

Transportation Impact Fees **Frequently Asked Questions**

1. May the rate for impact fees authorized by the Growth Management Act (GMA) be equal to the full cost of new facilities needed to serve new growth and development?

No. Impact fees cannot be used to cover the full cost of new facilities. The statute authorizing impact fees under GMA is RCW 82.02.050, which provides as follows:

Counties, cities and towns that are required or choose to plan under RCW 36.70A.040 are authorized to impose impact fees on development activity as part of the financing for public facilities, provided that the financing for system improvements to serve new developments must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

So it is clear that a city cannot rely solely on the use of impact fees to finance public facilities for new development. There must be a balance between impact fees and other sources of public funds.

In the City of Spokane, the City's six-year street plan (an element of the City's capital facilities plan) outlines in excess of \$106 million in transportation system improvement projects, approximately half of which is necessary to accommodate the City's planned growth. The External Working Group prioritized this list to where the City's proposed impact fees are based on a fraction of the cost of the City's overall growth related transportation needs.

2. What are impact fees?

Impact fees are charges assessed against development activity that attempt to recover the cost incurred by a local government in providing the public facilities required to serve the new development.

3. Who pays impact fees?

The developer of a proposed development pays the impact fee, although the developer will, as a practical matter, pass the costs of these fees onto the purchasers of the developed property.

4. Must the city charge impact fees?

No. Impact fees are strictly optional. The Growth Management Act requires the city to plan for future growth and provide the facilities necessary for accommodating that growth. Impact fees provide another way for the city to pay for these facilities.

5. What means are available to the City to insure that developers install and/or pay for public facilities necessitated by new development?

State law authorizes the City to impose development fees and exactions upon developers as a means of insuring the provision of public facilities necessitated by new development. The Growth Management Act authorizes cities that are planning under the Act to charge impact fees (RCW 82.02.050 - .090).

In addition, Washington cities have a variety of other options available for imposing traffic impact fees on new development. The following statutes provide the authorization to impose traffic impact fees: Subdivision Exactions – Ch. 58.17 RCW; State Environmental Policy Act (Mitigation Measures)-Ch. 43.21C RCW; Voluntary Agreements-RCW 82.02.020; Transportation Benefit District Act-RCW 35.21.225 and Ch. 36.73 RCW; Local Transportation Act-Ch. 39.92 RCW; and Growth Management Act-Ch. 82.02 RCW.

6. What types of facilities may be financed with impact fees?

The impact fees authorized by GMA allows cities to impose fees for system improvements – *i.e.*, public facilities that are 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.

By contrast, most of the other mechanisms available to the City to ensure that developers install and/or pay for public facilities necessitated by new development are related to project improvements – *i.e.*, site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project.

For example, under Chapter 58.17 RCW, the state subdivision law, cities may apply a requirement that developers install, at their expense, the improvements necessary for a full range of urban services in new subdivisions. Such improvements usually include streets, curbs and gutters, sidewalks, water systems, fire hydrants, sewer and drainage lines, and in some instances, transit stops, parks and recreation facilities, and sites for schools. Installation of these improvements is usually required as a condition of subdivision approval. Also, a performance bond or similar obligation is required as assurance that improvements will be installed in accordance with city requirements. If a proposed plat does not make "appropriate provisions" for the public health, safety, and general welfare, including such needed improvements, the legislative body may deny the proposed plat.

Similarly, SEPA (Ch. 43.21C RCW) grants wide-ranging authority to impose mitigating conditions relating to a project's environmental impacts. Many cities have interpreted SEPA's authority to mitigate environmental impacts to include authority to impose impact fees to pay for the mitigation of adverse traffic impacts. A municipality pursuing this course must establish a proper foundation. Local SEPA policies authorizing the exercise of SEPA substantive authority must be adopted and fees imposed must be rationally related to impacts identified in

threshold determination documents (primarily environmental checklists) or environmental impact statements. Fees collected under SEPA may not duplicate fees collected under other sources of authority.

7. Is it possible to use impact fees to fund transit improvements?

Reviewing RCW 82.02.060(3), 82.02.050(4), and 82.02.090, it is clear that public facilities must be included in a capital facilities plan element of a comprehensive plan before they can be paid for with the Growth Management Act. The Growth Management Act states that impact fees can be used for public facilities, including public streets and roads. Streets and roads can easily be interpreted to include HOV lanes and other physical improvements to the roadway which may facilitate public transit use. It may be more of a stretch to cover programs such as van pool, ride-share, other transit facilities and similar programs. Our attorneys feel that the case could possibly be made, particularly since transportation planning is moving toward non-structural solutions. However, it remains a gray area which could be contested in court.

