

Ordinance O-4502

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TRANSPORTATION IMPACT FEES AND AMENDING CHAPTER 27.04 OF THE KIRKLAND MUNICIPAL CODE.

1 The City Council of the City of Kirkland do ordain as follows:
2

3 Section 1. Kirkland Municipal Code ("KMC") Section 27.04.010
4 is amended to read as follows:
5

6 27.04.010 Findings and authority.

7 The city council finds and determines that new growth and
8 development, including but not limited to new residential, commercial,
9 retail, office, industrial, and institutional development, and changes in
10 ~~land uses~~ in the city will create additional demand and need for public
11 facilities (~~public streets and roads~~) in the city and finds that new growth
12 and development should pay a proportionate share of the cost of new
13 public facilities needed to serve the new growth and development. The
14 city has conducted an extensive study documenting the procedures for
15 measuring the impact of new developments on public facilities and has
16 prepared a rate study. The city council accepts the methodology and
17 data contained in the rate study. Therefore, pursuant to Chapter 82.02
18 RCW, the city council adopts this chapter to assess impact fees for ~~public~~
19 transportation facilities.
20

21 Section 2. KMC Section 27.04.020 is amended to read as
22 follows:
23

24 27.04.020 Definitions.

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

29 (1) "Act" means the Growth Management Act, Chapter 36.70A
30 RCW.

31 (2) "Applicant" means the owner of real property according to the
32 records of the King County recorder's office, or the applicant's
33 authorized agent.

34 (3) "Building permit" means the official document or certification
35 that is issued by the planning and building department and that
36 authorizes the construction, alteration, enlargement, conversion,
37 reconstruction, remodeling, rehabilitation, erection, tenant
38 improvement, demolition, moving or repair of a building or structure.

39 (4) "Capital facilities" means the facilities or improvements
40 included in the capital facilities plan.

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

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

45 (7) "Council" means the city council of the city.

- 46 (8) "Department" means the public works department.
47 (9) "Director" means the director of the public works department,
48 or the director's designee.
49 (10) "Encumbered" means to reserve, set aside or otherwise
50 earmark the impact fees in order to pay for transportation planning,
51 engineering design studies, land surveys, right-of-way acquisition,
52 engineering, permitting, financing, administrative expenses,
53 construction of roads and related facilities, and any other commitments,
54 contractual obligations or other liabilities incurred for public facilities.
55 (11) "Gross floor area" is the total square footage of all floors in a
56 structure as defined in Kirkland Zoning Code Chapter 5 KZC.
57 (12) "Hearing examiner" means the person who exercises the
58 authority of Kirkland Municipal Code Chapter 3.34 ~~of this code~~.
59 (13) "Impact fee" means a payment of money imposed by the city
60 on an applicant prior to issuance of a building permit ~~or a change in land~~
61 ~~use when no building permit is required pursuant to this chapter as a~~
62 ~~condition of granting a building permit, or as a requirement for a change~~
63 ~~in use in order to pay for the public facilities needed to serve new growth~~
64 and development. "Impact fee" does not include a reasonable permit
65 fee or application fee.
66 (14) "Impact fee account" or "account" means the account
67 established for the system improvement for which impact fees are
68 collected. The account shall be established pursuant to this chapter, and
69 shall comply with the requirements of RCW 82.02.070.
70 (15) "Independent fee calculation" means the study or data
71 submitted by an applicant to support the assessment of an impact fee
72 other than the fee in the schedule in Section 27.04.150.
73 (16) "Interest" means the interest rate earned by local
74 jurisdictions in the State of Washington Local Government Investment
75 Pool, if not otherwise defined.
76 (17) "Interlocal agreement" or "agreement" means a roads
77 interlocal agreement, authorized in this chapter, by and between the
78 city and other government agencies concerning the collection and
79 expenditure of impact fees, or any other interlocal agreement entered
80 by and between the city and another municipality, public agency or
81 governmental body to implement the provisions of this chapter.
82 (18) "Low-income housing" means (A) an owner-occupied
83 housing unit affordable to households whose household income is less
84 than eighty percent of the King County median income, adjusted for
85 household size, as determined by the United States Department of
86 Housing and Urban Development (HUD), and no more than thirty
87 percent of the household income is paid for housing expenses, or (B) a
88 renter-occupied housing unit affordable to households whose income is
89 less than sixty percent of the King County median income, adjusted for
90 household size, as determined by HUD, and no more than thirty percent
91 of the household income is paid for housing expenses (rent and an
92 appropriate utility allowance). In the event that HUD no longer publishes
93 median income figures for King County, the city may use or determine
94 such other method as it may choose to determine the King County
95 median income, adjusted for household size. The director will make a
96 determination of sales prices or rents which meet the affordability
97 requirements of this section. An applicant for a low-income housing
98 exemption may be a public housing agency, a private nonprofit housing
99 developer or a private developer.

100 (19) "Owner" means the owner of real property according to the
 101 records of the King County recorder's office; provided, that if the real
 102 property is being purchased under a recorded real estate contract, the
 103 purchaser shall be considered the owner of the real property.

