

ORDINANCE 4221

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TRANSPORTATION AND PARK IMPACT FEES AND AMENDING CERTAIN SECTIONS OF CHAPTERS 27.04 AND 27.06 OF THE KIRKLAND MUNICIPAL CODE.

The City Council of the City of Kirkland do ordain as follows:

Section 1. Section 27.04.040 of the Kirkland Municipal Code is hereby amended to read as follows:

**27.04.040 Independent fee calculations.**

(a) If, in the judgment of the director, none of the fee categories or fee amounts set forth in the schedule in Section 27.04.150 accurately describes the impacts resulting from issuance of the proposed building permit, or for a change in use when no building permit is required, the applicant shall provide to the department for its review and evaluation an independent fee calculation, prepared by a traffic engineer approved by the director. The director may impose on the proposed building permit or on a change in land use when no building permit is required an alternative impact fee based on this calculation. With the independent fee calculation, the applicant shall pay to the department an administrative processing fee of one hundred dollars per calculation, unless a different fee is provided for in Title 5 of this code.

(b) If an applicant requests not to have the impact fees determined according to the schedule in Section 27.04.150, then the applicant shall submit to the director an independent fee calculation, prepared by a traffic engineer approved by the director and paid for by the applicant, for the building permit, or for a change in use when no building permit is required. The independent fee calculation shall show the basis upon which it was made and shall include, but not be limited to, trip generation characteristics. With the request, the applicant shall pay to the department ~~an~~ the administrative processing fee ~~of two hundred dollars per fee calculation, unless a different fee is~~ provided for in Title 5 of this code.

(c) An applicant may request issuance of a building permit or permission to occupy for a change in use when no building permit is required, prior to completion of an independent fee study; provided, that the impact fee is collected based on the fee schedule in Section 27.04.150. A partial refund may be forthcoming if the fee collected exceeds the amount determined in the independent fee calculation and the public works department agrees with the independent fee calculation.

(d) While there is a presumption that the calculations set forth in the rate study used to prepare the fee schedule in Section 27.04.150 are correct, the director shall consider the documentation submitted by the applicant, but is not required to accept such documentation which the director reasonably deems to be inaccurate or not reliable, and may, in the alternative, require the applicant to submit additional or different documentation. The director is authorized to adjust the impact fee on a case-by-case basis based on the independent fee calculation, the specific characteristics of the building permit, or

change of use if no building permit is required, and/or principles of fairness.

(e) Determinations made by the director pursuant to this section may be appealed to the hearing examiner subject to the procedures set forth in Section 27.04.130.

Section 2. Subsection 27.04.050 of the Kirkland Municipal Code is hereby amended to read as follows:

**27.04.050 Exemptions.**

(a) The following building permit applications shall be exempt from impact fees:

(1) ~~Retroactive to January 1, 2009, Replacement~~ replacement of a structure with a new structure of the same gross floor area and use at the same site or lot when such replacement occurs within five years ~~twenty-four consecutive months~~ of the demolition or destruction of the prior structure.

(2) Replacement, alteration, expansion, enlargement, remodeling, rehabilitation or conversion of an existing dwelling unit where no additional units are created and the use is not changed.

(3) Any building permit for a legal accessory dwelling unit approved under Title 23 of this code (zoning code) as it is considered part of the single-family use associated with this fee.

(4) Alteration of an existing nonresidential structure that does not expand the usable space or change the use.

(5) Miscellaneous improvements, including but not limited to fences, walls, swimming pools, mechanical units, and signs.

(6) Demolition or moving of a structure.

(7)(A) Construction or Creation of Low-Income Housing. Any claim for an exemption must be made before payment of the impact fee. Any claim not so made shall be deemed waived. The claim for exemption must be accompanied by a draft lien and covenant against the property guaranteeing that the low-income housing will continue. Before approval of the exemption, the department shall approve the form of the lien and covenant. Within ten days of approval, the applicant shall execute and record the approved lien and covenant with the King County department of records and elections. The lien and covenant shall run with the land. In the event that the housing unit is no longer used for low-income housing, the current owner shall pay the current impact fee plus interest to the date of the payment.

(B) The amount of impact fees not collected from low-income housing pursuant to this exemption shall be paid from public funds other than the impact fee account.

(8)(A) Development activities of community-based human services agencies which meet the human services needs of the community such as providing employment assistance, food, shelter, clothing, or health services for low- and moderate-income residents.

