

PS&T COMMITTEE AGENDA

March 3, 2016 - North Conference Room

21630 11th Avenue South – Des Moines 98198

5:30P – 7:00P

1. Red Light Cameras

(Discussion Item – 20 min)

Staff will update the committee on the potential for red light camera enforcement at select traffic signals in the City as well as discuss a draft ordinance associated with a potential new DMMC chapter associated.

2. Traffic Impact Fee Update

(Discussion Item – 20 min)

Staff will provide a status to the committee as to the recent Traffic Impact Fee Update and the associated fee results and brief comparison of impact fees from neighboring agencies.

3. Impact Fee Deferral Program

(Discussion Item – 20 min)

Staff will brief the Committee on a proposed Draft Impact Fee Deferral Program for discussion.

4. CIP Project Updates

(Informational Item – 15 Min)

Staff will provide a status update to the Committee on current CIP Projects.

5. Flashing Yellow Arrow Discussion

(Discussion Item – 15 min)

Staff will brief the committee on the upcoming installation of a flashing yellow left-turn phase for the northbound left turn at South 227th/MVD.

6. Code Enforcement Duties

(Discussion Item – 15 min)

Staff will provide a status update to the Committee on Code Enforcement functions since the Code Enforcement Officer position was eliminated in 2016.

CITY ATTORNEY'S FIRST DRAFT 2/22/2016

DRAFT ORDINANCE NO. 16-018

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the Des Moines Traffic Code, authorizing the use of automated red light running enforcement cameras, adding a new chapter to Title 10 DMMC, establishing a penalty, and codifying a new chapter in Title 10 DMMC.

WHEREAS, pursuant to chapter 10.04 DMMC, the City adopted by reference the State's Model Traffic Ordinance which authorizes issuance of citations for school zone speed violations, and

WHEREAS, a red light running study was conducted for certain intersections in Des Moines and the results indicated a significant number of violations, and

WHEREAS, RCW 46.63.170 authorizes the use of automated traffic safety cameras to detect violations at traffic control signals upon passage of a local ordinance authorizing the use of said automated cameras, and

WHEREAS, consistent with the requirements of RCW 47.36.020, the duration of the yellow change intervals at the city's signalized intersections are at least as long as the minimum yellow change interval identified in the manual of uniform traffic control devices, and

WHEREAS, the City desires to use automated traffic safety cameras to detect red light running violations consistent with the authority granted in RCW 46.63.170; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. A new chapter is added to Title 10 DMMC entitled "*Automated Red Light Running Enforcement*", to read as follows:

(1) Definitions.

(a) Use of words and phrases. As used in this ordinance, unless the context or subject matter clearly requires

otherwise, the words or phrase defined in this section shall have the indicated meaning.

(b) "Automated red light running enforcement camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle whenever a vehicle fails to stop when facing a steady red traffic control signal.

(2) Authorized use.

(a) Consistent with the authority granted in RCW 46.63.170, City law enforcement officers and persons commissioned by the Chief of Police are authorized to use automated red light running enforcement cameras and related automated systems only to detect and record the image of red light running violations.

(b) Use of automated red light running enforcement cameras is restricted to intersections of two arterials with traffic control signals that have yellow change interval durations in accordance with RCW 47.36.022, which interval durations may not be reduced after placement of the camera.

(c) Use of automated red light running enforcement cameras is limited to taking pictures of the vehicle and vehicle license plate only, and only while an infraction is occurring. Pictures may not reveal the face of the driver or of passengers in the vehicle.

(d) Each location where an automated red light running enforcement camera is used shall be clearly identified by the City Traffic Engineer with the posting of signage placed in a manner that clearly indicates to a driver that the driver is entering a zone where traffic laws are enforced by an automated camera.

(e) Notwithstanding any other provision of law, all photographs, microphotographs and electronic images prepared under this ordinance and, as provided in RCW 46.63.170(1)(f), are not open to the public and may not be used in a court in a

pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

(3) Notice of infraction.

(a) A notice of infraction based on evidence detected through the use of an automated red light running enforcement camera shall be mailed to the registered owner of the vehicle within fourteen (14) days of the violation, or to the renter of a vehicle within fourteen (14) days of establishing the renter's name and address under subsection (c)(i) of this section. A law enforcement officer shall authorize the issuance of the notice of infraction, which shall include with it a certificate or facsimile thereof, based upon the inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, citing the infraction and stating the facts supporting the notice of infraction. This certificate or facsimile shall be prima facie evidence of the facts contained in it and shall be admissible in a proceeding charging a violation under this ordinance. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated red light running enforcement camera may respond to the notice by mail.

(b) The registered owner of a vehicle is responsible for a notice of infraction detected through use of an automated red light running enforcement camera unless the registered owner overcomes the presumption stated in this ordinance, or, in the case of a rental car business, satisfies the conditions under subsection (c) of this section. If appropriate under the circumstances, a renter identified under subsection (c)(i) of this section is responsible for such an infraction.

(c) If the registered owner of a vehicle responsible for a notice of infraction detected through use of an automated red light running enforcement camera is a rental

car business, the Chief of Police or his designee shall, before such a notice of infraction is issued, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen(18) days of receiving the written notice, provide to the Des Moines Police Department by return mail:

(i) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(ii) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft.