104 (20) "Prior use" means the use with the highest impact fee per
 105 unit, based on the schedule in Section 27.04.150, in existence since
 106 January 1, ~~2006~~2015, as documented by city records.

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

112 (22) "Public facilities" means the ~~public streets and roads~~
 113 transportation facilities for pedestrians, bicycles, transit and motor
 114 vehicles of the city or other governmental entities.

115 (23) "Rate study" means the Transportation Impact Fee Rate
 116 Study, City of Kirkland, by ~~Mirai, Associates, dated April 10, 2007~~Fehr &
 117 Peers, dated October 2015, as updated and amended from time to time.

118 (24) "Residential" means housing, such as detached, attached or
 119 stacked dwelling units (includes cottage, carriage and two-/three-unit
 120 homes approved under Kirkland Zoning Code Chapter 113 ~~KZC~~, and
 121 senior and assisted dwelling units intended for occupancy by one or
 122 more persons and not offering other services). For the purpose of this
 123 chapter, an accessory dwelling unit, regulated in Kirkland Zoning Code
 124 Chapter 115 ~~KZC~~, is considered an adjunct to the associated primary
 125 structure and is not charged a separate impact fee.

126 (25) "Road" means a right-of-way which affords the principal
 127 means of access to abutting property, including avenue, place, way,
 128 drive, lane, boulevard, highway, street, and other thoroughfare, except
 129 an alley.

130 (26) "Square footage" means the square footage of the gross floor
 131 area of the development as defined in Chapter 5 ~~KZC~~.

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

135

136 Section 3. KMC Section 27.04.030 is amended to read as
 137 follows:

138

139 27.04.030 Assessment of impact fees.

140 (a) The city shall collect impact fees, based on the schedule in
 141 Section 27.04.150, from any applicant seeking a building permit from
 142 the city, ~~or any person or entity seeking a change in land use based on~~
 143 ~~the land use categories on the schedule in Section 27.04.150 when no~~
 144 ~~building permit is required.~~ The public works department is authorized
 145 to determine what land use category found in the rate schedule applies
 146 to the application.

147 (b) All impact fees shall be collected from the applicant prior to
 148 issuance of the building permit ~~or prior to occupancy for a change in~~
 149 ~~land use when no building permit is required based on the land use~~
 150 ~~categories on the schedule in Section 27.04.150.~~ Unless the use of an
 151 independent fee calculation has been approved, or unless a
 152 development agreement entered into pursuant to RCW 36.70B.170
 153 provides otherwise, the fee shall be calculated based on the impact fee

154 schedule in effect at the time a complete building permit application is
155 filed. ~~For a change in use for which no building permit is required, the~~
156 ~~fee shall be calculated based on the impact fee schedule in effect on the~~
157 ~~date of payment of the impact fee.~~

158 (c) The city shall establish the impact fee rate for a land use that
159 is not listed on the rate schedule in Section 27.04.150. The applicant
160 shall submit all information requested by the department for purposes
161 of determining the impact fee rate pursuant to Section 27.04.040. The
162 adopted cost per trip in Section 27.04.150 shall be the basis for
163 establishing the impact fee rate.

164 (d) ~~For a change in use of an existing building or dwelling unit, or~~
165 ~~portion thereof, the impact fee shall be the applicable impact fee for the~~
166 ~~land use category of the new use, less the impact fee for the land use~~
167 ~~category of the prior use. For any change in use that includes an~~
168 alteration, expansion, replacement or new accessory building, the
169 impact fee shall be the applicable impact fee for the land use category
170 of the new gross floor area (or, if applicable, gross leasable area), less
171 the impact fee for the land use category of the prior gross floor area
172 (or, if applicable, gross leasable area).

173 (e) For mixed use buildings or developments, impact fees shall be
174 imposed for the proportionate share of each land use based on the
175 applicable unit of measurement found on the schedule in Section
176 27.04.150.

177 (f) For building permits within new subdivisions approved under
178 Kirkland Municipal Code Title 22 (Subdivisions), a credit shall be applied
179 for any dwelling unit that exists on the land within the subdivision prior
180 to the subdivision if the dwelling unit is demolished. The credit shall
181 apply to the first complete building permit application submitted to the
182 city subsequent to demolition of the existing dwelling unit, unless
183 otherwise allocated by the applicant of the subdivision as part of
184 approval of the subdivision.

185 (g) At the time of issuance of any single-family detached or
186 attached residential building permit issued for a dwelling unit that is
187 being constructed for resale, the applicant may elect to have the impact
188 fee payment deferred until the building permit is completed or 18
189 months after issuance of the building permits, whichever occurs first.
190 The impact fee due and owing, less any credits awarded, shall be paid
191 prior to building permit final inspection, building permit final occupancy,
192 or 18 months after the date of building permit issuance, whichever is
193 applicable, record a covenant against the title to the property that
194 requires payment of the impact fees due and owing, less any credits
195 awarded, by providing for automatic payment through escrow of the
196 impact fee due and owing to be paid at the time of closing of sale of the
197 lot or unit. Applicants electing to use this deferred impact fee process
198 shall pay a two-hundred-forty-dollar administration fee with each
199 respective building permit prior to issuance of such building permit for
200 each individual lien filed.