(B) Any applicant for an exemption from the impact fee which meets the criteria set forth in subsection (8)(C) of this section may apply to the city manager for an exemption. The application shall be on forms provided by the city and shall be accompanied by all information and data the city deems necessary to process the application.

(C) Exemption Criteria. To be eligible for the impact fee exemption established by this section, the applicant shall meet each of the following criteria:

1. The applicant must have secured federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.
  2. The applicant's services must be responsive to the variety of cultures and languages that exist in the city.
  3. The applicant must provide services and programs to those considered most vulnerable and/or at risk, such as youth, seniors, and those with financial needs, special needs and disabilities.
  4. The applicant's services must meet the human services goals and policies set forth in XII.B. of the city of Kirkland comprehensive plan.
  5. The applicant shall certify that no person shall be denied or subjected to discrimination in receipt of the benefit of services and programs provided by the applicant because of sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person.
  6. The applicant must provide direct human services at the premises for which the applicant is seeking exemption.
- (D) The city manager shall review applications for exemptions under subsection (8)(A) of this section pursuant to the above criteria and shall advise the applicant, in writing, of the granting or denial of the application. In addition, the city manager shall notify the city council when such applications are granted or denied.
- (E) The determination of the city manager shall be subject to the appeals procedures set forth in Section 27.04.130.
- (F) Any claim for exemption must be made before payment of the impact fee. Any claim not so made shall be deemed waived. The claim for exemption must be accompanied by a draft lien and covenant against the property guaranteeing that the human services use will continue. Before approval of the exemption, the department shall approve the form of lien and covenant. Within ten days of approval, the applicant shall execute and record the approved lien and covenant with the King County department of records and elections. The lien and covenant shall run with the land. In the event the property is no longer used for human services, the current owner shall pay the current impact fee plus interest to the date of the payment.
- (G) The amount of impact fees not collected from human services agencies pursuant to this exemption shall be paid from public funds other than the impact fee account.
- (b) The director shall be authorized to determine whether a particular development for a proposed building permit, or a change in land use when no building permit is required, falls within an exemption of this chapter or in this code. Determinations of the director shall be subject to the appeals procedures set forth in Section 27.04.130.

Section 3. Section 27.04.150 of the Kirkland Municipal Code is hereby amended to read as follows:

**27.04.150 Transportation impact fee schedule.**

| Land Uses           | Unit of Measure | ITE Land Use Code | Fee Per Unit |
|---------------------|-----------------|-------------------|--------------|
| Cost per Trip End > |                 |                   | \$3,398.20   |
| <b>Residential</b>  |                 |                   |              |

|                                   |             |                                |            |
|-----------------------------------|-------------|--------------------------------|------------|
| Detached Housing                  | dwelling    | 210                            | \$3,432.00 |
| Attached and Stacked Housing      | dwelling    | 220, 221, 230, 233; See Note 2 | \$2,012.00 |
| Senior Housing                    | dwelling    | See Note 1                     | \$1,006.00 |
| Nursing Home                      | bed         | 620                            | \$598.00   |
| Congregate Care/Assisted Living   | dwelling    | 253, 254                       | \$462.00   |
| <b>Commercial – Services</b>      |             |                                |            |
| Drive-In Bank                     | sq. ft./GFA | 912                            | \$39.97    |
| Walk-In Bank                      | sq. ft./GFA | 911                            | \$38.62    |
| Day Care Center                   | sq. ft./GFA | 565                            | \$19.20    |
| Library                           | sq. ft./GFA | 590                            | \$8.78     |
| Post Office                       | sq. ft./GFA | 732                            | \$13.48    |
| Hotel/Motel                       | room        | 310                            | \$2,291.00 |
| Extended Stay Motel               | room        | 311                            | \$1,553.00 |
| Service Station                   | VFP         | 944                            | \$9,151.00 |
| Service Station/Minimart          | VFP         | 945                            | \$6,625.00 |
| Service Station/Minimart/Car Wash | VFP         | 946                            | \$9,901.00 |
| Carwash                           | stall       | 947                            | \$5,594.00 |
| Movie Theater                     | seats       | 445                            | \$550.00   |
| Health Club                       | sq. ft./GFA | 492                            | \$9.14     |
| Racquet Club                      | sq. ft./GFA | 491                            | \$4.12     |
| Marina                            | berth       | 420                            | \$512.00   |
| <b>Commercial – Institutional</b> |             |                                |            |
| Elementary School/Jr. High School | student     | 520                            | \$435.00   |
| High School                       | student     | 530                            | \$272.00   |
| University/College                | student     | 550                            | \$553.00   |
| Church                            | sq. ft./GFA | 560                            | \$2.37     |
| Hospital                          | sq. ft./GFA | 610                            | \$4.58     |
| <b>Commercial – Restaurant</b>    |             |                                |            |
| Restaurant                        | sq. ft./GFA | 931                            | \$19.78    |
| Fast Food Restaurant w/o          | sq. ft./GFA | 933                            | \$25.39    |

