

# City of SeaTac

## Policies and Procedures

<b>Policy Number:</b>	PW- 014
<b>Policy Name:</b>	Fee in Lieu of Constructing Frontage Improvements
<b>Department(s):</b>	Public Works Department and CED
<b>Effective Date:</b>	January 10, 2023
<b>Supersedes:</b>	January 25, 2021
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<b>Signature:</b>	

### **Purpose:**

To provide guidance on the application of fee-in-lieu, on a case-by-case basis, of the construction of required frontage improvements (referred to as “off-site improvements” in SMC 13.200.020) in compliance with the requirements of RCW 82.02.020 and case law interpreting the same.

### **SMC Reference:**

13.200.020(D) – Off-Site Improvements (Attachment A)

### **Regulatory Reference and Decisions:**

RCW82.02.020

### **Principles Represented by Statute & Case Law:**

Approval to accept a fee-in-lieu of construction of frontage improvements by a developer will have to meet two factors:

1. Identification of a direct impact caused by the proposed development to be mitigated.

2. Demonstration that the mitigation addresses the direct impact that is the consequence of the proposed development, in other words, the fee is reasonably necessary as a direct result of the proposed development.<sup>1</sup>

**Policy:**

- A. Timing:** Developments required to provide frontage improvements per SMC 13.200 may request to pay a fee-in-lieu of constructing the improvements any time prior to the issuance of final plat, ROW, or STE permit. Eligibility to apply for a request to pay fee-in-lieu of construction should be identified at the pre-application meeting for the project, and no later than during the land use application review stage.
- B. Criteria for Decision:** The Director or designee may accept a fee-in-lieu for off-site improvements along the development site street frontage, provided the subject offsite improvements cannot or should not be constructed concurrently with the subject development and the following requirements are met:
- Sufficient information is provided by the applicant per the procedure below to determine project feasibility
  - Staff assessment of a direct impact caused by the proposed development using sound principles of planning and engineering, including an evaluation that no significant adverse impact will result from delaying the construction of the subject frontage improvements.
  - Staff assessment of the subject mitigation as to whether the mitigation sufficiently address this direct impact, based on sound principles of planning and engineering.
  - The City is able to utilize the fee-in-lieu within the next five (5) years on a capital improvement project that would mitigate the identified direct impacts by constructing the required improvements.
- C. Exceptions:** N/A.
- D. Decision Maker:** The decision is by the Public Works Director or designee.
- E. Material Required from Applicant:** The Applicant shall submit a letter requesting fee-in-lieu of constructing required frontage improvements. The City may discuss, but will not pre-approve, a fee-in-lieu request without this submittal. The written request shall include:
- The project or permit number assigned to the application;
  - A description of why a fee-in-lieu is requested and how it meets the requirements of the policy;
  - A project location map;
  - A project site map;

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<sup>1</sup> “The statutory prohibition is intended ‘to stop the imposition of general social costs on developers, while at the same time allowing the continued imposition of costs that are directly attributable to the development.’” *Isla Verde Int’l Holdings v. City of Camas*, 146 Wn.2d 740, 760, n. 14 (2002). “Our supreme court has repeatedly held that this statute requires ‘that development conditions must be tied to a specific, identified impact of a development on a community.’” *Citizens’ Alliance for Prop. Rights v. Sims*, 145 Wn.App. 649 (2008).

- An affidavit by a Professional Engineer, licensed in the state of Washington, that the preliminary layout reflects all known technical challenges (such as walls, contaminated soils, wetlands buffers, and other critical areas) at the time of writing;
- An Engineering Estimate signed and sealed by a licensed professional engineer registered in Washington State;
- An executed letter of no contest. The purpose of this letter is to allow temporary encroachments on the property during the construction and maintenance of the proposed frontage improvement.
- A preliminary layout of the required improvements, including:
  - Survey of existing site conditions with topographic contours,
  - Right of Way lines and utilities,
  - Adjacent neighbors' improvements (as needed),
  - Streetlights (if required),
  - Stormwater Management System,
  - The proposed preliminary (>60%) layout must have sufficient information to allow the bond quantity worksheet to be completed; and,
- Any other information required by the Director or designee.

