

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AMENDING TITLE 3 OF THE BLACK DIAMOND MUNICIPAL CODE TO ESTABLISH A NEW CHAPTER 3.80 ENTITLED "TRANSPORTATION IMPACT FEES;" PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City has authority to adopt impact fees to address the impact on transportation facilities caused by new development, pursuant to Ch. 82.020 RCW; and

**WHEREAS**, the City Council desires to ensure that those transportation facilities necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use, or within the period provided by law, without decreasing the current service levels below established minimum standards for the City; and

**WHEREAS**, the City Council finds that it is in the public interest for the City to have a diversity of housing options and that it is in the public interest for the City to provide the option of an exemption from full transportation impact fees in order to incentive the construction of low-income housing; and

**WHEREAS**, the City Council finds that it is in the public interest for the City to have early learning facilities to serve its residents and that it is in the public interest for the City to provide the option of an exemption from full transportation impact fees for early learning facilities; and

**WHEREAS**, the City Council finds that it is in the public interest for the City to have a diversity of housing options and that it is in the public interest for the City to provide the option of an exemption from full transportation impact fees in order to incentive the construction of accessory dwelling units; and

**WHEREAS**, the City Council held a public hearing and considered this Ordinance during its regular City Council meeting of \_\_\_\_\_, 2021;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1. New Municipal Code Chapter.** Title 3 of the Black Diamond Municipal Code is amended to add a new Chapter 3.80, entitled "Transportation Impact fees," containing the following provisions:

**Commented [EK1]:** Corresponds with Optional Provision #1 below. If there is no Council consensus for Optional Provision #1, this WHEREAS clause to be deleted.

**Commented [EK2]:** Corresponds with Optional Provision #2 below. If there is no Council consensus for Optional Provision #2, this WHEREAS clause to be deleted.

**Commented [EK3]:** Corresponds with Optional Provision #3 below. If there is no Council consensus for Optional Provision #3, this WHEREAS clause to be deleted.

**Chapter 3.80**  
**TRANSPORTATION IMPACT FEES**

- 3.80.010 Authority and Purpose.**
- 3.80.020 Definitions.**
- 3.80.030 Council Adoption and Review of Impact Fees.**
- 3.80.040 Applicability.**
- 3.80.050 Service Area.**
- 3.80.060 Assessment of Transportation Impact Fees.**
- 3.80.070 Collection of Transportation Impact Fees.**
- 3.80.080 Exemptions.**
- 3.80.090 Determination of Transportation Impact Fees, Reductions, Credits, Adjustments and Independent Calculations, and Appeals.**
- 3.80.100 Transportation Impact Fee Accounts and Refunds.**
- 3.80.110 Use of Funds.**
- 3.80.120 Existing Authority Unimpaired.**

**3.80.010 Authority and Purpose.**

A. This Chapter is enacted pursuant to the Growth Management Act as codified in chapter 36.70A RCW and the provisions of RCW 82.02.050 through 82.02.100.

B. The purposes of this Chapter are to:

1. Develop a program consistent with the City's Comprehensive Plan for joint public and private financing of transportation facilities as such facilities are necessitated in whole or in part by development within the City;

2. Ensure that those transportation facilities necessary to support Development shall be adequate to serve the Development at the time the Development is available for occupancy and use, or within the period established by law, without decreasing current service levels below established minimum standards for the City.

3. Create a mechanism to charge and collect Transportation Impact Fees to ensure that all new Development bears its proportionate share of the capital costs of transportation facilities reasonably related to new Development; and

4. Establish standards and procedures so that new Development pays a proportionate share of costs for new facilities and services and does not pay arbitrary or duplicative fees for the same impact.

C. The City has conducted studies documenting the procedures for measuring the impact of new growth and Development on public transportation facilities, has commissioned the preparation of a fee study, has reviewed the fee study, and hereby incorporates these studies into this Chapter by reference. Based on the foregoing, the City has prepared a formula and method of calculating Transportation Impact Fees to serve new Development that provides a balance between Transportation Impact Fees and other sources of public funds.

D. The provisions of this Chapter shall be liberally construed to effectively carry out its purposes in the interest of the public health, safety, and welfare.

### **3.80.020 Definitions.**

For purposes of this Chapter, the following terms have the indicated meanings:

A. "Applicant" means a person, firm, company, partnership, or corporation, and all successors in interest thereto, proposing a Development in the city.

