



MEMORANDUM

TO: Mayor and City Council

FROM: Robert Spillar, P.E., Director,
Austin Transportation Department 

DATE: December 7, 2020

SUBJECT: **Staff Responses to Recent Stakeholder Requests on the Street Impact Fee Ordinances**

On December 3, 2020, Council approved the Street Impact Fee ordinances (items #51 and #52) on second reading, with an amendment to incorporate changes from staff. The ordinances with the incorporated amendments are posted with the December 10, 2020 [agenda](#), where the Street Impact Fee ordinance items #61 and #62 are proposed for third reading. During the December 3, 2020 Council discussion, Council members directed staff to respond to recent stakeholder requests prior to third reading. Staff is aware of the following stakeholder requests and has prepared the following responses.

Austin Board of Realtors (ABoR) and Homebuilders Association of Greater Austin (HBA) requests dated November 30, 2020

“We ask you to consider adopting the following amendments during the second reading of the Street Impact Fee Ordinances:

Street Impact Fee Assessment

We recommend that the Street Impact Fees be assessed at the following rate:

- *Residential Land Uses – 15% of maximum allowable fee”¹*

Staff Response:

Staff does not recommend a collection rate of 15% of the maximum allowable fee for residential land uses, which equates to \$365/vehicle-mile of demand generated by new development. The 35% collection rate for residential uses (\$850/vehicle-mile) recommended by staff is based on the Impact Fee Advisory Committee (IFAC) recommendation. Under that rate, the amount collected for a single family home is similar to the amount under the rough proportionality calculation used today, which led to the IFAC and staff recommending it as the collection rate to transition to the new impact fee program. At a 15% collection rate, staff estimates that larger developments would ultimately contribute less than they would under the

¹ Staff does not recommend any impact fee reduction that uses an assessment rate instead of a collection rate to measure the reduction. See discussion below in response to RECA and DAA proposed amendments.

current system. The other outcome is that there would be less predictability in the process because improvements may still be required to mitigate transportation impacts and those improvements may exceed the impact fee collection amount. While the overall mitigation amount may be similar, there would be an efficiency loss in the process, which is counter to the intent of the Street Impact Fee program. At a 35% collection rate for residential uses, the City’s collection rate would be less than the City of Pflugerville’s rate and would be slightly more than the City of Round Rock’s Phase 1 rate, but less than their Phase 2 amount.

Staff analyzed the revenue impact of a reduced collection rate for residential land uses. Based on the estimated projection of revenue from the current ordinance, the lower rate would result in a reduction in impact fee revenue of \$76 million over 10 years. While the loss in SIF revenue could be collected through the mitigation process (under rough proportionality), it would be less predictable, which introduces inefficiency in the development review process. It is also difficult to ascertain what amount would be collected through the current transportation review process in this scenario.

	Collection Rates	Revenue Projected (accounting for estimated reductions) over 10 years
A	Current Ordinance Proposal: 35% Residential, 50% Non-Residential, 1-Year Grace Period	\$458.5 million
B	15% Residential, 50% Non-Residential, 1-year Grace Period	\$382.5 million (\$76M or \$7.6M/yr less than current ordinance)

“Street Impact Fee Timing

We recommend an additional one-year extension to the one-year statutorily required grace period as outlined below:

- *Year 1 – Statutorily required implementation delay*
- *Year 2 – One-year extension to statutorily required implementation delay”*

Staff Response:

The IFAC recommended a one-year grace period for all developments (see [IFAC comments](#) in agenda backup). The one-year grace period defined in the ordinance is an expansion of the one-year statutorily required grace period for previously platted properties to one year for ALL properties. Staff has heard from stakeholders about the length of the development process in Austin as a factor to consider in determining the length of the grace period. Staff believes that one year is sufficient to allow for development to respond to the changes in process as the fee will not be collected at the beginning of the development process, but at the time building permits are approved. The study to develop a Street Impact Fee also began in late 2016, and concluded early this year, providing substantial time for pre-planning. Staff did receive feedback from stakeholders that prompted the addition of a three-year grace period for developments with approved Transportation Impact Analyses.

