

ORDINANCE O-4503

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PARK IMPACT FEES AND AMENDING CHAPTER 27.06 OF THE KIRKLAND MUNICIPAL CODE.

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

3 Section 1. KMC Section 27.06.020 is amended to read as
4 follows:
5

6 27.06.020 Definitions.

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

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

13 (b) "Applicant" means the owner of real property according to the
14 records of the King County recorder's office, or the applicant's
15 authorized agent.

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

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

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

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

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

28 (h) "Department" means the parks and community ~~service-services~~
29 department.

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

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

38 (k) "Hearing examiner" means the person who exercises the
39 authority of Kirkland Municipal Code Chapter 3.34.

40 (l) "Impact fee" means a payment of money imposed by the city on
41 an applicant prior to issuance of a building permit ~~or a change in land~~

42 ~~use when no building permit is required as a condition of granting a~~
43 ~~building permit or as a requirement for a change in use in order to pay~~
44 for the public facilities needed to serve new residential growth and
45 development. "Impact fee" does not include a reasonable permit fee or
46 application fee.

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

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

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

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

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

82 (r) "Owner" means the owner of real property according to the
83 records of the King County recorder's office; provided, that if the real
84 property is being purchased under a recorded real estate contract, the
85 purchaser shall be considered the owner of the real property.

86 (s) "Parks" means parks, open space, trails, and recreational
87 facilities.

88 (t) "Project improvements" means site improvements and facilities
89 that are planned and designed to provide service for a particular

90 development or users of a project, and are not system improvements.
 91 No improvement or facility included in the capital facilities plan shall be
 92 considered a project improvement.

93 (u) "Public facilities" means the public parks, open space, trails, and
 94 recreational facilities.

95 (v) "Rate study" means the "Rate Study for Impact Fees for Parks
 96 and Recreational Facilities," city of Kirkland, by Henderson, Young and
 97 Company, dated ~~March 27, 2007~~August 13, 2015, as updated and
 98 amended from time to time.

99 (w) "Residential" means housing, such as detached, attached or
 100 stacked units (includes cottage, carriage and two-/three-unit homes
 101 approved under Kirkland Zoning Code Chapter 113-KZC), and senior and
 102 assisted living units intended for occupancy by one or more persons and
 103 not offering other services. For the purpose of this chapter, an accessory
 104 dwelling unit as regulated in Kirkland Zoning Code Chapter 115-KZC is
 105 considered an adjunct to the associated primary structure and is not
 106 charged a separate impact fee.

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

110
 111 Section 2. KMC Section 27.06.030 is amended to read as
 112 follows:

113
 114 27.06.030 Assessment of impact fees.

115 (a) The city shall collect impact fees, based on the schedule in
 116 Section 27.06.150, from any applicant seeking a building permit from
 117 the city, ~~or any person or entity seeking a change in land use to one of~~
 118 ~~the land use categories in Section 27.06.150 when no building permit is~~
 119 ~~required.~~

120 (b) All impact fees shall be collected from the applicant prior to
 121 issuance of the building permit, ~~or prior to occupancy for a change in~~
 122 ~~land use when no building permit is required based on the land use~~
 123 ~~categories in Section 27.06.150.~~ Unless the use of an independent fee
 124 calculation has been approved, or unless a development agreement
 125 entered into pursuant to RCW 36.70B.170 provides otherwise, the fee
 126 shall be calculated based on the impact fee schedule in effect at the
 127 time a complete building permit application is filed. ~~For a change in use~~
 128 ~~for which no building permit is required, the fee shall be calculated~~
 129 ~~based on the impact fee schedule in effect on the date of payment of~~
 130 ~~the impact fee.~~

131 (c) The city shall establish the impact fee rate for a land use that
 132 is not listed on the rate schedule set forth in Section 27.06.150. The
 133 applicant shall submit all information requested by the department for
 134 purposes of determining the impact fee rate pursuant to Section
 135 27.06.040.

136 (d) ~~For a change in use, the impact fee shall be the applicable~~
 137 ~~impact fee for the land use category of the new use, less the impact fee~~
 138 ~~for the land use category of the prior use.~~

139 (e-d) For building permits for mixed use developments, impact
 140 fees shall be imposed on the residential component of the development
 141 found on the schedule in Section 27.06.150.

