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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4104

AN ORDINANCE adopting a Transportation Improvement Program; establishing the geographic boundaries of the Plan Area; adopting a Long-term Transportation Plan; adopting a capital funding program; providing a method for the calculation of transportation impact fees; and authorizing the imposition of transportation impact fees on new development to provide a portion of the funding for reasonable and necessary off-site transportation improvements to mitigate the cumulative impacts of growth and development in the Plan Area.

WHEREAS, the City desires to develop a program pursuant to the Local Transportation Act of 1988, chapter 39.92 RCW for joint public and private financing of transportation improvements to mitigate the cumulative impacts of growth and development within the City; and

WHEREAS, adoption of such a program is intended to provide a clear and predictable method for allocating the cost of necessary transportation improvements between the public and private sectors; and

WHEREAS, this program is supplemental to and does not replace the existing authority and responsibility of the City to regulate development and to provide public facilities; nor does it supplant requirements of environmental review and mitigation under the State Environmental Policy Act (SEPA); and

WHEREAS, the imposition of transportation impact fees pursuant to this ordinance is not a property or business tax but rather is a development fee imposed to provide funding to finance, in part, transportation improvements to mitigate the cumulative impacts of growth and development within the City; and

WHEREAS, this program is designed so that its application to new development will not result in "double-charging" to mitigate the off-site transportation impacts of new development; and

WHEREAS, the City has sought comment in the development of this transportation improvement program from other affected local governments and state agencies authorized to perform public transportation functions; and

WHEREAS, pursuant to proper notice, a public hearing was held with regard to the City's proposed Transportation Improvement Program on November 20, 1989; and

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WHEREAS, the City has complied with the requirement of the State Environmental Policy Act and the City Environmental Procedures Code; now, therefore

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Authority and Purpose. This ordinance is enacted pursuant to the Local Transportation Act, Laws of 1988, Chapter 179, codified as chapter 39.92 RCW. It is the purpose of this ordinance to:

(1) Develop and adopt a program for the purpose of jointly funding, from public and private sources, transportation improvements necessitated in whole or in part by development and growth within the Plan Area.

(2) Provide a fair and predictable method for allocating the cost of reasonable and necessary transportation improvements between the public and private sectors.

(3) Create a mechanism to charge and collect transportation impact fees from new development to provide a portion of the funding for reasonable and necessary offsite transportation improvements to mitigate the cumulative impacts of growth and development in the Plan Area.

(4) Create a system for the collection and administration of transportation impact fees.

This ordinance supplements existing authority of the City to regulate development. This ordinance does not supplant the requirements of environmental review and mitigation under the State Environmental Policy Act ("SEPA"). However, it is intended that any transportation impact fees paid in accordance with the program established by this ordinance shall not exceed the amount that the City can demonstrate is reasonably necessary as a direct result of such proposed Development. This program may serve as one method by which the Developer may meet, in part or in whole, its obligations under SEPA.

Section 2. Definitions

(1) "Developer" means an individual, group of individuals, partnership, corporation, association, municipal corporation, state agency, or other person undertaking Development and their successors and assigns.

(2) "Development" means any subdivision or short platting of land or any construction or reconstruction of residential, commercial, industrial, public or any other building, building space, or land for which a permit, approval or other authorization is required if the Development, when the construction that would take place thereunder is completed, would generate at least one (1) new PM Peak Hour Trip and if

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such permit, approval or other authorization is processed pursuant to Bellevue City Code (Land Use Code) Process I (20.35.100 et seq.); Bellevue City Code (Land Use Code) Process II (20.35.200 et seq.); or Bellevue City Code (Construction Code) Chapter 23.10.

(3) "Direct result of the proposed development" means those quantifiable transportation impacts that are caused by vehicles or pedestrians whose trip origin or destination is the proposed Development.

(4) "Fair market value" means the price in terms of money that a property will bring in a competitive and open market under all conditions of a fair sale, the buyer and seller each prudently knowledgeable, and assuming the price is not affected by undue stimulus, measured at the time of the dedication to local government of land or improved transportation facilities.

(5) "Level of Service (LOS)" means a measure of traffic congestion along a roadway or at an intersection identified by a letter scale from 'A' to 'F' as defined by the Institute of Transportation Engineers.

(6) "Off-site transportation improvements" means those transportation improvements designated in Section 5(b) of this ordinance that are authorized to be undertaken by the City and that serve the transportation needs of more than one Development.

(7) "PM Peak Hour" means the consecutive 60-minute period between 3:00 PM to 7:00 PM which experiences the highest sum of traffic volume on a roadway segment or passing through a roadway intersection.