Staff analyzed the potential impact to revenue of a two-year grace period. Based on the estimated projection of revenue from the current ordinance, the extended grace period would

result in a reduction in impact fee revenue of \$50.9 million over 10 years, see scenario C below. Combined with the 15% residential rate, staff estimated a reduction in revenue of \$118.5 million over 10 years, scenario D below. Again, staff notes that while some of the loss in SIF revenue could be collected through the mitigation process (under rough proportionality) this process is less predictable and the amount that would be collected under that process is difficult to estimate.

	Collection Rates	Revenue Projected (accounting for estimated reductions) over 10 years
A	35% Residential, 50% Non-Residential, 1-Year Grace Period <i>(Current Ordinance Proposal)</i>	\$458.5 million
B	15% Residential, 50% Non-Residential, 1-year Grace Period	\$382.5 million (\$76M or \$7.6M/yr less than current ordinance)
C	35% Residential, 50% Non-Residential, 2-Year Grace Period	\$407.6 million (\$50.9M or \$5.1M/yr less than current ordinance)
D	15% Residential, 50% Non-Residential, 2-year Grace Period	\$340 million (\$118.5M or \$11.9M/yr less than current ordinance)

“Reductions for Small Projects

We recommend that the small projects reduction, outlined under 25-6-667(C), should:

- *be an automatic administrative reduction, meaning that “the burden of qualifying for the reduction is on the applicant” requirement does not apply to the small projects reduction outlined under 25-6-667(C); and*
- *not be limited to a one-time application, meaning the phrase “one-time” should be removed from the small projects reduction outlined under 25-6-667(C).”*

Staff Response:

The provision referenced was moved to the fee schedule ordinance, see Part 2. (D)(3), [Item #61](#). Thus, the burden requirement for applicants to demonstrate they qualify for fee reductions does not apply and will be administratively determined. Staff understands the concern for smaller developers and homeowners in navigating the development process and believes the administrative guidelines and process will provide a simple process for projects that qualify for this collection rate exemption. The administrative guidelines that will be developed will provide development review staff with instructions about how to calculate and collect impact fees. This will also be addressed in the impact fee worksheet that is being developed and, once fees are adopted, will be publicly available on the City’s website. Staff will also consider additional resources that could be published, such as a table or matrix that identifies common development scenarios, such as adding an accessory dwelling unit to an existing residential use, to show applicants if they may be exempt from impact fees, removing the need to calculate the vehicle-mile increase. In the example of adding an accessory dwelling unit to a single-family home, the accessory dwelling unit would be exempt from an impact fee.

As the provision referenced was moved to the fee ordinance, the language has changed and “one-time” does not appear in Part 2. (D)(3), [Item #61](#). The intent of the language as written is to allow for an addition of trips up to 10 PM peak hour trips compared to the existing land use, with a \$0 collection rate. Subsequent additions would be subject to the collection rate schedule in Part 2. (D) or other schedule in effect at the time of building permit application.

Staff understands the request to allow smaller developments, such as individual homeowners, the ability to add subsequent additions at the \$0 collection rate. Staff believes it is not the intent to allow larger developments to incrementally add 10 PM peak trips over time and avoid a Street Impact Fee for the entire development. To address the issue of allowing for smaller developments to add to their site, but will not cumulatively exceed the 10 PM peak hour trips, staff proposes the following language as a potential amendment for Council to consider:

Part 2. (D)(3): “(3) For any new development that adds net service units to an existing land use located on a lot or tract and does not result in an increase of more than 10 PM peak hour trips, the collection rate will be \$0 per vehicle-mile. For such lot or tract, this collection rate shall apply to the further addition of net service units provided that the cumulative additional trips for the new development does not exceed 10 PM peak hour trips. For any addition of service units that exceeds the cumulative total of 10 PM peak hour trips for the lot or tract, the collection rate shall be the general collection rate then in effect.”

“Periodic Review of Projects and Fees

We recommend that City Staff be required to review projects in the Capital Improvement Plan and recalculate the Street Impact Fees at least every three years, starting after the first year of implementation. In addition, City Staff should be required to create a public reporting process indicating which projects have utilized Street Impact Fees and showing balances of the funds per service area.”

