrative fee. The administrative fee shall be the greater of fifty dollars or three percent of the impact fees payable under this chapter as a result of the development approval, not to exceed one thousand dollars; provided, the administrative fee for a single family dwelling unit shall be fifty dollars. The administrative fee shall be deposited in an administrative fee account within the impact fee account and shall be used to defray the City's costs of processing and accounting for impact fees and the City's costs in administration and update of the rate study. Payment of the administrative fee does not constitute payment of the fees relating to independent fee calculations as provided in SMC 17D.035.050(C).
- B. The administrative fee, in addition to the actual impact fees, shall be paid by the applicant to the City at the same time as the impact fee is paid.

17D.035.090 Appeals

- A. Any feepayer may pay the impact fees imposed by this chapter under protest in order to obtain a building permit or occupancy permit. Any appeal filed prior to the payment of impact fees shall constitute a waiver and suspension of timelines established by state and/or local law for the processing of permit applications.
- B. Appeals regarding the impact fees imposed on any development activity shall only be filed by the feepayer of the property where such development activity will occur.
- C. The feepayer must first file a request for review regarding impact fees with the director, as provided herein:
 1. The request shall be in writing on the form provided by the City.
 2. The request for review by the director shall be filed no later than fourteen calendar days after the feepayer pays the impact fees at issue.
 3. No administrative fee will be imposed for the request for review by the director; and
 4. The director shall issue a determination in writing.
- D. Determinations of the director with respect to the applicability of the impact fees to a given development activity, the availability or value of a credit, or the

director's decision concerning the independent fee calculation, or any other determination which the director is authorized to make pursuant to this title, can be appealed to the hearing examiner subject to the procedures set forth in chapter 17G.050 SMC.

17D.035.100 Establishment Of Impact Fee Account

- A. Impact fee receipts shall be earmarked specifically and deposited in special interest-bearing accounts for each service area. The fees received shall be prudently invested in a manner consistent with the investment policies of the City.
- B. There is hereby established an impact fee account for the fees collected pursuant to this chapter known as the transportation impact account. Except as provided in SMC 17D.035.080, funds withdrawn from this account must be used in accordance with the provisions of SMC 17D.030.120. Interest earned on the fees shall be retained in each of the accounts and expended for the purposes for which the impact fees were collected.
- C. On an annual basis, the chief financial officer and director shall provide a report to the council on the account showing the source and amount of all moneys collected, earned, or received, and system improvements that were financed in whole or in part by impact fees and contributions towards meeting concurrency goals and requirements.
- D. Impact fees shall be expended or encumbered within six years of receipt, unless the council identifies in written findings an extraordinary and compelling reason or reasons for the City to hold the fees beyond the six-year period. Under such circumstances, the council shall establish the period of time within which the impact fees shall be expended or encumbered.

17D.035.110 Refunds

- A. If the City fails to expend or encumber the impact fees within six years of when the fees were paid, the current owner of the property for which impact fees have been paid may receive a refund of such fees; provided, a refund is not required where extraordinary or compelling reasons exist for holding the fees longer than six years, as identified in written findings by the city council. In determining whether impact fees have been expended or encumbered, impact fees shall be considered expended or encumbered on a first in, first out basis.
- B. The City shall notify potential claimants by first class mail deposited with the United States postal service at the last known address of the claimants.
- C. Property owners seeking a refund of impact fees must submit a written request for a refund of the fees to the director within one year of the date the right to claim the refund arises or the date that notice is given, whichever is later.
- D. Any impact fees for which no application for a refund has been made within the one-year period shall be retained by the City and expended on the appropriate public facilities.
- E. Refunds of impact fees under this chapter shall include any interest earned on the impact fees by the City.
- F. A feepayer may request and shall receive a refund, including interest earned on the impact fees, when the

feepayer and/or the feepayer's successors and assigns do not proceed with the development activity and there has been no impact to the City's transportation system. A request for a refund pursuant to this section must be accompanied by an acknowledgement that the feepayer's underlying development approval, including any associated permits, has expired and that any application to reinstate the development approval shall be subject to the payment of impact fees pursuant to this chapter.

17D.035.120 Use Of Funds

Impact fees may be used only as allowed by chapter 82.02 RCW.

17D.030.130 Administrative Guidelines

The director shall be authorized to adopt forms, applications, brochures, and guidelines for the implementation of this chapter in accordance with City policy which may include the adoption of a procedures guide for impact fees.

17D.035.140 Review

The rate study and the fee schedules set forth in this chapter shall be reviewed by the city council upon completion of the baseline study and as it may deem necessary and appropriate every two years in conjunction with the annual update of the capital facilities plan element of the City's comprehensive plan.

