

COMMUNITY PLANNING & DEVELOPMENT AND TRANSPORTATION & INFRASTRUCTURE

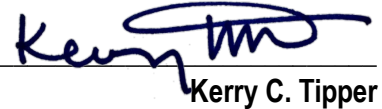
RULES & REGULATIONS

OF THE EXECUTIVE DIRECTORS OF THE DEPARTMENTS OF TRANSPORTATION &
INFRASTRUCTURE AND COMMUNITY PLANNING & DEVELOPMENT, CITY & COUNTY OF DENVER

GOVERNING PUBLIC INFRASTRUCTURE MANAGEMENT AT 41ST & FOX STATION - EAST

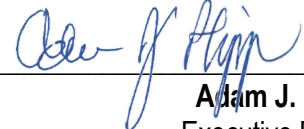
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Adopted Pursuant to
Chapter 2, Article VI of the
Charter of the City &
County of Denver and
Section 2-91 et seq. and 12-
18 of the Revised
Municipal Code

Effective Date: **Thursday, July 13, 2023**

CITY AND COUNTY OF DENVER
DEPARTMENT OF COMMUNITY PLANNING AND DEVELOPMENT
DEPARTMENT OF TRANSPORTATION AND INFRASTRUCTURE
AMENDED AND RESTATED RULES AND REGULATIONS
GOVERNING CITY AND COUNTY OF DENVER
PUBLIC INFRASTRUCTURE MANAGEMENT
AT 41ST & FOX STATION – EAST

ARTICLE I. GENERAL PROVISIONS

Section 1.01 Authority.

These rules and regulations (“Rules & Regs”) as amended and restated herein are adopted by the City and County of Denver’s Executive Director of the Department of Community Planning and Development (“Community Planning and Development” or “CPD”) pursuant to Article II of Chapter 12 of the Denver Revised Municipal Code of the City and County of Denver (“DRMC”) and the City and County of Denver’s Executive Director of the Department of Transportation and Infrastructure (“DOTI”) pursuant to Article V of Chapter 49 of the DRMC. Originally adopted in 2018, the Rules & Regulations Governing Public Infrastructure Management at 41st & Fox Station – East (the “2018 Rules”) are hereby amended and restated for the continuing purpose of administering and managing the pace and scale of private development and the conservation, provision, and management of limited public transportation infrastructure in certain identified areas of the City and County of Denver (“City”).

Section 1.02 Intent.

The Executive Director of DOTI (“Director of DOTI”) and the Executive Director of CPD (“Director of CPD”) desire to continue to manage the pace and scale of private development in certain geographic areas of the City in order to manage fairly, effectively, and efficiently the demand on limited available roadway capacity, and to facilitate new and improved transportation infrastructure and transportation management strategies that will provide and conserve necessary roadway capacity. It has been determined by the Directors of DOTI and CPD that the area set forth on **Exhibit A** continues to be the Area Designated for Development and Infrastructure Management, as defined below.

Section 1.03 Severability.

Should any section, clause, or provision of these Rules & Regs be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof, other than the part declared to be invalid.

Section 1.04 Definitions.

Terms or phrases specific to or introduced in this document are defined below.

- (a) *“Additional Trips”* means ADT that is added to the Total Trip Capacity by new or upgraded transportation infrastructure.
- (b) *“Allocation of Trips”* means the ADT assigned to a specific development project from the Remaining Trip Capacity sufficient to accommodate the project’s estimated ADT demand. The Allocation of Trips occurs upon approval of the project’s formal Site Development Plan.
- (c) *“Applicant”* has the meaning set forth in Section 12.3.3.1 of the Denver Zoning Code, as amended from time to time.
- (d) *“Area Designated for Development and Infrastructure Management”* means that area designated jointly by the Directors of DOTI and CPD in Exhibit A.
- (e) *“Average Daily Vehicle Trips” or “ADT”* means the calculated average number of weekday vehicle trips to and from a particular area or location.
- (f) *“Baseline Assumptions”* means the estimated and calculated ADT of the Total Trip Capacity and baseline Existing Trip Count and baseline Remaining Trip Capacity, as well as the 15% over-reservation of trips, as of July 1, 2018, as established in the 2018 Rules, in the Area Designated for Development and Infrastructure Management.
- (g) *“Concept Plan” or “Concept Plan Submittal”* means a pre-application concept-level site plan and the plan review, modification, and release process for such a site plan that is a mandatory prerequisite before submittal of a formal Site Development Plan application, per Section 12.4.3 of the Denver Zoning Code, as amended from time to time.
- (h) *“Complete Application”* has the meaning set forth in Section 13.3 and 12.3.3 of the Denver Zoning Code, as amended from time to time.
- (i) *“Director of DOTI” and “Director of CPD”* means the Executive Directors of DOTI and CPD, respectively, or their designees.
- (j) *“Existing Trip Count”* means the current calculated ADT demand on the roadway infrastructure system within the Area Designated for Development and Infrastructure Management.