B. "Capital Facilities Element" means the capital facilities plan element of the City of Black Diamond's Comprehensive Plan currently in effect or as subsequently amended.

C. "City" means the City of Black Diamond.

D. "Commercial" means any activity carried out for the purpose of financial gain for an individual or organization, whether profit or nonprofit.

E. "Developer" means a person or persons or entity or entities that owns, or holds purchase options or other control over, property on which Development is proposed.

F. "Development" means any:  
1. construction or expansion of a building, structure, or use;  
2. change in use of a building or structure; or  
3. change in the use of land

that creates additional demand for transportation facilities.

G. "Dwelling Unit" means a dwelling unit as defined in Section 18.100.270 of the Black Diamond Municipal Code currently in effect or as subsequently amended.

H. "Encumber" means to transfer impact fee dollars from the Transportation Impact Fee Fund to a fund for a particular system improvement that is fully funded in the current year's budget or for which a construction contract or contracts have been let.

I. "Low-Income Housing" means housing that has a monthly cost of no greater than thirty percent of eighty percent of the median family income adjusted for family size, for King County, as reported by the United States Department of Housing and Urban Development.

J. "P.M. Peak Hour" means the consecutive 60-minute period between the hours of 4:00 p.m. and 6:00 p.m. during which the highest volume of traffic occurs.

K. "Project Improvements" means 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.

L. "System Improvements" means traffic capacity-adding transportation facilities that are included in the City's Six-year Transportation Improvement Plan and are designed to provide service to the community at large, in contrast to Project Improvements or existing transportation facility preservation projects, such as repaving projects.

M. "Transportation Impact Fee" means a payment of money imposed upon Development as a condition of development approval and/or building permit approval to mitigate all or any portion of the transportation impact from the Development. "Transportation Impact Fee" does not include a reasonable permit or application fee, administrative fees for collecting and handling impact fees, the cost of reviewing independent fee calculations, or the administrative fee required for an appeal.

N. "Transportation Impact Fee Fund" means the fund established for the transportation facilities for which Transportation Impact Fees are collected.

O. "Transportation Impact Fee Schedule" means the table of Transportation Impact Fees adopted by the City Council establishing the standard amounts that Applicants shall pay for various types of projects as a condition of Development within the City.

P. "Transportation Impact Fee Study" means the rate study conducted by Parametrix, Inc., dated May 2021, which determined the Transportation Impact Fees to include in the Traffic Impact Fee Schedule, and includes any subsequent updates thereto.

### **3.80.030 Council Adoption and Review of Impact Fees.**

A. The City Council hereby adopts Table 4 of the Transportation Impact Fee Study as the Transportation Impact Fee Schedule for the City. The methodology described in the Transportation Impact Fee Study shall apply in calculating Transportation Impact Fees, including for any Development that does not fit squarely within the land use categories listed in Table 4.

B. The Transportation Impact Fee Schedule may be reviewed and amended by resolution of the City Council from time to time, as the City Council deems appropriate.

C. The Transportation Impact Fee Schedule shall be automatically updated for inflation annually using the following procedures:

1. The Public Works Director shall use the Construction Cost Index for Seattle (June-June) published by the Engineering News Record to calculate annual inflation adjustments in the Transportation Impact Fee Schedule. The Transportation Impact Fee Schedule shall not be adjusted for inflation if the index is unchanged.

2. The indexed Transportation Impact Fee Schedule shall be effective January 1 of each year. A copy of the indexed Transportation Impact Fee Schedule shall be provided to the City Council each December, but it shall become effective without further Council action.

D. The Public Works Director shall review the Transportation Impact Fee Schedule annually to determine whether a new Transportation Impact Fee rate study should be prepared.

### **3.80.040 Applicability.**

A. A Transportation Impact Fee is hereby imposed on every Development activity in the City based upon the rates established in the Transportation Impact Fee Schedule. The Transportation Impact Fee Schedule shall establish such rates based upon the land use as defined within the Transportation Impact Fee Schedule. Should a definition of a particular land use category (such as, but not limited to: single family residential, etc.) otherwise contained within the Black Diamond Municipal Code conflict with a land use category definition contained within the Transportation Impact Fee Schedule, the definition contained within the Transportation Impact Fee Schedule shall control for purposes of calculating the Transportation Impact Fees due.

B. Any Transportation Impact Fee imposed shall be reasonably related to the impact caused by the Development and shall not exceed a proportionate share of the costs of System Improvements that are reasonably related to the Development.