8. If, under RCW 82.02.060(4), a city adjusts impact fees downward in certain unusual circumstances, must it make up for the adjustment with public funds?

The city is not required to make up for, with public funds, an adjustment from the standard impact fee for which the city must allow in order to ensure fairness in the imposition of such fees. Unlike RCW 82.02.060(2), in which the city provides an exemption for low-income housing or for "other development activity with broad public purposes," the city is not required by RCW 82.02.060(4) to use public funds to cover the fees that are "lost" by an adjustment.

The same logic does not operate for adjustments as for exemptions. An adjustment to ensure fairness should be made where the impact for a project is, for some documented reason (see RCW 2.02.060(5)), less than it would be for other similar projects and, thus, application of the standard fee would be excessive. For instance, it may be possible to demonstrate that residents living near a bus route will generate less vehicle traffic than the standard development. In theory, the lower impact would require fewer improvements. A city would allow an exemption for low-income housing for public policy reasons and not because the fee would be disproportionate to the impact. Thus, where an exemption is allowed, the impact would not be mitigated unless the fees are made up from some other source (other than the developer).

9. What is the effect of impact fees on general business activity?

All things being equal, businesses may choose to locate in a community without impact fees in preference to one that has impact fees. However, there are many other factors in a location decision. For instance, some cities attribute their success in attracting major new employers to the quality of services and amenities which they offer, such as an open space system. Some companies choose to locate in an area with these extra amenities in spite of greater incentives, tax breaks, and lower fees offered by competing cities.

10. May the City require impact fees for development in unincorporated urban growth areas surrounding the City?

The City does not have authority to require impact fees outside the city limits but within the urban growth area, as it does not have the necessary regulatory and governmental jurisdiction. The GMA, however, does contemplate that regulation within urban growth areas be exercised jointly by the city and county by agreement. In fact, the GMA mandates that the county and the cities within it enact county-wide planning policies which must provide for "policies for joint county and city planning within urban growth areas." RCW 36.70A.210(3)(f). Thus, any collection and use of impact fees within the urban growth area for city facilities to serve development within the urban growth area can only come about through agreement between the city and the county, unless the developer agrees to such fees as a condition of the city's provision of utilities. These impact fees must be spent for system improvements that "will reasonably benefit" this development within the urban growth area. Furthermore, public facilities addressed by a capital facilities plan element of the city's comprehensive plan should relate to development within the urban growth area, as impact fees may be collected and spent only for such public facilities.

11. May the City reduce impact fees below the amount needed to cover projected transportation system needs for new development?

Yes. First of all, the City may not require new development to pay for correction of existing deficiencies. The City may only charge new development for the portion of facilities that are needed as a result of new development.

The City is not required to impose impact fees and the City Council may choose to set impact fees below the level necessary to fully cover transportation system improvements for new development. A city may want to do so because of affordable housing concerns or a variety of other public purposes. A city must still show what other source of public funds will be used to cover the gap between the amount funded by impact fees and the total amount needed.

If the City wishes to reduce projected costs of facilities to serve new development (making it easier to reduce impact fees) it may want to reconsider plan assumptions and level of service standards.

12. May transportation impact fees be used to fund pedestrian and bicycle facilities?

The Growth Management Act states that impact fees can be used for public facilities, including public streets and roads (RCW 82.02.050(4) and RCW 82.02.090(7)). It is likely that "streets and roads" could be interpreted to include wide shoulders, bicycle lanes, sidewalks and other physical improvements to the roadway that may facilitate pedestrian and bicycle circulation.

13. May a person that has paid a fee pursuant to SEPA for a system improvement be required to pay a GMA impact fee for the same system improvement?

No. Both SEPA and GMA prohibit double dipping and explicitly prohibit requiring fees under both statutory schemes for the same system improvement. It is possible, however, that a developer might be required to pay two separate impact fees for the same project. For example, WSDOT may charge a fee under SEPA for their SR195 interchange and the City of Spokane may charge a GMA impact fee for the adjoining frontage road.

14. Must a person that is required to construct a system improvement as a condition of development approval also pay GMA impact fees?

It depends. Impact fee ordinances 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 capital facilities plan and that are required by the city as a condition of approving the development activity. If this credit is equal to or exceeds the GMA impact fees that would have been due for a proposed development activity, no GMA impact fees would be payable. In no event will this credit exceed the amount of impact fees that were otherwise due and payable.