- (k) *“Remaining Trip Capacity”* means the calculated remaining ADT at any given time that can be added to the Area Designated for Development and Infrastructure Management before reaching the Total Trip Capacity. Beginning with the Baseline Assumptions as described under Section 2.02 “Establishment of Baseline Assumptions”, the Remaining Trip Capacity accounts for all Reservations of Trips and Allocations of Trips that have been subtracted from the Total Trip Capacity since adoption of the 2018 Rules, as well as all Additional Trips that have been added to the Total Trip Capacity by new or upgraded transportation infrastructure.
- (l) *“Reservation of Trips”* means the ADT assigned to a specific development project from the Remaining Trip Capacity sufficient to accommodate the project’s estimated ADT demand. The Reservation of Trips occurs upon the project’s release from the Concept Plan Submittal phase.
- (m) *“Rezoning Process”* refers to the Official Map Amendment process set forth in Section 12.4.10 of the Denver Zoning Code, as amended from time to time.
- (n) *“Site Development Plan”* or *“SDP”* has the meaning set forth in Section 13.3 of the Denver Zoning Code, as amended from time to time.
- (o) *“Site Development Plan Process”* or *“SDP Process”* means the process by which a project receives approval of a Site Development Plan and includes the Concept Plan Submittal as well as the formal Site Development Plan submittal, also known as the concept phase and the formal phase.
- (p) *“Transportation Demand Management”* or *“TDM”* has the meaning set forth in section 54-48(a) of the DRMC, as amended from time to time.
- (q) *“Total Trip Capacity”* means the estimated maximum ADT that the infrastructure roadway system within or adjacent to the Area Designated for Development and Infrastructure Management can accommodate before reaching an unacceptable level of congestion.

1.05 Re-Assessment, Amendment, Rescission, and De-Designation.

Five-Year Re-Assessment Cadence. Notwithstanding the authority of the Directors of DOTI and CPD to re-assess from time to time the necessity, sufficiency, and details of these Rules & Regs, and to revise and amend these Rules & Regs accordingly, or to rescind them in their entirety, it is the intent and expectation of the Directors of DOTI and CPD that these Rules & Regs will be so re-assessed at no less than a 5-year cadence.

ARTICLE II. DEVELOPMENT AND INFRASTRUCTURE MANAGEMENT

Section 2.01 Applicability.

The Directors of DOTI and CPD have determined that the area set forth in Exhibit A is an Area Designated for Development and Infrastructure Management. All development projects requiring review through the Site Development Plan Process within the Area Designated for Development and Infrastructure Management will be administered in the City's development process with the protocols and procedures outlined in these Rules & Regs.

Section 2.02 Establishment of Baseline Assumptions.

The 2018 Rules established, through customary traffic studies and other reasonable methods, the following Baseline Assumptions in the Area Designated for Development and Infrastructure Management, as of July 1, 2018:

- a) The **Total Trip Capacity** is 25,000 trips.
- b) The baseline **Existing Trip Count** is 13,700 trips. This includes an estimate and allocation of 1,500 trips for the RTD Park-n-Ride property at the 41st and Fox Station.
- c) Therefore, the **baseline Remaining Trip Capacity** is 11,300 trips (25,000 minus 13,700).
- d) **15% Over-Reservation Factor.** The City recognizes, however, that moving through the SDP Process is often a multi-year enterprise, and that not all development projects that embark on the SDP Process will succeed in being approved and constructed. It is not in the City's interests thereby to "lock up" trips with such projects that may not use them, nor to deny access to such trips by other projects that may actually use them. It is impossible, however, to predict which projects these will be. In view of this uncertainty, therefore, and in the interests of most fairly maximizing available trips, the baseline Remaining Trip Capacity is increased by 15% to provide an over-reservation factor.
- e) Thereby, the **Remaining Trip Capacity**, as of the original adoption of the 2018 Rules, is 12,995 (11,300 plus the 15% over-reservation factor).