(8) "PM Peak Hour Trips" means total vehicular trips entering and leaving a Development during the PM Peak Hour on adjacent streets, as defined in the most recent ITE, Trip Generation Manual, published by the Institute of Transportation Engineers. Other trip generation sources may be used where ITE data are based on a limited survey base or where there may be special trip-generating characteristics of the proposal.

(9) "Plan Area" means that geographic area described in Section 3 of this ordinance generally benefited by the off-site transportation improvements proposed to be constructed pursuant to Section 5(b) of this ordinance and within which transportation impact fees will be imposed.

(10) "Transportation impact fee" means the monetary charge imposed on new Development within the Plan Area for the purpose of providing a portion of the funding for the transportation improvements reasonable and necessary to significantly mitigate the cumulative impacts of growth and development in the Plan Area.

(11) "Transportation improvement" means any and all capital improvements to the transportation infrastructure of the City constructed pursuant to city design and development standards and requirements,

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including without limitation, roads, bridges, overpasses, sidewalks, curbs, turn lanes, traffic signals, traffic signs, HOV lanes, bus shelters and associated landscaping.

(12) "Transportation Improvement Program" means that program adopted pursuant to this ordinance for the purpose of jointly funding, from public and private sources, transportation improvements necessitated in whole or in part by development and growth within the Plan Area.

(13) "Transportation Management Program (TMP)" means a program(s) designed to increase the efficiency of existing capital transportation facilities including, without limitation, transit, ride-sharing, flexible working hours, and other measures to decrease single occupancy vehicle trips.

Section 3. Description of Plan Area

The boundaries of the Transportation Improvement Program (the "Plan Area") established under this ordinance shall be coextensive with the city limits of the City of Bellevue and shall include all unincorporated areas annexed to the City on and after the effective date of this ordinance. Pursuant to the adoption of interlocal agreements with other local and regional governments, including any transportation benefit district created pursuant to chapter 36.73 RCW, the geographic boundaries of the Plan Area may be expanded consistent with the provisions of such interlocal agreements.

Section 4. Designation of Long-term Transportation Plan

The City hereby designates the following transportation plans and studies and any subsequent amendments thereto as the City's comprehensive Long-term Transportation Plan ("Plan") and hereby adopts said Plan for the purpose of identifying the proposed offsite transportation improvements reasonable and necessary to meet the future development and growth needs of the Plan Area consistent with the City's Level of Service (LOS) policy:

- Chapter 21.M Transportation/Circulation Element of Comprehensive Plan
- Chapter 21.V Subarea Element of Comprehensive Plan
- Subarea Action Plans
- Capital Improvement Program Plan
- Bellevue Long-range Transportation System Planning Study (1982)
- Newcastle Facilities Planning Study Update
- Eastside Transportation Program
- Signal Warrants Studies
- Sunset Properties Draft and Final Environmental Impact Statement
- Bellevue-Redmond Overlake Transportation Study (BROTS)
- Central Business District (CBD) Implementation Plan

Applicable elements of the comprehensive Long-term Transportation Plan adopted herein have been coordinated with local and regional planning efforts including but not limited to the Eastside Transportation Program,

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the King County Transportation Plan and Bellevue-Redmond Overlake Transportation Study (BROTS).

Section 5. Transportation Improvements

(a) The transportation improvements within the Plan Area to be funded pursuant to the Transportation Improvement Program are those transportation improvements reasonable and necessary to significantly mitigate the cumulative impacts of growth and development in the Plan Area consistent with the City's Level of Service (LOS) policy. For the purpose of this ordinance, off-site transportation impacts are measured as a pro rata share of the capacity provided by the off-site transportation improvements to be funded under the Transportation Improvement Program. The transportation improvements to be funded shall be designed and constructed pursuant to economically sound and efficient engineering standards and shall meet all applicable federal, state and city design and construction standards.

(b) The Transportation Commission is directed to develop and present to the City Council for approval and adoption by ordinance a list of transportation improvements in the Plan Area to be funded pursuant to the Transportation Improvement Program. Such transportation improvements shall include design, engineering and acquisition of necessary right-of-way therefor.

The list of transportation improvements to be funded pursuant to the Transportation Improvement Program shall be reviewed at least annually. Based on such review, the City Council may update the list by adding or deleting transportation improvements.

(c) The Transportation Commission is directed to present an estimate of the cost of implementing the list of transportation improvements to be funded pursuant to the Transportation Improvement Program at the time such list is presented to the City Council. This estimate shall be reviewed at least annually. Based on such review the City Council may make adjustments in the estimate to reflect revised cost estimates or changes to the list.

