

**Chapter 20.77**

**TRANSPORTATION  
IMPACT FEES**

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**20.77.010 Authority**

This chapter is enacted pursuant to the Washington State Growth Management Act codified at Chapter 36.70A RCW and RCW 82.02.050 et seq., which authorizes agencies planning under the Growth Management Act to assess, collect, and use impact fees to pay for capital projects related to transportation facilities needed to accommodate growth. Whatcom County is planning under the Growth Management Act and has adopted a Comprehensive Plan which includes a Capital Facilities element which complies with RCW 36.70A.070(3), RCW 82.02.050(4), and all other applicable requirements. The county's Comprehensive Plan identifies the objective to pursue a transportation impact fee as part of the overall transportation financing mechanism. Consequently, Whatcom County is authorized to impose, collect, and use impact fees.

**20.77.020 Purpose**

1 The purpose of this chapter is to:

2  
3 (1) Develop a transportation impact fee program consistent with the Whatcom  
4 County Comprehensive Plan for joint public and private financing of  
5 transportation improvements necessitated in whole or in part by development in  
6 the unincorporated areas of the county;

7  
8 (2) Create a mechanism to charge and collect fees to ensure that all new  
9 development pays a proportionate share of the capital costs of off-site  
10 transportation facilities necessitated by new development;

11  
12 (3) Ensure that the county pays its fair share of the capital costs of transportation  
13 facilities necessitated by public use of the transportation system; and

14  
15 (4) Ensure fair collection and administration of such impact fees.

16  
17 **20.77.030 Reserved**

18  
19 **20.77.040 Applicability**

20  
21 (1) The requirements of this chapter apply to all development activity in  
22 unincorporated areas of Whatcom County for which a building permit is issued  
23 after the effective date of this ordinance.

24  
25 (2) Mitigation of impacts using transportation impact fees for transportation  
26 facilities located in jurisdictions outside the jurisdiction of Whatcom County will be  
27 required when there is an interlocal agreement between the county and the  
28 affected jurisdiction specifically addressing transportation impact identification  
29 and mitigation per section 20.77.180.

30  
31 **20.77.050 Geographic scope**

32  
33 The boundaries within which impact fees shall be charged and collected are co-  
34 extensive with the unincorporated areas of Whatcom County.

35  
36 **20.77.060 Imposition of transportation impact fees**

37  
38 Any person who receives a building permit for any development activity or who  
39 undertakes any development activity within the unincorporated jurisdiction of  
40 Whatcom County for which a building permit is not required shall pay the  
41 transportation impact fees as set forth in this chapter to the county. The impact  
42 fees shall be paid at the time of issuance of the permit.

43  
44 **20.77.070 Service area**

1 For the purpose of this chapter, Whatcom County shall be divided into eight (8)  
2 transportation service areas as depicted on Attachment A, and is herein  
3 incorporated by reference. The exact boundaries will be defined in an official  
4 map maintained by the county based on the boundaries depicted on Attachment  
5 A.

6  
7 **20.77.080 Exemptions**

8  
9 (1) The transportation impact fees referenced in this chapter shall not apply to  
10 the following:

- 11  
12 (a) Alteration, expansion, enlargement, remodeling, rehabilitation, or  
13 conversion of an existing unit where no additional units are created and  
14 the use is not changed.
- 15 (b) A change in use that results in no additional impact to the county's  
16 transportation system.
- 17 (c) The construction of accessory structures that will not create additional  
18 transportation impacts on system improvements.
- 19 (d) A structure moved from one location within the county to another location  
20 within the county. The vacated lot will not be exempted from paying all  
21 appropriate impact fees upon development.
- 22 (e) New or expanded county facilities, public parks, or public park and  
23 ride facilities.

24 (2) The director shall be authorized to determine whether a particular  
25 development for a proposed building permit, or certificate of occupancy if no  
26 building permit is required, falls within an exemption of this chapter.  
27 Determinations of the director shall be subject to the appeals procedures set  
28 forth in section 20.77.170.

29  
30 (3) The amount of transportation impact fees not collected due to exemptions  
31 shall be paid from public funds other than impact fee accounts.

32  
33 **20.77.090 Assessment of transportation impact fees**

34  
35 (1) An impact fee schedule setting forth the amount of the transportation impact  
36 fees to be paid by a development is set out in Attachment C and incorporated  
37 herein by this reference.