201 (h) Except as otherwise provided in this section, the city shall not
202 issue any building permit unless and until the impact fee has been paid.
203 ~~For a change in land use when a building permit is not required, an~~
204 ~~applicant shall not occupy or permit a tenant to occupy the subject~~
205 ~~property unless and until the impact fee has been paid.~~

206 (i) The payment of impact fees may be delayed through a
207 development agreement approved by the city council pursuant to
208 Chapter 36.70B RCW, provided the following criteria are met:

209 (1) Payment of fees may be delayed to no later than issuance of
210 the certificate of occupancy;

211 (2) The development agreement shall provide mechanisms, such
212 as withholding of the certificate of occupancy and/or property liens, to
213 assure that the city will collect the deferred fees;

214 (3) The delay shall not reduce the availability of funds to
215 implement the city's adopted capital improvement program in a timely
216 manner; and

217 (4) Projects must provide significant public benefit, including but
218 not limited to:

219 (A) Projects that implement adopted city council goals;

220 (B) Projects with economic benefit to the city;

221 (C) Projects that involve partnerships with other governmental
222 agencies; and

223 (D) Projects that include affordable housing as defined by the
224 Kirkland Zoning Code.

225
226 Section 4. KMC Section 27.04.035 is amended to read as
227 follows:

228
229 ~~27.04.035 Temporary suspension of t~~Transportation impact fees
230 relating to change of use.

231 ~~Notwithstanding any other provision of this chapter, the city~~
232 ~~temporarily suspends the imposition of~~ The city shall not impose
233 transportation impact fees to the extent the assessment of the fee is
234 the result of a change to a land use category that results in a higher fee
235 under Section 27.04.150; provided, that this section shall not apply to a
236 project;

237
238 (a) to the extent it the project will add, increase or expand the gross
239 floor area of an existing building;

240 (b) for which a certificate of occupancy has been issued and the
241 impact fees have been paid, but the tenant land use is changed before
242 the space is occupied;

243
244 and provided further, that this section applies only to the use,
245 renovation or remodeling of existing structures and does not apply to
246 redevelopment projects or other projects in which existing structures
247 are replaced or substantially redeveloped. ~~This section shall apply to~~
248 ~~projects for which complete building applications are filed with the city~~
249 ~~between February 1, 2011, and December 31, 2015. This section shall~~
250 ~~automatically expire on December 31, 2015.~~

251
252 Section 5. KMC Section 27.04.040 is amended to read as
253 follows:

254
255 27.04.040 Independent fee calculations.

256 (a) If, in the judgment of the director, none of the fee categories
257 or fee amounts set forth in the schedule in Section 27.04.150 accurately
258 describes the impacts resulting from issuance of the proposed building
259 permit, ~~or for a change in use when no building permit is required, the~~

260 applicant shall provide to the department for its review and evaluation
 261 an independent fee calculation, prepared by a traffic engineer approved
 262 by the director. The director may impose on the proposed building
 263 permit ~~or on a change in land use when no building permit is required~~
 264 an alternative impact fee based on this calculation. With the
 265 independent fee calculation, the applicant shall pay to the department
 266 an administrative processing fee of one hundred dollars per calculation,
 267 unless a different fee is provided for in Title 5.

268 (b) If an applicant requests not to have the impact fees
 269 determined according to the schedule in Section 27.04.150, then the
 270 applicant shall submit to the director an independent fee calculation,
 271 prepared by a traffic engineer ~~approved by the director~~ and paid for by
 272 the applicant, ~~for the building permit, or for a change in use when no~~
 273 ~~building permit is required~~. The independent fee calculation shall show
 274 the basis upon which it was made and shall include, but not be limited
 275 to, trip generation characteristics. With the request, the applicant shall
 276 pay to the department the administrative processing fee provided for in
 277 Kirkland Municipal Code Title 5.

278 (c) An applicant may request issuance of a building permit, ~~or~~
 279 ~~permission to occupy for a change in use when no building permit is~~
 280 ~~required~~, prior to completion of an independent fee study; provided,
 281 that the impact fee is collected based on the fee schedule in Section
 282 27.04.150. A partial refund may be forthcoming if the fee collected
 283 exceeds the amount determined in the independent fee calculation and
 284 the public works department agrees with the independent fee
 285 calculation.

286 (d) While there is a presumption that the calculations set forth in
 287 the rate study used to prepare the fee schedule in Section 27.04.150
 288 are correct, the director shall consider the documentation submitted by
 289 the applicant, but is not required to accept such documentation which
 290 the director reasonably deems to be inaccurate or not reliable, and may,
 291 in the alternative, require the applicant to submit additional or different
 292 documentation. The director is authorized to adjust the impact fee on a
 293 case-by-case basis based on the independent fee calculation, the
 294 specific characteristics of the building permit, ~~or change of use if no~~
 295 ~~building permit is required~~, and/or principles of fairness.

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

299
 300 Section 6. KMC Section 27.04.050 is amended to read as
 301 follows:

302
 303 27.04.050 Exemptions.