Timely mailing of this statement to the Des Moines Police Department relieves a rental car business of any liability under this ordinance for the notice of infraction. In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

(4) Prima facie presumption.

(a) In a traffic infraction case involving an infraction detected through the use of an automated red light running enforcement camera under this ordinance, proof that the particular vehicle described in the notice of traffic infraction was involved in red light running violation, together with proof that the person named in the notice of infraction was at the time of the violation the registered owner of the vehicle, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person in control of the vehicle at the point where, and for the time during which, the violation occurred.

(b) This presumption may be overcome only if the registered owner states under oath, in testimony before the court that the vehicle involved was, at the time, stolen or in

the care, custody, or control of some person other than the registered owner.

(5) Processing of infractions. Infractions detected through the use of automated red light running enforcement cameras are not part of the registered owner's driving record and shall be processed in the same manner as parking infractions.

(6) Nonexclusive enforcement. Nothing in this ordinance prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) as now in effect or hereinafter amended.

(7) Penalty.

(a) The maximum penalty for infractions detected under authority of, and committed pursuant to, the provisions of this ordinance shall be two hundred fifty dollars (\$250.00). The monetary penalty for a violation of this ordinance is consistent with the authority of RCW 46.63.170 and shall not exceed the maximum amount of fine issued for other parking infractions within the City of Des Moines.

(b) Revenue from fines assessed under authority of this ordinance shall be used solely for public safety purposes or as otherwise provided by state law. For purposes of this section, the term "public safety purposes" may include, but is not limited to, the following:

(i) Personnel costs for employees or contractors who are involved in automated red light running enforcement planning and implementation, including professional services such as traffic engineering services;

(ii) Personnel costs for employees or contractors who are involved in automated red light running enforcement, court hearings, fine collection or other processing, including expert witness fees, and/or technology enhancements to efficiently support program administration;

(iii) Costs associated with training of employees or contractors involved with the automated red light running enforcement program;

(iv) Purchase and/or maintenance of equipment, including signage, related to the automated red light running enforcement program;

(v) Costs associated with public safety including general fund expenditures for police services unrelated to the automated red light running enforcement program;

(vi) Costs associated with intersection safety projects in the transportation capital fund, unrelated to the automated red light running enforcement program.

(8) Compensation for services. The compensation paid to the manufacturer or vendor of the automated red light running enforcement camera equipment used shall be based only upon the value of the equipment and services provided or rendered in support of the system, and shall not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.

Sec. 2. Codification. Section 1 of this ordinance shall be codified as a new chapter in Title 10 DMMC entitled "*Automated Red Light Running Enforcement*".

Sec. 3. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 4. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

PASSED BY the City Council of the City of Des Moines this _____ day of _____, 2016 and signed in authentication thereof this _____ day of _____, 2016.

M A Y O R

APPROVED AS TO FORM:

Assistant City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____

RED LIGHT PHOTO ENFORCEMENT PRIOTIZED BY PREDICTED VIOLATIONS AFTER MATURITY				
ATS Loc.	Direction	Street	Cross Street	Violations per day
15	EB	S 227th St	Marine View Dr/SR 509	8
17	SB	Pacific Hwy S/ Intertional Blvd/ SR 99	S 216th St	6.4
21	WB	Kent Des Moines Rd/SR 516	Pacific Hwy S/SR 99	6.4
12	SB	Marine View Dr/SR 509	7th Ave S/ 7th Pl S	6.2
19	SB	Pacific Hwy S/ Intertional Blvd/ SR 99	S 224th St	6.2
11	NB	Marine View Dr/SR 509	7th Ave S/ 7th Pl S	6
18	EB	S 216th St	Pacific Hwy S/ Intertional Blvd/ SR 99	5.5
1	NB	16th Ave S	S 240th St	4.8
8	WB	S 272nd St	16th Ave S	4.8
9	EB	S 216th St	20th Ave S	4.3
10	WB	S 216th St	24th Ave S	4.3
7	EB	S 272nd St	16th Ave S	4.1
13	NB	Marine View Dr/SR 509	S 227th St	4
20	SB	Pacific Hwy S/SR 99	Kent Des Moines Rd/SR 516	4
4	WB	S 240th St	16th Ave S	3.8
14	SB	Marine View Dr/SR 509	S 227th St	3.8
5	NB	16th Ave S	S 272nd St	3.7
6	SB	16th Ave S	S 272nd St	3.7
2	SB	16th Ave S	S 240th St	1.8
3	EB	S 240th St	16th Ave S	1.8
16	NB	Pacific Hwy S/ Intertional Blvd/ SR 99	S 216th St	N/A