(d) The Transportation Commission is directed to present to the City Council a list of funding sources for approval and adoption by ordinance to provide funding for the transportation improvements to be funded pursuant to the Transportation Improvement Program. The list of funding sources shall be reviewed at least annually. Pursuant to such review the City Council may update the list of funding sources to reflect revised funding requirements, reallocation of existing funding sources, recognition of new funding sources or any other funding revision.

Section 6. Adoption of Capital Funding Program.

To fund the list of transportation improvements identified in Section 5(b) of this ordinance, the Transportation Commission shall present to

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the City Council for its approval and adoption by ordinance a Capital Funding Program. This Capital Funding Program shall be reviewed at least annually and may be modified by the Council as needed.

Section 7. Imposition of Transportation Impact Fees.

A. Any Development in the Plan Area, except a Development or portion thereof specifically exempt pursuant to subsection (C) of this section, which is approved, permitted or otherwise authorized after the effective date of this ordinance, shall be required to pay a transportation impact fee to the extent and in the amount provided herein.

B. No building permit, or conditional use permit where applicable, for any Development requiring payment of a transportation impact fee shall be issued unless or until the transportation impact fee required by this ordinance has been paid in full or the Developer has agreed to pay said fee by installment as hereinafter authorized.

C. The following types of development or portion thereof are exempt from the requirement to pay a transportation impact fee as otherwise required by this ordinance.

- i. The gross square footage of any Development or portion thereof used exclusively for "child care services" as defined in Bellevue City Code (Land Use Code) Section 20.50.014 ; provided that no such exemption shall be provided unless the Developer has first signed a concomitant agreement satisfactory to the City which provides assurance that such "child care services" use shall continue for at least that term specified in such concomitant agreement.
- ii. The gross square footage of any Development or portion thereof used exclusively for "affordable housing"; provided that no such exemption shall be provided unless the Developer has first signed a concomitant agreement satisfactory to the City which provides assurance that such "affordable housing" will continue to be made available for as long as the structure exists. For purposes of this ordinance, "affordable housing" shall mean that housing which is affordable to families with an income up to 80% of the area median income, adjusted for family size, as defined by the Department of Housing and Urban Development for the Seattle Metropolitan Statistical Area.

Section 8. Calculating Transportation Impact Fees.

A. The Transportation Commission shall develop a transportation impact fee schedule using the following methodology and shall bring such schedule forward to the City Council for approval and adoption by ordinance:

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1. For each transportation improvement listed in the Transportation Improvement Program, calculate the percentage of total future PM Peak Hour traffic attributable to growth and development within the Plan Area ("growth percentage"). Multiply the "growth percentage" by the total estimated cost of such transportation improvement to obtain the amount attributable to growth and development within the Plan Area.

2. Specify one or more geographic areas within the Plan Area as "Impact Fee Areas."

3. For each transportation improvement listed in the Transportation Improvement Program, calculate the percentage of projected PM Peak Hour traffic attributable to growth and development originating from or destined to each Impact Fee Area. Using the resulting percentage, allocate a proportionate share of the transportation cost attributable to growth and development to each Impact Fee Area. Within an Impact Fee Area, sum these proportionate shares of each transportation improvement. This sum constitutes the "area growth cost."

4. Divide the "area growth cost" by the total number of PM Peak Hour vehicle trips generated by growth and development in the Impact Fee Area to obtain an "average impact fee per trip."

5. Adjust the "average impact fee per trip" for specific land use types to account for the following factors:

- a. Pass-by trips, as defined in ITE Trip Generation, current edition.
- b. Average trip length.
- c. Expected levels of ridesharing and transit usage pursuant to a Transportation Management Program.

6. Produce a schedule of impact fee rates per trip and per Development unit (e.g., square footage, housing units) for specific land use types within each Impact Fee Area. The average impact fee rate within each Impact Fee Area, as set forth in such schedule, shall not exceed three dollars (\$3.00) per gross square foot of Development (1989 dollars); provided that such average rate may be adjusted consistent with the provisions of subsection (E) of this section.

B. The Department of Public Works shall calculate the amount of the applicable transportation impact fee for each Development by:

- 1. Determining the applicable Impact Fee Area for the Development.
- 2. Verifying the Development land use type and units of Development.

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3. Determining the applicable per unit transportation impact fee from the impact fee schedule.

4. Multiplying the applicable per unit transportation impact fee by the Development unit to obtain the "base transportation impact fee" for such Development.

If the Development does not fit into any of the categories specified in the fee schedule, the Department shall use the impact fee applicable to the most directly comparable type of land use specified in the fee schedule. If the Development includes mixed uses, the fee shall be determined by apportioning the space committed to uses specified on the schedule.