|  |             |     |            |
|--|-------------|-----|------------|
| Drive-Through                            |             |     |            |
| Fast Food Restaurant w/<br>Drive-Through | sq. ft./GFA | 934 | \$33.63    |
| Tavern                                   | sq. ft./GFA | 936 | \$19.32    |
| <b>Industrial</b>                        |             |     |            |
| Light Industry/High<br>Technology        | sq. ft./GFA | 110 | \$5.29     |
| Industrial Park                          | sq. ft./GFA | 130 | \$4.64     |
| Warehousing/Storage                      | sq. ft./GFA | 150 | \$2.54     |
| <b>Commercial – Retail</b>               |             |     |            |
| Shopping Center                          | sq. ft./GLA | 820 | \$4.02     |
| Auto Parts Sales                         | sq. ft./GFA | 943 | \$5.15     |
| Auto Care Center                         | sq. ft./GLA | 942 | \$3.91     |
| Car Sales – New/Used                     | sq. ft./GFA | 841 | \$9.43     |
| Convenience Market                       | sq. ft./GFA | 851 | \$29.77    |
| Discount Club                            | sq. ft./GFA | 861 | \$11.53    |
| Electronics Superstore                   | sq. ft./GFA | 863 | \$6.42     |
| Freestanding Discount Store              | sq. ft./GFA | 815 | \$7.22     |
| Furniture Store                          | sq. ft./GFA | 890 | \$0.46     |
| Hardware/Paint Store                     | sq. ft./GFA | 816 | \$5.59     |
| Home Improvement<br>Superstore           | sq. ft./GFA | 862 | \$3.50     |
| Other Retail Sales                       | sq. ft./GFA | 814 | \$3.13     |
| Nursery/Garden Center                    | sq. ft./GFA | 817 | \$4.39     |
| Pharmacy (with Drive-<br>Through)        | sq. ft./GFA | 881 | \$7.11     |
| Quick Lubrication Vehicle<br>Shop        | service bay | 941 | \$3,427.00 |
| Video Rental                             | sq. ft./GFA | 896 | \$7.72     |
| Supermarket                              | sq. ft./GFA | 850 | \$15.98    |
| Tire Store                               | service bay | 849 | \$4,379.00 |
| <b>Commercial – Office</b>               |             |     |            |
| General Office Building                  | sq. ft./GFA | 710 | \$6.64     |
| Medical Office/Clinic                    | sq. ft./GFA | 720 | \$13.00    |

VFP = Vehicle Fueling Positions (maximum number of vehicles that can be fueled simultaneously)

GLA = Gross ~~Leasible~~ Leasable Area

GFA = Gross Floor Area

Note 1. Senior Housing rate is one-half of attached and stacked housing rate.

Note 2. Includes cottage, carriage, and two/three unit homes approved under Chapter 113 of Title 23.

Section 4. Subsection 27.06.020 of the Kirkland Municipal Code is hereby amended to read as follows:

**27.06.020 Definitions.**

The following words and terms shall have the following meanings unless the context clearly requires otherwise. Terms otherwise not defined herein shall be defined pursuant to RCW 82.02.090, or given their usual and customary meaning.

(a) "Act" means the Growth Management Act, Chapter 36.70A RCW.

(b) "Applicant" means the owner of real property according to the records of the King County department of records and elections, or the applicant's authorized agent.

(c) "Building permit" means the official document or certification that is issued by the building division of the fire and building department and that authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, tenant improvement, demolition, moving or repair of a building or structure.

(d) "Capital facilities" means the facilities or improvements included in the capital facilities plan.

(e) "Capital facilities plan" means the capital facilities plan element of the city's comprehensive plan adopted pursuant to Chapter 36.70A RCW, and such plan as amended.

(f) "City" means the city of Kirkland, Washington.

(g) "Council" means the city council of the city.

(h) "Department" means the parks and community service department.

(i) "Director" means the director of the parks and community service department, or the director's designee.

(j) "Encumbered" means to reserve, set aside or otherwise earmark the impact fees in order to pay for park planning, design, land surveys and acquisition, engineering, permitting, financing, administrative expenses, construction of parks and related facilities and any other commitments, contractual obligations or other liabilities incurred for public facilities.