Staff Response:

Review of the implementation of the impact fee program is the function of the Impact Fee Advisory Committee (IFAC), appointed by the City Council. The IFAC receives, reviews and approves a report every six months that documents what revenue is being collected and how it is being spent. This committee can advise the Council if they have, or receive from stakeholders, a recommendation to adjust the collection rates. Council can also act to change the collection rates without a recommendation from the committee. The IFAC serves an oversight function per Chapter 395:

- (c) *The advisory committee serves in an advisory capacity and is established to:*
- (1) *advise and assist the political subdivision in adopting land use assumptions;*
 - (2) *review the capital improvements plan and file written comments;*
 - (3) *monitor and evaluate implementation of the capital improvements plan;*

(4) file semiannual reports with respect to the progress of the capital improvements plan and report to the political subdivision any perceived inequities in implementing the plan or imposing the impact fee; and

(5) advise the political subdivision of the need to update or revise the land use assumptions, capital improvements plan, and impact fee.

The recommendation requests a review of the Roadway Capacity Plan and recalculation of fees every three years, which would require a study update. Staff believes the intent is a review of the program performance and collection rates every three years, with a study update occurring every five years, per the requirements in Chapter 395. The IFAC can make a recommendation to Council to update the collection rate as often as desired between study updates. Staff does not recommend a study update every three years but supports a review of the collection rates through the IFAC after three years of implementation. Staff also plans to provide public reports every six months and will be considering the creation of an online tool to track revenue and expenditures under the impact fee program after program adoption.

Real Estate Council of Austin and Downtown Austin Alliance requests dated December 3, 2020

Amendment No. 1 to 25-6-662 to change Assessment of the Street Impact Fee to occur in three phases, see Attachment A.

Staff Response:

Staff would like to provide information regarding the assessment versus the collection rate. The proposed amendment replaces language for § 25-6-662(A), see [ordinance for Item #62](#). Section 25-6-662 generally sets rules for *assessing* impact fees. In contrast, section 25-6-663 generally sets rules for collection of impact fees. Both assessment rates and collection rates are contained in the [Item #61](#) fee ordinance Part 2, sections (C) and (D), respectively.

“Assessment” under Local Government Code Chapter 395 is a term of art. Once assessment occurs, usually at the time of final platting, impact fees which are collected, generally at the time of building permit, cannot be raised, unless a new development increases the number of service units for the development, and then only for the additional service units. The amount of impact fees collected can never exceed the amount of impact fees assessed for a new development. See § 25-6-663 (A).

The RECA and DAA amendment establishes assessment, not collection rates, for all new developments, see Attachment A. This means that collection rates can go down from the assessment rates stated, but can never go up, even though the maximum impact fee based on the Street Impact Fee Study that can be assessed exceeds by several times the rates recommended in the amendment. Stated differently, the maximum amount of fees that can be collected over the 10-year life of the Street Impact Fee program is just what is stated in the amendment request, Attachment A. As a consequence, staff believes that the suggested rates in the amendment should be considered “collection rates.” The proposed amounts as collection rates are far below what staff believes to be the correct initial rates of collection for Street Impact Fees over the life of the program.

It should be noted that the proposed amendment directly contradicts subsection § 25-6-662 (D), which provides that street impact fees will be assessed at the maximum fee per service unit, as determined by the impact fee study. These “assessment rates” are set forth for each service area in the fee ordinance, Part 2, section (C).

Considering the suggested rates as collection rates, staff does not recommend the reduction in collection rates from the current ordinance or a phase-in of the fee schedule. The rates recommended do not align with the IFAC recommendation. The IFAC did not recommend a phase-in of collection rates as they felt that removed simplicity from the program, a program intent they strove to maintain with their recommendation, by introducing different rates for different years. They recognized this would be complicated for applicants and for review staff. Staff does not recommend a phase-in for the same reasons.

Staff analyzed the potential impact to fee revenue of the lower collection rates and phased-in fee schedule. Based on the estimated projection of revenue from the current ordinance, the recommendation would result in a reduction in impact fee revenue of \$145.4 million over 10 years, see scenario E below.