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

306 (1) Replacement of a structure with a new structure of the same
 307 gross floor area ~~and use~~ at the same site or lot when such replacement
 308 occurs within five years of the demolition or destruction of the prior
 309 structure. For replacement of structures in a new subdivision, see
 310 Section 27.04.030(f).

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

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

317 (4) Alteration of an existing nonresidential structure that does not
318 expand the usable space.

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

321 (6) Demolition or moving of a structure.

322 (7)(A) Any applicant for the construction or creation of low-
323 income housing may request an exemption of eighty percent of the
324 required impact fee for low-income housing units subject to the criteria
325 in subsection (a)(7)(C) of this section.

326 (B) Any applicant for an exemption from the impact fees which
327 meets the criteria set forth in subsection (a)(7)(C) of this section shall
328 apply to the city manager for an exemption. The application shall be on
329 forms provided by the city and shall be accompanied by all information
330 and data the city deems necessary to process the application.

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

334 (i) The applicant must be proposing a greater number of low-
335 income housing units or a greater level of affordability for those units
336 than is required by the Kirkland Zoning Code and/or the Kirkland
337 Municipal Code. The allowed exemption shall only apply to those low-
338 income units in excess of the minimum required by code unless the
339 development will be utilizing public assistance targeted for low-income
340 housing.

341 (ii) The applicant must demonstrate to the city manager's
342 satisfaction that the amount of the impact fee exemption is justified
343 based on the additional affordability provided above that required by
344 code and is necessary to make the project economically viable.

345 (iii) The proposed housing must meet the goals and policies set
346 forth in Section VII-C of the city of Kirkland comprehensive plan.

347 (D) The city manager shall review applications for exemptions
348 under subsection (a)(7)(A) of this section pursuant to the above criteria
349 and shall advise the applicant, in writing, of the granting or denial of the
350 application. In addition, the city manager shall notify the city council
351 when such applications are granted or denied.

352 (E) The determination of the city manager shall be the final
353 decision of the city with respect to the applicability of the low-income
354 housing exemption set forth in this subsection.

355 (F) Any claim for exemption must be made before payment of the
356 impact fee. Any claim not so made shall be deemed waived. The claim
357 for exemption must be accompanied by a draft lien and covenant
358 against the property guaranteeing that the low-income housing use will
359 continue. Before approval of the exemption, the planning and building
360 department shall approve the form of lien and covenant, which shall, at
361 a minimum, meet the requirements of RCW 82.02.060. Prior to issuance
362 of a certificate of occupancy for any portion of the development, the
363 applicant shall execute and record the approved lien and covenant with
364 the King County recorder's office. The lien and covenant shall run with
365 the land. In the event the property is no longer used for low-income
366 housing, the current owner shall pay the current impact fee plus interest
367 to the date of the payment.

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

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

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

380 (i) The applicant must have secured federal tax-exempt status
381 under Section 501(c)(3) of the Internal Revenue Code.

382 (ii) The applicant's services must be responsive to the variety of
383 cultures and languages that exist in the city.

384 (iii) The applicant must provide services and programs to those
385 considered most vulnerable and/or at risk, such as youth, seniors, and
386 those with financial needs, special needs and disabilities.

387 (iv) The applicant's services must meet the human services goals
388 and policies set forth in Section XII-B of the city of Kirkland
389 comprehensive plan.

390 (v) The applicant shall certify that no person shall be denied or
391 subjected to discrimination in receipt of the benefit of services and
392 programs provided by the applicant because of sex, marital status,
393 sexual orientation, race, creed, color, national origin, or the presence of
394 any sensory, mental, or physical disability or the use of a trained dog
395 guide or service animal by a person with a disability.

396 (vi) The applicant must provide direct human services at the
397 premises for which the applicant is seeking exemption.

398 (D) The city manager shall review applications for exemptions
399 under subsection (a)(8)(A) of this section pursuant to the above criteria
400 and shall advise the applicant, in writing, of the granting or denial of the
401 application. In addition, the city manager shall notify the city council
402 when such applications are granted or denied.

403 (E) The determination of the city manager shall be the final
404 decision of the city with respect to the applicability of the community-
405 based human services exemption set forth in this subsection.

406 (F) Any claim for exemption must be made before payment of the
407 impact fee. Any claim not so made shall be deemed waived. The claim
408 for exemption must be accompanied by a draft lien and covenant
409 against the property guaranteeing that the human services use will
410 continue. Before approval of the exemption, the department shall
411 approve the form of lien and covenant. Within ten days of approval, the
412 applicant shall execute and record the approved lien and covenant with
413 the King County recorder's office. The lien and covenant shall run with
414 the land. In the event the property is no longer used for human services,
415 the current owner shall pay the current impact fee plus interest to the
416 date of the payment.

417 (G) The amount of impact fees not collected from human services
418 agencies pursuant to this exemption shall be paid from public funds
419 other than the impact fee account.