**F. Form Decision Takes:** The decision will be in the form of a letter to the applicant. The letter shall include an analysis of the criteria, conditions of approval, and shall include language related to filing an appeal per SMC 1.20 and SMC 16A.17.

### **Procedure:**

#### **A. Eligibility Identification:**

- As part of pre-application meeting comments, Engineering Review Staff will identify if the project frontage is included in a planned capital project and therefore would be eligible to apply for the fee-in-lieu option.
- The Land Use Approval will specify eligibility for fee-in-lieu option.

#### **B. Submittal:**

- A request for a fee-in-lieu can only be submitted if there is an active final short plat, STE, or ROW permit application;
- Written materials (specified in section F) are submitted to the permit center;

#### **C. Routing & Review:**

- Permit center routes the written materials to appropriate engineering review staff, and planning staff;
- Engineering Review staff will consult and coordinate with Public Works Engineering Division and Planning Division staff as needed to review for the following elements:
  - Compliance with the criteria for approval (Policy section B., above)
  - Sufficiency of cost estimates (ensure current bid prices are used, including an estimated adjustment for inflation);
  - Properly executed agreements;
  - Potential design technical challenges;

- Identification of an appropriate capital improvement project whereupon the fee-in-lieu payment will apply.

**D. Approval & Issuance:**

- An Agreement to Payment in Lieu of Improvement will be prepared referencing the legal description of the development project and relevant facts for review by Legal Department prior to execution and recording.
- Engineering review staff will add the fee-in-lieu amount into LAMA (Rev #: 307.345.81.00.000, Tran Code: 1522);
- Approval is issued to the applicant and a copy is included in the project file;
- The written approval shall be valid only for the permit application with which it is associated;
- The written approval shall include the following conditions of approval:
  - i. For projects that are subject to a subdivision dedication, Right of Way dedication through an executed Statutory Warranty Deed, or in other similar form as approved by the Director, all encumbrances shall be removed from the property being dedicated unless otherwise approved by the Director.
  - ii. Prior to issuance of the underlying permit, a fee-in-lieu payment is required.

## **Attachment A**

### **SMC 13.200.020(D)- Off-Site Improvements**

A. The installation of off-site improvements is required as a condition of development in order to incorporate transportation improvements that are reasonably necessary to mitigate the direct impacts of the following types of development:

1. Creation of a subdivision, short subdivision, or binding site plan;
2. Construction of a duplex or multi-family building (as defined in Chapter 15.105 SMC);
3. Construction of a building to be used for public assembly, commercial purposes, or industrial purposes;
4. Expansion of an existing building encompassing more than fifty percent (50%) of the gross floor area (GFA), or by increasing the GFA by more than one thousand (1,000) square feet. However, this subsection does not apply to construction or expansion of a single-family dwelling or accessory dwelling unit (as defined in Chapter 15.105 SMC);
5. Construction of a new “parking lot” or “parking lot, public/private” (as defined in Chapter 15.105 SMC), where the project value is in excess of seventy-five thousand dollars (\$75,000); or
6. Expansion of an existing “parking lot” or “parking lot, public/private” (as defined in Chapter 15.105 SMC), where the project value is in excess of seventy-five thousand dollars (\$75,000).

B. Off-site improvements shall be installed along the entire street frontage of the property at the sole cost of the applicant as directed by the Director. Off-site improvements may include, but not be limited to, curb, gutter, sidewalk, storm drainage, street lighting, public utility relocation, franchise utility relocation, landscaping strip, street trees and landscaping, irrigation, on-street parking, street pavement widening, bicycle lanes, safety railings, street signs, pavement marking, and channelization. Beyond the property frontage, the applicant shall provide ramps or other appropriate transition from the new sidewalk or walkway to the existing shoulder, and pavement and channelization tapering back to the existing pavement and channelization as needed for safety. The off-site improvements shall be continued beyond the street frontage of the property if and to the extent necessary to provide a safe, accessible transition.