C. Once the calculation of the "base transportation impact fee" has been made, any credit owing to the Developer for the fair market value of off-site land dedicated to and accepted by the City and/or the cost of constructing off-site transportation improvements dedicated to and accepted by the City shall be subtracted from the base fee; provided no credit shall be provided unless such off-site transportation improvements are included in the Transportation Improvement Program. The Public Works Director shall initially determine, subject to final approval by the City Council, whether the City will accept such dedication for which a credit is requested. If the value of any such dedication exceeds the amount of the transportation impact fee obligation, the Developer shall be entitled to reimbursement from transportation impact fees attributable to the dedicated facilities that are paid by subsequent Developers within the Plan Area. The Public Works Director is directed to establish rules and regulations to administer the provisions of this section.

D. Payment of the transportation impact fee entitles the Developer and its successors or assigns to a credit in the amount of the impact fee against any other fee or assessment made specifically for the designated off-site transportation improvements covered by the transportation impact fee imposed under this ordinance.

E. Where the property on which a Development is proposed to be located is subject to a prior recorded concomitant agreement between the Developer or his predecessor and the City, which concomitant agreement provides for the construction of, or the payment of money for, any transportation improvement or portion thereof included in the Transportation Improvement Program, the Developer shall be given a credit against any transportation impact fee imposed by this ordinance in the amount of such fees already paid or in the amount of the construction cost to the Developer of any such transportation improvement actually constructed.

F. The transportation impact fee schedule authorized pursuant to this ordinance may be revised if review shows that the estimated cost of carrying out the applicable transportation improvements to be funded under the Transportation Improvement Program has changed at the time of

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the review of the list of such transportation improvements pursuant to Section 5(c). This provision shall apply prospectively only. No transportation impact fee for a specific Development shall be increased or decreased once said fee has been paid or the Developer has elected to pay by the installment method.

G. No transportation impact fee shall be collected if the transportation improvements are incapable of being reasonably accomplished because of lack of public funds. No impact fee shall be imposed by the City on a Development when mitigation for the same off-site transportation impact of the Development is being required by any other governmental agency pursuant to any other local, state or federal law.

Section 9. Determination, collection and administration of fees.

A. The Department of Public Works shall determine the amount of Transportation Impact Fee required for any Development pursuant to the transportation impact fee schedule adopted pursuant to Section 8 of the ordinance.

B. Any transportation impact fee imposed under this ordinance shall be due and payable at the time the City issues any building permit, or conditional use permit if applicable, for the Development or, in the case of residential subdivisions or short plats, at the time of final plat approval, at the Developer's option. The Developer may elect to pay the entire fee in a lump sum at the time the permit is issued, or may elect to pay twenty percent of the total fee at the time the permit is issued and the remaining balance in equal installments with interest accruing on the unpaid balance. The interest rate applicable to such installment payments shall be that rate of interest computed by the state treasurer as published in the Washington State Register pursuant to RCW 19.52.025 for the month of December of the year immediately preceeding the calendar year in which the promissory note is provided to the City. Said interest rate shall remain in effect for the entire term of said promissory note. The Director of the Department of Finance or his designee shall determine the frequency of payments. The payment period shall be five (5) years; provided that at the option of the Developer and upon agreement of the Director of the Department of Finance the payment period may be less than five (5) years. The Developer may pay the outstanding balance with accumulated interest at any time without penalty. If the Developer fails to pay any installment within ten days of the date in which said installment is due, the total outstanding balance of all installments plus interest shall immediately be due and payable.

The Developer may elect the installment method of payment only if the Developer executes a promissory note payable to the City for the total amount of the fee plus interest and provides additional security in a form acceptable to the Director of the Department of Finance or his designee.

If the installment method of payment is elected by the Developer of a subdivision or short plat, the total amount of the outstanding balance

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plus interest for each lot shall be recorded on the face of the subdivision plat or short plat and that amount shall be a lien against said lot and shall be subject to foreclosure to the same extent and subject to the same procedures as LID assessment liens are subject to foreclosure. This remedy is in addition to the City's authority to exercise its rights under any security agreement provided by the Developer.

If the Developer of a subdivision or short plat elects to pay the impact fee on the date a building permit is obtained, the Developer is deemed to have waived the option to pay the impact fee by installment.

Failure to comply fully and promptly with the payment obligation imposed under this ordinance shall result in the immediate revocation of any permit, approval or other authorization issued by the City and forfeiture of all right to occupy or otherwise use the Development.