38  
39 (2) The impact fee schedule, as set out in Attachment C, shall be updated  
40 annually at a rate adjusted in accordance with the Engineering News Record  
41 (ENR) Construction Cost Index for the Seattle area, using a July – July annual  
42 measure to establish revised fee schedules effective August 1st of the  
43 subsequent year.

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(3) The impact fee amount is calculated by using the following formula:

$$\begin{array}{l} \text{Amount of Transportation Impact} \\ \text{Fee that shall be paid for that} \\ \text{development use} \end{array} = \begin{array}{l} \text{Number of units} \\ \text{of each use} \end{array} \times \begin{array}{l} \text{Transportation Impact Fee} \\ \text{per unit amount for the} \\ \text{service area in which the} \\ \text{development is located} \end{array}$$

- (a) The number of units of each use is determined as follows: (i) for residential uses it is the number of dwelling units for which a building permit application has been made and (ii) for office, retail, or manufacturing uses it is the gross floor area of building(s) to be used for each use expressed in square feet divided by 1,000 square feet, or in the units defined in the schedules.
- (b) Using the formula in 20.77.090(3), transportation impact fees shall be calculated separately for each use. The transportation impact fees that shall be paid are the sum of these calculations.
- (c) If a development activity will include more than one use in a building or site, then the transportation impact fee shall be determined using the above formula by apportioning the space committed to the various uses specified on the schedule in Attachment C.
- (d) If the type of use or development activity is not specified on the transportation impact fee schedule in Attachment C, the director shall use the transportation impact fee applicable to the most comparable type of land use on the fee schedule. The director shall be guided in the selection of a comparable type by the most recent *Trip Generation* manual (Institute of Transportation Engineers) or other recognized national standard.
- (e) In the case of a change in use, development activity, redevelopment, or expansion or modification of an existing use, the transportation impact fee shall be based upon the net increase in the impact fee for the new development activity as compared to the impact fee that would have applied to the previous development activity. The director shall be guided in this determination by the sources and agencies listed above.

(4) As described in this section, the impact fees set forth in the schedule included in Attachment C shall be presumed valid and appropriate, unless revised pursuant to the following provisions:

- (a) An applicant may request a credit following the procedures set forth in Section 20.77.110.
- (b) An applicant may submit an independent fee calculation following the procedures set forth in Section 20.77.100.

1  
2  
3       **20.77.100 Independent fee calculations**  
4

5       (1) If, in the judgment of the director, none of the land use categories set forth in  
6 the fee schedule in Attachment C accurately describes the proposed land use,  
7 the applicant shall provide to the department for its review and evaluation an  
8 independent fee calculation, prepared by a traffic engineer approved by the  
9 director and paid for by the applicant. The independent fee calculation shall show  
10 the basis upon which it was made and shall include, but not limited to, trip  
11 generation characteristics. The director may accept this calculation and impose  
12 an impact fee based on this calculation, or it may obtain a second independent  
13 fee calculation and then decide which impact fee calculation is more appropriate.  
14 The second independent fee calculation will be paid for by the county. With the  
15 independent fee calculation, the applicant shall pay to the department an  
16 administrative processing fee provided for in Whatcom County Unified Fee  
17 Schedule.  
18

19       (2) If an applicant requests not to have the impact fees determined according to  
20 the schedule in Attachment C, then the applicant shall submit to the director an  
21 independent fee calculation, prepared by a traffic engineer approved by the  
22 director and paid for by the applicant. The independent fee calculation shall show  
23 the basis upon which it was made and shall include, but not be limited to, trip  
24 generation characteristics. With the request, the applicant shall pay to the  
25 department an administrative processing fee per the Whatcom County Unified  
26 Fee Schedule.  
27

28       (3) When an independent fee calculation is sought under subsection (2), above,  
29 the county may issue a building permit or certificate of occupancy when no  
30 building permit is required for a change in use, prior to completion of the  
31 independent fee calculation; provided, that the impact fees must be collected  
32 based on the fee schedule in Attachment C at the time of issuance. If the  
33 director ultimately approves the independent fee calculation, the county shall  
34 refund the portion of the fee that exceeds the approved independent fee  
35 calculation.  
36