(k) "Hearing examiner" means the person who exercises the authority of Chapter 3.34 of this code.

(l) "Impact fee" means a payment of money imposed by the city on an applicant prior to issuance of a building permit or a change in land use when no building permit is required as a condition of granting a building permit or as a requirement for a change in use in order to pay for the public facilities needed to serve new residential growth and development. "Impact fee" does not include a reasonable permit fee or application fee.

(m) "Impact fee account" or "account" means the account established for the system improvement for which impact fees are collected. The account shall be established pursuant to this chapter, and shall comply with the requirements of RCW 82.02.070.

(n) "Independent fee calculation" means the study or data submitted by an applicant to support the assessment of an impact fee other than the fee in the schedule set forth in Section 27.06.150 of this chapter.

(o) "Interest" means the interest rate earned by local jurisdictions in the State of Washington Local Government Investment Pool, if not otherwise defined.

(p) "Interlocal agreement" or "agreement" means a park interlocal agreement, authorized in this chapter, by and between the city and other government agencies concerning the collection and expenditure of impact fees, or any other interlocal agreement entered by and between the city and another municipality, public agency or governmental body to implement the provisions of this chapter.

(q) "Low-income housing" means: (1) an owner-occupied housing unit affordable to households whose household income is less than eighty percent of the King County median income, adjusted for household size, as determined by the United States Department of Housing and Urban Development (HUD), and no more than thirty percent of the household income is paid for housing expenses, or (2) a renter-occupied housing unit affordable to households whose income is less than sixty percent of the King County median income, adjusted for household size, as determined by HUD, and no more than thirty percent of the household income is paid for housing expenses (rent and an appropriate utility allowance). In the event that HUD no longer publishes median income figures for King County, the city may use or determine such other method as it may choose to determine the King County median income, adjusted for household size. The director will make a determination of sales prices or rents which meet the affordability requirements of this section. An applicant for a low-income housing exemption may be a public housing agency, a private nonprofit housing developer or a private developer.

(r) "Multifamily dwelling" means attached, stacked, duplex, or assisted living unit as defined in Chapter 5 of Title 23 of this code (zoning code) and cottage, carriage and two/three units homes approved under Chapter 113 of Title 23 of this code (zoning code).

(s) "Owner" means the owner of real property according to the records of the King County department of records and elections; provided, that if the real property is being purchased under a recorded real estate contract, the purchaser shall be considered the owner of the real property.

(t) "Parks" means parks, open space, and recreational facilities.

(u) "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development or users of a project, and are not system improvements. No improvement or facility included in the capital facilities plan shall be considered a project improvement.

(v) "Public facilities" means the public parks, open space, and recreational facilities.

(w) "Rate study" means the "Rate Study for Impact Fees for Parks and Recreational Facilities," city of Kirkland, by Henderson, Young and Company, dated March 27, 2007.

(x) "Residential" means housing, such as single-family dwellings (detached), multifamily dwellings (attached or stacked), accessory dwelling units, apartments, condominiums, mobile homes and/or manufactured homes or assisted living units intended for occupancy by one or more persons. For the purpose of this chapter, an accessory dwelling unit, as defined in Chapter 5 and regulated in Chapter 115 of Title 23 of this code (zoning code), is considered an adjunct to the associated single-family dwelling unit and is not charged a separate impact fee. For the purpose of this chapter, single-family dwellings include one or more detached dwelling units on one lot.

(y) "Single-family dwelling" means detached living unit as defined in Chapter 5 of Title 23 of this code (zoning code).

(z) "System improvements" means public facilities included in the capital facilities plan and designed to provide service to service areas within the community at large, in contrast to project improvements.

Section 5. Section 27.06.040 of the Kirkland Municipal Code is hereby amended to read as follows:

**27.06.040 Independent fee calculations.**

(a) If, in the judgment of the director, none of the fee categories or fee amounts set forth in the schedule in Section 27.06.150 of this chapter accurately describes the impacts resulting from issuance of the proposed building permit, or for a change in use when no building permit is required, the applicant shall provide to the department for its review and evaluation an independent fee calculation. The director may impose on the proposed building permit or on a change in land use when no building permit is required, an alternative impact fee based on this calculation. With the independent fee calculation, the applicant shall pay to the department an administrative processing fee of one hundred dollars per calculation unless a different fee is provided for in Title 5 of this code.

