

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4824

AN ORDINANCE relating to the Transportation Improvement Program and Chapter 22.16 of the Bellevue City Code; repealing Sections 1, 2, 3 and 4 of Ordinance No. 4161; repealing Sections 3 and 6 of Ordinance No. 4104, as amended, and Sections 22.16.030 and .060 of the Bellevue City Code; amending Sections 1, 2, 4, 5, 6, 7, 8, 9, 10 and 11 of Ordinance No. 4101, as amended, and Sections 22.16.010, .020, .040, .050, .060, .070, .080, .090, .100 and .110 respectively of the Bellevue City Code; adding a new Section 22.16.095 to Chapter 22.16 of the Bellevue City Code; adopting the 1994-2005 Transportation Facilities Plan Final Report; adopting the Impact Fee Project List; adopting the Impact Fee Schedule; and providing for an effective date.

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

Section 1. Section 1 of Ordinance No. 4104 and Section 22.16.010 of the Bellevue City Code are amended to read as follows:

22.16.010 Authority and purpose

A. This Chapter 22.16 of the Bellevue City Code is enacted pursuant to chapter 82.02 RCW. It is the purpose of this chapter to:

1. Adopt a program for the purpose of jointly funding, from public and private sources, system improvements necessitated in whole or in part by development and growth within the service 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.

4. Provide a portion of the funding for reasonable and necessary system improvements to mitigate the cumulative impacts of growth and development in the Service Area.

5. Create a system for the collection and administration of transportation impact fees.

B. This Chapter 22.16 supplements existing authority of the City to regulate development. This chapter does not supplant the requirements of environmental review and mitigation under the State Environmental Policy Act ("SEPA") and Chapter 22.02 of the Bellevue City Code. Any transportation impact fees paid in accordance with the program established by this chapter shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development. This program may serve as one method by which the developer may meet, in part or in whole, its obligations under SEPA; provided, that a developer required to pay a fee as mitigation under SEPA and Chapter 22.02 of the Bellevue City Code for system improvements shall not be required to pay an impact fee under this chapter for those same system improvements.

Section 2. Section 2 of Ordinance No. 4104, as amended by Section 5 of Ordinance No. 4161, and Section 22.16.020 of the Bellevue City Code are amended to read as follows:

22.16.020 Definitions.

(1) "Affordable housing" means 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. In addition, "affordable housing" shall mean those categories of affordable housing for certain projects in the downtown area which Bellevue City Code (Land Use Code) 20.20.128.B.9 defines as affordable for households whose incomes do not exceed 105%, 100%, 90%, or 80% of the area median income.

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

(3) "Development" means any construction or expansion of a building, structure, or use for which a permit, approval, or other authorization is required that creates additional demand and need for public facilities provided that such

development generates at least one (1) new p.m. peak hour trip, when the permit, approval, or other authorization for the development 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. In the case of tenant improvement permits, "Development" means any proposed new use or expanded existing use for which SEPA review is required; the threshold for imposing the impact fee for a tenant improvement is 11 p.m. peak hour trips.

(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) "Gross floor area" means the sum in square feet of the area at each floor level of a building that is included within the principal outside faces of exterior walls. The gross floor area of any parking garages within the building shall not be included.

(6) "Impact Fee Area" means one or more geographic areas within the service area, as shown on the map adopted by Section 16 of this ordinance, and as such map may be amended.

(7) "Impact Fee Project List" means those transportation improvement projects in the Transportation Facilities Plan which are funded in part by transportation impact fees, as adopted by Section 15 of Ordinance No. 4824 and given Clerk's Receiving No. 22455 and as such list may be amended.

(8) "Impact Fee Schedule" means a schedule of impact fee rates per development unit (e.g. square footage) for specific land uses within each impact fee area, as adopted by Section 16 of Ordinance No. 4824 and given Clerk's Receiving No. 22456, and as such schedule may be amended.

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

(10) "P.M. Peak Hour" means the 60-minute period between 3:00 p.m. to 7:00 p.m. which experiences the highest volume of traffic on a roadway or passing through a roadway intersection.

(11) "P.M. Peak Hour Trips" means the total vehicular trips entering and leaving a development during the p.m. Peak Hour on the adjacent roadway

(12) "P.M. peak hour trip generation rate" means the trip generation rate per unit of development, as specified in the City of Bellevue's most recent Transportation Impact Fee Program Technical Report. A unit of development is the element used to describe the size of the development, e.g., gross floor area in square feet for an office building, students for a school. Other trip generation definition sources may be used where the proposal has special trip-generating characteristics, subject to approval of the Transportation Department.

