

MEMORANDUM OF UNDERSTANDING

BETWEEN THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION AND THE CITY OF TACOMA

This Memorandum of Understanding (MOU) is made between the WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION (Commission) and the CITY OF TACOMA WASHINGTON (City).

Background and Purpose

The Commission regulates railroad crossings within the State of Washington under RCW 81.53.

RCW 81.53 is inoperative within first-class cities except “to the extent a first-class city requests to participate in the commission’s crossing safety inspection program within the city.” RCW 81.53.240(1).¹ For purposes of this MOU, the terms “crossing safety inspection program” and “rail safety program” are interchangeable.

The Commission has adopted rules to allow first-class cities to request participation in the Commission’s rail safety program. Under WAC 480-62-260(2), the city’s request “must be accompanied by documentation demonstrating that the city’s governing body has approved the terms and conditions set forth in a memorandum of understanding between the city and the commission governing the commission’s assumption of rail crossing safety inspection authority within the city limits.”² The city’s request “will become effective on the date requested by the city or the first day of the month following commission approval of the memorandum of understanding referenced [above], whichever occurs later.” WAC 480-62-260(2).

The City is a first-class city that intends to request participation in the Commission’s rail safety program. This MOU is intended to serve as the memorandum of understanding required by WAC 480-62-260(2).

The purpose of this MOU is to describe how the Commission intends to operate its rail safety program within the City, including how the Commission intends: (1) to inspect railroad crossings within the City; (2) to inform appropriate parties of any defects found at the crossing; and (3) to require corrective action by railroad companies when defects are found to be the responsibility of such companies.

This MOU is not intended to modify or construe any state law or Commission regulation. To the extent any provision in this MOU conflicts with a state law or a Commission regulation, the law or regulation controls.

This MOU is not a binding contract. It imposes no legal obligations and creates no enforceable rights. The undersigned parties do not intend to formalize this MOU as permitted by

¹ The text of RCW 81.53.240 is attached as Appendix A.

² The text of WAC 480-62-260 is attached as Appendix B.

the Interlocal Cooperation Act. The parties anticipate, however, that the City will bring this MOU before its governing body for approval as contemplated by WAC 480-62-260(2).

Intended Operation of the Commission's Rail Safety Program within the City

The Commission intends to conduct its rail safety program within the City according to the following non-binding guidelines:

1. Crossing Inspections:

- a. Commission-employed railroad inspector(s) (Inspectors) will inspect railroad crossings within the City.
 - i. For crossings not on an oil-by-rail route, Inspectors will conduct an inspection at least once every 36 months.
 - ii. For crossings on an oil-by-rail route, including private crossings, Inspectors will conduct an inspection at least once every 18 months.
 - iii. Inspectors will conduct an inspection if a complaint is filed with the Commission regarding conditions at a crossing.
 - iv. Inspectors will conduct an inspection if the Commission has information that leads it to believe an inspection is warranted.
- b. During a typical inspection of a public crossing, Inspectors will evaluate and make an appropriate record of:
 - i. The crossing, including its location, identifying information, type, configuration, dimensions, construction, physical condition, etc.
 - ii. The intersecting road, including its location, type, configuration, dimensions, speed limit, grade, usage, motorist sight distances, physical condition, etc.
 - iii. Safety systems, including signals, markings, gates, signs, barriers, etc., and the physical condition of such systems.
 - iv. Other relevant characteristics, such as the presence of sidewalks or bike lanes.
- c. The Commission has exclusive discretion to decide which crossings to inspect, when to inspect the crossings, and what procedures will apply during the inspections.
- d. The Commission will not bill the City for any expense related to an inspection.