C. There is hereby created and established a special purpose, non-operating Transportation Improvement Program Impact Fee Fund ("the Impact Fee Fund"). All transportation impact fees, interest and investment income received pursuant to this ordinance shall be deposited into the Impact Fee Fund. All transportation impact fees paid into the Fund shall be earmarked to ensure that fees collected on a particular Development shall be used in substantial part to pay for those transportation improvements mitigating the impacts of that Development. Rules and regulations for administration of the Fund shall be established by the City's Finance Director. The Impact Fee Fund is not intended as a fund from which direct transportation capital expenditures will be made. This fund is intended to serve as an accounting device to receive revenues generated as described herein for automatic transfer to other fund(s) where expenditure purposes associated with these revenues have been budgeted. In consideration of this, appropriations in this fund may be administratively adjusted periodically; that is without additional ordinance requirements, to equal revenue expectations. Appropriation changes by ordinance will continue to be provided for the funds in which expenditures will actually occur. The Transportation Commission shall review the operation of the Transportation Improvement Program Impact Fee Fund.

D. Transportation impact fees paid toward more than one transportation improvement may be pooled and expended on any one or more of the transportation improvements mitigating the impact of that Development. Any interest earned on impact fee installment payments, or on invested monies in the Impact Fee Fund may be pooled and expended on any one or more of the transportation improvements for which impact fees have been collected.

E. Developments that use pre-existing transportation improvements funded in part by transportation impact fees imposed under this ordinance shall pay their proportionate share of the cost of said pre-existing transportation improvements, pursuant to the methodology and

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transportation impact fee schedule set forth in section 8 of this ordinance.

F. If a Developer desires to appeal the determination of the amount of the transportation impact fee, including whether or to what extent an exemption applies or a credit should be provided, the Developer must file an appeal with the Hearing Examiner for the City within twenty days of the date that notice is given to the Developer of the fee. The appeal shall be processed pursuant to Process VI of the Land Use Code. Pending determination on any appeal, a building permit may only be issued if the Developer first pays the full amount of the fee, as determined by the Department, (or the down payment if the installment payment is elected) under protest.

Section 10. Refund of Fees Paid.

(a) If a building permit expires and no construction has commenced, the Developer shall be entitled to a refund of any transportation impact fee principal plus interest paid less a reasonable administrative charge for the processing of said fee.

(b) All transportation impact fees and interest received on promissory notes not spent within six years of collection of said fees and interest for the transportation improvements eligible for expenditure of such fees shall be refunded to the property owner currently of record.

Section 11. Amendments. This ordinance, the Long-term Transportation Plan and the Transportation Improvement Program adopted hereunder may be amended at any time or from time to time to coordinate the Plan and/or the Program with applicable local or regional transportation plans relating to the Plan Area or the region and to otherwise revise the Plan or the Program in such manner as the City shall deem necessary and advisable.

Section 12. Severability. If any one or more provisions of this ordinance shall be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining provisions of this ordinance, the Long-term Transportation Plan, or the Transportation Improvement Program; this ordinance, the Plan and the Program shall be construed and enforced as if such unconstitutional or invalid provision had not been contained herein.

Section 13. Effective Date. The provisions of Sections 1-12 of this ordinance shall not become effective until such time as the City Council has approved and adopted by ordinance a list of transportation improvements pursuant to Section 5(b); a list of funding sources pursuant to Section 5(d); a Capital Funding Program pursuant to Section 6; and a transportation impact fee schedule pursuant to Section 8 of this ordinance.

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Section 14. This ordinance shall take effect and be in force thirty days after its passage.

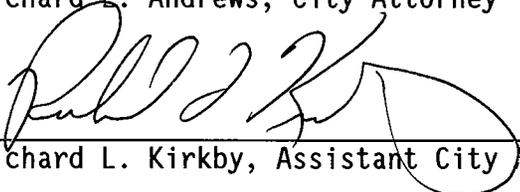
PASSED by the City Council this 18th day of December, 1989,
and signed in authentication of its passage this 18th day of December
1989

(SEAL)

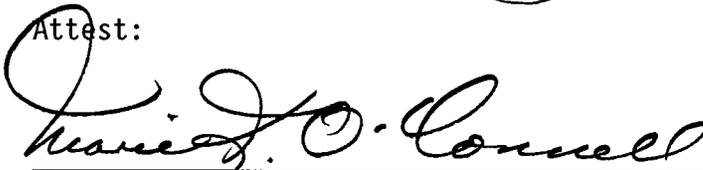

Nan Campbell, Mayor

Approved as to form:

Richard L. Andrews, City Attorney


Richard L. Kirkby, Assistant City Attorney

Attest:


Marie K. O'Connell, City Clerk

Published December 26, 1989