(13) "Project improvements" mean site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in the capital facilities plan shall be considered a project improvement.

(14) "Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.

(15) "Reasonably related to the proposed development" means those quantifiable transportation impacts that are caused by vehicles whose trip origin or destination is the proposed development.

(16) "Service or Plan Area" means the geographic area which is benefited by the transportation improvements proposed to be constructed with transportation impact fees collected under this Chapter 22.16 and within which transportation impact fees will be imposed. The boundaries of the Service Area shall be the same as the legal boundaries 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 RCW 36.73 RCW, the geographic boundaries of the Service Area may be expanded consistent with the provisions of such interlocal agreements.

(17) "System Improvements" mean public facilities that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements.

(18) "Transportation Facilities Plan" means the twelve-year program adopted by the City Council by resolution for jointly funding, from public and private sources, transportation improvements necessitated in whole or in part by development within the Service Area. The Transportation Facilities Plan is based on the transportation facility plans adopted in the City's GMA Comprehensive Plan codified at 21.M.610 et seq.

(19) "Transportation Impact Fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee .

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

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

Section 3. Section 4 of Ordinance No. 4104 and Section 22.16.040 of the Bellevue City Code are amended to read as follows:

22.16.040 Designation of Long-term Transportation Plan

The City designates the Transportation Facilities Plan adopted by Resolution No. 5802 and any subsequent updates thereto as the City's comprehensive long-term transportation plan for the purpose of identifying the proposed transportation improvements reasonable and necessary to meet the future development needs of the service area consistent with the City's level of service policy. The Transportation Facilities Plan is based on the transportation facility plans adopted in the City's GMA Comprehensive Plan codified at 21.M.610 et seq.

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Section 4. Section 5 of Ordinance No. 4104 and Section 22.16.050 of the Bellevue City Code are amended to read as follows:

22.16.050 Transportation Improvements

A. The Transportation Facilities Plan is a twelve-year list of transportation improvements in the Service Area. These transportation improvements include design, acquisition of right of way, and construction. Every two (2) years, the Transportation Commission shall present an update of the Transportation Facilities Plan to the City Council for approval and adoption.

B. The Impact Fee Project List consists of the transportation improvements in the Transportation Facilities Plan needed to provide capacity on City of Bellevue roadways, where the capacity needs are created in part or in whole by new development. The Impact Fee Project list is adopted by the City Council C. Within six (6) months following the adoption of an updated Transportation Facilities Plan, the Transportation Commission shall present to City Council for approval and adoption an updated Impact Fee Project List. This list shall include the costs of design, acquisition of right of way, and construction.

Section 5. Section 7 of Ordinance No. 4104, as amended by Section 6 of Ordinance No. 4161, and Section 22.16.070 of the Bellevue City Code are amended to read as follows:

22.16.070 Imposition of Transportation Impact Fees.

A. Any development in the Service Area, except a development or portion thereof specifically exempt pursuant to subsection (B) of this section, which is approved, permitted, or otherwise authorized after the effective date of Ordinance No. 4104, shall be required to pay a transportation impact fee to the extent and in the amount provided herein.

B. The following types of development or portion thereof are exempt from the requirement to pay a transportation impact fee as otherwise required by this Chapter 22.16.

1. 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.

2. 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.

3. Public transportation facilities;

4. Public parks and recreational facilities;

5. Privately operated not-for-profit social service facilities recognized by the Internal Revenue Service under Internal Revenue Code Section 501(c)(3);

6. Public libraries;

7. Publicly-funded educational institutions.

8. Hospitals, as defined in Bellevue City Code (Land Use Code) 20.50.024, if not operated for profit.

Impact fees for these exemptions shall be paid from public funds other than the Impact Fee Fund.