The City's draft impact fee ordinance also provides a variety of other credits for certain in-fill development, mixed use development, and development of green streets.

15. Will the payment of impact fees guarantee a finding of concurrency and otherwise eliminate traffic studies and traffic scoping meetings?

No. The payment of impact fees does not guarantee a finding of concurrency. Nor does it eliminate the City's regulatory responsibility to evaluate the environmental impacts of development activity under SEPA. Consequently, traffic studies will still be required for some development activity.

City staff, with the support of the External Working Group, is recommending that the City Council adopt a variety of measures concurrent with the adoption of transportation impact fees that should result in a reduction of the number of required traffic studies and a reduction in the scope of those that are still required.

Included in the foregoing measures is gathering the data necessary to establish a baseline for the city's transportation system in order to facilitate implementation of a more effective transportation management system. An improved transportation management system will assist the City in monitoring the performance of its existing transportation system; will assist the City in more accurately identifying existing system deficiencies; will assist the City in anticipating additional demand that new growth and development will place on the system; and will assist the City in more accurately identifying the system improvements necessary to accommodate the anticipated growth. In addition, it should reduce the scope of project specific transportation studies in most cases and significantly reduce the amount of data developers are required to gather in preparation of such studies.

16. Are vacant lots in previously approved plats subject to the payment of impact fees?

Yes. Washington courts have ruled in at least two separate cases that cities may impose impact fees on building permit applications even though the applications are for construction/development in plats that received approval prior to implementation of impact fees.

17. If property is redeveloped, will impact fees be offset to reflect the number of vehicle trips generated by the previous use of the property?

Yes. In recognition that replacement of an existing structure generally will not create additional vehicle trips, the draft ordinance currently provides that the replacement of certain structures is not subject to impact fees. For the same reason, the draft ordinance also provides that re-use or change in use of existing structures is not subject to impact fees where the new use does not generate net new vehicle trips. Left to decide is whether this treatment should end once a structure is vacant for a period of time.

18. How is the City insuring that impact fees are not imposed to make up for existing transportation deficiencies?

For each of the projects on the City's impact fee project list, the City identified existing deficiencies by modeling the volume to capacity (V/C) ratio of the roadway under existing conditions and assuming construction the project. Where the modeling indicated that a project will result in additional capacity, the City applied the difference in the V/C ratio to determine the percentage of project cost attributable to correcting existing deficiencies.

19. How will impact fees impact low income housing?

Impact fee ordinances may provide an exemption for low-income housing and other development activities with broad public purposes. If a city allows an exemption, however, it must make up the difference through/from/by public funds other than impact fees. The City's draft ordinance provides an exemption for low-income housing, as generally defined by the City's Community Development Department. No other exemptions are provided for in the draft ordinance.

20. Will impact fees have a disproportionate impact on small businesses?

Impact fees will represent a new cost to developments that are exempt from SEPA's mitigation requirements. Impact fees, however, are based on the number of new p.m. peak hour trips a project will generate. Therefore, if a development/business is truly small, the impact to the transportation system will be small and the resulting impact fee will reflect the small impact.

21. What are the benefits of impact fees?

Impact fees may only be used for system improvements that are reasonably related to and that will reasonably benefit new development. Impact fees will provide the City with a reliable local source of funding that can be leveraged to obtain matching funds for transportation projects. This will result in an improved transportation system that will benefit new development and the entire community as a whole.

22. What are the options for a developer that disagrees with the impact fees set forth in the ordinance's impact fee schedules?

A developer who disagrees with the fees set forth in the impact fee schedules can submit data and/or analysis to demonstrate that his or her project will generate fewer vehicle trips than the fee schedule assumes. If the City disagrees with the developer's independent fee calculations, but wishes to proceed with construction anyway, the developer can pay the City's standard impact fees under protest and file an appeal. The developer can obtain a refund of the impact fees if the local government fails to expend or obligate the impact fee payments within six years, or terminates the impact fee requirement, or if the developer does not proceed with the development and creates no impacts.

23. How does the City address pass-by and shared trips in the impact fees set forth in the City's impact fee schedules?

The transportation impact fee rate schedules recognize pass-by rates as outlined in the ITE Manual.

24. May the City use impact fees collected in one service area to build transportation projects in another service area?

No. Impact fees collected in a specific area must be spent on transportation improvement projects within that service area.

25. What is next in the process?

- Plan Commission Workshop and Hearing
- City Council Hearing