142 (f-e) For building permits within new subdivisions approved under
 143 Kirkland Municipal Code Title 22 (Subdivisions), a credit shall be applied
 144 for any dwelling unit that exists on the land within the subdivision prior
 145 to the subdivision if the dwelling unit is demolished. The credit shall
 146 apply to the first complete building permit application submitted to the
 147 city subsequent to the demolition of the existing dwelling unit, unless
 148 otherwise allocated by the applicant of the subdivision as part of
 149 approval of the subdivision.

150 (g-f) At the time of issuance of any ~~single-family detached or~~
 151 ~~attached~~ residential building permit ~~issued for a dwelling unit that is~~
 152 ~~being constructed for resale, the applicant may elect to have the impact~~
 153 ~~fee payment deferred until the building permit is complete or 18 months~~
 154 ~~after issuance of the building permit, whichever occurs first. The impact~~
 155 ~~fee due and owing, less any credits awarded, shall be paid prior to~~
 156 ~~building permit final inspection, building permit final occupancy, or 18~~
 157 ~~months after the date of building permit issuance, whichever is~~
 158 ~~applicable, record a covenant against the title to the property that~~
 159 ~~requires payment of the impact fees due and owing, less any credits~~
 160 ~~awarded, by providing for automatic payment through escrow of the~~
 161 ~~impact fee due and owing to be paid at the time of closing of sale of the~~
 162 ~~lot or unit. Applicants electing to use this deferred impact fee process~~
 163 ~~shall pay a two-hundred-forty-dollar administration fee with each~~
 164 ~~respective building permit prior to issuance of such building permit for~~
 165 ~~each individual lien filed.~~

166 (h-g) Except as otherwise provided in this section, the city shall
 167 not issue any building permit unless and until the impact fee has been
 168 paid. ~~For a change in land use when a building permit is not required,~~
 169 ~~an applicant shall not occupy or permit a tenant to occupy the subject~~
 170 ~~property unless and until the impact fee has been paid.~~

171 (I-h) The payment of impact fees may be delayed through a
 172 development agreement approved by the city council pursuant to
 173 Chapter 36.70B RCW, provided the following criteria are met:

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

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

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

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

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

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

186 (C) Projects that involve partnerships with other governmental
 187 agencies; and

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

190
 191 Section 3. KMC Section 27.06.050 is amended to read as
 192 follows:

193 27.06.050 Exemptions.

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

196 (1) Replacement, alteration, expansion, enlargement, remodeling,
197 rehabilitation or conversion of an existing dwelling unit where no
198 additional units are created ~~and the use is not changed~~. Replacement
199 must occur within five years of the demolition or destruction of the prior
200 structure. For replacement of structures in a new subdivision, see
201 Section 27.06.030(f).

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

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

206 (4) Demolition or moving of a structure.

207 (5)(A) Any applicant for the construction or creation of low-
208 income housing may request an exemption of eighty percent of the
209 required impact fee for low-income housing units subject to the criteria
210 in subsection (a)(5)(C) of this section.

211 (B) Any applicant for an exemption from the impact fee which
212 meets the criteria set forth in subsection (a)(5)(C) of this section shall
213 apply to the city manager for an exemption. The application shall be on
214 forms provided by the city and shall be accompanied by all information
215 and data the city deems necessary to process the application.

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

219 (i) The applicant must be proposing a greater number of low-
220 income housing units or a greater level of affordability for those units
221 than is required by the Kirkland Zoning Code and/or the Kirkland
222 Municipal Code. The allowed exemption shall only apply to those units
223 in excess of the minimum required by code unless the development will
224 be utilizing public assistance targeted for low-income housing.

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

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

231 (D) The city manager shall review applications for exemptions
232 under subsection (a)(5)(A) of this section pursuant to the above criteria
233 and shall advise the applicant, in writing, of the granting or denial of the
234 application. In addition, the city manager shall notify the city council
235 when such applications are granted or denied.

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

239 (F) Any claim for exemption must be made before payment of the
240 impact fee. Any claim not so made shall be deemed waived. The claim

241 for exemption must be accompanied by a draft lien and covenant
242 against the property guaranteeing that the low-income housing use will
243 continue. Before approval of the exemption, the planning and building
244 department shall approve the form of lien and covenant, which shall, at
245 a minimum, meet the requirements of RCW 82.02.060. Prior to issuance
246 of a certificate of occupancy for any portion of the development, the
247 applicant shall execute and record the approved lien and covenant with
248 the King County recorder's office. The lien and covenant shall run with
249 the land. In the event the property is no longer used for low-income
250 housing, the current owner shall pay the current impact fee plus interest
251 to the date of the payment.