420 (b) Unless otherwise established in this section, the planning and
421 building director shall be authorized to determine whether a particular

422 development for a proposed building permit, ~~or a change in land use~~
423 ~~when no building permit is required~~, falls within an exemption of this
424 chapter or in this code. Determinations of the planning and building
425 director shall be subject to the appeals procedures set forth in Section
426 27.04.130.

427
428 Section 7. KMC Section 27.04.100 is amended to read as
429 follows:

430 27.04.100 Refunds.

431 (a) If the city fails to expend or encumber the impact fees within
432 ten years of payment (or where extraordinary or compelling reasons
433 exist, such other time periods as established pursuant to Section
434 27.04.080), the current owner of the property for which impact fees
435 have been paid may receive a refund of the fee. In determining whether
436 impact fees have been expended or encumbered, impact fees shall be
437 considered expended or encumbered on a first-in, first-out basis.

438 (b) The city shall notify potential claimants by first class mail
439 deposited with the United States Postal Service at the last known
440 address of such claimants.

441 (c) Property owners seeking a refund of impact fees must submit
442 a written request for a refund of the fees to the director within one year
443 of the date the right to claim the refund arises or the date that notice is
444 given, whichever is later.

445 (d) Any impact fees for which no application for a refund has been
446 made within the one-year period shall be retained by the city and
447 expended on the appropriate public facilities.

448 (e) Refunds of impact fees under this chapter shall include any
449 interest earned on the impact fees by the city.

450 (f) ~~When~~ If the city terminates the impact fee program, all
451 unexpended or unencumbered funds, including interest earned, shall be
452 refunded pursuant to this chapter. The city shall publish notice of the
453 termination and the availability of refunds in a newspaper of general
454 circulation at least two times and shall notify all potential claimants by
455 first class mail to the last known address of the claimants. All funds
456 available for refund shall be retained for a period of one year after the
457 second publication. At the end of one year, any remaining funds shall
458 be retained by the city, but must be expended for the appropriate public
459 facilities. This notice requirement shall not apply if there are no
460 unexpended or unencumbered balances within the account.

461 (g) The city shall ~~also~~ refund the impact fee paid plus interest to
462 the current owner of property for which the impact fee had been paid,
463 if the development was never completed or occupied; provided, that if
464 the city expended or encumbered the impact fee in good faith prior to
465 the application for a refund, the director may decline to provide the
466 refund. If within a period of three years, the same or subsequent owner
467 of the property proceeds with the same or substantially similar
468 development, the owner can petition the director for an offset. The
469 petitioner shall provide receipts of impact fees previously paid for a
470 development of the same or substantially similar nature on the same
471 property or some portion thereof. The director shall determine whether
472 to grant an offset, and the determinations of the director may be
473 appealed pursuant to the procedures in Section 27.04.130.

474 Section 8. KMC Section 27.04.110 is amended to read as
475 follows:

476
477 27.04.110 Use of funds.

478 (a) Impact fees may be spent for system improvements, including
479 but not limited to transportation planning, engineering design studies,
480 land surveys, right-of-way acquisition, engineering, permitting,
481 financing, administrative expenses, and construction of transportation
482 facilities such as streets, and roads, and related facilities such as curbs,
483 gutters, sidewalks, bike lanes, storm drainage, and installation of traffic
484 signals, signs and street lights.

485 (b) Impact fees shall be expended or encumbered on a first-in,
486 first-out basis.

487 (c) Impact fees may be used to recoup cost for system
488 improvement previously incurred by the city to the extent that new
489 growth and development will be served by the previously constructed
490 system improvements.

491 (d) In the event that bonds or similar debt instruments are or have
492 been issued for the advanced provision of system improvements, impact
493 fees may be used to pay debt service on such bonds or similar debt
494 instruments to the extent that system improvements provided are
495 consistent with the requirements of this chapter and are used to serve
496 the new development.

497
498 Section 9. KMC Section 27.04.120 is amended to read as
499 follows:

500
501 27.04.120 Review of schedule and fee increases.

502 (a) The schedule in Section 27.04.150 will be amended to reflect
503 changes to the twenty-year transportation project list as part of
504 adoption of amendments to the capital facilities plan in Chapter XIII of
505 Title 17 of this code (the comprehensive plan). Amendments to the
506 schedule for this purpose shall be adopted by the council.

507 (b) The fees on the schedule in Section 27.04.150 shall be indexed
508 to provide for an automatic fee increase each January 1st beginning in
509 the year ~~2009~~2017. A six-year moving average of the Washington State
510 Department of Transportation Construction Cost Index will be used to
511 determine the increase in fees for each year to reflect increased project
512 costs. In the event that the fees on the schedule in Section 27.04.150
513 are increased during the preceding calendar year due to changes to the
514 twenty-year transportation project list pursuant to subsection (a) of this
515 section, the fees will not be indexed the following January. The finance
516 and administration department shall compute the fee increase and the
517 new schedule shall become effective immediately after the annual fee
518 increase calculation.

519 (c) A new rate study, which establishes the schedule in Section
520 27.04.150, shall be updated every three years, unless the city
521 determines that circumstances ~~have not changed to~~ do not warrant an
522 update.

