



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

**[Docket No. FTA 2022-0038]**

#### **Notice of Availability: Joint Development Circular C 7050.1C and Response to Comments**

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice of availability: Joint Development Circular C 7050.1C and response to comments.

**SUMMARY:** The Federal Transit Administration (FTA) is issuing a new Circular 7050.1C to address joint development projects using FTA funds or FTA-funded property. The purpose of these changes is to incorporate changes made by the Bipartisan Infrastructure Law (BIL), implemented as the Infrastructure Investment and Jobs Act, that amended the definition of a “capital project.”

**DATES:** The applicable date of these changes is [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** One may view the comments at docket number FTA-2022-0038. For access to the docket, please visit <https://www.regulations.gov> or the Docket Operations office located in the West Building of the United States Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday,

**FOR FURTHER INFORMATION CONTACT:** For policy guidance questions, contact Stacy Weisfeld, Office of Budget and Policy, Federal Transit Administration, 1200 New Jersey Ave.

SE, Room E52-316, Washington, DC 20590, phone: (202) 366-6166, or email: [stacy.weisfeld@dot.gov](mailto:stacy.weisfeld@dot.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

This notice announces the availability of Joint Development Circular 7050.1C, which replaces Circular 7050.1B. This notice also responds to comments received on the proposed changes that were announced in a notice published in the *Federal Register* on January 30, 2023 (88 FR 5957). The Circular

itself is not included in this notice; instead, an electronic version may be viewed on FTA's website at:

<https://www.transit.dot.gov/JointDevelopment>

Sec. 30001 of the Bipartisan Infrastructure Law (Pub. L. 117-58) amended Section 5302 of title 49, United States Code, by adding section 5302(4)(G)(vi)(XV); revising section 5302(4)(G)(iv); and reordering Sections 5302(4)(G)(i-vi).

Section 5302(4)(G)(vi)(XV) added “technology to fuel a zero-emission vehicle” as an eligible joint development improvement under the definition of a “capital project.” Accordingly, Joint Development Circular 7050.1C adds “technology to fuel a zero-emission vehicle” as an eligible joint development improvement under FTA programs. Recipients of assistance for these improvements must collect fees for the use of the charging facilities unless exceptions apply.

Section 5302(4)(G)(iv) provides that “if equipment to fuel privately owned zero-emission passenger vehicles is installed, the recipient of assistance shall collect fees from users of the equipment in order to recover the costs of construction, maintenance, and operation of the equipment.” Accordingly, this language is addressed in the Joint Development Circular on pages III-7 and VI-4 –VI-5, with the following clarifying conditions: “The recipient of assistance shall be required to collect fees from usage only if the equipment is used primarily by privately-owned passenger vehicles. Fee collection may also be waived if the recipient demonstrates in the joint development application that the cost to install a fee collection system is more than the recipient anticipates collecting from users of the equipment. The method of fee collection in all circumstances is at the discretion of the site host (the owner or occupant of land on which the charging station is built) and/or recipient of FTA assistance. Electricity costs are considered operating costs and would, therefore, fall under the fee collection requirements.”

## **II. Response to Public Comments**

FTA received submissions from three commenters in response to the *Federal Register* notice. The following is a summary of the comments received, FTA’s responses, and the clarifications included in the final guidance.

**Comment:** One commenter requested clarification if Zero Emission Vehicle (ZEV) fees are considered program income.

**Response:** Yes, ZEV fees collected under this provision shall be considered program income.

**Comment:** A transit agency requested clarification whether recipients are required to charge for the use of fueling equipment that is constructed, operated, and maintained with funds other than FTA funds; in other words, are recipients required to charge for the use of fueling equipment if there are no FTA-assisted construction, maintenance, or operation costs to recover; or if the equipment is not owned or operated by the recipient.

**Response:** Circular 7050.1C provides on pages III-7 and VI-5 that recipients are not required to charge for the use of fueling equipment if no FTA funds are used to construct, operate, or maintain the equipment and the equipment is not owned or operated by the recipient. Though not required, recipients may negotiate for any fees charged to be shared as part of the joint development agreement.

**Comment:** The transit agency also asked FTA to clarify whether collection of the required fees by the owner and/or operator of the fueling equipment is sufficient or if such fees need to be passed through to the project sponsors.

**Response:** Recipients are not required to charge for the use of fueling equipment that they do not own or operate. Though not required, recipients may negotiate for any fees charged to be shared as part of the joint development agreement.

**Comment:** The transit agency commented that the term “site host” was undefined.

**Response:** FTA is clarifying in Circular 7050.1C that a site host is the owner or occupant of land on which the charging station is built.

**Comment:** The transit agency also requested clarification as to whether the owner/operator of the fueling equipment possesses the discretion to determine the method of fee collection.

**Response:** In instances where the recipient partners with another entity in constructing, operating, or maintaining the charging equipment and is required to charge for the use of the equipment, the recipient and their partner(s) should come to an agreement as to the fee collection method.

**Comment:** The transit agency further commented that FTA should consider exempting the vehicles of a joint developments' affordable housing tenants from the fee collection requirement.

**Response:** Exempting any private users from the fee collection requirements is outside the scope of the statute and is therefore not discussed further in Circular 7050.1C. However, FTA encourages recipients to work with their partners to consider negotiating a different fee structure for affordable housing tenants.

**Comment:** An industry association commented in support of the proposed changes to the Joint Development Circular and noted the importance of allowing the fee collection to be waived if the recipient demonstrates the cost to install a fee collection system is more than the costs paid by the users.

**Response:** FTA acknowledges these comments and refers the reader to the response provided above.

**Comment:** The industry association further commented that charging stations should be allowed to accommodate not only personal automobiles but any other form of electrically powered mobility devices such as electric bicycles, electric scooters, electric mopeds, or any other emerging battery-powered or zero-emission vehicle.

**Response:** The statute only addresses the collection of fees from "passenger vehicles" and does not address the shared or incidental use of the equipment by other vehicle types or the collection of fees from the users of those vehicles. 49 U.S.C. 5302(4)(G)(iv). While the term "passenger vehicle" is not defined in the statute, FTA interprets it to mean automobiles or vans, consistent with similar definitions in other Federal statutes. *See* 49 U.S.C. 30127(a)(2) ("multipurpose passenger vehicle"); 49 U.S.C. 32101(9)-(10) ("multipurpose passenger vehicle" and "passenger motor vehicle"); 49 U.S.C. 30127(a)(3) ("passenger car").

**Comment:** The industry association also commented that agencies should have the ability to cover the costs of the infrastructure, the operation and maintenance costs as well as the cost of the electricity provided.

**Response:** FTA concurs with this comment and further clarifies in the final circular that electricity costs are considered operating costs and would, therefore, fall under the fee collection requirements. Electricity costs may also be negotiated as part of the fair share of costs pursuant to 49 U.S.C. 5302(4)(G)(v).

**Nuria I. Fernandez,**

*Administrator.*

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