C. Required off-site improvements shall be complete prior to the earlier of:

1. Issuance of any certificate of occupancy (including any phased occupancy); or
2. Finalization of a development permit in which the off-site improvements are a requirement; unless financial security has been established as allowed by this chapter.

D. If the Director determines that the off-site improvements required by this section cannot or should not be constructed concurrent with the proposed development, the applicant shall, prior to issuance of a building permit or final approval for subdivisions, short subdivisions, or binding site plans:

1. Pay to the City an amount equal to the applicant's cost of installing the required off-site improvements, as authorized by and in a manner consistent with RCW 82.02.020. The cost of installing the required off-site improvements shall be based on engineering cost estimates, as approved by the Director. (Ord. 20-1019 § 3)

### **13.200.030 Bonds and other security for off-site and on-site improvements.**

A. This section is intended to apply in addition to any other bonding requirements set forth in Chapters 11.05, 11.10, 12.10, and 13.190 SMC. However, where such persons have previously posted, or are required to post, other bonds covering either the project itself or other construction related to the project, such person may, with the permission of the Director and to the extent allowable by law, combine all such bonds into a single bond; provided, that at no time shall the amount thus bonded be less than the total amount which would have been required in the form of separate bonds; and provided further, that such bond shall on its face clearly delineate those separate bonds which it is intended to replace.

B. Performance Bond. An applicant shall provide a performance bond, in an amount and with surety and conditions satisfactory to it, or other secure method approved by the Director, providing for and securing to the City the actual construction and installation of such off-site and/or on-site improvements, within a period specified by the city and in accordance with approved permits, agreements, plans, specifications, requirements, conditions, regulations, and policies.

C. Phased occupancy or final approval of a long subdivision, short subdivision, or binding site plan may be requested prior to the satisfactory completion of all off-site and/or on-site improvements. Approval of any request is at the discretion of the Director and shall be based upon the criteria set forth in subsection (D) of this section.

D. Bond in Lieu for Completion of Improvements. The use of a bond or other security to ensure the completion of either off-site and/or on-site improvements may be allowed if:

1. The Director determines that the off-site and/or on-site improvements are substantially complete; and
2. The applicant provides a performance bond, in an amount and with surety and conditions satisfactory to it, or other secure method approved by the Director, providing for and securing to the City the completion of construction and installation of the required off-site and/or on-site improvements; and
3. The applicant provides a maintenance bond, in an amount and with surety and conditions satisfactory to it, to ensure that all constructed off-site and/or on-site improvements will remain in continued successful operation and compliance with City standards until a final maintenance inspection has been completed by the City. The final maintenance inspection shall be no sooner than:
  - a. One (1) year after final plat approval for short subdivisions.
  - b. Two (2) years after final plat approval for long subdivisions.
  - c. One (1) year after final approval for all other development permits; and

4. The applicant is unable to complete the off-site or on-site improvements because of unavoidable circumstances that in no way resulted from the actions or inaction of the applicant; and

5. The Director, in their sole discretion, is reasonably certain that the applicant will be able to complete the off-site and/or on-site improvements within a reasonable amount of time; and

6. Granting phased occupancy prior to completion of the off-site or on-site improvements will not be materially detrimental to the City or to the properties in the vicinity of the subject property; and

7. The Director, in their sole discretion, determines that public safety will not be compromised.

E. Maintenance Bond. Prior to final permit approval for the construction of any off-site or on-site improvements, the applicant shall provide a maintenance bond or other security to ensure that the constructed off-site or on-site improvements will remain in continued successful operation and compliance with City standards for the time period and manner specified in subsection (D)(3) of this section. (Ord. 20-1019 § 3)

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