* Below this line not recommended by ATS

RED LIGHT PHOTO ENFORCEMENT PRIOTIZED ACCIDENTS FROM 2011 TO 2014

ATS Loc.	Direction	Street	Cross Street	2011-2014 Accidents per approach
17	SB	Pacific Hwy S/ Intertional Blvd/ SR 99	S 216th St	17
2	SB	16th Ave S	S 240th St	10
5	NB	16th Ave S	S 272nd St	9
18	EB	S 216th St	Pacific Hwy S/ Intertional Blvd/ SR 99	8
20	SB	Pacific Hwy S/SR 99	Kent Des Moines Rd/SR 516	6
16	NB	Pacific Hwy S/ Intertional Blvd/ SR 99	S 216th St	5
1	NB	16th Ave S	S 240th St	4
14	SB	Marine View Dr/SR 509	S 227th St	4
19	SB	Pacific Hwy S/ Intertional Blvd/ SR 99	S 224th St	4
3	EB	S 240th St	16th Ave S	4
21	WB	Kent Des Moines Rd/SR 516	Pacific Hwy S/SR 99	3
12	SB	Marine View Dr/SR 509	7th Ave S/ 7th Pl S	3
11	NB	Marine View Dr/SR 509	7th Ave S/ 7th Pl S	3
13	NB	Marine View Dr/SR 509	S 227th St	3
4	WB	S 240th St	16th Ave S	2
6	SB	16th Ave S	S 272nd St	1
15	EB	S 227th St	Marine View Dr/SR 509	1
8	WB	S 272nd St	16th Ave S	1
7	EB	S 272nd St	16th Ave S	1
9	EB	S 216th St	20th Ave S	0
10	WB	S 216th St	24th Ave S	0

Chapter 12.40 TRANSPORTATION IMPACT FEES

Sections

- [12.40.010](#) Title.
- [12.40.020](#) Application.
- [12.40.030](#) Purpose and intent.
- [12.40.040](#) Authority.
- [12.40.050](#) Findings and authority.
- [12.40.060](#) Adopted by reference.
- [12.40.070](#) Definitions – Use of words and phrases.
- [12.40.080](#) Transportation impact fees established.
- [12.40.090](#) Establishment of service area.
- [12.40.100](#) Imposition of transportation impact fees on development activity.
- [12.40.110](#) Independent calculations.
- [12.40.120](#) Exemptions.
- [12.40.130](#) Credits for dedications and construction of improvements.
- [12.40.140](#) Disposition of transportation impact fee revenues.
- [12.40.150](#) Refunds.
- [12.40.160](#) Appeals.
- [12.40.170](#) Existing authority unimpaired.
- [12.40.180](#) Administrative guidelines.

12.40.010 Title.

This chapter shall be entitled "Transportation Impact Fees." [Ord. 1578 § 114, 2013.]

12.40.020 Application.

This chapter shall apply to all transportation impact fees. [Ord. 1578 § 115, 2013.]

12.40.030 Purpose and intent.

The purpose and intent of this chapter is for the collection of transportation impact fees for streets, and providing for certain other matters in connection therewith. [Ord. 1578 § 116, 2013.]

12.40.040 Authority.

This chapter is created pursuant to RCW [82.02.050](#) through [82.02.090](#). [Ord. 1578 § 117, 2013.]

12.40.050 Findings and authority.

The City Council hereby finds and determines that development activities, including but not limited to new residential, commercial, retail, office, and industrial development in the City will create additional transportation demand and need for public facilities in the City, and the City Council finds that such new growth and development should pay a proportionate share of the cost of new transportation facilities needed to serve the new growth and development. The City has conducted extensive research and analysis documenting the procedures for measuring the impact of new developments on public facilities, and has prepared a "Rate Study for Transportation Impact Fees, City of Des Moines," dated August 17, 2009 [Transportation Impact Fee Rate Study Update](#), dated December 2015 ("rate study"). The rate study utilizes a methodology for calculating impact fees that fulfills all of the requirements of RCW [82.02.060](#)(1). A copy of the rate study shall be kept on file with the City Clerk and is available to the public for review. Therefore, pursuant to chapter [82.02](#) RCW, the Council adopts this chapter to assess transportation impact fees for streets and roads. The provisions of this chapter shall be liberally construed in order to carry out the purposes of the Council in establishing the transportation impact fee program. [Ord. 1578 § 118, 2013.]

12.40.060 Adopted by reference.

The "Rate Study for Transportation Impact Fees, 2009 Update, City of Des Moines," dated August 17, 2009 [Transportation Impact Fee Rate Study Update](#), dated December 2015, is hereby adopted as set forth in Exhibit A¹, which is attached to the ordinance codified in this chapter and incorporated herein by reference. [Ord. 1578 § 119, 2013.]

12.40.070 Definitions – Use of words and phrases.

As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings. Terms otherwise not defined herein shall be defined pursuant to RCW [82.02.090](#), or given their usual and customary meaning.

"Accessory living quarters" is as defined in DMMC [18.01.050](#).

"Building permit" means an official document or certification which is issued by the Planning, Building and Public Works Director and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving, or repair of a building or structure.

"Capital facilities plan" means the capital facilities element of the City Comprehensive Plan.

"City Comprehensive Plan" means the City of Des Moines Comprehensive Plan, adopted pursuant to chapter [36.70A RCW](#), and such plan as subsequently amended or revised.

"Department" means the City's Planning, Building, and Public Works Department.

"Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land, that generates at least one p.m. peak hour trip.

"Development approval" means any written authorization from the City which authorizes the commencement of a development activity.

"Dwelling" is as defined in DMMC [18.01.050](#).