523
524 Section 10. KMC Section 27.04.130 is amended to read as
525 follows:

526
527 27.04.130 Appeals.

528 (a) An appeal of an impact fee imposed on a building permit or a
529 ~~change in land use when no building permit is required~~ may only be filed
530 by the applicant of the subject property. An appeal of an impact fee
531 assessed pursuant to Section 27.04.135(b) ~~or (c)~~ may be filed by a
532 property owner ~~or occupant responsible for the change in use when no~~
533 ~~building permit is required~~. An applicant may either file an appeal and
534 pay the impact fee imposed by this chapter under protest, or appeal the
535 impact fee before issuance of the building permit ~~or before occupancy~~
536 ~~for a change in use when no building permit is required~~. No appeal may
537 be filed after the impact fee has been paid and the building permit has
538 been issued ~~or occupancy has occurred for a change in use for which~~
539 ~~no building permit is required~~.

540 (b) An appeal shall be filed with the hearing examiner on the
541 following determinations of the director:

542 (1) The applicability of the impact fees to a given building permit
543 ~~or change in use when no building permit is required~~ pursuant to
544 Sections 27.04.030 and 27.04.050;

545 (2) The decision on an independent fee calculation in Section
546 27.04.040;

547 (3) The availability or value of a credit in Section 27.04.060; or

548 (4) Any other determination which the director is authorized to
549 make pursuant to this chapter.

550 (c) An appeal, in the form of a letter of appeal, along with the
551 required appeal fee, shall be filed with the department for all
552 determinations by the director, prior to issuance of a building permit ~~or~~
553 ~~a change in land use when no building permit is required~~. The letter
554 must contain the following:

555 (1) A basis for and arguments supporting the appeal; and

556 (2) Technical information and specific data supporting the
557 appeal.

558 (d) The fee for filing an appeal shall be two hundred fifty dollars.

559 (e) Within twenty-eight calendar days of the filing of the appeal,
560 the director shall mail to the hearing examiner the following:

561 (1) The appeal and any supportive information submitted by the
562 appellant;

563 (2) The director's determination along with the record of the
564 impact fee determination and, if applicable, the independent fee
565 calculation; and

566 (3) A memorandum from the director analyzing the appeal.

567 (f) The hearing examiner shall review the appeal from the
568 applicant, the director's memorandum, and the record of determination
569 from the director. No oral testimony shall be given, although legal
570 arguments may be made. The determination of the director shall be
571 accorded substantial weight.

572 (g) The hearing examiner is authorized to make findings of fact
573 and conclusions of law regarding the decision. The hearing examiner
574 may, so long as such action is in conformance with the provisions of this
575 chapter, reverse or affirm, in whole or in part, or modify the
576 determination of the director, and may make such order, requirements,
577 decision or determination as ought to be made, and to that end shall
578 have the powers which have been granted to the director by this
579 chapter. The hearing examiner's decision shall be final.

580 (h) The hearing examiner shall distribute a written decision to the
581 director within fifteen working days.

582 (i) The department shall distribute a copy of the hearing
583 examiner decision to the appellant within five working days of receiving
584 the decision.

585 (j) In the event the hearing examiner determines that there is a
586 flaw in the impact fee program, that a specific exemption or credit
587 should be awarded on a consistent basis, or that the principles of
588 fairness require amendments to this chapter, the hearing examiner may
589 advise the council as to any question or questions that the hearing
590 examiner believes should be reviewed as part of the council's review of
591 the fee schedule in Section 27.04.150 as provided by Section 27.04.120.

592 Section 11. KMC Section 27.04.135 is amended to read as
593 follows:

594
595 27.04.135 Responsibility for payment of fees.

596 (a) The building permit applicant is responsible for payment of
597 the fees authorized by this chapter in connection with a building permit
598 application.

599 (b) In the event that a building permit is erroneously issued
600 without payment of the fees authorized by this chapter, the building
601 official may issue a written notice to the property owner and occupant
602 advising them of the obligation to pay the fees authorized by this
603 chapter. Such notice shall include a statement of the basis under which
604 the fees under this chapter are being assessed, the amount of fees
605 owed, and a statement that the property owner or occupant may appeal
606 the fee determination within twenty calendar days of the date the notice
607 was issued. Any appeals of such a fee determination shall be processed
608 in accordance with the procedures set forth in Section 27.04.130.

609 (c) In the event a change in land use for which no building permit
610 is required results in an obligation to pay impact fees, the director may
611 issue a written notice to the property owner and occupant advising them
612 of the obligation to pay the fees authorized by this chapter. Such notice
613 shall include a statement of the basis under which the fees under this
614 chapter are being assessed, the amount of fees owed, and a statement
615 that the property owner or occupant may appeal the fee determination
616 within twenty calendar days of the date the notice was issued. Any
617 appeals of such a fee determination shall be processed in accordance
618 with the procedures set forth in Section 27.04.130.

619 (d) If a property owner or occupant fails to appeal the issuance
620 of a fee notice under subsection (b) ~~or (c)~~ of this section, or if the
621 property owner or occupant's appeal is unsuccessful, the city is
622 authorized to institute collection proceedings for the purpose of
623 recovering the unpaid impact fees.

