

ORDINANCE NO. C _____

An ordinance establishing interim voluntary transportation impact fees; adopting a new chapter 17D.030 to title 17 of the Spokane Municipal Code; and declaring an emergency.

The City of Spokane does ordain:

Section I. That there is adopted a new chapter 17D.030 to title 17 of the Spokane Municipal Code to read as follows:

**CHAPTER 17D.030
Interim Voluntary Transportation Impact Fees**

Sections:

- 17D.030.010 Findings and Authority.
- 17D.030.020 Definitions.
- 17D.030.030 Optional Assessment of Voluntary Impact Fees.
- 17D.030.080 Establishment of Impact Fee Account.
- 17D.030.090 Authorization for Interlocal Agreements.
- 17D.030.100 Refunds.
- 17D.030.110 Use of Funds.
- 17D.030.130 Appeals.
- 17D.030.140 Existing Authority Unimpaired.
- 17D.030.150 Appendix A

17D.030.010 Findings And Authority

The city council finds and ordains as follows:

- A. That new City of Spokane (City) growth and development, including but not limited to new residential, commercial, retail, office, industrial and institutional development, is creating additional demand and need for city public transportation facilities (public streets and public roadways);
- B. That new growth and development should pay a proportionate share of the cost of necessary new public transportation facilities, taking into account other sources of public funds;
- C. That the City recognizes that a permanent impact fee ordinance should involve significant input from stakeholders and other members of the public as well as coordination with adjacent jurisdictions. However, the City further recognizes that the existing "Level of Service" levels contained in the City of Spokane's Comprehensive Plan and the concurrency standards established by SMC chapter 17D.010 create an increasing burden on all stakeholders due to the difficulty and time involved in conducting a traffic impact analysis for most

development projects as well as uncertainty as to the cost and scope of off site improvements necessary to meet concurrency standards. To respond to these concerns, the City is establishing an impact fee pursuant to RCW 82.02.020 and 82.02.050-090 which shall be voluntary and an alternative to the existing methodology of satisfying transportation concurrency requirements by conducting a traffic impact analysis and identifying improvements pursuant to that analysis. The fee is also intended to be an interim fee and be in effect for six months from its effective date. At that time the City may consider the imposition of permanent mandatory or voluntary impact fees;

- D. That current circumstances unnecessarily impede development and fail to provide fiscal certainty often necessary for sustained future economic growth and as such constitute a public emergency requiring immediate passage of this chapter for the preservation of the public peace, health or safety and the immediate support of City government and its existing institutions;
- E. That the City has compiled data and prepared a formula and method of calculating the amount of the interim impact fee. The data and method of calculating contained in the interim 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;

Now, therefore, pursuant to RCW Chapter 82.02.020, and RCW 82.02.050-090 the city council adopts this chapter to authorize appropriate and lawful voluntary impact fees for public transportation facilities.

17D.030.020 Definitions

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. "Applicant" means the owner of real property according to the records of the Spokane County, or the applicant's authorized agent.
- B. "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.
- C. "Capital facilities" means the facilities or improvements included in the capital facilities plan.

- D. "Capital facilities plan" means the capital facilities plan element of the city's comprehensive plan adopted pursuant to RCW Chapter 36.70A, and such plan as amended.
- E. "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.
- F. "Developer Agreement" means a voluntary agreement entered into with a developer pursuant to RCW 82.02.020.
- G. "Director" means the director of engineering services, or the director's designee.
- H. "Encumbered" means to reserve, set aside or otherwise earmark the voluntary impact fees in order to pay for commitments, contractual obligations or other liabilities incurred for public facilities.
- I. "Gross floor area" is the total square footage of all floors in a structure as defined in SMC chapter 11.19.
- J. "Hearing examiner" means the person who exercises the authority of SMC chapter 17G.050.
- K. "Interest" means the interest rate earned by local jurisdictions in the State of Washington Local Government Investment Pool, if not otherwise defined.
- L. "Interim rate study" means the Transportation Impact Fee Interim Rate Study, City of Spokane, dated May 9, 2005.
- M. "Interlocal agreement" or "agreement" means a roads 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.
- N. "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.
- O. "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 a

capital facilities plan approved by the governing body of the county, city, or town shall be considered a project improvement (RCW 82.02.090(6)).

- O. "Public facilities" means the following capital facilities owned or operated by government entities:
 - 1. public streets and public roadways (RCW 82.02.090(7)).
- Q. "Public street or roadway" shall mean the entire width of the right of way of any road or street designed and ordinarily used for travel or parking of motor vehicles, which is controlled by a public authority other than the Washington State Department of Transportation, and which is open as a matter of right to the general public for ordinary vehicular traffic.
- R. "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.
- S. "Square footage" means the square footage of the gross floor area of the development as defined SMC chapter 11.19.
- T. "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 (RCW 82.02.090(9)).
- U. "Voluntary impact fee" means a payment of money 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 or application fee (RCW 82.02.090(3)).
- V. "Voluntary impact fee account" or "account" means the account established for the system improvement for which impact fees are collected. The account shall be established pursuant to this chapter, and shall comply with the requirements of RCW 82.02.070

17D.030.030 Optional Assessment Of Voluntary Impact Fees

- A. The City shall offer, in lieu of the requirement for a transportation impact analysis necessary to evaluate transportation concurrency, to collect a voluntary impact fee, based on the districts and schedule set forth in SMC 17D.030.150 (Appendix A). The impact fees shall:
 - 1. Be set forth in a schedule of impact fees which shall be adopted for each type of development activity that is subject to impact fees. This schedule

shall be based upon a formula or method of calculating that incorporates those provisions set forth in RCW 82.02.060 (a) – (e).