2. Defect Notification Process:

- a. The Commission will use the information obtained by its Inspectors to determine a crossing's compliance with applicable safety rules.
- b. The Commission will issue a defect notice if the crossing fails to comply with any rule set forth in:
 - i. WAC 480-62-225 (crossing surfaces).³
 - ii. WAC 480-62-230 (traffic control devices).⁴
- c. For defects found at public crossings:
 - i. The Commission will issue a defect notice to the appropriate railroad company if the railroad company is responsible for the defect(s). The Commission may follow up with an enforcement action if the railroad company fails to take appropriate and timely corrective action.
 - ii. The Commission will issue an advisory defect notice to the City if the City is responsible for the defect. Advisory defect notices are not subject to Commission enforcement.
- d. The Commission has exclusive discretion over the issuance and content of defect notices.
- e. Nothing in this MOU affects agreements between railroad companies and landowners governing liability or cost allocation at private crossings.

Duration and Modification

This MOU is effective on the later of the two signing dates below. It will remain in effect until the City opts-out of the Commission's rail safety program by "submitting to the commission documentation that the city's governing body has approved the withdrawal." WAC 480-62-260(4).⁵ The notice "must be submitted to the commission at least ninety days prior to the date upon which the city intends to assume all rail crossing safety inspections within its jurisdiction." *Id.*

The parties may not modify this MOU. Because this MOU establishes no legal obligations or enforceable rights, the parties anticipate that any disputes will be resolved either informally or through the opt-out procedure referenced above.

³ The text of WAC 480-62-225 is attached as Appendix C.

⁴ The text of WAC 480-62-230 is attached as Appendix D.

⁵ The text of WAC 480-62-260 is attached as Appendix B.

Contact Information

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Signatures

The undersigned officials acknowledge this MOU and its provisions:

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

CITY OF TACOMA

STEVEN V. KING
Executive Director and Secretary

Kurtis D. Kingsolver, P.E.
Public Works Director/City Engineer

Date:

Date:

APPENDIX A

RCW 81.53.240 **Scope of chapter.**

(1) Except to the extent necessary to permit participation by first-class cities in the grade crossing protective fund, when an election to participate is made as provided in RCW [81.53.261](#) through [81.53.291](#), or to the extent a first-class city requests to participate in the commission's crossing safety inspection program within the city, this chapter is not operative within the limits of first-class cities, and does not apply to street railway lines operating on or across any street, alley, or other public place within the limits of any city, except that a streetcar line outside of cities of the first class shall not cross a railroad at grade without express authority from the commission. The commission may not change the location of a state highway without the approval of the secretary of transportation, or the location of any crossing thereon adopted or approved by the department of transportation, or grant a railroad authority to cross a state highway at grade without the consent of the secretary of transportation.

(2) Within thirty days of July 1, 2015, first-class cities must provide to the commission a list of all existing public crossings within the limits of a first-class city, including over and under-crossings, including the United States department of transportation number for the crossing. Within thirty days of modifying, closing, or opening a grade crossing within the limits of a first-class city, the city must notify the commission in writing of the action taken, identifying the crossing by United States department of transportation number.

APPENDIX B

WAC 480-62-260

First-class cities opt-in.

(1) Participation in the commission's rail safety program. RCW 81.53.240 allows a first-class city to request participation in the commission's crossing safety inspection program. For the purposes of this section, the commission's crossing safety inspection program shall mean the inspection of grade crossings to ensure proper design and maintenance, as set forth in WAC 480-62-225. For the purposes of this section participation in the crossing safety inspection program shall not include the crossing petition process outlined in RCW 81.53.030 and 81.53.060.

(2) Process for opt-in. A first-class city must notify the commission of its intent to opt-in to the commission's rail safety program at least sixty days prior to the effective date requested by the city. A first-class city's request to opt-in must be accompanied by documentation demonstrating that the city's governing body has approved the terms and conditions set forth in a memorandum of understanding between the city and the commission governing the commission's assumption of rail crossing safety inspection authority within the city limits. A first-class city's request to opt-in will become effective on the date requested by the city or the first day of the month following commission approval of the memorandum of understanding referenced in this section, whichever occurs later.

(3) Technical assistance to first-class cities. For first-class cities that opt-in to the commission's crossing safety inspection program, the commission will provide technical assistance on grade crossing safety, maintenance, and modifications as agreed between the city and the commission.