A transportation impact fee advisory board consisting of individuals representing the building, real estate, and property development industries, the broader business community, community leaders, community assembly, and citizens shall be appointed by the mayor to review proposed changes to the rate study and the fee schedules set forth in this chapter prior to their review and adoption by the city council. This review shall occur when the city council may deem it necessary and appropriate every two years in conjunction with the annual update of the capital facilities plan element of the City's comprehensive plan. Provided, this section shall not be interpreted as requiring review by an advisory board or city council prior to the automatic fee adjustments contemplated in SMC 17D.035.040(A).

17D.035.150 Authorization for Interlocal Agreements

Consistent with other terms of this chapter, interlocal agreements by and between the City and other government agencies are permissible, as authorized by RCW 36.70A.040(6)(d).

17D.035.160 Existing Authority Unimpaired

Nothing in this chapter shall preclude the City from requiring the applicant for development approval to mitigate adverse environmental impacts of a specific development pursuant to the State Environmental Policy Act, chapter 43.21C RCW, based on the environmental documents accompanying the underlying development approval process, and/or chapter 58.17 RCW, governing plats and subdivisions; provided, that the exercise of this authority is consistent with the provisions of RCW 82.02.050(1)(c). Nothing in this chapter shall preclude the City from entering into a development agreement as authorized in RCW 36.70B.170 *et seq.* addressing, without limitation, the amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications.

17D.035.170 Severability

If any section or portion of a section of this chapter is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other chapter or any other section of this chapter.

17D.035.180 Appendix A - Impact Fee Schedule

17D.030.190 Appendix B - Service Area Map

17E.035.200 Appendix C - Trip Rates, Pass-by Trips, and Trip Length Adjustment Factors

17D.030.210 Phased Implementation.

~~==== Option 1: That the fees set forth in Section 17D.030.180 shall be implemented in phases as follows: All applicants seeking development approval during the first calendar year following the effective date of this ordinance shall pay 1/4th of the fees otherwise payable in Section 17D.030.180; all applicants seeking development approval during the second calendar year shall pay 1/2 of the fees otherwise payable under Section 17D.030.180; all applicants seeking development approval during the third calendar year shall pay 3/4 of the fees otherwise payable under Section 17D.030.180; and all applicants seeking development approval during the fourth calendar year and thereafter shall pay the full fees set forth in Section 17D.030.180. Provided, this implementation schedule may be adjusted with the City Council's approval from time to time pursuant to the required review provisions set forth in this chapter, and shall be reviewed and adjusted as appropriate depending on the findings of the Baseline Study.~~

~~==== Option 2: That the fees set forth in Section 17D.030.180 shall be implemented in phases as follows: All applicants seeking development approval during the first calendar year following the effective date of this ordinance shall pay 1/3 of the fees otherwise payable in Section 17D.030.180; all applicants seeking development approval during the second calendar year shall pay 2/3 of the fees otherwise payable under Section 17D.030.180; and all applicants seeking development approval during the third calendar year and thereafter shall pay the full fees set forth in Section 17D.030.180. Provided, this implementation schedule may be adjusted with the City Council's approval from time to time pursuant to the required review provisions set forth in this chapter, and shall be reviewed and adjusted as appropriate depending on the findings of the Baseline Study.~~

~~==== Option 3: That the fees set forth in Section 17D.030.180 shall be implemented in phases as follows: All applicants seeking development approval during the first calendar year following the effective date of this ordinance shall pay 1/2 of the fees otherwise payable in Section 17D.030.180; and all applicants seeking development approval during the second calendar year and thereafter shall pay the full fees set forth in Section 17D.030.180. Provided, this implementation schedule may be adjusted with the City Council's approval from time to time pursuant to the required review provisions set forth in this chapter, and shall be reviewed and adjusted as appropriate depending on the findings of the Baseline Study.~~

Section 3 - Effective Date. ~~That this ordinance shall become effective the later of October 1, 2009 or the date of the second regularly scheduled legislative session of the City Council following its receipt of the findings of the Baseline Study, which shall be the effective date.~~ That this ordinance shall become effective after October 1, 2009, or the date of the second regularly scheduled legislative session of the City Council following its receipt of the findings of the baseline study and adjusting the rate schedule to reflect those findings, if warranted, and the occurrence of the adoption by the Council of a new and additional permanent funding mechanism (i.e., a transportation benefit district, a street utility tax, or similar broad-based tax or fee) to supplement the City's ability to eliminate existing deficiencies within a reasonable time.

Adopted by the City Council on this 17th day of November 2008.

Effective Date to be determined.

The following attachments to this ordinance are on file for review in the City Clerk's Office:

Appendix A – Impact Fee Schedule

Appendix B – Service Area Map

Appendix C – ITE Trip Rates, Pass-by Trips, and Trip Length Adjustment Factors Used in Fee Schedule