37       (4) Any independent fee calculation proposed under this section shall be  
38 accompanied by a study that complies with the following standards:

- 39               (a) The study shall follow accepted traffic impact fee assessment practices  
40               and methodologies and be consistent with the methods used in developing  
41               the county's transportation impact fee schedules.  
42  
43

- 1 (b) The study shall use acceptable data sources and the data shall be  
2 comparable with the uses and intensities proposed for the proposed  
3 development activity.  
4
- 5 (c) The study shall comply with the applicable State laws governing impact  
6 fees including RCW 82.02.050 – 82.02.100 as these statutes may be  
7 amended from time to time.  
8
- 9 (d) The study, including any data collection and analysis, shall be prepared  
10 and documented by a professional traffic engineer.  
11
- 12 (e) The study shall show the basis upon which the independent fee  
13 calculation was made.  
14

15 (5) The director shall consider the independent fee calculation study and related  
16 documentation submitted by the applicant, but is not required to accept the  
17 calculation if the director decides that the study is not accurate or reliable. If the  
18 director finds the study to be unreliable, the director may require the applicant to  
19 submit additional or different documentation for consideration. If the director  
20 decides that third-party engineers are needed to review the calculation and  
21 related documentation, the applicant shall pay for the reasonable cost of a review  
22 such engineers. If an acceptable independent fee calculation study is not  
23 presented, the applicant shall pay the transportation impact fees based upon the  
24 process and schedules referenced in this chapter. If an acceptable independent  
25 fee calculation study is presented, the director may adjust the fee to an  
26 appropriate amount.  
27

28 (6) Determinations made by the director pursuant to this section may be  
29 appealed to the hearing examiner subject to the procedures set forth in Section  
30 20.77.170.  
31

### 32 **20.77.110 Credits**

33

34 (1) An applicant may request a credit for the value of dedicated land,  
35 improvements, or construction if the land and/or the facility constructed are (a)  
36 required as a condition of development approval; and (b) included within the  
37 project list entitled, Transportation Impact Fee Project List, which is attached to  
38 this ordinance as Attachment B, and incorporated herein by reference as if set  
39 forth in full.  
40

41 (2) Each request for a credit shall include a legal description of land donated, a  
42 detailed description of improvements or construction provided, and a legal  
43 description or other adequate description of the development to which the credit  
44 will be applied.  
45

1 (3) The credit shall not exceed the impact fee payable by the applicant.

2  
3 (4) For each request for a credit, the land value or costs of construction shall be  
4 determined as follows:

5  
6 (a) The amount of credit for land dedicated shall be the higher of either the  
7 value of the land established in the impact fee project list, if such value is  
8 identified, or by an appraisal conducted by an independent professional  
9 appraiser chosen by the fee payer from a list of at least three such  
10 appraisers provided by the county. The cost of the appraisal shall be borne  
11 by the fee payer. For purposes of this section, the date of value shall be the  
12 date the land was dedicated to the county. The appraisal shall only value  
13 the land dedicated and not any alleged damages to any abutting property.

14  
15 (b) The amount of credit for facilities constructed shall be based upon the  
16 actual cost of construction at the time of construction.

17  
18  
19 (5) After the director has determined the amount of the credit, the department  
20 shall include the determination with issuance of the building permit along with, a  
21 statement setting forth the dollar amount of the credit, the basis for the credit,  
22 where applicable, the description of the land dedicated and the date of the  
23 determination.

24  
25 (6) Any credit must requested before payment of the impact fee and prior to  
26 issuance of the building permit. Any claim not so made shall be deemed waived.

27  
28 (7) No credit shall be given for project improvements.

29  
30 (8) Determinations made by the director pursuant to this chapter shall be subject  
31 to the appeals procedures set forth in section 20.77.170.

32  
33 **20.77.120 Project list**

34  
35 (1) The project list for the county's transportation impact fee program is  
36 established in Attachment B and is herein incorporated by reference.

37  
38 (2) Transportation impact fees shall only be imposed for system improvements  
39 that are reasonably related to the new development.

40  
41 (3) Transportation impact fees shall not exceed a proportionate share of the  
42 costs of system improvements that are reasonably related to the new  
43 development.

1 (4) Transportation impact fees shall be used for system improvements that will  
2 reasonably benefit the new development.