Publication and Maintenance of Trip Accounting. The Directors of DOTI and CPD have and shall continue to cause these Baseline Assumptions to be published on the City's website and shall continue to publish and update from time to time a current accounting of the Reservation of Trips and Allocation of Trips to specific development projects, and the resulting Remaining Trip Capacity.

Accounting for New Capacity. In the event that new or upgraded transportation infrastructure serves to add Additional Trips to the Total Trip Capacity of the Area Designated for Development and Infrastructure Management, such changes, and the

resulting impact on Remaining Trip Capacity, shall also be accounted for, published, and updated from time to time on the City’s website.

Section 2.03 Compliance with Transportation Demand Management, Traffic Study Submittal, and Conditions for Release from Concept.

TDM Requirements and Enhancements. In 2021, the City adopted Division 3 of Article II, Chapter 54 of the DRMC, entitled Transportation Demand Management Requirements, through ordinance number 342 (“TDM Ordinance”), requiring every SDP submitted to the City to comply with the TDM Ordinance and rules and regulations promulgated pursuant thereto (“TDM Rules & Regs” and together with the TDM Ordinance, the “Citywide TDM Program”). The Citywide TDM Program requires commitments to specific physical and/or programmatic strategies to reduce vehicle trip generation, and specific enforceable targets for maximum single-occupancy vehicle trip generation, as appropriate for certain scales and programs of development. For purposes of equity among the development community and ease of administration, all projects in the Area Designated for Development and Infrastructure Management are subject to the Citywide TDM Program, as amended from time to time. In addition, because the issue of trip generation and trip mitigation is so acute in the Area Designated for Development and Infrastructure Management, Tier 0 projects subject to these Rules & Regs will be subject to the Tier 1 requirements of the Citywide TDM Program, and Tier 1 projects subject to these Rules & Regs will be subject to the Tier 2 requirements of the Citywide TDM Program.

Trip Reservation Study or Memo. In addition to compliance with the Citywide TDM Program, each Concept Plan Submittal within the Area Designated for Development and Infrastructure Management shall include a study (or memo, as appropriate) for review and acceptance by the City for determination of the development project’s Reservation of Trips. The traffic impact study or traffic memo shall provide a calculation of the net ADT from the project, accounting for the impact of any TDM strategies contemplated in compliance with the Citywide TDM Program, and accounting, as appropriate, for any trips from the current uses on the property that are reasonably assumed to be part of the Existing Trip Count but will be extinguished by the project.

No Release from Concept without Trips. No Concept Plan Submittal shall be approved and released for submittal of a formal Site Development Plan if the Remaining Trip Capacity is insufficient to cover the project’s necessary Reservation of Trips. Nonetheless, in accordance with Section 2.02, City staff shall record and account for the date of each project’s Concept Plan Submittal that is, in all respects but for a Reservation of Trips, approvable and ready for release from the Concept phase. Should sufficient additional trips become available in the Remaining Trip Capacity, due to the addition or upgrade of transportation infrastructure, or due to the failure of other projects to meet deadlines and retain their Reservation or Allocation of Trips, as detailed in Sections 2.05 and 2.06, submittals held in abeyance will be assigned trips and allowed to move forward accordingly, on a first-come-first-served basis, according to the date City staff have recorded and accounted for.

Section 2.04 Reservation and Allocation of Trips.

Reservation of Trips. At the time the City notifies an Applicant that their Concept Plan Submittal is released from the concept phase to proceed to formal Site Development Plan, the City shall make a Reservation of Trips from the Remaining Trip Capacity. Once trips are reserved from the Remaining Trip Capacity, they are unavailable for use by any other development project and the Remaining Trip Capacity will be recalculated to account for these reserved trips.