252 (b) Unless otherwise established in this section, the ~~planning~~
253 director shall be authorized to determine whether a particular
254 development for a proposed building permit ~~or a change in land use~~
255 ~~when no building permit is required~~ falls within an exemption of this
256 chapter or of this code. Determinations of the director shall be subject
257 to the appeals procedures set forth in Section 27.06.130.

258
259 Section 4. KMC Section 27.06.100 is amended to read as
260 follows:

261
262 27.06.100 Refunds.

263 (a) If the city fails to expend or encumber the impact fees within
264 ten years of payment (or where extraordinary or compelling reasons
265 exist, such other time periods as established pursuant to Section
266 27.06.080), the current owner of the property for which impact fees
267 have been paid may receive a refund of the fee. In determining whether
268 impact fees have been expended or encumbered, impact fees shall be
269 considered expended or encumbered on a first-in, first-out basis.

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

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

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

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

282 (f) ~~When~~If the city terminates the impact fee program, all
283 unexpended or unencumbered funds, including interest earned, shall be
284 refunded pursuant to this chapter. The city shall publish notice of the
285 termination and the availability of refunds in a newspaper of general
286 circulation at least two times and shall notify all potential claimants by
287 first class mail to the last known address of the claimants. All funds
288 available for refund shall be retained for a period of one year after the
289 second publication. At the end of one year, any remaining funds shall

290 be retained by the city, but must be expended for the appropriate public
 291 facilities. This notice requirement shall not apply if there are no
 292 unexpended or unencumbered balances within the account.

293 (g) The city shall also refund the impact fee paid plus interest to
 294 the current owner of property for which the impact fee had been paid,
 295 if the development was never completed or occupied; provided, that if
 296 the city expended or encumbered the impact fee in good faith prior to
 297 the application for a refund, the director may decline to provide the
 298 refund. If, within a period of three years, the same or subsequent owner
 299 of the property proceeds with the same or substantially similar
 300 development, the owner can petition the director for an offset. The
 301 petitioner shall provide receipts of impact fees previously paid for a
 302 development of the same or substantially similar nature on the same
 303 property or some portion thereof. The director shall determine whether
 304 to grant an offset, and the determinations of the director may be
 305 appealed pursuant to the procedures in Section 27.06.130.

306
 307 Section 5. KMC Section 27.06.120 is amended to read as
 308 follows:

309
 310 27.06.120 Review of schedule and fee increases.

311 (a) The schedule in Section 27.06.150 will be amended to reflect
 312 changes to the capital facilities plan in Chapter XIII of Title 17 of this
 313 code (the comprehensive plan). Amendments to the schedule for this
 314 purpose shall be adopted by the council.

315 (b) The fees on the schedule in Section 27.06.150 shall be indexed
 316 to provide for an automatic fee increase each January 1st beginning in
 317 the year ~~2009~~2017. The June to June Seattle-Tacoma-Bremerton Area
 318 Consumer Price Index (CPI-W) will be used to determine the increase
 319 in fees for each year to reflect increased project costs. In the event that
 320 the fees on the schedule in Section 27.06.150 are increased during the
 321 preceding calendar year due to changes to the capital facilities plan
 322 pursuant to subsection (a) of this section, the fees will not be indexed
 323 the following January. The finance and administration department shall
 324 compute the fee increase and the new schedule shall become
 325 effective immediately after the annual fee increase calculation.

326 (c) A new rate study, which establishes the schedule in Section
 327 27.06.150, shall be updated every three years, unless the city
 328 determines that circumstances ~~have not changed to~~ do not warrant an
 329 update.

330
 331 Section 6. KMC Section 27.06.130 is amended to read as
 332 follows:

333
 334 27.06.130 Appeals.

335 (a) An appeal of an impact fee imposed on a building permit ~~or a~~
 336 ~~change in land use when no building permit is required~~ may only be filed
 337 by the applicant of the building permit for the subject property. An
 338 appeal of an impact fee assessed pursuant to Section 27.06.135(b) ~~or~~

339 ~~(e)~~ may be filed by a property owner or occupant responsible for the
340 change in use when no building permit is required. An applicant may
341 either file an appeal and pay the impact fee imposed by this chapter
342 under protest, or appeal the impact fee before issuance of the building
343 permit ~~or before occupancy for a change in use when no building permit~~
344 ~~is required~~. No appeal may be filed after the impact fee has been paid
345 and the building permit has been issued ~~or occupancy has occurred for~~
346 ~~a change in use for which no building permit is required~~.