3  
4 (5) Transportation impact fees must spent on system improvements included in  
5 the project list.

6  
7 (6) The director shall periodically review the project list and costs for the  
8 transportation impact fee program and shall recommend updates, if any, as part  
9 of an amendment to WCC 20.77.

10  
11 **20.77.130 Time of payment of fees**

12  
13 (1) All applicants shall pay the transportation impact fee in accordance with the  
14 provisions of this chapter at the time that the applicable building permit, or  
15 certificate of occupancy when a building permit is not required, is ready for  
16 issuance. The impact fee paid shall be based upon the schedule in effect at the  
17 time of the issuance.

18  
19 (2) All applicants shall pay an administrative fee at the time of application for a  
20 building permit as set forth in the Whatcom County Uniform Fee Schedule.

21  
22 (3) If the development is modified or conditioned in such a way as to alter the  
23 land uses or unit count for the development after issuance of the building permit  
24 or certificate of occupancy, the impact fee will be recalculated accordingly, based  
25 on the provisions of this chapter. If the recalculated fee is greater than the  
26 previously paid fee, the county shall withhold or revoke the certificate of  
27 occupancy until the updated fee is paid. If the recalculated fee is less than the  
28 previously paid fee, then the county will refund the difference, unless the fees  
29 have been spent or encumbered by the county.

30  
31 (4) No building permit or certificate of occupancy shall be issued until the impact  
32 fee is paid,

33  
34 (5) An applicant may obtain a preliminary determination of the impact fee before  
35 application for a development permit, by paying the administrative fee and  
36 providing the director with the information needed for processing. The preliminary  
37 determination of the impact fee shall only be used as guidance by the applicant  
38 and shall not be binding on the county.

39  
40 (6) Impact fees may be paid under protest in order to obtain a permit or other  
41 approval of development activity.

42  
43 **20.77.140 Impact fee account**

1 (1) There is created and established a special purpose, non-lapse transportation  
2 impact fee fund. As necessary, the county shall establish separate accounts  
3 within such fund and maintain records for each such account whereby  
4 transportation impact fees collected can be segregated by service area in  
5 accordance with this chapter.

6  
7 (2) All interest shall be retained in the account and expended for the purposes for  
8 which the impact fees were imposed.

9  
10 (3) The county shall provide an annual report for the previous calendar year on  
11 each impact fee account showing the source and amount of moneys collected,  
12 earned or received and system improvements that were financed in whole or in  
13 part by impact fees.

14  
15 (4) The transportation impact fees paid to the county shall be held and disbursed  
16 as follows:

- 17  
18 (a) The transportation impact fees collected shall be placed in a deposit  
19 account within the impact fee fund;  
20  
21 (b) When the council appropriates capital improvement project (CIP) funds  
22 for a project on the project list, the fees held in the transportation  
23 impact fee fund shall be transferred to the CIP fund. Any non-impact  
24 fee moneys appropriated for the project may comprise both the public  
25 share of the project cost and an advancement of that portion of the  
26 private share that has not yet been collected in transportation impact  
27 fees;  
28  
29 (c) The first money spent by the finance manager on a project after a  
30 council appropriation shall be deemed to be the fees from the impact  
31 fee fund;  
32  
33 (d) Fees collected after a project has been fully funded by means of one or  
34 more council appropriations shall constitute reimbursement to the  
35 county of the public moneys advanced for the private share of the  
36 project.  
37  
38 (e) Projects shall be funded by a balance between transportation impact  
39 fees and public funds, and shall not be funded solely by transportation  
40 impact fees.  
41  
42 (f) Transportation impact fees shall be expended or encumbered for a  
43 permissible use within six years of receipt, unless an extraordinary or  
44 compelling reason exists for the fees to be held longer than six years.  
45 The county executive may recommend to the council that the county

1 hold fees beyond six years in cases where extraordinary or compelling  
2 reasons exist. Such reasons shall be identified in written findings by  
3 the council.  
4  
5

6 **20.77.150 Use of funds**  
7

8 (1) Transportation impact fees shall only be used for transportation system  
9 improvements identified in the capital facilities plan and on the project list as set  
10 forth in Attachment B.  
11