"Encumbered" means to reserve, set aside, or otherwise earmark the transportation impact fees in order to pay for commitments, contractual obligations, or other liabilities incurred for public facilities.

"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 development activity which creates the demand for additional system improvements and which requires the issuance of a permit for a given development activity. "Feepayer" includes an applicant for a transportation impact fee credit.

"GMA" means the Washington State Growth Management Act, codified as chapter [36.70A RCW](#), as now in existence, or as hereinafter amended.

"Hearing Examiner" means the Hearing Examiner of the City, pursuant to chapter [18.240 DMMC](#).

"Impact fee" means a payment of money imposed by the City upon development approval pursuant to this chapter as a condition of issuance of a permit for a given development activity to pay for public facilities needed to serve new growth and development, and to mitigate the impacts of the development activity on the transportation facilities of the City. "Impact fee" does not include a reasonable permit or application fee, an administrative fee for collecting and handling impact fees, or the cost of reviewing independent calculations.

"Independent calculation" means the street and road impact calculation, and/or economic documentation prepared by a feepayer, to support the assessment of a transportation impact fee other than by the rate listed in DMMC [12.40.100](#), the rate study, or the Department's fee schedule; or the calculations prepared by the Planning, Building and Public Works Director where none of the land use categories or fee amounts in the rate

study or the Department's fee schedule accurately describe or capture the impacts of the development activity on public facilities.

"ITE Land Use Code" means the classification code number assigned to a type of land use by the Institute of Transportation Engineers in the most recent edition of the Trip Generation Manual, unless otherwise noted.

"Owner" means the owner of record of real property. If real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

"Permit for change in land use" means an official document which is issued by the Planning, Building and Public Works Director which authorizes a change in use of an existing building, structure, or land that does not require a building permit.

"Planning, Building and Public Works Director" means the Planning, Building, and Public Works Director, or the Planning, Building and Public Works Director's designee.

"P.M. peak hour" means the 60-minute period generally between 4:00 p.m. and 6:00 p.m. which experiences the highest volume of traffic on a road or street or passing through a road or street intersection.

"P.M. peak hour trips" means the total vehicular trips entering and leaving a place of development activity on the adjacent public road or street during the p.m. peak hour.

"Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and 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 adopted by the council shall be considered a project improvement.

"Public facilities," as used in this chapter, refers to public streets, roads and rights-of-way owned or operated by the City or other governmental entities, including trails, paths, bikeways, other transportation facilities and all attendant improvements.

"Rate study" means the rate study identified in DMMC [12.40.060](#).

"Service area" means the transportation impact fee service area of the City identified in DMMC [12.40.090](#).

"System improvements" means public facilities that are included in the City's capital facilities plan, and such plan as amended, and are designed to provide service to service areas within the community at large.

"Transportation facilities" means and refers to streets and roads, but includes all publicly owned streets, roads, alleys and rights-of-way within the City and street services, traffic control devices, curbs, gutters, sidewalks and related facilities and improvements. [Ord. 1578 § 120, 2013.]

12.40.080 Transportation impact fees established.

There is established, subject to the provisions of this chapter, a transportation impact fee program. [Ord. 1578 § 121, 2013.]

12.40.090 Establishment of service area.

(1) The City hereby establishes, as the service area for transportation impact fees, the City, including all property located within the corporate limits of the City.

(2) The scope of the service area is hereby found to be reasonable and established on the basis of sound planning and engineering principles, and consistent with RCW [82.02.060](#). [Ord. 1578 § 122, 2013.]

12.40.100 Imposition of transportation impact fees on development activity.

(1) The City hereby authorizes the assessment and collection of transportation impact fees on development activity within the City, based on the methodology described in the rate study. The maximum allowable transportation impact fee rate established by the rate study is ~~\$6,088~~**\$6,376**. Instead of setting the base rate at this level, the base rate for ~~the calendar year 2009~~ is established at ~~\$5,000~~ **\$5,065.10** per new p.m. peak hour trip. The base transportation impact fee rate is subject to annual adjustment in accordance with subsection (5) of this section. Accordingly, using the methodology described in the rate study, the Department will annually update the fee schedule identified in the rate study, and make the fee schedule available for public use.

(2) The collection of transportation impact fees will be modified for those subareas of the Pacific Ridge Zone that are also subject to SEPA mitigation fees pursuant to Exhibit B of Ordinance No. 1298, as presently written or as subsequently amended or revised.²

(3) Transportation impact fee rates are based upon the formula for calculating the proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, necessitated by new development to be borne by transportation impact fees, which formulas are described in the rate study.

(4) The City Council may review the base transportation impact fee rate set forth in subsection (1) of this section at any time the City Council deems appropriate, including, but not limited to, the update of the capital

facilities element of the City's comprehensive plan, and the council may adjust the transportation impact fee base rate as the council deems just and appropriate, up to the maximum rate identified in the rate study.