Section 6. Section 8 of Ordinance No. 4104, as amended by Section 7 of Ordinance No. 4161, and Section 22.16.080 of the Bellevue City Code are amended to read as follows:

22.16.080 Calculating Transportation Impact Fees.

A. Within six (6) months following the adoption of an updated Transportation Facilities Plan, and subsequent adoption of an updated Impact Fee Project List, the Transportation Commission shall develop a new transportation impact fee schedule using the following methodology and shall present such schedule to the City Council for consideration for approval and adoption:

1. For the transportation improvements listed in the Impact Fee Project List, calculate the percentage of total future p.m. peak hour traffic attributable to development within the Service Area ("development percentage"). Multiply the development percentage by the total estimated cost

of such transportation improvements to obtain the funding amount needed from development within the Service Area.

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

3. For the transportation improvements listed in the Impact Fee Project List, calculate the percentage of projected p.m. peak hour traffic attributable to development originating from or destined to each Impact Fee Area. Using the resulting percentage, allocate a proportionate share of the transportation cost attributable to development to each Impact Fee Area. Within an Impact Fee Area, sum these proportionate shares of transportation improvements. This sum constitutes the "area development cost."

4. Divide the "area development cost" by the total number of p.m. peak hour vehicle trips generated by 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:

a. Pass-by trips, as defined in the ITE Trip Generation Manual, current edition; and

b. Average trip length.

c. Expected levels of ridesharing and transit usage

6. Produce a schedule of impact fee rates per development unit (e.g., square footage, housing units) for specific land use types within each Impact Fee Area.

B. The Transportation Department 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.

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.

C. If the development does not fit into any of the categories specified in the transportation impact 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 in the fee schedule. The Transportation Department shall be authorized to adjust the impact fees for any mixed development based on analysis of specific trip generating characteristics of the development.

D. Once the calculation of the "base transportation impact fee" has been made, any credit owing to the development for the fair market value of any dedication of land for, improvements to, or new construction of any system improvements provided by the developer, to facilities that are identified in the Impact Fee Project List and that are required as a condition of approving the development activity shall be provided. The Director of the Transportation Department shall initially determine, subject to final approval by the City Council, whether the City will accept such dedication, improvements or construction. If the value of any such dedication, improvements or construction exceeds the amount of the transportation impact fee obligation, the Developer shall be entitled to reimbursement from transportation impact fees that are paid by subsequent Developers within the Service Area. To ensure that reimbursements are paid only from impact fees and not from general City funds, the reimbursement amount may not exceed the growth percentage of the Impact Fee Project multiplied by the value of the dedication, improvement or construction. The growth percentage of a project is identified in the impact fee project list. The Director of the Transportation Department is directed to establish rules and regulations to administer the provisions of this section.

E. 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 system improvements covered by the transportation impact fee imposed under this Chapter 22.16.

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F. A Developer shall be given a credit against a transportation impact fee in the amount of transportation impact mitigation fees already paid or improvements already constructed where a prior recorded concomitant agreement provided for the payment for or the construction of any transportation improvement or portion thereof included in the Impact Fee Project list. This provision applies only where the property subject to the concomitant agreement is the property on which the development is proposed to be located.

G. The transportation impact fee schedule authorized pursuant to this Chapter 22.16 may be revised if review shows that the estimated cost of carrying out the applicable transportation improvements to be funded under the Impact Fee Project List has changed at the time of the review of the list. 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.

H. 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 transportation impact of the development is being required by any other governmental agency pursuant to any other local, state, or federal law.

I. The Transportation Department may consider unusual circumstances for specific developments and may adjust the standard impact fee for specific developments in order to ensure that impact fees are imposed fairly. The Department shall set forth its reasons for adjusting the impact fee in written findings.

Section 7. Section 9 of Ordinance No. 4104, as amended by Section of Ordinance No. 4161, and Section 22.16.090 of the Bellevue City Code are amended to read as follows:

22.16.090 Determination, collection, and administration of fees.

A. The Transportation Department shall determine the amount of the transportation impact fee required for any development pursuant to the transportation impact fee schedule.

B. No building permit, or conditional use permit where applicable, for any development requiring payment of a transportation impact fee pursuant to

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this Chapter 22.16, shall be issued until the transportation impact fee has been paid in full.

C. There is hereby created and established a special purpose, non-operating Transportation Impact Fee Fund ("the Impact Fee Fund"). All transportation impact fees, and investment income received pursuant to this Chapter 22.16 shall be deposited into the Impact Fee Fund. Procedures for administration of the Fund shall be established by the Director of the Finance Department. 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, in order to equal revenue expectations. Appropriation changes by ordinance will continue to be provided for the funds in which expenditures will actually occur.