C. Transportation Impact Fees shall be based on the Capital Facilities Element and on the City's Six-year Transportation Improvement Plan.

D. The City shall also impose an application fee to cover the City's reasonable costs to administer the Transportation Impact Fee program. The administrative fee shall be paid by the Applicant to the City at the time of building permit application. The administrative fee shall be deposited into an administrative fee account within the Transportation Impact Fee Fund. Administrative fees shall be used to defray the cost incurred by the City in the administration and update of the Transportation Impact Fee program, including, but not limited to, review of independent fee calculations and the value of credits. The administrative fee is not creditable or refundable and is not subject to deferral.

#### **3.80.050 Service Area.**

There shall be one service area which shall be consistent with the corporate limits of the City.

#### **3.80.060 Assessment of Transportation Impact Fees.**

A. The City shall assess Transportation Impact Fees from any Applicant seeking a building permit from the City, using the Transportation Impact Fee Schedule in effect at the time of building permit issuance, unless payment is deferred pursuant to this Chapter, in which case the Transportation Impact Fees shall be assessed based on the Transportation Impact Fee Schedule in effect at the time of the deferral application.

B. Unless the proposed Development is exempt or subject to adjustments, credits, or an independent fee calculation accepted by the City, the City shall not issue building permit(s) unless and until the Transportation Impact Fees have been paid.

#### **3.80.070 Collection of Transportation Impact Fees.**

A. Except as provided in subsection (B) of this section, the Transportation Impact Fees imposed under this Chapter are due and payable at the time of issuance of a building permit.

B. Transportation Impact Fee payments may be deferred for single-family detached and attached residential construction (as such terms are

defined within the Transportation Impact Fee Schedule) until the City conducts a final building inspection, as authorized by RCW 82.02.050(3). Each Applicant for Transportation Impact Fee deferral is entitled annually (per calendar year) to obtain deferral for only the first 20 single-family residential construction building permits applied for by that Applicant.

1. In order to defer the payment of Transportation Impact Fees, all Applicants and legal owners of the subject property upon which the Development activity is to occur must sign an impact fee deferral agreement in a form acceptable to the City Attorney. The Applicant must also pay an administrative fee, along with fees necessary for recording the agreement in the King County real property records. The impact fee deferral agreement shall require the applicant to grant and record an impact fee lien as required by RCW 82.02.050(3)(c) prior to issuance of the building permit. The City shall withhold final building inspection approval, issuance of a certificate of occupancy, and any other equivalent final certification until the deferred Transportation Impact Fees have been paid in full.
2. In no event shall the term of an impact fee deferral exceed 18 months.
3. In the event that the Transportation Impact Fees are not paid within the time provided in this subsection, the City may commence foreclosure proceedings under the process set forth in Chapter 61.12 RCW, except as may be revised herein. The then-present owner shall also pay the City's reasonable attorney fees and costs incurred in the foreclosure process. Notwithstanding the foregoing, the City shall not commence foreclosure proceedings until 30 calendar days after providing written notification to the then-present owner of the property via certified mail with return receipt requested advising of its intent to commence foreclosure proceedings. If the then-present owner cures the default within the 30-day cure period, no attorney fees and/or costs will be owed. In addition, the City retains its full authority to withhold inspections and to suspend, revoke, or refuse to issue certificates of occupancy and other building permits and to commence enforcement actions due to nonpayment of impact fees.
4. Upon written request following full payment of Transportation Impact Fees that have been deferred pursuant to this chapter, the City shall execute a written release of the lien recorded pursuant to this Chapter. The release shall be in a form approved by the

City Attorney and shall be recorded against the title of the subject property by and at the expense of the current landowner.

### **3.80.080 Exemptions.**

The following Development activities do not create any additional transportation impacts or have been determined by the City Council to be exempt from paying Transportation Impact Fees pursuant to this ordinance:

A. Existing Dwelling Unit. Any alteration, expansion, reconstruction, remodeling, replacement, or demolition/removal of an existing Dwelling Unit that does not result in the generation of any new P.M. Peak Hour trips.

B. Existing Nonresidential Building. Any alteration, expansion, reconstruction, remodeling, replacement, or demolition/removal of an existing nonresidential building that does not result in the generation of any new P.M. Peak Hour trips.

C. Condominium projects in which existing Dwelling Units are converted into condominium ownership and that do not result in the generation of any new P.M. peak hour trips.

D. Any Development activity that is exempt from the payment of a Transportation Impact Fee pursuant to RCW 82.02.100, due to mitigation required by the State Environmental Policy Act ("SEPA").