12 (2) Transportation impact fees referenced in this chapter may be spent for public  
13 improvements, including but not limited to planning, land acquisition, site  
14 improvements, necessary off-site improvements, construction, engineering,  
15 architectural, permitting, financing and administrative expenses, applicable  
16 impact fees or mitigation costs, capital equipment pertaining to planned facilities,  
17 and any other expenses which can be capitalized.  
18

19 (3) Transportation impact fees may also be used to recoup public improvement  
20 costs previously incurred by the county to the extent that new growth and  
21 development will be served by the previously constructed improvements or  
22 incurred costs.  
23

24 (4) In the event that bonds or similar debt instruments are or have been issued  
25 for the advanced provision of public improvements for which impact fees may be  
26 expended, impact fees may be used to pay the principal on such bonds or similar  
27 debt instruments to the extent that the facilities or improvements provided are  
28 consistent with the requirements of this section and are used to serve the new  
29 development.  
30

31 **20.77.160 Refunds**  
32

33 (1) An applicant may request and shall receive a refund when the applicant does  
34 not proceed with the development activity for which transportation impact fees  
35 were paid, and the applicant shows that no impact has resulted, and the county  
36 has not yet spent or encumbered the fees; however, the impact fee  
37 administrative fee shall not be refunded. If the county has spent or encumbered  
38 the fees, no refund shall be made to the applicant.  
39

40 (2) If an owner appears to be entitled to a refund of transportation impact fee  
41 under RCW 82.02.080, the finance manager shall notify the owner by first class  
42 mail deposited with the United States Postal Service at their last known address.  
43 The owner must submit a request for a refund to the finance director in writing  
44 within one year of the date the right to claim the refund arises or the date the  
45 notice is given, whichever is later. Any transportation impact fees that are not

1 expended or encumbered within the time limitations established by this chapter  
2 and for which no application for a refund has been made within this one-year  
3 period, shall be retained and expended on the system improvements included in  
4 the project list.

5  
6 (3) In the event that transportation impact fees must be refunded for any reason,  
7 they shall be refunded with interest earned to the owners as they appear of  
8 record with the Whatcom County assessor at the time of refund.

9  
10 (4) When the county seeks to terminate any or all impact fee requirements, all  
11 unexpended or unencumbered funds shall be refunded pursuant to this section.  
12 Upon the finding that any or all fee requirements are to be terminated, the county  
13 shall place notice of such termination and the availability of refunds in a  
14 newspaper of general circulation at least two times and shall notify all potential  
15 claimants by first class mail to the last known address of claimants. Claimants  
16 shall request refunds as in subsection (2) of this section. All funds available for  
17 refund shall be retained for a period of one year. At the end of one year, any  
18 remaining funds shall be retained by the county, but must be expended on the  
19 system improvements included in the project list. This notice requirement shall  
20 not apply if there are no unexpended or unencumbered balances within an  
21 account or accounts being terminated.

#### 22 23 **20.77.170 Appeals**

24  
25 (1) An applicant may appeal the amount of an impact fee determined by the  
26 director as provided in X :

27  
28 (a) [appeals process text to be added]

#### 29 30 **20.77.180 Authorization for interlocal agreements**

31  
32 The county executive is authorized to execute, on behalf of the county, an  
33 interlocal agreement with other local governments for the collection, expenditure,  
34 and reporting of impact fees.

#### 35 36 **20.77.190 Relationship to State Environmental Policy Act (SEPA)**

37  
38 (1) All development shall be subject to environmental review pursuant to SEPA  
39 and other applicable county ordinances and regulations.

40  
41 (2) Further mitigation in addition to the impact fee shall be required for identified  
42 adverse impacts appropriate for mitigation pursuant to SEPA that are not  
43 mitigated by an impact fee.

44

1 (3) Nothing in this chapter shall be construed to limit the county's authority to  
2 deny development permits when a proposal would result in significant adverse  
3 transportation impacts identified in an environmental impact statement and  
4 reasonable mitigation measures are insufficient to mitigate the identified impact.

5  
6 **20.77.200 Relationship to concurrency management**

7  
8 Neither compliance with this chapter or the payment of any fee hereunder shall  
9 constitute a determination of concurrency under WCC 20.78.