Allocation of Trips. Upon final approval of a project's Site Development Plan, any reserved trips assigned to the project shall be converted to allocated trips. Once trips are allocated from the Remaining Trip Capacity, they are unavailable for use by any other development project and the Remaining Trip Capacity will be recalculated to account for these allocated trips.

Section 2.05 Expiration of Reserved Trips.

Notwithstanding Section 2.04 "Reservation of Trips", reserved trips will revert back to the Remaining Trip Capacity for any Site Development Plan submittal that fails to meet the following timelines and does not subsequently qualify for the restoration of a previously secured trip assignment:

- A. **Timeframe for Initial Submittal of Formal Site Development Plan.** A complete formal Site Development Plan and all associated required documents shall be submitted no later than one hundred twenty (120) days after receipt of written notification by the City of the project's release from the concept plan review phase of the SDP Process. If the formal SDP is not submitted within that timeframe, the trips reserved to the project at the conclusion of the concept plan review phase will be cancelled and returned to the Remaining Trip Capacity.

Subsequently, unless precluded by any City and County of Denver Ordinances, Codes, rules and regulations, policies, or procedures, the Applicant may continue the current SDP Process with submittal of a complete formal SDP.

Likewise, the Applicant may have its previous Reservation of Trips restored if the trips are still available in the Remaining Trip Capacity. Otherwise, City staff shall, in accordance with Section 2.02, record and account for the date of the project's submittal that is, in all respects but for a Reservation of Trips, ready for subsequent review. Should sufficient additional trips become available in the Remaining Trip Capacity, due to the addition or upgrade of transportation infrastructure, or due to the failure of other projects to meet deadlines and retain their Reservation or Allocation of Trips, as detailed in Sections 2.05 and 2.06, submittals held in abeyance will be assigned trips and allowed to move forward on a first-come-first-served basis, according to the date City staff have recorded and accounted for.

- B. **Timeframe for Resubmittals of Formal Site Development Plan and Other Submittals Necessary for SDP Approval.** Upon receipt of comments from the City on the initial formal Site Development Plan, or on any subsequent submittals or resubmittals of the formal SDP or other submittals necessary for final SDP approval, the Applicant must resubmit the revised SDP or other submittals, responding to such comments, no later than one hundred twenty (120) days following such receipt. If the formal SDP or other required submittals are not re-submitted within that timeframe, then the Reservation of Trips will be cancelled and returned to the current Remaining Trip Capacity.

Subsequently, unless precluded by any City and County of Denver Ordinances, Codes, rules and regulations, policies or procedures, the Applicant may continue the current SDP Process with re-submittal of the formal SDP or other required submittals.

Likewise, the Applicant may have its previous Reservation of Trips restored if the trips are still available in the Remaining Trip Capacity. Otherwise, City staff shall, in accordance with Section 2.02, record and account for the date of the project's submittal that is, in all respects but for a Reservation of Trips, ready for subsequent review. Should sufficient additional trips become available in the Remaining Trip Capacity, due to the addition or upgrade of transportation infrastructure, or due to the failure of other projects to meet deadlines and retain their Reservation or Allocation of Trips, as detailed in Sections 2.05 and 2.06, submittals held in abeyance will be assigned trips and allowed to move forward on a first-come-first-served basis, according to the date City staff have recorded and accounted for.

- C. **Timeframe for Approval of Site Development Plan.** Following the receipt of written notification from the City of the project's release from the concept plan review phase of the Site Development Plan Process, a formal Site Development Plan based on such Concept Plan Submittal must be approved by the City no later than twenty-four (24) months after the date of such receipt, unless extended pursuant to section 2.05 "Extension of Timeframe for Approval of Site Development Plan". If the formal Site Development Plan is not approved within that timeframe, or within any approved extension thereof, then the Reservation of Trips will be cancelled and returned to the Remaining Trip Capacity.

Subsequently, unless precluded by any City and County of Denver Ordinances, Codes, rules and regulations, policies, or procedures, the Applicant may continue the current SDP Process and receive final approval of the formal SDP.