	Collection Rates	Revenue Projected (accounting for estimated reductions) over 10 years
A	35% Residential, 50% Non-Residential, 1-Year Grace Period <i>(Current Ordinance Proposal)</i>	\$458.5 million
B	15% Residential, 50% Non-Residential, 1-year Grace Period	\$382.5 million (\$76M or \$7.6M/yr less than current ordinance)
C	35% Residential, 50% Non-Residential, 2-Year Grace Period	\$407.6 million (\$50.9M or \$5.1M/yr less than current ordinance)
D	15% Residential, 50% Non-Residential, 2-year Grace Period	\$340 million (\$118.5M or \$11.9M/yr less than current ordinance)
E	Year 1: 1-year grace period Year 2: 15% Residential, 20% Non-Residential Year 3: 20% Residential, 25% Non-Residential Years 4-10: 30% Residential, 35% Non-Residential	\$313.1 million (\$145.4M or \$14.5M/yr less than current ordinance)

Amendment No. 2 to § 25-6-669, adding a section for “Credits for TIA and TDM” (moves current 669 Offsets to § 25-6-670 and Appeals to § 25-6-671), see Attachment B.

Staff Response:

Regarding the change suggested in (A)(a) – this is already captured in § 25-6-669 (A).

Regarding the change suggested in (A)(c) – State law prevents impact fee revenue from being spent on roadway maintenance. If the system improvements, such as new signals or roadway widening, are required and are either in the Roadway Capacity Plan or eligible to be, then the costs would be offset – which is already addressed in § 25-6-669 (A) and (A)(3). The fee offset would be handled through an offset agreement, see § 25-6-669 (D), with the City that documents the improvements the developer will build for a determined cost and that cost will be deducted from their SIF otherwise due at the time of building permit. Any non-eligible improvements, such as standalone sidewalks or bicycle facilities, would count toward their rough proportionality calculation, but cannot be offset for impact fees. That is because the study and maximum assessable fees did not include those projects, as not allowed by state law. This amendment would essentially fund local streets and other improvements that are site-related under the code. The amendment thus reduces the overall funds available to achieve the statutory purpose, financing of system facilities.

Regarding the change suggested in (A)(d) – Soft costs for roadway capacity improvements would be part of the offset cost described above. The developer would provide an estimate of their cost for the project to the City for review and the cost would be part of the offset agreement.

Regarding the change suggested in (B)(a) – The City cannot offset impact fees for non-capacity related improvements. In the current ordinance, a new development is eligible for mobility-related fee reductions included in § 25-6-667 (A) and (B), for internal capture, transit proximity, and reduced parking. Other mitigation, such as sidewalks and bus stops, cannot be offset because the cost of these improvements was not part of the Street Impact Fee study, as not eligible by state law. Again, these types of improvements may count toward the rough proportionality calculation but are not eligible for SIF offsets.

Regarding the change suggested in (C) – § 25-6-669 (D) is where the offset agreement is discussed. The timing and process for offset agreements is typically handled with administrative guidelines. Staff is concerned about the language as written as it implies that it would be possible for a developer to abandon a construction project mid-project if the costs were exceeding their initial estimate. In order to address the concern about the developer's actual cost being considered the offset, staff proposes the following ordinance language: add to § 25-6-669 (A) a subsection (6) to read:

“(6) The amount of any offsets shall be based on the actual costs of eligible system facilities.”

For consistency, staff recommends the following change to § 25-6-669 (A)(4):

“(4) The ~~value~~ amount of any offset for a system facility shall be reduced by the City's cost participation in the construction or funding of such facility.”

Additionally, administrative guidelines will be developed to instruct how offset agreements should be written.

Staff is available to present these responses at Council's December 8, 2020 work session or during the December 10, 2020 Council meeting. Prior to that, if you have additional questions, please contact Liane Miller at (512) 974-7922, liane.miller@austintexas.gov.

Attachments:

- A) Amendment No. 1 proposed by RECA and DAA, December 3, 2020
- B) Amendment No. 2 proposed by RECA and DAA, December 3, 2020

CC: Spencer Cronk, City Manager
Gina Fiandaca, Assistant City Manager
Upal Barua, Acting Assistant Director, Austin Transportation Department

Commercial & Downtown Street Impact Fee Motion Sheet

Item 52 | December 3, 2020

AMENDMENT NO. 1:

On Page 6, Lines 227-237, Delete (A), and Insert:

