Chapter 17.42

METHODS TO MITIGATE DEVELOPMENT IMPACTS

Sections:

17.42.010 Purpose.

It is the purpose of this chapter to provide alternatives for prospective developers of land within the city to mitigate the direct impacts that have been specifically identified by the city as a consequence of proposed development, and to make provisions for, including without limitation, bicycle and pedestrian facilities. The provisions of this chapter shall be considered in conjunction with the provisions of Chapters 17.32 (School Impact Fees), 17.34 (Fire Impact Fees), 17.36 (Park Impact Fees), and/or 17.38 (Transportation Impact Fees) NBMC. No development shall be required to provide duplicate mitigation for the same impacts.

17.42.020 Determination of direct impact.

Before any development is given the required approval or is permitted to proceed, the director shall determine direct impacts, if any, that are a direct consequence of the proposed development and which require mitigation. The director shall consider the following factors:

A. Pre-development versus post-development need for services, such as: city streets, bicycle, and pedestrian facilities and other similar municipal facilities or services;

B. Likelihood that a direct impact of a proposed development would require mitigation due to the cumulative effect of such impact when aggregated with the similar impacts of future development in the immediate vicinity of the proposed development;

C. Size, number, condition, and proximity of existing facilities to be affected by the proposed development;

D. Nature and quantity of capital improvements reasonably necessary to mitigate specific direct impacts identified as a consequence of the proposed development;

E. Likelihood that the users of the proposed development will benefit from any mitigating capital improvements or programs; and

F. Any significant adverse environmental impacts of the proposed development identified in the process of complying with the Washington State Environmental Policy Act. (Ord. 1680 § 2 (part), 2018).

17.42.030 Costs.

The cost of any investigations, analysis, and/or reports necessary for a determination of direct impact shall be borne by the applicant.

17.42.040 Mitigation of direct impacts.

The director shall review an applicant's proposal to mitigate any identified direct impacts and determine whether such proposal is a reasonable and acceptable mitigation measure considering the cost and land requirements of the required improvement and the extent to which the necessity of the improvement is attributable to the direct impacts of the proposed development. No official or body shall approve a development unless reasonable provisions have been made to mitigate identified direct impacts that are direct consequences of such development.

17.42.050 Methods of mitigation.

A. The methods to mitigate identified direct impacts required as a condition of any development approval may include, but are not limited to: dedication of land to any public body; off-site improvements; on-site improvements; and other capital or noncapital methods that may effectively reduce direct impacts.

B. In lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, the city may approve a voluntary payment agreement with the developer, which shall be subject to the following provisions:

1. The director must find that the money offered will mitigate or is a satisfactory alternative to mitigate the identified direct impact. Bicycle and pedestrian facilities mitigation shall be assessed based on the mitigation fee study dated September 2018, for bicycle and pedestrian facilities, prepared by Fehr and Peers on file with the city clerk, and as additionally modified to scale such fees according to residential building size per a Middle Housing Impact Fee Analysis Report prepared by FGS Group, dated April 3, 2025 on file with the city clerk. Such bicycle and pedestrian facilities mitigation fees are~~and~~ as listed in the city taxes, rates and fees schedule.

2. The administration shall review the bicycle and pedestrian facilities mitigation fee rates annually to determine when new rate studies should be prepared. An inflationary adjustment should be made in the city taxes, rates and fees schedule at the beginning of each calendar year in the same percentage as the change in the Engineering News Record (ENR) Construction Cost Index (CCI) for the Seattle area from the prior year's rate.

3. Mitigation rates may be adjusted by the director, if one of the following circumstances exists:

   a. The applicant demonstrates that a mitigation fee assessment was improperly calculated; or

   b. Studies and data provided by the applicant demonstrate that one or more of the factors used to calculate the mitigation fee may not be appropriate.

4. Payment of any mitigation fee shall be held in a reserve account and may only be expended to fund a capital improvement or program to mitigate the identified direct impact.

5. No building permit shall be issued until the voluntary payment has been paid in full by the applicant; provided, that payment of mitigation fees may be phased if the building permit for the development is also phased.

C. The following types of development shall be exempted from the mitigation required under this chapter: development of commercial uses, attached senior housing, ~~and~~ the construction of one single-family home outside of a plat or any other larger development, and accessory dwelling units as defined in NBMC 18.06.030.

17.42.060 Appeals.

Determinations made by the director pursuant to this chapter may be appealed as set forth below:

A. Any feepayer may pay the voluntary payment imposed by this chapter under protest in order to obtain a building permit. No appeal shall be permitted, and no building permit issued, until the voluntary payment at issue has been paid.

B. Appeals regarding the voluntary payment imposed on any development activity may be filed only by the payor and owner of the property where such development activity will occur.

C. Before a payor may appeal, the payor must first file a request for review regarding the voluntary payment with the director, as provided herein:

1. The request shall be in writing on the form provided by the city;

2. The request for review by the director shall be filed within 14 calendar days of the payor's payment of the voluntary payment at issue. Failure to timely file such a request shall constitute a final bar to any review or appeal;

3. No administrative fee will be imposed for the request for review by the director; and

4. The director shall issue his/her determination in writing.

D. Determinations of the director with respect to the applicability of the voluntary payment to a given development activity, or the director's decision concerning the independent voluntary payment calculation, or the voluntary payment imposed by the director, or any other determination which the director is authorized to make pursuant to this chapter, may be appealed to the hearing examiner only as provided below.

E. An appeal must be filed no later than 14 calendar days after the director's issuance of a written determination, by filing with the department a notice of appeal specifying the grounds thereof, and depositing the necessary fee, which is set forth in the existing fee schedules for appeals of such decisions. The director shall transmit to the office of the hearing examiner all papers constituting the record for the determination, including, where appropriate, the independent voluntary payment calculation.

F. The hearing examiner shall fix a time for the hearing of the appeal, give notice to the parties in interest, and decide the same as provided in the North Bend Municipal Code. At the hearing, any party may appear in person or by agent or attorney.

G. The hearing examiner is authorized to make findings of fact regarding the applicability of the voluntary payment to a given development activity, or the accuracy or applicability of an independent voluntary payment calculation. The decision of the hearing examiner shall be final.

H. The hearing examiner may, so long as such action is in conformance with the provisions of this chapter, reverse or affirm, in whole or in part, or may modify the determinations of the director with respect to the amount of the voluntary payment imposed.