(5) The Planning, Building and Public Works Department will annually adjust the transportation impact fee base rate based on the construction cost index for the Seattle area as reported in the Engineering News Record periodical, typically in March. ~~The first adjustment will occur in March 2010.~~

~~(6) The transportation impact fee shall be phased in as follows. The base rate identified in subsection (1) of this section shall be at 50 percent through December 31, 2011, as adjusted in accordance with subsection (5) of this section. For the calendar year 2012, 2013, and 2014, the transportation impact fee shall be 55 percent of the then-current base rate; for the calendar year 2015, the transportation impact fee shall be 70 percent of the then-current base rate; for the calendar year 2016, the transportation impact fee shall be 85 percent of the then-current base rate; for the calendar year 2017 and thereafter, the transportation impact fee shall be 100 percent.~~

~~(6)~~(7) For a change in use of an existing building or dwelling, including any alteration, expansion, replacement or new accessory living quarters, the net transportation impact fees shall be the applicable transportation impact fees calculated for the land use category of the new use, reduced by an amount equal to the current transportation impact fees calculated for the prior use.

~~(7)~~(8) No reduction based on prior use shall be made for a vacant structure or a vacant property that once contained a structure if the structure or property had been vacant for more than 10 years.

~~(8)~~(9) For mixed use developments, transportation impact fees shall be imposed for the proportionate share of each applicable land use.

~~(9)~~(10) The transportation impact fees imposed pursuant to this chapter shall be assessed by the City. A preliminary assessment will be provided by the Department during the review and approval of a given development activity, typically a building permit application or a permit for a change in land use. A final assessment, based upon the transportation impact fee rate in effect as of the date the actual permit is issued, shall be made by the Department, and the fee shall be due and payable in full at the time of issuance of the permit. Failure to pay the transportation impact fees for a given development activity at the time that such transportation impact fees are due and payable shall result in denial of the permit for which the applicant has applied.

~~(10)~~(11) Development activities that have been allowed credits prior to the submittal of the complete building permit application or an application for a permit for a change in land use shall submit, along with the complete application, a copy of the letter or certificate issued by the Planning, Building and Public Works Director pursuant to DMMC 12.40.130 setting forth the dollar amount and basis of the approved credit. The net transportation impact fees, as determined after the reduction of appropriate credits, shall be collected from the applicant in accordance with subsection (10) of this section.

~~(11)~~(12) Where the transportation impact fees imposed are determined by the square footage of the development, the Department may at its discretion or at the written request of the feepayer review the constructed development prior to the issuance of a certificate of occupancy or an occupancy permit to confirm that the square footage of the constructed development is consistent with the square footage used to determine the final assessment and payment of the transportation impact fee. If the final square footage of the development is in excess of the square footage used to determine the final assessment and payment of the transportation impact fee, any difference will be due prior to the issuance of a certificate of occupancy or an occupancy permit, using the transportation impact fee rate in effect at that time. If the final square footage is less than the square footage used to determine the final assessment and payment of the transportation impact fee, the Department shall give a refund for the difference. [Ord. 1588 § 1, 2013; Ord. 1578 § 123, 2013.]

12.40.110 Independent calculations.

(1) If in the judgment of the Planning, Building and Public Works Director none of the land use categories or fee amounts set forth in the rate study or the Department's fee schedule accurately describes or captures the impacts of a new development on roads, the Department may conduct independent calculations and the Planning, Building and Public Works Director may impose alternative fees on a specific development based on those calculations. The alternative fees and the calculations shall be set forth in writing and shall be mailed to the feepayer.

(2) A feepayer may opt not to have the impact fees determined according to the Department's fee schedule identified in DMMC 12.40.100(1), in which case the feepayer shall prepare and submit to the Planning, Building and Public Works Director an independent calculation for the development activity for which a permit is being sought. The documentation submitted shall show the basis upon which the independent calculation was made. An independent calculation shall use the same methodology used to establish the transportation impact fee set forth in the rate study, shall be limited to adjustments in trip generation rates and lengths 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.

(3) Any feepayer submitting an independent calculation will be required to pay the City a fee to cover the cost of reviewing the independent calculation. The fee required by the City for conducting the review of the independent calculation shall be \$500.00, unless otherwise established by the City Manager or the City Manager's designee, and shall be paid by the feepayer prior to initiation of review.

(4) There is a rebuttable presumption that the calculations set forth in the rate study and the fees set forth in the Department's fee schedule are valid. The Planning, Building and Public Works Director shall consider the documentation submitted by the feepayer, but is not required to accept such documentation or analysis which the Planning, Building and Public Works Director reasonably deems to be inapplicable, inaccurate, or not reliable. The Planning, Building and Public Works Director may require the feepayer to submit additional or different documentation for consideration. The Planning, Building and Public Works Director is authorized to adjust the transportation impact fees on a case-by-case basis based on the independent calculation, the specific characteristics of the development, and/or principles of fairness. The fees or alternative fees and the calculations shall be set forth in writing and shall be mailed to the feepayer.

(5) Determinations made by the Planning, Building and Public Works Director pursuant to this section shall be subject to the appeal procedures set forth in DMMC [12.40.160](#). [Ord. 1578 § 124, 2013.]