10  
11 **20.77.210 Necessity of compliance**

12  
13 A building permit issued after the effective date of this ordinance shall be null and  
14 void if issued without substantial compliance with this chapter by the department,  
15 the approving authority and the director.

16  
17 **20.77.220 Definitions**

18  
19 The following are definitions provided for administering the transportation impact  
20 fee program. The public works director shall have the authority to resolve  
21 questions of interpretation or conflicts between definitions.

22  
23 **"Applicant"** means any property owner, developer, or other person who seeks a  
24 building permit from Whatcom County.

25  
26 **"Building permit"** means the official document or certification that is issued by  
27 the building department and that authorizes the construction, alteration,  
28 enlargement, conversion, reconstruction, remodeling, rehabilitation, erection,  
29 tenant improvement, demolition, moving or repair of a building or structure.

30  
31 **"Capital facilities plan"** means the capital facilities plan element of the county's  
32 Comprehensive Plan adopted pursuant to Chapter 36.70A RCW, and such plan  
33 as amended.

34  
35 **"County Council"** or **"Council"** means the County Council of Whatcom County.

36  
37 **"Development activity"** means any construction or expansion of a building,  
38 structure, or use, any change in use of a building or structure, or any changes in  
39 the use of land, that creates additional demand and need for public facilities,

40  
41 **"Director"** means the director of the department of public works of Whatcom  
42 County or his/her designee.

43  
44 **"Finance manager"** means the finance manager of Whatcom County or his/her  
45 designee.

1  
2 **“Impact fee”** or **“transportation impact fee”** means a payment of money  
3 imposed upon development as a condition of development approval to pay for  
4 system improvements needed to serve new growth and development, and that is  
5 reasonably related to the new development that creates additional demand and  
6 need for system improvements, that is a proportionate share of the cost of the  
7 system improvements, and that is used for system improvements that reasonably  
8 benefit the new development.

9  
10 **“Impact fee account”** or **“account”** means the account established for the  
11 system improvements for which impact fees are collected. The account shall be  
12 established pursuant to this chapter, and shall comply with the requirements of  
13 RCW 82.02.070.

14  
15 **“Interlocal agreement”** or **“agreement”** means an interlocal agreement,  
16 authorized in this chapter, by and between Whatcom County and other  
17 government agencies concerning the collection and expenditure of impact fees,  
18 or any other interlocal agreement entered by and between the county and  
19 another municipality or public agency to implement the provisions of this chapter.

20  
21 **“Jurisdiction”** means a municipality or county.

22  
23 **“Project improvements”** mean site improvements and facilities that are planned  
24 and designed to provide service for a particular development project and that are  
25 necessary for the use and convenience of the occupants or users of the project,  
26 and are not system improvements. No improvement or facility included in the  
27 capital facilities plan approved by the county council shall be considered a project  
28 improvement.

29  
30 **“Project list”** means system improvements included in the transportation impact  
31 fee program as defined in 20.77.120 and Attachment B which is herein  
32 incorporated by reference.

33  
34 **“Proportionate share”** means that portion of the cost of system improvements  
35 that are reasonably related to the service demands and needs of new  
36 development.

37  
38 **“Schedule”** means the list of adopted transportation impact fees for  
39 development activity that is subject to impact fees which is based upon a formula  
40 or other calculation method consistent with RCW 82.02.060. The schedule of  
41 impact fees is defined in Attachment C which is herein incorporated by reference.

42  
43 **“Service area”** means a geographic area defined by the county or interlocal  
44 agreement, in which a defined set of system improvements provide service to  
45 development within the area. Service districts shall be designated on the basis of

1 sound planning or engineering principles. Development in a service area may,  
2 and will likely be found to, impact and be served by system improvements  
3 outside of the service area, and the resulting transportation impact fee will reflect  
4 a proportionate share charge based on those impacts.

5  
6 **“System improvements”** mean public streets and roads that are included in  
7 the capital facilities plan and are designed to provide service areas within the  
8 community at large, in contrast to project improvements.

9  
10 **“Trip generation manual”** means the most current edition of the report entitled  
11 “Trip Generation” produced by the Institute of Transportation Engineers.

12  
13  
14  
15

16 **Attachment A – Transportation Service Areas**  
17 **Attachment B – Transportation Impact Fee Project List**  
18 **Attachment C – Schedule of Transportation Impact Fees**

DRAFT