(4) Process to opt-out. First-class cities that opt-in to the commission's crossing safety inspection program may opt-out of the program by submitting to the commission documentation that the city's governing body has approved the withdrawal of the city from the commission's crossing safety inspection program. A city's notice of withdrawal must be submitted to the commission at least ninety days prior to the date upon which the city intends to assume all rail crossing safety inspections within its jurisdiction.

APPENDIX C

WAC 480-62-225

Crossing surfaces.

(1) Areas of responsibility.

(a) Highway authorities must maintain and keep in repair the surfaces and the subgrades of the roadway approaches up to one foot from the outside of either rail at a grade crossing with one track. At crossings involving more than one track, the highway authority must maintain and keep in repair the roadway approaches up to one foot from the outside of each of the two outside rails.

(b) At a grade crossing with one track, railroad companies must maintain and keep in repair the crossing surfaces between the rails and for a distance of one foot on the outside of either rail. At crossings involving more than one track, railroad companies must maintain and keep in repair the crossing surfaces and the roadway for the entire area between the outermost rails at the crossing, and for a distance of one foot outside of the two outermost rails.

(c) If tracks at a crossing involving more than one track are owned by different railroad companies, each company must maintain and keep in repair the crossing surfaces and roadway within its right of way that is within the area specified in (b) of this subsection.

(2) Crossing surfaces.

(a) Crossing surfaces include shoulders and pedestrian walkways immediately adjacent to a roadway or shoulder. If reasonably possible, roadways and adjacent shoulders and pedestrian walkways must be continued through a crossing without narrowing the roadway, shoulder or walkway.

(b) The subgrade to a crossing surface must be maintained in a manner which minimizes damage to the crossing surface, taking into account the effects of topography, water tables, weather, and the types of vehicular traffic generally using the crossing.

(3) Roadways.

(a) Roadways between tracks at crossings involving more than one set of tracks, including the roadway subgrade, must be of the same quality as the roadway approaches to the crossing unless the highway authority and the railroad company agree to a higher quality.

(b) Roadway approaches must be constructed and maintained so that the transition between the roadway and crossing surface is on the same plane and smooth.

(c) At grade crossings where track superelevation exists, roadway approaches must be constructed and maintained so that the transition between the roadway and crossing surface is as smooth as practicable.

(4) Standards for surface maintenance and repair. Crossing surfaces must be convenient and safe for passage. Some factors in determining compliance with this general standard are:

(a) Whether crossing surfaces and the adjacent roadways are level with the top of the rails on the plane created by each set of tracks.

(b) Whether crossing surfaces are broken or loose.

(c) The existence of potholes.

(d) The existence of curled or rolled asphalt.

(e) Whether traffic generally slows to traverse the crossing.

(f) Citizen complaints.

(5) Notice. Notice requirements for highway authorities and railroad companies when performing maintenance on a crossing surface are located in WAC 480-62-305 (4) and (5).

APPENDIX D

WAC 480-62-230

Traffic control devices.

(1) Whenever a railroad company performs any construction, maintenance or repairs at a grade crossing or grade separated crossing, the company must install and maintain traffic control devices adequate to protect the public and railroad employees as prescribed in the Manual on Uniform Traffic Control Devices (MUTCD), Part 8, Traffic Control for Railroad and Light Rail Transit Grade Crossings, as published by the United States Department of Transportation. In addition, railroads must maintain all crossings with proper traffic control devices as prescribed in the MUTCD, Part 8. The commission adopts, by reference, the MUTCD, Part 8, as described in WAC 480-62-999. Flaggers must also be provided where necessary to adequately protect the public and railroad employees.

(2) Any traffic control device must be used only as long as the device is needed or applicable. Any device that is no longer needed or applicable must be immediately removed or inactivated so as to prevent confusion.

(3) All barricades, signs, and similar devices must be constructed and installed in a workmanlike manner.

(4) Bushes, weeds, or any other material or object must not be allowed to obscure any traffic control devices.

(5) All signs, barricades, and other control devices intended for use during hours of darkness must be adequately illuminated or reflectorized, with precautions taken to protect motorists from glare.