E. Any Development activity for which transportation impacts have been mitigated pursuant to a condition of Development approval or development agreement to pay fees, dedicate land, or construct or improve facilities, unless the condition of the Development approval or a development agreement provides otherwise; provided that the condition of the Development approval or development agreement predates the effective date of this Chapter.

F. Any Development activity for which transportation impacts have been mitigated pursuant to a voluntary agreement entered into with the City pursuant to RCW 82.02.020 to pay fees, dedicate land, or construct or improve transportation facilities, unless the terms of the voluntary agreement provide otherwise; provided that the agreement predates the effective date of this Chapter.

G. A Developer who is constructing, reconstructing, or remodeling any form of Low-Income Housing may request an exemption of up to [XX] percent of the required Transportation Impact Fees. Any claim for an exemption for Low-Income Housing must be made prior to payment of the Transportation Impact Fee, and any claim not so made shall be deemed

**Commented [EK4]:**Optional Provision #1:

Council may set this percentage at whatever number it deems to be appropriate.

If Council wishes to provide an exemption for over 80%, the statute provides the remaining percentage of the exempted fee must be paid from public funds other than impact fee accounts. RCW 82.02.060 (3) .



waived. Prior to issuance of a certificate of occupancy for any portion of the Development, the owner shall execute and record against the property in the King County real property records a City-prepared covenant guaranteeing that the Low-Income Housing shall continue in perpetuity, which covenant shall run with the land, address annual reporting requirements to the City, include price restrictions and household income limits, and be consistent with the provisions of RCW 82.02.060(3) as now adopted or hereafter amended. In the event that an exempt housing unit is converted to any use other than Low-Income Housing, the then-current owner shall pay the applicable Transportation Impact Fees in effect at the time of conversion.

H. A Developer who is constructing, reconstructing, or remodeling any form of Early Learning Facility (as defined in RCW 43.31.565 as adopted or later amended) may request an exemption of up to [YY] percent of the required Transportation Impact Fees.

I. A Developer who is constructing, reconstructing, or remodeling any form of accessory dwelling unit ("ADU") as defined by BDMC 18.56.005, may request an exemption of up to [ZZ] percent of the required Transportation Impact Fees. Any claim for an exemption for ADUs must be made prior to payment of the Transportation Impact Fee, and any claim not so made shall be deemed waived. Impact fees from such Development activity shall be paid from public funds other than impact fee accounts per RCW 82.02.060(2).

### **3.80.090 Determination of Transportation Impact Fees, Reductions, Credits, Adjustments and Independent Calculations, and Appeals.**

A. Determination of Transportation Impact Fees. The City shall determine the amount of a Developer's Transportation Impact Fees according to the Transportation Impact Fee Schedule.

B. Reductions. The Transportation Impact Fee amount established by the Transportation Impact Fee Schedule shall be reduced by the amount of any payment previously made for the Development activity in question, either as a condition of Development approval (such as, but not limited to a SEPA condition) or pursuant to a voluntary agreement.

C. Credits.

1. Whenever a Developer is subject to a Development condition that the Developer actually construct a System Improvement acceptable to the City or improve an existing System Improvement, the Developer shall be entitled to a credit for the actual cost of constructing or improving such System Improvement(s) against the

#### **Commented [EK5]: Optional provision #2:**

Should Council adopt this provision, the exemption percentage is adjustable. Council has discretion under the statute to provide no exemption from TIF for early learning facilities, or may exempt any amount thereof, up to 100%.

If Council wishes this number to be higher than 80%, the City does NOT have to make up that difference with other funds like with low income housing, but in that case, the City would require recording a covenant against the property providing the facility must serve at least 25% low income families and provide annual reports to the City to that end. If there is Council consensus to adopt this exemption and set it at higher than 80%, we will need to insert additional language for second reading.

#### **Commented [EK6]: Optional Provision #3**

Transportation Impact Fee that would be chargeable under the Transportation Impact Fee schedule, unless an applicable development agreement between the City and the Developer provides otherwise. The cost of construction of such System Improvement(s) shall be estimated for purposes of calculating an estimated credit, but must be documented, and the documentation confirmed after the construction is completed to assure that an accurate credit amount is provided. If construction costs are less than the calculated fee amount, the difference remaining shall be chargeable as a Transportation Impact Fee.