12.40.120 Exemptions.

(1) Except as provided for below, the following shall be exempted from the payment of transportation impact fees:

- (a) Alteration or replacement of an existing structure that does not expand the usable space, add any residential units or generate any additional p.m. peak trips.
- (b) Miscellaneous improvements which do not generate increased p.m. peak trips, including, but not limited to, fences, decks, walls, residential swimming pools, and signs.
- (c) Demolition or moving of a structure when additional p.m. peak hour trips are not generated.
- (d) A change of use that does not generate one or more p.m. peak hour trips.

(2) The Planning, Building and Public Works Director shall be authorized to determine whether a particular development activity falls within an exemption identified in this section or under other applicable law. Determinations of the Planning, Building and Public Works Director shall be in writing and shall be subject to the appeals procedures set forth in DMMC [12.40.160](#). [Ord. 1578 § 125, 2013.]

12.40.130 Credits for dedications and construction of improvements.

(1) A feepayer can request that a credit or credits for the value of system improvements, including dedications of land, improvements and/or construction provided by the feepayer, be applied toward the calculated transportation impact fee. The application for credits shall be presented by the feepayer on forms to be provided by the Department and shall include the content designated in such forms. Credits will be given only if the land, improvements, and/or the facility constructed are:

- (a) Included within the capital facilities plan or would serve the goals and objectives of the capital facilities plan; and
- (b) Are at suitable sites and constructed at acceptable quality as determined by the Planning, Building and Public Works Director; and
- (c) Serve to offset impacts of the feepayer's development activity; and
- (d) Are for one or more of the transportation projects listed in the rate study as the basis for calculating the transportation impact fee.

(2) The transportation impact fee program shall provide credits for mitigation fees imposed under the State Environmental Policy Act (RCW [43.21C.060](#)) and chapter [16.05](#) DMMC for system improvements identified in the comprehensive transportation plan as "intersection and roadway capacity improvement projects for the traffic impact fee program."

(3) The Planning, Building and Public Works Director shall determine if requests for credits meet the criteria in subsection (1) or (2) of this section, or under other applicable law. Determinations of the Planning, Building and Public Works Director may be appealed pursuant to DMMC [12.40.160](#).

(4) Each request for a credit or credits shall include a legal description of the dedicated land, a detailed description of improvements or construction provided, and a legal description or other adequate description of the development to which the credit will be applied.

(5) For each request for a credit or credits, the Planning, Building and Public Works Director shall determine the value of the dedicated land, improvements, or construction on a case-by-case basis.

(6) In the event that the feepayer disagrees with the Planning, Building and Public Works Director's valuation of the dedicated land, the feepayer may submit an appraisal for the Planning, Building and Public Works

Director's consideration, prepared by a state certified MAI (member of the American Institute of Appraisers) in accordance with the most recent version of the Uniform Standards of Professional Appraisal Practice. In the event that that feepayer disagrees with the Planning, Building and Public Works Director's valuation of improvements or construction provided, the feepayer may submit a valuation for the Planning, Building and Public Works Director's consideration, prepared by a licensed engineer. The appraiser and/or engineer must be licensed and in good standing pursuant to chapter 18.43 RCW et seq., in the category for the property and/or improvements to be appraised/valued, and shall not have a fiduciary or personal interest in the property being appraised.

(7) Appraisals and/or engineering valuations submitted by the feepayer shall be subject to review by the Planning, Building and Public Works Director and, at the Planning, Building and Public Works Director's discretion, an independent review appraiser/engineer selected by the Planning, Building and Public Works Director. The feepayer shall pay for the actual costs for the appraisal/valuation and the independent review. An estimate of the appraisal and review costs will be prepared by the Department, and the feepayer shall pay the estimated costs prior to commencement of the appraisal and review. If the final cost of the appraisal and review is in excess of the initial estimate and payment, any difference will be due prior to the issuance of a letter or certificate from the Planning, Building and Public Works Director. If the final cost of the appraisal and review is less than the initial estimate and payment, the Department shall give a refund for the difference.

(8) After receiving and reviewing the appraisal, the Planning, Building and Public Works Director shall provide the applicant with a letter or certificate setting forth the dollar amount of any credit, the reason for the credit, the legal description of the real property dedicated where applicable, and the legal description or other adequate description of the project or development to which the credit may be applied. The feepayer 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 Planning, Building and Public Works Director before the impact fee credit will be applied. The failure of the feepayer to sign, date, and return such document within 60 calendar days shall nullify the credit. If credit is denied, the feepayer shall be notified in a letter that includes the reasons.

(9) If the total value of any credit for such dedication, improvement or construction costs exceeds the amount of the transportation impact fee obligation, the developer will not be entitled to reimbursement of the difference.

(10) No credit shall be given for project improvements.

(11) Any claim for credit must be made no later than 14 calendar days after the submission of an application for a building permit or an application for a permit for a change in use. The failure to timely file such a claim shall constitute a final bar to later request any such credit.

(12) Determinations made by the Planning, Building and Public Works Director pursuant to this section shall be subject to the appeals procedures set forth in DMMC [12.40.160](#). [Ord. 1578 § 126, 2013.]

12.40.140 Disposition of transportation impact fee revenues.

(1) The transportation impact fees collected pursuant to the provisions of this chapter shall be deposited into a transportation impact fee fund. Pending application as provided in this chapter, the moneys deposited in the transportation impact fee fund shall be invested in any investment authorized for the investment of City funds. All interest and profits derived from the investment of moneys in each account in the transportation impact fee fund shall be retained in such account.