624
625 Section 12. KMC Section 27.04.150 is amended to read as
626 follows:

627
628 27.04.150 Transportation impact fee schedule.

629 The impact fee schedule below is based on the city's 2007 latest
630 rate study. As authorized under Section 27.04.120(b), the schedule may
631 automatically increase each January 1st based on the Washington State
632 Department of Transportation Construction Cost Index. See the public
633 works department's fee schedule for the current impact fee.

Land Use	Unit of Measure	FTE Land Use Code	Fee Per Unit
-	-	-	-
Cost per Trip-End →	-	-	\$3,398.20
Residential			
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
Commercial—Services			
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
Car Wash	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
Commercial—Institutional			
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
Commercial—Restaurant			
Restaurant	sq. ft./GFA	931	\$19.78
Fast Food Restaurant w/o Drive-Through	sq. ft./GFA	933	\$25.39
Fast Food Restaurant w/ Drive-Through	sq. ft./GFA	934	\$33.63

Land Use	Unit of Measure	FPE Land Use Code	Fee Per Unit
Favem	sq. ft./GFA	936	\$19.32
Industrial			
Light Industry/High Technology	sq. ft./GFA	110	\$5.29
Industrial Park	sq. ft./GFA	130	\$4.64
Warehousing/Storage	sq. ft./GFA	150	\$2.54
Commercial—Retail			
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 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 Through)	sq. ft./GFA	881	\$7.11
Quick Lubrication Vehicle Shop	service bay	941	\$3,427.00
	sq. ft./GFA	896	\$7.72
Supermarket	sq. ft./GFA	850	\$15.98
Tire Store	service bay	849	\$4,379.00
Commercial—Office			
General Office Building	sq. ft./GFA	710	\$6.64
Medical Office/Clinic	sq. ft./GFA	720	\$13.00

- 634 VFP = Vehicle Fueling Positions (maximum number of vehicles that can
635 be fueled simultaneously)
636 GLA = Gross Leasable Area
637 GFA = Gross Floor Area
638 Note 1. Senior housing rate is one-half of attached and stacked housing
639 rate.
640 Note 2. Includes cottage, carriage and two-/three-unit homes approved
641 under Chapter 113-KZC.

<u>Land Uses</u>	<u>Unit of Measure</u>	<u>ITE Land USE Code</u>	<u>Fee per Unit</u>
<u>Cost per Person Trip End ></u>			persons \$3,454.15
<u>Trip Length</u>			
<i>Residential</i>			
<u>Detached Housing</u>	<u>dwelling</u>	<u>210</u>	<u>\$ 5,009</u>
<u>Attached and Stacked Housing</u>	<u>dwelling</u>	<u>220,221,230,233</u>	<u>\$ 2,855</u>
<u>Senior Housing</u>	<u>dwelling</u>	<u>See note 1</u>	<u>\$ 1,427</u>
<u>Nursing Home</u>	<u>bed</u>	<u>620</u>	<u>\$ 742</u>
<u>Congregate Care/ Assisted Living</u>	<u>dwelling</u>	<u>253,254</u>	<u>\$ 573</u>
<i>Commercial - Services</i>			
<u>Drive-in Bank</u>	<u>sq ft/GFA</u>	<u>912</u>	<u>\$ 28.53</u>
<u>Walk-in Bank</u>	<u>sq ft/GFA</u>	<u>911</u>	<u>\$ 17.53</u>
<u>Day Care Center</u>	<u>sq ft/GFA</u>	<u>565</u>	<u>\$ 22.29</u>
<u>Hotel</u>	<u>room</u>	<u>310</u>	<u>\$ 3,434</u>
<u>All Suites Hotel</u>	<u>room</u>	<u>311</u>	<u>\$ 2,290</u>
<u>Service Station/Minimart</u>	<u>VFP</u>	<u>945</u>	<u>\$ 12,167</u>
<u>Movie Theater</u>	<u>screens</u>	<u>445</u>	<u>\$ 32,107</u>
<u>Health Club</u>	<u>sq ft/GFA</u>	<u>492</u>	<u>\$ 9.88</u>
<u>Racquet Club</u>	<u>sq ft/GFA</u>	<u>491</u>	<u>\$ 2.97</u>
<u>Marina</u>	<u>Berth</u>	<u>420</u>	<u>\$ 638</u>
<i>Commercial - Institutional</i>			
<u>Elementary School/Jr. High School</u>	<u>student</u>	<u>520,522</u>	<u>\$ 289</u>
<u>High School</u>	<u>student</u>	<u>530</u>	<u>\$ 282</u>
<u>University/College</u>	<u>student</u>	<u>550</u>	<u>\$ 553</u>
<u>Church</u>	<u>sq ft/GFA</u>	<u>560</u>	<u>\$ 2.45</u>
<u>Hospital</u>	<u>sq ft/GFA</u>	<u>610</u>	<u>\$ 4.48</u>
<i>Commercial - Restaurant</i>			
<u>Quality Restaurant</u>	<u>sq ft/GFA</u>	<u>931</u>	<u>\$ 17.17</u>
<u>High-Turnover Restaurant</u>	<u>sq ft/GFA</u>	<u>932</u>	<u>\$ 22.98</u>
<u>Fast Food Restaurant w/o drive thru</u>	<u>sq ft/GFA</u>	<u>933</u>	<u>\$ 31.49</u>
<u>Fast Food Restaurant w drive thru</u>	<u>sq ft/GFA</u>	<u>934</u>	<u>\$ 39.31</u>
<i>Industrial</i>			
<u>Light Industry/High Technology</u>	<u>sq ft/GFA</u>	<u>110</u>	<u>\$ 5.80</u>
<u>Industrial Park</u>	<u>sq ft/GFA</u>	<u>130</u>	<u>\$ 5.08</u>
<u>Warehousing/Storage</u>	<u>sq ft/GFA</u>	<u>150</u>	<u>\$ 1.91</u>
<i>Commercial - Retail</i>			
<u>Shopping Center</u>	<u>sq ft/GLA</u>	<u>820</u>	<u>\$ 4.94</u>
<u>Auto Parts Sales</u>	<u>sq ft/GFA</u>	<u>843</u>	<u>\$ 6.98</u>
<u>Auto Care Center</u>	<u>sq ft/GLA</u>	<u>942</u>	<u>\$ 4.46</u>