Likewise, the Applicant may have the previous Reservation of Trips converted into an Allocation of Trips per section 2.04 if the trips are still available in the Remaining Trip Capacity. Otherwise, City staff shall, in accordance with Section 2.02, record and account for the date of the project's submittal that is, in all respects but for a Reservation of Trips, ready for final approval. Should sufficient additional trips become available in the Remaining Trip Capacity, due to the

addition or upgrade of transportation infrastructure, or due to the failure of other projects to meet deadlines and retain their Reservation or Allocation of Trips, as detailed in Sections 2.05 and 2.06, submittals held in abeyance will be assigned trips and allowed to move forward on a first-come-first-served basis, according to the date City staff have recorded and accounted for.

Extension of Timeframe for Approval of Site Development Plan. While the 24-month limit is a reasonable timeframe for development projects to proceed from release from the concept phase to final Site Development Plan approval, the City recognizes that some unusual circumstances beyond a project’s control may jeopardize meeting that deadline. In such cases, an explicit written request, detailing the reasons and reasoning for such a request, may be submitted to the Directors of DOTI and CPD jointly for a non-renewable extension of the deadline to a date no later than 12 months from the original SDP approval deadline. Such an extension may be granted at the sole and jointly-held discretion of the Directors of DOTI and CPD.

Applications with Multiple Buildings, Phases, and Uses, and Subsequent Changes. If a Concept Plan Submittal contains multiple buildings, phases, or programmatic uses, but the formal Site Development Plan submittal does not include all buildings, phases, or uses, or reduces the use intensities represented in the Concept Plan Submittal, then the Reservation of Trips for those buildings, phases, uses, or intensities not included in a formal SDP submittal will be cancelled and returned to the Remaining Trip Capacity.

Mixed-Use Trip Reductions for Applications with Multiple Buildings, Phases and Uses. If a Concept Plan Submittal contains multiple buildings, phases, and programmatic uses, any calculated mixed-use “internal capture” reductions in the Reservation of Trips necessary to support the project cannot be credited unless all buildings, phases, and programmatic uses are part of the formal Site Development Plan submittal. An Applicant may have sequential formal SDP submittals in support of the Concept Plan Submittal containing multiple buildings, phases, and programmatic uses and any resulting trip reductions and each formal SDP submittal must reflect the trip generation, in isolation, of the buildings, phases, and programmatic uses in each formal SDP submittal. The mixed-use trip reductions anticipated with the Concept Plan Submittal containing multiple buildings, phases, and programmatic uses may be credited upon the formal SDP submittal containing the remaining buildings, phases, and programmatic uses, and the resulting trip “savings” will be subtracted from the project’s Reservation of Trips and will revert to the Remaining Trip Capacity.

Section 2.06 Expiration of Allocated Trips.

Notwithstanding Section 2.04 “Allocation of Trips”, allocated trips shall revert to the Remaining Trip Capacity for any approved Site Development Plan that fails to meet the following timelines and does not subsequently qualify for the restoration of a previously secured trip assignment:

- A. **Expiration of Site Development Plan.** Upon the expiration of any approved formal Site Development Plan for any reason, including but not limited to: (i) the

lapse of approval of the SDP as determined by the Denver Zoning Code §12.3.6; or (ii) the expiration of an approved building permit or lack of one or more active building permits under such approved formal SDP; then the Allocation of Trips shall be cancelled and returned to the Remaining Trip Capacity.

Subsequently, unless precluded by any City and County of Denver Ordinances, Codes, rules and regulations, policies, or procedures, if the Applicant continues the current development process with all necessary permits and approvals, the project is entitled to a restoration of the previous Allocation of Trips.

In the event, however, that trips are not available in the Remaining Trip Capacity at that time, City staff shall, in accordance with Section 2.02, record and account for the date of the project's submittal that is, in all respects but for an Allocation of Trips, ready to proceed. Should sufficient additional trips become available in the Remaining Trip Capacity, due to the addition or upgrade of transportation infrastructure, or due to the failure of other projects to meet deadlines and retain their Reservation or Allocation of Trips, as detailed in Sections 2.05 and 2.06, submittals held in abeyance will be assigned trips and allowed to move forward on a first-come-first-served basis, according to the date City staff have recorded and accounted for.

Section 2.07 Accounting for New Trip Capacity Created by Development Projects.