(b) If an applicant requests not to have the impact fees determined according to the schedule in Section 27.06.150 of this chapter, then the applicant shall submit to the director an independent fee calculation, paid for by the applicant, for the building permit or for a change in use when no building permit is required. The independent fee calculation shall show the basis upon which it was made. With the request, the applicant shall pay to the department an ~~the~~ administrative processing fee of ~~two hundred dollars per fee calculation unless a different fee is~~ provided for in Title 5 of this code.

(c) An applicant may request issuance of a building permit prior to completion of an independent fee study; provided, that the impact fee is collected based on the fee schedule in Section 27.06.150. A partial refund may be forthcoming if the fee collected exceeds the amount determined in the independent fee calculation and the parks and community development department agrees with the independent fee calculation.

(d) While there is a presumption that the calculations set forth in the rate study used to prepare the fee schedule in Section 27.06.150 are correct, the director shall consider the documentation submitted by the applicant, but is not required to accept such documentation which the director reasonably deems to be inaccurate or not reliable, and may, in the alternative, require the applicant to submit additional or different documentation. The director is authorized to adjust the



impact fee on a case-by-case basis based on the independent fee calculation, the specific characteristics of the building permit or change in use if no building permit is required and/or principles of fairness.

(e) Determinations made by the director pursuant to this section may be appealed to the hearing examiner subject to the procedures set forth in Section 27.06.130.

Section 6. Section 27.06.050 of the Kirkland Municipal Code is hereby amended to read as follows:

**27.06.050 Exemptions.**

(a) The following building permit applications shall be exempt from impact fees:

(1) Replacement, alteration, expansion, enlargement, remodeling, rehabilitation or conversion of an existing dwelling unit where no additional units are created and the use is not changed. Retroactive to January 1, 2009, Replacement replacement must occur within five years ~~twenty four consecutive months~~ of the demolition or destruction of the prior structure.

(2) Any building permit for a legal accessory dwelling unit approved under Title 23 of this code (Kirkland Zoning Code).

(3) Miscellaneous improvements, including but not limited to fences, walls, swimming pools, mechanical units, and signs.

(4) Demolition or moving of a structure.

(5)(A) Construction or Creation of Low-Income Housing. Any claim for an exemption must be made before payment of the impact fee. Any claim not so made shall be deemed waived. The claim for exemption must be accompanied by a draft lien and covenant against the property guaranteeing that the low-income housing will continue. Before approval of the exemption, the department shall approve the form of the lien and covenant. Within ten days of approval, the applicant shall execute and record the approved lien and covenant with the King County department of records and elections. The lien and covenant shall run with the land. In the event that the housing unit is no longer used for low-income housing, the current owner shall pay the current impact fee plus interest to the date of the payment.

(B) The amount of impact fees not collected from low-income housing pursuant to this exemption shall be paid from public funds other than the impact fee account.

(b) The director shall be authorized to determine whether a particular development for a proposed building permit or a change in land use when no building permit is required falls within an exemption of this chapter or of this code. Determinations of the director shall be subject to the appeals procedures set forth in Section 27.06.130.

Section 7. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 8. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this 1st day of December, 2009.


Signed in authentication thereof this 1st day of December, 2009.

  
MAYOR

Attest:

  
City Clerk

Approved as to Form:

  
City Attorney

PUBLICATION SUMMARY  
OF ORDINANCE NO. 4221

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TRANSPORTATION AND PARK IMPACT FEES AND AMENDING CERTAIN SECTIONS OF CHAPTERS 27.04 AND 27.06 OF THE KIRKLAND MUNICIPAL CODE.

SECTION 1. Amends Section 27.04.040 of the Kirkland Municipal Code ("KMC") relating to independent fee calculations for transportation impact fees.

SECTION 2. Amends KMC Section 27.04.050 relating to exemptions from transportation impact fees.

SECTION 3. Amends KMC Section 27.04.150 relating to the fee schedule for transportation impact fees.

SECTION 4. Amends the definition of "multifamily dwelling" that is set forth in KMC Section 27.06.020 relating to park impact fees.

SECTION 5. Amends KMC Section 27.06.040 relating to independent fee calculations for park impact fees.

SECTION 6. Amends KMC Section 27.06.050 relating to exemptions from park impact fees.

SECTION 7. Provides a severability clause for the ordinance.

SECTION 8. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 1st day of December, 2009.

I certify that the foregoing is a summary of Ordinance 4221 approved by the Kirkland City Council for summary publication.

  
\_\_\_\_\_  
City Clerk