Car Sales - New/Used	sq ft/GFA	841	\$ 11.61
Convenience Market	sq ft/GFA	851	\$ 40.20
Discount Club	sq ft/GFA	857	\$ 12.68
Free Standing Discount Store	sq ft/GFA	815	\$ 9.19
Hardware/Paint Store	sq ft/GFA	816	\$ 7.33
Home Improvement Superstore	sq ft/GFA	862	\$ 3.42
Nursery/Garden Center	sq ft/GFA	817	\$ 9.94
Pharmacy(with Drive Through)	sq ft/GFA	881	\$ 10.34
Quick Lubrication Vehicle Shop	Service Bay	941	\$ 4,249
Supermarket	sq ft/GFA	850	\$ 15.34
Tire Store	Service Bay	848	\$ 5,217
Miscellaneous Retail	sq ft/GLA	820	\$ 4.94
Commercial - Office			
General Office Building	sq ft/GFA	710	\$ 7.96
Medical Office/Clinic	sq ft/GFA	720	\$ 14.97

Notes:

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

GLA= Gross Leasable Area

GFA= Gross Floor Area

For uses with Unit of Measure in sq ft, trip rate is given as trips per 1000 sq ft


Note 1. Senior Housing rate is 1/2 of Attached and Stacked Housing rate

642 Section 13. If any provision of this ordinance or its application
 643 to any person or circumstance is held invalid, the remainder of the
 644 ordinance or the application of the provision to other persons or
 645 circumstances is not affected.
 646

647 Section 14. This ordinance shall be in force and effect on
 648 January 1, 2016, after its passage by the Kirkland City Council and
 649 publication pursuant to Section 1.08.017, Kirkland Municipal Code in the
 650 summary form attached to the original of this ordinance and by this
 651 reference approved by the City Council.
 652

653 Passed by majority vote of the Kirkland City Council in open
 654 meeting this 17th day of November, 2015.
 655

656 Signed in authentication thereof this 17th day of November,
 657 2015.



 MAYOR


Attest:



 City Clerk

Publication Date: November 23, 2015

Approved as to Form:



City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. O-4502

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TRANSPORTATION IMPACT FEES AND AMENDING CHAPTER 27.04 OF THE KIRKLAND MUNICIPAL CODE.

SECTION 1. Amends Kirkland Municipal Code ("KMC") Section 27.04.010 updating the findings and authority to assess impact fees.

SECTION 2. Amends KMC 27.04.020 updating the definitions relating to transportation impact fees.

SECTION 3. Amends KMC 27.04.030 relating to the assessment of impact fees.

SECTION 4. Amends KMC 27.04.035 relating to transportation impact fees relating to change of use.

SECTION 5. Amends KMC Section 27.04.040 relating to independent fee calculations, removing references to change of use.

SECTION 6. Amends KMC Section 27.04.050 clarifying exemptions from certain building permit applications.

SECTION 7. Amends KMC Section 27.04.100 clarifying if the city terminates the impact fee program the fee will be refunded.

SECTION 8. Amends KMC Section 27.04.110 relating to use of funds.

SECTION 9. Amends KMC Section 27.04.120 changing the date of an automatic fee increase to 2017 and clarifying the City can determine if a rate study update is needed.

SECTION 10. Amends KMC Section 27.04.130 by removing the reference to change of use for appeals.

SECTION 11. Amends KMC Section 27.04.135 relating to the responsibility for the payment of fees.

SECTION 12. Amends KMC Section 27.04.150 by updating the impact fee schedule.

SECTION 13. Provides a severability clause for the ordinance.

SECTION 14. 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 January 1, 2016, 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 17th day of November, 2015.

I certify that the foregoing is a summary of Ordinance O-4502 approved by the Kirkland City Council for summary publication.



City Clerk