2. Whenever a Developer is subject to a Development condition that the Developer dedicate land to the City to mitigate its transportation impacts, the Developer shall be entitled to a credit against the Transportation Impact Fee chargeable under the Transportation Impact Fee Schedule, unless an applicable development agreement between the City and the Developer provides otherwise. The value of a credit for dedication of land shall be established on a case-by-case basis by an appraiser selected by or acceptable to the City. The appraiser must be licensed in good standing by the state of Washington for the category of the property appraised. The appraisal and review shall be at the expense of the Applicant. The appraisal shall be in accordance with the most recent version of the Uniform Standards of Professional Appraisal Practice, as published by The Appraisal Foundation, and shall be subject to review and acceptance by the City. If the amount of a credit is less than the calculated fee amount, the difference remaining shall be chargeable as a Transportation Impact Fee.
3. In the event the amount of a credit calculated under this section is greater than the amount of the Transportation Impact Fees due, the Applicant may apply such excess credit toward impact fees imposed on other Developments within the same service area; provided, however if the System Improvement is one for which a latecomers agreement would be authorized, then the Applicant shall only be entitled to a latecomers agreement. In any event the City shall not be responsible for payment to the Applicant of any amount credited and not used.
4. No credit shall be given for Project Improvements.
5. An Applicant must request a credit pursuant to this section prior to payment of the Transportation Impact Fees and the issuance of the first building permit associated with the Development. Any claim not timely made shall be waived.

D. Adjustments.

1. An Applicant may request an adjustment to a Development's calculated Transportation Impact Fees by preparing and submitting to the City's Public Works Director an independent fee calculation for the Development activity for which a building permit is sought. The documentation submitted shall show the basis upon which the independent fee calculation was made. Independent fee calculations for Transportation Impact Fees shall use the same formulas and methodology used to establish the Transportation Impact Fees in this Chapter and shall be limited to adjustments in trip generation rates used in the Transportation Impact Fee Study, and shall not include travel demand forecasts, trip distribution, transportation assignment, transportation service areas, costs of road projects, or cost allocation procedures. If the City's Public Works Director agrees with the independent fee calculation, a written agreement to accept such amount shall be transmitted to the Applicant who shall, in turn, present it to the City when Transportation Impact Fees are collected.
2. Pursuant to RCW 82.02.060(5), an Applicant may request an adjustment to their calculated Transportation Impact Fees on the basis that the Applicant's specific case presents unusual circumstances and that imposition of the Transportation Impact Fees as calculated based on the Transportation Impact Fee Schedule results in unfairness.
3. An Applicant must request an adjustment pursuant to this section prior to payment of the Transportation Impact Fees and the issuance of the first building permit associated with the Development. Any claim not timely made shall be waived.

E. Appeals.

1. Notwithstanding any other provision of the BDMC, any decision of the City with regard to Transportation Impact Fee amounts, including any credits or adjustments, shall be appealable by the Applicant to the City's hearing examiner.
2. Any appeals must be filed within ten (10) days of the decision being appealed. The notice of appeal shall be made by the Applicant upon a form to be supplied by the City. A nonrefundable fee of two hundred fifty dollars shall be paid at the time the notice of appeal is submitted. A hearing shall then be scheduled before the hearing examiner within thirty days of the filing of the notice of appeal and appeal fee.

3. Notwithstanding any other provision of the Black Diamond Municipal Code, only the Applicant has standing to appeal Transportation Impact Fee matters.

4. The appeal procedures and decision requirements shall follow the provisions set forth in BDMC Chapter 2.30, Hearing Examiner, or as hereafter amended.

F. Transportation Impact Fees may be paid under protest in order to obtain a permit or other approval of Development activity.

### **3.80.100 Transportation Impact Fee Accounts and Refunds.**

A. Transportation Impact Fee receipts shall be earmarked specifically and retained in the Transportation Impact Fee Fund. All Transportation Impact Fees and any investment income generated by such fees shall remain in that fund until spent, Encumbered, or refunded pursuant to the provisions of this Chapter.

B. On an annual basis, the City's Finance Director shall provide a report to the City Council on the Transportation Impact Fee Fund showing the source and amount of all monies collected, earned, or received, and System Improvements that were financed in whole or in part by Transportation Impact Fees. Additionally, on an annual basis, the City's Public Works Director shall provide a report to the City Council on the amount of Transportation Impact Fees that were not collected as a result of the provisions of this Chapter.