(2) The transportation impact fees deposited in each account in the transportation impact fee fund and the interest and profit received from the investments therefrom shall be expended only for system improvements for which such transportation impact fees were collected, in conformity with the City Comprehensive Plan and comprehensive transportation plan, and expended or encumbered within six years of receipt by the City, unless written findings by the City Council identify an extraordinary and compelling reason for the City to hold the fees for a longer time. The City shall account for annual expenditures and shall comply with this section in successive comprehensive plans, transportation plans and capital facilities plans as appropriate.

(3) The transportation impact fees may also be used to recoup system improvement costs previously incurred by the City to the extent that new growth and development will be served by the previously constructed improvements or incurred costs.

(4) In the event that bonds or similar debt instruments are or have been issued for the advanced provision of system improvements for which transportation impact fees may be expended, transportation impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this section and are used to serve the new development.

(5) The City shall prepare an annual report on the transportation impact fee fund which shows the source and amount of all moneys collected, earned or received and the public facilities that were financed in whole or in part by impact fees. [Ord. 1578 § 127, 2013.]

12.40.150 Refunds.

(1) The City shall, in accordance with RCW [82.02.080](#), refund to the current owners of property on which a transportation impact fee has been paid any transportation impact fees paid with respect to such property that has not been expended or encumbered for public facilities of the type of which such transportation impact fees were collected.

(2) The City shall also refund to the current owner of property on which a transportation impact fee has been paid all transportation impact fees paid with respect to such property if the development activity for which the transportation impact fee was imposed did not occur and no impact has resulted.

(3) If some, but not all, of the development activity for which the transportation impact fee was imposed occurred, the transportation impact will be deemed to have occurred, and no refund will be payable; provided, however, that the property on which the transportation impact fee was paid shall be eligible to receive a credit toward any subsequent development activity on the property up to the full amount of the payment.

(4) Owners seeking a refund of transportation impact fees must submit a written request for a refund of transportation impact fees to the Planning, Building and Public Works Director or designee within one year of the date the right to claim the refund arises, which, for purposes of refund claims authorized pursuant to subsection (2) of this section only, shall be the date of voluntary or involuntary abandonment of the permit, or the date that notice is given as provided in subsection (1) of this section, whichever occurs later. Refunds of transportation impact fees shall not include interest or any profits earned on the transportation impact fees from the date of their receipt to the date of refund. Any transportation impact fees not expended within the time limitations, and for which no application for a refund has been made within the one-year claim period, shall be retained by the City and expended on system improvements for which such transportation impact fees were initially collected, without further limitation as to the time of expenditure. [Ord. 1578 § 128, 2013.]

12.40.160 Appeals.

(1) The determination of the Planning, Building and Public Works Director or designee regarding the applicability of the transportation impact fee to a given development activity within the service area shall be final; however, an owner may pay a transportation impact fee imposed pursuant to this chapter under protest in order to obtain a permit and, after such payment, file an appeal regarding the amount of the transportation impact fee or a determination made pursuant to DMMC [12.40.110](#), [12.40.120](#) or [12.40.140](#) to the Hearing Examiner pursuant to DMMC [18.20.150](#) and [18.20.160](#) and chapter [18.240](#) DMMC.

(2) Appeal regarding the amount of the transportation impact fee imposed on any development activity may only be made by the owner of the property where such development activity shall occur. [Ord. 1578 § 129, 2013.]

12.40.170 Existing authority unimpaired.

Nothing in this chapter shall preclude the City from requiring the applicant 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 chapters [43.21C](#) and [82.02](#) RCW. [Ord. 1578 § 130, 2013.]

12.40.180 Administrative guidelines.

The Planning, Building and Public Works Director shall be authorized to adopt internal guidelines for the administration of transportation impact fees, which may include the adoption of standard operating procedures and administrative policy for transportation impact fees. [Ord. 1578 § 131, 2013.]

Current Traffic Impact Fee for a Single Family Home:

Auburn – \$3,413.48

Kent – \$3,877.41

Federal Way – \$3,718.23

Burien – \$957

SeaTac – \$1,025

Des Moines - \$5,797.85

Note: other impact fees are assessed at different rates between the Cities, i.e., School Impact Fees, Park in Lieu fees, etc.

Statutory Requirements

The 2015 Legislature enacted enacted ESB 5923, which requires counties, cities, and towns to adopt a deferral system for the collection of impact fees for new single-family detached and attached residential construction. The deadline for most of the new law's provisions is September 1, 2016.

Under the new law, counties, cities, and towns must adopt a deferral system for the collection of impact fees that, upon developer request, delays payment until the time of:

1. Final inspection;
 2. Issuance of the certificate of occupancy or equivalent certification; and/or
 3. The closing of the first sale of the property.
- Other provisions of the new law include:
- The term of deferral is 18 months from issuance of the building permit.
 - The amount of impact fees that may be deferred is determined by the fees in effect at the time the applicant applies for a deferral.
 - Deferral of impact fees can be limited to the first 20 single-family residential building permits, annually, per applicant.
 - An applicant seeking a deferral must grant and record a lien against the property in favor of the municipality in the amount of the deferred impact fee.
 - Municipalities may collect reasonable administrative fees from applicants seeking a deferral.
 - To limit the "spin-off LLC" issue, "applicant" is defined to include "an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant."
 - Limited grandfathering is authorized for an existing deferral system (in effect on or before April 1, 2015), even if it does not fully match the new state requirements, as long as all impact fees are deferred.
 - Municipalities and school districts are authorized to institute foreclosure proceedings if impact fees are not paid.
 - The Department of Commerce must develop an annual report, beginning December 1, 2018, on the payment and collection of impact fees from school districts, counties, and cities for single-family residential construction.

Option for deferred payment of impact fees (from Mercer island).

An applicant may request, at any time prior to building permit issuance, and consistent with the requirements of this section, to defer to final inspection the payment of an impact fee for a residential development unit. The following shall apply to any request to defer payment of an impact fee:

A. The applicant shall submit to the city a written request to defer the payment of an impact fee for a specifically identified building permit. The applicant's request shall identify, as applicable, the applicant's corporate identity and contractor registration number, the full names of all legal owners of the property upon which the development activity allowed by the building permit is to occur, the legal description of the property upon which the development activity allowed by the building permit is to occur, the tax parcel identification number of the property upon which the development activity allowed by the building permit is to occur, and the address of the property upon which the development activity allowed by the building permit is to occur. All applications shall be accompanied by an administrative fee as provided for in the city's adopted permit and impact fee schedule.

B. The impact fee amount due under any request to defer payment of impact fees shall be based on the schedule in effect at the time the applicant provides the city with the information required in subsection A of this section.

C. Prior to the issuance of a building permit that is the subject of a request for a deferred payment of impact fee, all applicants and/or legal owners of the property upon which the development activity allowed by the building permit is to occur must sign a deferred impact fee payment lien in a form acceptable to the city attorney. The deferred impact fee payment lien shall be recorded against the property subject to the building permit and be granted in favor of the city in the amount of the deferred impact fee. Any such lien shall be junior and subordinate only to one mortgage for the purpose of construction upon the same real property subject to the building permit. In addition to the administrative fee required in subsection A of this section, the applicant shall pay to the city the fees necessary for recording the lien agreement with the King County recorder.

D. The city shall not approve a final inspection until the impact fees identified in the deferred impact fee payment lien are paid in full.

E. In no case shall payment of the impact fee be deferred for a period of more than 18 months from the date of building permit issuance.

F. Upon receipt of final payment of the deferred impact fee as identified in the deferred impact fee payment lien, the city shall execute a release of lien for the property. The property owner may, at his or her own expense, record the lien release.

G. In the event that the deferred impact fee is not paid within the time provided in this section, the city shall institute foreclosure proceedings under the process set forth in Chapter 61.12 RCW. The District may also institute foreclosure proceedings as set forth in RCW 82.02.050(3).

H. An applicant is entitled to defer impact fees pursuant to this section for no more than 20 single-family dwelling unit building permits per year in the city. For purposes of this section, an "applicant" includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.

City of Des Moines



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February 23, 2016

Charlotte Claybrook
 Local Programs Division
 Washington State Department of Transportation
 310 Maple Avenue
 PO Box 47390
 Olympia WA 98504-7390

Subject: Woodmont Safe Routes to School Improvement – Additional Funding Request

I wanted to reach out to Local Programs with a question/request. We have been working with our consultant on the Woodmont Safe Routes to School Improvement recently. We have learned through the initial design that 3 of the underground utilities are in conflict with the proposed sidewalk and will be relocating to be within the roadway prism. What this means is that the utilities will essentially be responsible for overlaying both directions of South 268th Street. So as the project currently sits, there will be 1,200 feet or so of new sidewalk and a newly paved road from 16th Ave to 19th Ave. During a committee meeting update on the project, the question was asked as to how much it would cost to complete the south side sidewalk (approximately 750 more feet, see attached graphic). The costs came back at \$160,000 if they were included in this project, which is a significant savings due to the economy of scale in adding it to the project versus a stand-alone project. In fact, completing the 750 feet of south side sidewalk was going to be a potential SRTS application for our City in the current call. This additional 750 feet would provide a safe route to school for 18 more homes, "complete" the pedestrian corridor, and eliminate the need to cross 268th midblock as currently planned. If you recall from our application, our pedestrian accident was related to crossing attempt in the vicinity of 18th/19th Ave.

The City would like to request from SRTS additional funding in the amount of \$160,000, bringing the total award from \$431,000 to \$591,000. The additional design costs to include the south side sidewalk would be covered by the City (approximately \$17,000).

The project is on schedule and we hope to advertise for bids in May. A timely response and or direction would be much appreciated. Thank you for your consideration.

Sincerely yours,

R. Brandon Carver, P.E., P.T.O.E.
 Transportation & Engineering Services Manager

Attachment



Figure 1
ADDITIONAL SIDEWALK
Woodmont School Walkway Improvements

EXISTING



PROPOSED

NEW 4-SECTION HEAD

NEW SIGN



LEFT TURN
YIELD
ON FLASHING
YELLOW

S 227 St