D. The Transportation Department shall pool impact fees whenever necessary to ensure that the fees are expended or encumbered for a permissible use within six (6) years of receipt, unless there exists an extraordinary or compelling reason for fees to be held longer than six (6) years. The City Council shall adopt written findings setting forth its reasons for holding any fees longer than six (6) years. Pooling for such purpose shall be accomplished by determining which project has the highest priority among the projects for which impact fees were collected, and the fees shall be transferred to the budget of that project. 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. Fees may be collected 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.

Section 8. A new Section 22.16.095 is added to Chapter 22.16 of the Bellevue City Code to read as follows:

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22.16.095 Appeal of Fees.

The Developer may 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 of the City within fourteen (14) days of the date that notice is given to the Developer of the fee. The appeal shall be processed pursuant to Process II of the Bellevue City Code (Land Use Code) 20.35.200 et seq. Pending determination on any appeal, a building permit may only be issued if the Developer first pays under protest the full amount of the fee, as determined by the Department.

Section 9. Section 10 of Ordinance No. 4104, as amended by Section 9 of Ordinance No. 4161, and Section 22.16.100 of the Bellevue City Code are amended to read as follows:

22.16.100 Refund of Fees.

A. If a building permit or other approval expires or if the application is withdrawn or canceled and no construction has commenced, the current property owner shall be entitled to a refund of any transportation impact fee paid plus interest earned less a reasonable administrative charge for the processing of said fee. Any fee erroneously paid or collected shall be refunded in full, with interest earned.

B. All transportation impact fees not expended or encumbered within six (6) years of collection shall be refunded in full to the property owner currently of record, with interest earned unless the City Council has made written findings extending the six-year period.

Section 10. Section 11 of Ordinance No. 4104 and Section 22.16.110 of the Bellevue City Code are amended to read as follows:

22.16.110 Amendments. This Chapter 22.16, and the Impact Fee Project List may be amended at any time or from time to time to coordinate the Impact Fee Project List with applicable local or regional transportation plans relating to the Service Area or the region and to otherwise revise the Impact fee Project List in such manner as the City shall deem necessary and advisable.

Section 11. Sections 1, 2, 3 and 4 of Ordinance No. 4161 are repealed.

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Section 12. Section 3 of Ordinance No. 4104 and Section 22.16.030 of the Bellevue City Code are repealed.

Section 13. Section 6 of Ordinance No. 4104, as amended by Section 3 of Ordinance No. 4161, and Section 22.16.060 of the Bellevue City Code are repealed.

Section 14. The City Council approves and adopts that certain 1994-2005 Transportation Facilities Plan Final Report given Clerk's Receiving No. 22454.

Section 15. The City Council approves and adopts that certain Impact Fee Project List given Clerk's Receiving No. 22455.

Section 16. The City Council approves and adopts that certain Impact Fee Schedule and Map given Clerk's Receiving No. 22456.

Section 17. Severability. If any one or more provisions of this ordinance shall be declared unconstitutional or invalid for any reason, such decision shall affect neither the validity of the remaining provisions of this ordinance and this ordinance shall be construed and enforced as if such unconstitutional or invalid provisions had not been contained herein.

Section 18. Effective date of Sections 1-16. The provisions of Sections 1-16 of this ordinance shall take effect and be in force on January 1, 1996 and shall apply to any development application filed on or after that date. Adoption of this ordinance shall have no effect on the validity of any impact fee imposed under Chapter 22.16 prior to January 1, 1996.

Section 19. Effective date of ordinance. This ordinance shall take effect and be in force thirty (30) days after its passage.

PASSED by the City Council this 27th day of November, 1995, and signed in authentication of its passage this 27th day of November, 1995.

(SEAL)

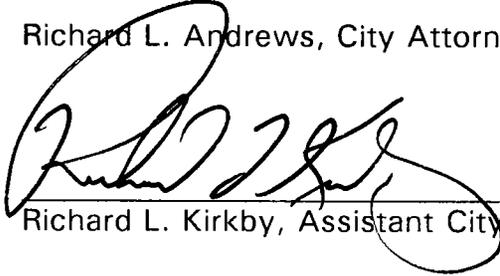

Donald S. Davidson, DDS, Mayor

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Approved as to form:

Richard L. Andrews, City Attorney



Richard L. Kirkby, Assistant City Attorney

Attest:


Myrna L. Basich, City Clerk

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