Trip Capacity Created Is Assigned to Project Creating It. In some specific cases, development projects through the Site Development Plan Process may be required, per ordinary exaction processes, to construct or upgrade transportation infrastructure that serves to increase the Total Trip Capacity. In other cases, development projects may elect, or be required by a Development Agreement or other consideration, to construct or upgrade transportation infrastructure that serves to increase the Total Trip Capacity. In all such cases, the Additional Trips created by the new or upgraded infrastructure will be credited as part of the project's Reservation of Trips and Allocation of Trips, but not subtracted from, nor dependent on the sufficiency of, the Remaining Trip Capacity. The status of Additional Trips, as reserved and allocated to a project outside of and unconstrained by the Remaining Trip Capacity, will be sustained through the contributing project's progress through the SDP Process.

Deadlines May Not Apply. Insofar as the project's Reservation and Allocation of Trips is solely reliant upon transportation infrastructure trip capacity created by the project's Additional Trips, the timeframe deadlines per Section 2.05 and Section 2.06 do not apply. Nonetheless, no Certificate of Occupancy of any kind will be issued for such a project until such infrastructure has been constructed, inspected, and accepted by the City.

Process for Establishing Trip Value of New Infrastructure. For the purposes of calculating Additional Trips a concept-level analysis of the "trip value" of the new or upgraded transportation infrastructure shall be submitted as part of the Concept Plan

Submittal for review, modification, and acceptance, and a provisional minimum number of trips thereby assigned to the project. At a stage no less than 30% design of the new or upgraded transportation infrastructure, but no later than the completion of construction of the new or upgraded transportation infrastructure, the Applicant shall submit to the City for review, modification, and acceptance, a final analysis of the “trip value” of the new or upgraded transportation infrastructure.

Final Trip Accounting and Assignment of Leftover Trips. Upon construction, inspection, and acceptance of the new or upgraded transportation infrastructure by the City, the “trip value” for said infrastructure, as accepted or modified by the City, will be added to the Total Trip Capacity, while the project’s Allocation of Trips shall be subtracted from the Remaining Trip Capacity. The difference between these two values – the “leftover trips” – will thereafter be indistinguishable from other trips in the Remaining Trip Capacity and will be available for assignment to other projects as per these Rules & Regs.

Trip Accounting and Assignment for Phased Projects. In the event, however, that a project creating Additional Trips is phased, and that subsequent phases will require the use of some proportion of the Additional Trips, then the Additional Trips created by the new or upgraded transportation infrastructure shall remain temporarily assigned to the project that created them and available for assignment to subsequent phases. The City shall continue to manage the assignment of such Additional Trips associated with phased projects according to these Rules & Regs, regardless of whether any of the associated property is sold. Nonetheless, following the initial issuance of any type of Certificate of Occupancy for any phase, the City may perform or require submittal of a calculation of the greatest possible number of trips necessary to support any subsequent phases. Any remaining trips beyond that number may then be transferred to the Remaining Trip Capacity for assignment to other projects as per these Rules & Regs.

Section 2.08 Rezoning Process

In the case of rezonings in the Area Designated for Development and Infrastructure Management, it is important to consider the transportation impact of potential development enabled by a proposed change in entitlement, and to understand the impact of the availability of trips on such an entitlement. Therefore, the application process for official map amendments/rezonings in the Area Designated for Development and Infrastructure Management is subject to an additional requirement as outlined in this section. This requirement is intended to do several things: (a) provide more predictability for the Applicant, the City, Planning Board, and City Council; (b) identify the magnitude of potential impact on the area’s acutely limited transportation infrastructure by projects enabled by a proposed change in entitlement; and (c) help determine whether such a project can currently be approved through the SDP Process at all, regardless of zoning entitlement.

- A. **Simultaneous Concept Plan Submittal Required with Pre-Application.** As part of the rezoning pre-application process and prior to submittal of a formal rezoning application, rezoning pre-applicants are required to submit a concurrent Concept Plan Submittal for review and approval in compliance with these Rules & Regs. This requirement is waived in the rare instance of a project that does not require a Concept Site Plan for development approval.

Exhibit A

The Area Designated for Development and Infrastructure Management, bounded by I-70 to the north; by I-25 to the east and south; and by the freight and passenger rail tracks to the west.