- (A) Assessment of the street impact fee for any new development shall occur in three phases:
- (1) Phase 1, Effective January 1, 2021
 - (a) For all property with a recorded plat dated before January 1, 2021, Street impact fees will be assessed as set forth below, but no street impact fees shall be collected for any building permit application dated before January 1, 2022
 - (i) Residential Land Uses - \$365 per service unit per vehicle mile
 - (ii) Non-Residential Land Uses - \$486 per service unit per vehicle mile
 - (b) For all property with a recorded plate dated before January 1, 2021, street impact fees will be assessed for any building permit application dated on or after January 1, 2022, as follows:
 - (i) Residential Land Uses - \$365 per service unit per vehicle mile
 - (ii) Non-Residential Land Uses - \$486 per service unit per vehicle mile
 - (c) For all property with a recorded plate dated after January 1, 2021, but before January 1, 2022, street impact fees will be assessed at final plat recordation as follows:
 - (i) Residential Land Uses - \$365 per service unit per vehicle mile
 - (ii) Non-Residential Land Uses - \$486 per service unit per vehicle mile
 - (2) Phase 2, Effective January 1, 2022
 - (a) For all property with a recorded plate dated on or after January 1, 2022, but before January 1, 2024, Street impact fees will be assessed at final plat recordation as follows:
 - (i) Residential Land Uses - \$486 per service unit per vehicle mile
 - (ii) Non-Residential Land Uses - \$608 per service unit per vehicle mile
 - (3) Phase 3, Effective January 1, 2024
 - (a) For all property with a recorded plat dated on or after January 1, 2024, street impact fees will be assessed at final plat recordation as follows:
 - (i) Residential Land Uses - \$729 per service unit per vehicle mile
 - (ii) Non-Residential Land Uses - \$850 per service unit per vehicle mile

Commercial & Downtown Street Impact Fee Motion Sheet

Item 52 | December 3, 2020

AMENDMENT No. 2

On Page 11, Line 425 Insert and renumber:

§ 25-6-669 CREDITS FOR TRAFFIC IMPACT ANALYSIS (TIA) and TRANSPORTATION DEMAND MANGEMENT (TDM).

- (A) Projects that are required to perform a Traffic Impact Analysis (TIA) as determined by the Director and Title 25 shall receive a credit towards their street impact fee for the following items that may be required for approval of the TIA:
- (a) Any vehicular network improvements requested by the Director as part of the TIA approval that are part of the roadway capacity plan.
 - (b)
 - (c) Any vehicular network improvements requested by the Director as part of the TIA approval that cannot otherwise be funded with street impact fee funding, including but not limited to roadway maintenance, signal improvements, roadway widening, and roadway striping projects. Any non-vehicular network improvements requested by the Director as part of the TIA approval in order to offset vehicular traffic generated to or from the development, including but not limited to sidewalk improvements, bike lanes, pedestrian cross walks, etc.
- (d) Soft costs associated with design and permitting of vehicular or non vehicular improvements identified in 25-6-669(a)-(c).
- (B) Projects that are required to perform a Transportation Demand Management Plan (TDM) as determined by the Director and Title 25 shall receive a credit towards their street impact fee for the following items that may be required for approval of the TDM plan:
- (a) Any improvements requested by the Director as part of the TDM review and approval process that cannot otherwise be funded with street impact fee funding, including but not limited to bikeway improvements, pedestrian improvements, sidewalks, bus stops, cross walks, and other multi-modal improvements or enhancements
 - (b) Soft costs associated with design and permitting of improvements noted herein.
- (C) The cost of improvements, including hard and soft costs, shall be estimated by the applicant at the time of TIA or TDM approval and shall be approved by the Director. If the actual costs at time of project construction exceed the approved estimated costs for any reason, as shown by two or more bids by qualified contractors, the applicant shall have the option, at their sole discretion, to pay the Street Impact Fee assessed on the project in lieu of completion of any project improvements, and:
- (a) The applicant shall sent notice to the Director of this decision, and

- (b) Within 30 days of receipt of such notice, the Director shall calculate the remaining Street Impact Fee due by reducing the cost of the originally assessed Street Impact Fee with the design and permitting costs of the improvements, and
- (c) The applicant shall provide the Director with permitted construction plans for all proposed transportation related improvements discussed herein.

§ 25-6-6~~7069~~ OFFSETS AGAINST STREET IMPACT FEES.

§ 25-6-6~~7169~~ APPEAL.