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

349 (1) The applicability of the impact fees to a given building permit
350 ~~or change in use when no building permit is required~~ pursuant to
351 Sections 27.06.030 and 27.06.050;

352 (2) The decision on an independent fee calculation in Section
353 27.06.040;

354 (3) The availability or value of a credit in Section 27.06.060; or

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

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

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

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

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

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

368 (1) The appeal and any supportive information submitted by the
369 appellant;

370 (2) The director's determination along with the record of the
371 impact fee determination and, if applicable, the independent fee
372 calculation; and

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

374 (f) The hearing examiner shall review the appeal from the
375 applicant, the director's memorandum, and the record of determination
376 from the director. No oral testimony shall be given, although legal
377 arguments may be made. The determination of the director shall be
378 accorded substantial weight.

379 (g) The hearing examiner is authorized to make findings of fact and
380 conclusions of law regarding the decision. The hearing examiner may,
381 so long as such action is in conformance with the provisions of this
382 chapter, reverse or affirm, in whole or in part, or modify the
383 determination of the director, and may make such order, requirements,
384 decision or determination as ought to be made, and to that end shall
385 have the powers which have been granted to the director by this
386 chapter. The hearing examiner's decision shall be final.

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

389 (i) The department shall distribute a copy of the hearing examiner's
390 decision to the appellant within five working days of receiving the
391 decision.

392 (j) In the event the hearing examiner determines that there is a
393 flaw in the impact fee program, that a specific exemption or credit
394 should be awarded on a consistent basis, or that the principles of
395 fairness require amendments to this chapter, the hearing examiner may
396 advise the council as to any question or questions that the hearing
397 examiner believes should be reviewed as part of the council's review of
398 the fee schedule in Section 27.06.150 as provided by Section 27.06.120.
399

400 Section 7. KMC Section 27.06.150 is amended to read as
401 follows:
402

403 27.06.150 Fee schedule.

404 The impact fee schedule below is based on the city's ~~2007~~latest rate
405 study. As authorized under Section 27.06.120(b), the schedule may
406 automatically increase each January 1st based on the CPI-W Index. See
407 the public works department's fee schedule for the current impact fee.

Park Impact Fee Schedule

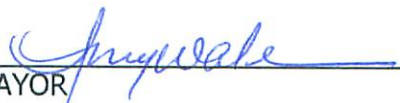
Type of Land Use	Impact Fee	Per Unit
Detached unit	\$3,621 <u>\$3,968</u>	Dwelling unit
Attached, stacked, senior or assisted living unit development, and cottage, carriage and two-/three-unit homes approved under Chapter <u>113</u> KZC	\$2,368 <u>\$3,015</u>	Dwelling unit

408 Section 8. If any provision of this ordinance or its application to
409 any person or circumstance is held invalid, the remainder of the
410 ordinance or the application of the provision to other persons or
411 circumstances is not affected.
412

413 Section 9. This ordinance shall be in force and effect on January
414 1, 2016, after its passage by the Kirkland City Council and publication
415 pursuant to Section 1.08.017, Kirkland Municipal Code in the summary
416 form attached to the original of this ordinance and by this reference
417 approved by the City Council.
418

419 Passed by majority vote of the Kirkland City Council in open
420 meeting this 17th day of November, 2015.
421

422 Signed in authentication thereof this 17th day of November,
423 2015.


MAYOR

Attest:

Nate Anderson
City Clerk

Approved as to Form:

Publication Date: November 23, 2015

John Johnson
City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4503

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PARK IMPACT FEES AND AMENDING CHAPTER 27.06 OF THE KIRKLAND MUNICIPAL CODE.

SECTION 1. Amends Kirkland Municipal Code ("KMC") Section 27.06.020 updating the definitions relating to park impact fees.

SECTION 2. Amends KMC Section 27.06.030 relating to the assessment of impact fees.

SECTION 3. Amends KMC Section 27.06.050 relating to exemptions from impact fees.

SECTION 4. Amends KMC Section 27.06.100 clarifying if the city terminates the impact fee program the fee will be refunded.

SECTION 5. Amends KMC Section 27.06.120 changing the date of an automatic fee increase to 2017 and clarifying the City can determine if a rate study update is needed.

SECTION 6. Amends KMC Section 27.06.130 by removing the reference to change of use for appeals.

SECTION 7. Amends KMC Section 27.06.150 by updating the impact fee schedule.

SECTION 8. Provides a severability clause for the ordinance.

SECTION 9. 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-4503 approved by the Kirkland City Council for summary publication.



City Clerk