2. Shall provide for 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. (RCW 82.02.060(3))
 3. Shall allow the City imposing the impact fees to adjust the standard impact fee at the time the fee is imposed to consider unusual circumstances in specific cases to ensure that impact fees are imposed fairly. (RCW 82.02.060 (4))
 4. Shall establish service areas as is set forth in Attachment A within which the City shall calculate and offer impact fees for various land use categories per unit of development. (RCW 82.02.060(6))
 5. May provide for the imposition of an impact fee for system improvement costs previously incurred by the City to the extent that new growth and development will be served by the previously constructed improvements provided such fee shall not be imposed to make up for any system improvement deficiencies. (RCW 82.02.060(7))
- B. This fee may be incorporated into a voluntary developer agreement entered into pursuant to RCW 82.02.020.
- C. All fees collected pursuant to such an agreement shall be collected from the applicant at the time and in the manner agreed to between the city and the developer but in no event shall be later than the time of issuance of the building permit, or certificate of occupancy permit if no building permit is required.
- D. For a change in use of an existing building or dwelling unit, or portion thereof, the voluntary impact fee shall be the applicable impact fee for the land use category of the new use, less the impact fee for the land use category of the prior use. If the impact fee based on the new use is greater than the impact fee based on the prior use, then an impact fee is due and owing for the difference between the two impact fees. If the opposite is true, no impact fee is due and owing. For any change in use that includes an alteration, expansion, replacement or new accessory building, the impact fee shall be the applicable impact fee for the land use category of the new gross floor area (or if applicable, gross leasable area), less the impact fee for the land use category of the prior gross floor area (or if applicable, gross leasable area).

- E. For mixed use buildings or developments, voluntary 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 Appendix A.

17D.030.080 Establishment Of Voluntary Impact Fee Account.

- A. A voluntary impact fee account is established by district for the fees collected pursuant to this chapter and shall be entitled the transportation impact fee account. Impact fees shall be earmarked specifically and deposited in the special interest-bearing account and shall be prudently invested in a manner consistent with the investment policies of the City. Funds withdrawn from this account shall be used in accordance with the provisions of Section 17D.030.110. Interest earned on impact fees shall be retained in the account and expended for the purpose for which the impact fees were collected. (RCW 82.02.070).
- B. On an annual basis, the chief financial officer 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.
- C. Voluntary 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.030.090 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.030.100 Refunds (RCW 82.02.080)

- A. If the City fails to expend or encumber the impact fees within six years of payment, the current owner of the property for which impact fees have been paid may receive a refund of the fee. 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.

17D.030.110 Use Of Funds

- A. Impact fees may be spent for system improvements, including but not limited to transportation planning, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting, financing, administrative expenses, construction of streets and public roadways and related facilities such as curbs, gutters, sidewalks, bike lanes, storm drainage and installation of traffic signals, signs and street lights. (RCW 82.020.050 & 060)
- B. Impact fees may be used to recoup cost for system improvement previously incurred by the city to the extent that new growth and development will be served by the previously constructed system improvements. (RCW 82.020.060(7))
- C. In the event that bonds or similar debt instruments are or have been issued for the advanced provision of system improvements, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that system improvements provided are consistent with the requirements of this chapter and are used to serve the new development.

17D.030.130 Appeals

- A. An appeal of an impact fee imposed on a building permit, or certificate of occupancy if no building permit is required, may only be filed by the applicant of the subject property. An applicant may either file an appeal and pay the impact fee imposed by this chapter under protest, or appeal the impact fee before issuance of the building permit or certificate of occupancy if no building permit is required. No appeal may be filed after the impact fee has been paid and the building permit or certificate of occupancy has been issued.
- B. An appeal shall be filed with the hearing examiner on the following determinations of the director:
 - 1. The applicability of the impact fees to a given building permit or certificate of occupancy found in Section 17D.030.030 and 050.

2. The availability or value of a credit in Section 17D.030.030; or
 3. Any other determination which the director is authorized to make pursuant to this chapter.
- C. An appeal, in the form of a letter of appeal, along with the required appeal fee, shall be filed with the department for all determinations by the director, prior to issuance of a building permit, or certificate of occupancy if no building permit is required. The letter must contain the following:
1. a basis for and arguments supporting the appeal; and
 2. technical information and specific data supporting the appeal.
- D. The fee for filing an appeal shall be as is set forth in SMC 8.02.087.
- E. Within twenty-eight days of the filing of the appeal, the director shall mail to the hearing examiner the following:
1. the appeal and any supportive information submitted by the appellant;
 2. the director's determination along with the record of the impact fee determination, and
 3. a memorandum from the director analyzing the appeal.
- F. The hearing examiner shall review the appeal pursuant to SMC chapter 17G.050.

17D.030.140 Existing Authority Unimpaired.

Nothing in this chapter shall preclude the City from requiring the applicant for a building permit, or certificate of occupancy if no building permit is required, to mitigate adverse environmental impacts of a specific development pursuant to the State Environmental Policy Act, RCW Chapter 43.21C, based on the environmental documents accompanying the underlying development approval process, and/or RCW Chapter 58.17, governing plats and subdivisions; provided, that the exercise of this authority is consistent with the provisions of RCW 82.02.050 (1)(c).

17D.030.150 Appendix A (See Attached)

Section 2. Emergency Clause. This ordinance is necessary due to reasons outline in Section 17D.030.010D above. It is passed by a majority plus one of the whole membership of the city council. It is necessary for the immediate preservation of the public peace, health or safety or for the immediate support of city government and its existing institutions. This ordinance shall take effect immediately upon passage.

Adopted by the City Council on this _____ day of _____, 2005.

Council President

Attest:

Approved as to form:

City Clerk

City Attorney

Mayor

Date