C. The current owner of property for which Transportation Impact Fees have been paid may receive a refund of such fees if the Transportation Impact Fees have not been expended or Encumbered within 10 years of their receipt by the City. In determining whether fees have been expended or Encumbered, fees shall be considered expended or Encumbered on a first-in, first-out basis. Notwithstanding the above, this refund mechanism only applies to Transportation Impact Fees and shall not apply to funds expended for mitigation projects or funds collected pursuant to a mitigation and/or development agreement.

D. The City shall provide for the refund of fees according to the requirements of this section and RCW 82.02.080.

1. The City shall notify potential claimants of the refund availability by first-class mail deposited with the United States Postal Service addressed to the owner of the property as shown in the county tax records.

2. A request for a refund must be submitted to the City's Finance Director in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever date is later.

E. Any Transportation Impact Fees that are not expended or Encumbered within 10 years of their receipt by the City, and for which no application for a refund has been made within this one-year period, shall be retained by the City and expended consistent with the provisions of this chapter.

F. Refunds of Transportation Impact Fees shall include any interest earned on the fees.

G. Should the City seek to terminate all Transportation Impact Fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded to the current owner of the property for which an impact fee was paid. Upon the finding that all fee requirements are to be terminated, the City shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first-class mail addressed to the owner of the property as shown in the county tax records. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the City, but must be expended for the original purposes, consistent with the provisions of this Chapter. The notice requirement set forth above shall not apply if there are no unexpended or unencumbered balances within the account or accounts being terminated.

H. An Applicant may request and shall receive a refund on paid Transportation Impact Fees, including interest earned on the Transportation Impact Fees, when:

1. The Applicant does not proceed to finalize the Development activity as required by statute or City code or the International Building Code; and
2. The City has not expended or Encumbered the Transportation Impact Fees prior to the application for a refund. In the event that the City has expended or Encumbered the fees in good faith, no refund shall be forthcoming. However, if within a period of three years, the same or subsequent owner of the property proceeds with the same or substantially similar Development activity, the owner shall be eligible for a credit against any then-existing Transportation Impact Fee requirement. The owner must petition the City in writing and provide receipts of Transportation Impact Fees paid by the owner for a Development of the same or substantially similar nature on the same property or some portion thereof. The City shall determine

whether to grant a credit and such determinations may be appealed by following the procedures set forth in this Chapter.

**3.80.110 Use of Funds.**

A. Transportation Impact Fees shall:

1. Be used for System Improvements that will reasonably benefit new Development; and
2. Not be imposed to make up for deficiencies in the facilities serving existing Development; and
3. Not be used for maintenance or operation.

B. Transportation Impact Fees will be spent for System Improvements listed in the City's Six-Year Transportation Improvement Plan and identified as being funded in whole or part by Transportation Impact Fees. Expenditures may include but are not limited to: facility planning, land acquisition, site improvements, necessary off-site improvements, construction, engineering, permitting, financing, grant match funds and administrative expenses, mitigation costs, capital equipment pertaining to public facilities, and any other capital cost related to a particular System Improvement.

C. Transportation Impact Fees may also be used to recoup costs previously incurred by the City to finance System Improvements identified per subsection (B) of this section and directly benefiting new growth and Development.

D. In the event that bonds or similar debt instruments are or have been issued for the construction of a public facility or System Improvement for which Transportation Impact Fees may be expended, Transportation Impact Fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this chapter and are used to serve new Development.

**3.80.120 Existing Authority Unimpaired.**

Nothing in this Chapter is designed to supersede or replace the provisions of BDMC Chapter 11.11, Concurrency Management. Further, nothing in this Chapter shall preclude the City from requiring an Applicant to mitigate adverse environmental impacts of a specific Development pursuant to the State Environmental Policy Act, Chapter 43.21C RCW, based on the environmental documents accompanying the underlying Development

approval process, and/or Chapter 58.17 RCW governing plats and subdivisions; provided, that the exercise of the City's existing authority is consistent with the provisions of Chapters 43.21C and 82.02 RCW.

**Section 2. Severability.** Should any section, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

**Section 3. Effective Date.** This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND AT A REGULAR MEETING THEREOF ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

CITY OF BLACK DIAMOND

\_\_\_\_\_  
Carol Benson, Mayor

Attest:

\_\_\_\_\_  
Brenda L. Martinez, City Clerk

Approved as to form:

\_\_\_\_\_  
David Linehan, City Attorney

Filed with the City Clerk:  
Passed by the City Council:  
Ordinance No.  
Date of Publication:  
Effective Date: