

ORDINANCE NO. 4100

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING CHAPTER 27.04 OF THE KIRKLAND MUNICIPAL CODE RELATING TO TRANSPORTATION IMPACT FEES; ADOPTING A NEW TRANSPORTATION IMPACT FEE SCHEDULE; PROVIDING FOR PERIODIC REVIEW AND ANNUAL ADJUSTMENT OF THE IMPACT FEE SCHEDULE; AND ADDRESSING OTHER RELATED MATTERS.

WHEREAS, the City of Kirkland is authorized under RCW Chapter 82.02 to require new growth and development within the City of Kirkland to pay a proportionate share of the cost of new facilities to serve such new growth and development through the assessment of impact fees; and

WHEREAS, the City Council wishes to ensure that the transportation facilities necessary to support development is adequate without decreasing current service levels below established minimum standards for the City; and

WHEREAS, the City of Kirkland has conducted extensive research documenting the procedures for measuring the impact of new development on public facilities and has prepared or obtained technical reports which serve as the basis for adopting a new impact fee schedule.

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. The title of Chapter 27.04 of the Kirkland Municipal Code is hereby changed to "Transportation Impact Fees."

Section 2. Appendix A of Chapter 27.04 of the Kirkland Municipal Code is hereby repealed.

Section 3. Chapter 27.04 of the Kirkland Municipal Code is hereby amended to read as follows:

27.04.010 Findings and authority.

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

27.04.020 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.

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

(2) "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.

(3) "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.

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

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

~~(6) "Certificate of occupancy" means the term as defined in the Uniform Building Code adopted in Title 21 of this code. In the case of a change in use or occupancy of an existing building or structure which may not require a building permit, the term shall specifically include certificate of occupancy and for residential development the final inspection, as those permits are defined or required by this code.~~

~~(67)~~ "City" means the city of Kirkland, Washington.

~~(78)~~ "Council" means the city council of the city.

~~(89)~~ "Department" means the public works department.

~~(910)~~ "Director" means the director of the public works department, or the director's designee.

~~(1011)~~ "Encumbered" means to reserve, set aside or otherwise earmark the impact fees in order to pay for transportation planning, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting, financing, administrative expenses, construction of roads and related facilities, and any other commitments, contractual obligations or other liabilities incurred for public facilities.

~~(1112)~~ "Gross floor area" is the total square footage of all floors in a structure as defined in Chapter 5 of Title 23 of this code (zoning code).

~~(1213)~~ "Hearing examiner" means the person who exercises the authority of Chapter 3.34 of this code.

~~(1314)~~ "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, or a certificate of occupancy if a building permit is not required, pursuant to this chapter as a condition of granting a building permit, ~~or certificate of occupancy permit if no building permit is required, or~~

as a requirement for a change in use in order to pay for the public facilities needed to serve new growth and development. "Impact fee" does not include a reasonable permit fee or application fee.

(1415) "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.

(1516) "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 attached as ~~Appendix A~~ KMC 27.04.150 to this chapter.

(1617) "Interest" means the interest rate earned by local jurisdictions in the State of Washington Local Government Investment Pool, if not otherwise defined.

(1718) "Interlocal agreement" or "agreement" means a roads 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.

(1819) "Low-income housing" means (A) 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 (B) 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.

(1920) "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.

(2021) "Prior use" means the use with the highest impact fee per unit, based on the schedule in KMC 27.04.150, in existence since January 1, 1998 ~~2006, as documented by City records based on the schedule in Appendix A.~~

(2122) "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.

(2223) "Public facilities" means the public streets and roads of the city or other governmental entities.

(2324) "Residential" means housing, such as single-family dwellings, accessory dwelling units, apartments, condominiums, mobile homes and/or manufactured homes, intended for occupancy by one or more persons and not offering other services. 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.

(2425) "Rate study" means the Transportation Impact Fee Rate Study, City of Kirkland, by Mirai, Associates BRW, Inc., dated April 10, 2007 ~~March 1999~~.

(2526) "Road" means a right-of-way which affords the principal means of access to abutting property, including avenue, place, way, drive, lane, boulevard, highway, street, and other thoroughfare, except an alley.

(2627) "Square footage" means the square footage of the gross floor area of the development as defined in Chapter 5 of Title 23 of this code (zoning code).

(2728) "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.

27.04.030 Assessment of impact fees.

(a) The city shall collect impact fees, based on ~~the schedule in Appendix AKMC 27.04.150~~, from any applicant seeking a building permit from the city, or ~~certificate of occupancy permit if a building permit is not required~~ any person or entity seeking a change in land use based on the land use categories on the schedule in KMC 27.04.150 when no building permit is required. The public works department is authorized to determine what land use category found in the rate schedule applies to the application.

(b) All impact fees shall be collected from the applicant prior to issuance of the building permit, or prior to occupancy for a change in land use when no building permit is required based on the land use categories on the schedule in KMC 27.04.150. Unless the use of an independent fee calculation has been approved, or unless a development agreement entered into pursuant to RCW 36.70B.170 provides otherwise, the fee shall be calculated based on impact fee schedule in effect at the time a complete building permit application is filed. For a change in use for which no building permit is required, the fee shall be calculated based on the impact fee schedule in effect on the date of payment of the impact fee. ~~certificate of occupancy permit if no building permit is required, using the impact fee schedule then in effect or pursuant to an independent fee calculation accepted by the director pursuant to Section 27.04.040.~~

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

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

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

~~(f) For existing or new mixed use buildings or developments, the impact fee for any building permit, or certificate of occupancy if a building permit is not required, shall be determined by multi-tenant averaging, if the owner has entered into a multi-tenant averaging agreement with the city. The public works director is authorized to prepare and execute the agreement. For purposes of this subsection, "multi-tenant averaging" shall be determined as follows:~~

~~(1) Concurrent with execution of the agreement, determine the total impact fee for all land use categories, based on the schedule in Appendix A ("total impact fee").~~

~~(2) For a proposed change of use, determine the total impact fee for the continuing and new uses, based on the schedule in Appendix A ("new total impact fee").~~

~~(3) If the new total impact fee is greater than the total impact fee, then an impact fee is due and owing for the difference between the two impact fees. If the opposite is true, no impact fee is due and owing.~~

~~(4) When an impact fee is due and owing due to a change in use, the amount of the total impact fee shall be increased to the amount of the new total impact fee for purposes of determining future impact fees.~~

~~(fg) The building division of the fire and building department shall not issue any building permit, or certificate of occupancy if no building permit is required, unless and until the impact fee has been paid. For a change in land use when a building permit is not required, an applicant shall not occupy or permit a tenant to occupy the subject property unless and until the impact fee has been paid.~~

~~(h) Notwithstanding the provisions of subsections (b) and (g) of this section, for a period of one year following the effective date of the ordinance codified in this subsection, an applicant for a building permit that meets the criteria of this subsection (h) may defer the payment of impact fees imposed on the building permit until the start of construction of the development that is authorized by~~

~~the permit. For the purposes of this subsection (h), the following criteria shall apply:~~

~~(1) Only an applicant for a building permit subject to an impact fee of \$10,000 or greater is eligible to defer the impact fee payment until the start of construction of the development that is authorized by the permit.~~

~~(2) "Start of construction" is defined as the initial performance of any clearing, grading, underground utilities work, foundation work, or other construction activity of any nature whatsoever on the development that is authorized by the building permit.~~

~~(3) If the applicant allows the building permit to expire without starting construction of the development that is authorized by the permit, the applicant shall not be required to pay the impact fees to the city.~~

~~(4) The building permit applicant shall post a performance security equal to the amount of the fee prior to the issuance of the building permit. The performance security shall be released upon payment of the impact fee or expiration of the building permit, whichever occurs first.~~

~~(5) The deferment of the payment of the impact fee by the applicant shall have no effect on (a) the expiration date of the building permit, or (b) the requirement in Section 27.04.130 that an appeal of the imposition of the impact fee be filed prior to issuance of the building permit.~~

~~(6) If the applicant starts construction of the development authorized by the building permit prior to paying the impact fee, the city shall issue and post a stop work order on the development. The applicant shall have no right to appeal or challenge a stop work order posted pursuant to this subsection (h)(6).~~

~~(7) The owner of the property that is the subject of the building permit shall sign an agreement, in a form approved by the city attorney, to be recorded with the King County records office, acknowledging the following:~~

~~(A) The owner has opted to defer the payment of the impact fee, indicating the amount of the impact fee.~~

~~(B) The deferred impact fee is due to the city at the start of construction.~~

~~(C) The owner cannot appeal the payment of the impact fee.~~

~~(D) The owner is subject to a stop work order if the owner starts construction before paying the impact fee, and such stop work order cannot be appealed.~~

~~(E) The owner will forfeit the performance security if the owner defaults on the impact fee payment.~~

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 Appendix AKMC 27.04.150 accurately describes the impacts resulting from issuance of the proposed building permit, or for a change in use when certificate of occupancy if 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, or certificate of occupancy if 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 the KMC.

(b) If an applicant requests not to have the impact fees determined according to the schedule in ~~Appendix~~ KMC 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~~ certificate of occupancy if 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 administrative processing fee of two hundred dollars per fee calculation, unless a different fee is provided for in Title 5 of the KMC.

(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 KMC 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 KMC 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 in use certificate of occupancy permit~~ 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.

27.04.050 Exemptions.

(a) The following building permit applications, ~~or certificate of occupancy if no building permit is required,~~ shall be exempt from impact fees:

~~(1) Any building permit application, or certificate of occupancy application if no building permit is required, that has been submitted to the building division of the fire and building department before five p.m. the business day before the effective date of the ordinance codified in this chapter and subsequently determined to be a complete application by the public works department, the fire and building department and the planning department based on the~~

~~information on file as of the effective date of the ordinance codified in this chapter.~~

~~(12)~~ 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 ~~twenty-four~~^{twelve} consecutive months of the demolition or destruction of the prior structure.

~~(23)~~ 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.

(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, ~~or certificate of occupancy if 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.

27.04.060 Credits.

(a) An applicant may request a credit or credits for the value of dedicated land, improvements, or construction if the land and/or the facility constructed are included within the capital facilities plan or the director makes the finding that such land and/or facility would serve the goals and objectives of the capital facilities plan.

(b) Each request for a credit or credits shall include a legal description of land donated, a detailed description of improvements or construction provided,

and a legal description or other adequate description of the development to which the credit will be applied.

(c) For each request for a credit or credits, the director shall determine the value of the dedicated land, improvements, or construction on a case-by-case basis. In the event that the applicant disagrees with the director's valuation, the applicant may submit an appraisal for the director's consideration, prepared by a state-certified real estate appraiser who has an MAI or SRA designation from the Appraisal Institute, establishing the fair market value of the dedicated land, improvements, or construction. The applicant shall pay the cost of the appraisal.

(d) After the director has determined the amount of the credit, the department shall include the determination with issuance of the building permit, ~~or occupancy permit if no building permit is required~~, a statement setting forth the dollar amount of the credit, the basis for the credit, where applicable, the description of the land donated to which the credit is applied and the date of the determination.

(e) Any claim for credit must be made before payment of the impact fee and prior to issuance of the building permit, ~~or certificate of occupancy if no building permit is required~~. Any claim not so made shall be deemed waived.

(f) No credit shall be given for project improvements or right-of-way dedications for direct access improvements to and/or within the subject development.

(g) Determinations made by the director pursuant to this chapter shall be subject to the appeals procedures set forth in Section 27.04.130.

27.04.070 Adjustments.

Pursuant to and consistent with the requirements of RCW 82.02.060, the rate study has provided adjustments for past and future taxes paid or to be paid by the new development which are earmarked or proratable to the same new system improvements that will serve the new development. The schedule in ~~Appendix AKMC~~ 27.04.150 has been reasonably adjusted for taxes and other revenue sources that are anticipated to be available to fund system improvements.

27.04.080 Establishment of impact fee account.

(a) An impact fee account is established for the fees collected pursuant to this chapter and shall be entitled the ~~transportation roads~~ impact fee account. Impact fees shall be earmarked specifically and deposited in the special interest-bearing account ~~and shall be prudently invested in a manner consistent with the investment policies of the city~~. Funds withdrawn from this account shall be used in accordance with the provisions of Section 27.04.110. Interest earned on impact fees shall be retained in the account and expended for the purpose for which the impact fees were collected.

(b) On an annual basis, the finance director shall provide a report to the council on the account showing the source and amount of all moneys

collected, earned, or received, and system improvements that were financed in whole or in part by impact fees.

(c) Impact fees shall be expended or encumbered within six years of receipt, unless the council identifies in written findings an extraordinary and compelling reason or reasons for the city to hold the fees beyond the six-year period. Under such circumstances, the council shall establish the period of time within which the impact fees shall be expended or encumbered.

27.04.090 Authorization for interlocal agreements.

The city manager is authorized to execute, on behalf of the city, an interlocal agreement with other state and local governments for the collection, expenditure, and reporting of impact fees.

27.04.100 Refunds.

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

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

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

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

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

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

(g) The city shall also refund the impact fee paid plus interest to the current owner of property for which the impact fee had been paid, if the development was never completed or occupied; provided, that if the city expended or encumbered the impact fee in good faith prior to the application for a refund,

the director may decline to provide the refund. If within a period of three years, the same or subsequent owner of the property proceeds with the same or substantially similar development, the owner can petition the director for an offset. The petitioner shall provide receipts of impact fees previously paid for a development of the same or substantially similar nature on the same property or some portion thereof. The director shall determine whether to grant an offset, and the determinations of the director may be appealed pursuant to the procedures in Section 27.04.130.

27.04.110 Use of funds.

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

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

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

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

27.04.120 Review of schedule and fee increases.

(a) The schedule in KMC 27.04.150 will be amended to reflect changes to the 20-year transportation project list as part of adoption of amendments to the capital facilities plan in Chapter XIII of Title 17 of this code (the Comprehensive Plan). Amendments to the schedule for this purpose shall be adopted by the council.

(b) The fees on the schedule in KMC 27.04.150 shall be indexed to provide for an automatic fee increase each January 1st beginning in the year 2009. A six year moving average of the Washington State Department of Transportation Construction Cost Index will be used to determine the increase in fees for each year to reflect increased project costs. In the event that the fees on the schedule in KMC 27.04.150 are increased during the preceding calendar year due to changes to the 20-year transportation project list pursuant to Section 27.04.120(a), the fees will not be indexed the following January. The finance and administration department shall compute the fee increase and the new schedule shall become effective immediately after the annual fee increase calculation.

(ca) A new rate study, which establishes the schedule in KMC 27.04.150, shall be updated every 3 years, unless the city determines that circumstances

~~have not changed to warrant an update. The schedule in Appendix A shall be reviewed by the council no later than three years after the effective date of the ordinance codified in this chapter, and every three years thereafter.~~

~~(b) The schedule in Appendix A may be reviewed by the council as it deems appropriate in conjunction with the update of the capital facilities plan.~~

27.04.130 Appeals.

(a) ~~An appeal of an impact fee imposed on a building permit or a change in land use when no building permit is required, or certificate of occupancy if no building permit is required, may only be filed by the applicant of the subject property. An appeal of an impact fee assessed pursuant to KMC 27.04.135(b) or (c) may be filed by a property owner or occupant responsible for the change in use when no building permit is required.~~ An applicant may either file an appeal and pay the impact fee imposed by this chapter under protest, or appeal the impact fee before issuance of the building permit or before occupancy for a change in use when no building permit is required ~~or certificate of occupancy if no building permit is required~~. No appeal may be filed after the impact fee has been paid and the building permit ~~or certificate of occupancy~~ has been issued or occupancy has occurred for a change in use for which no building permit is required.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The hearing examiner shall review the appeal from the applicant, the director's memorandum, and the record of determination from the director. No

oral testimony shall be given, although legal arguments may be made. The determination of the director shall be accorded substantial weight.

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

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

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

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

27.04.135 Responsibility for payment of fees.

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

(b) In the event that a building permit is erroneously issued without payment of the fees authorized by this chapter, the building official may issue a written notice to the property owner and occupant advising them of the obligation to pay the fees authorized by this chapter. Such notice shall include a statement of the basis under which the fees under this chapter are being assessed, the amount of fees owed, and a statement that the property owner or occupant may appeal the fee determination within 20 calendar days of the date the notice was issued. Any appeals of such a fee determination shall be processed in accordance with the procedures set forth in KMC 27.04.130.

(c) In the event a change in land use for which no building permit is required results in an obligation to pay impact fees, the director may issue a written notice to the property owner and occupant advising them of the obligation to pay the fees authorized by this chapter. Such notice shall include a statement of the basis under which the fees under this chapter are being assessed, the amount of fees owed, and a statement that the property owner or occupant may appeal the fee determination within 20 calendar days of the date the notice was issued. Any appeals of such a fee determination shall be processed in accordance with the procedures set forth in KMC 27.04.130.

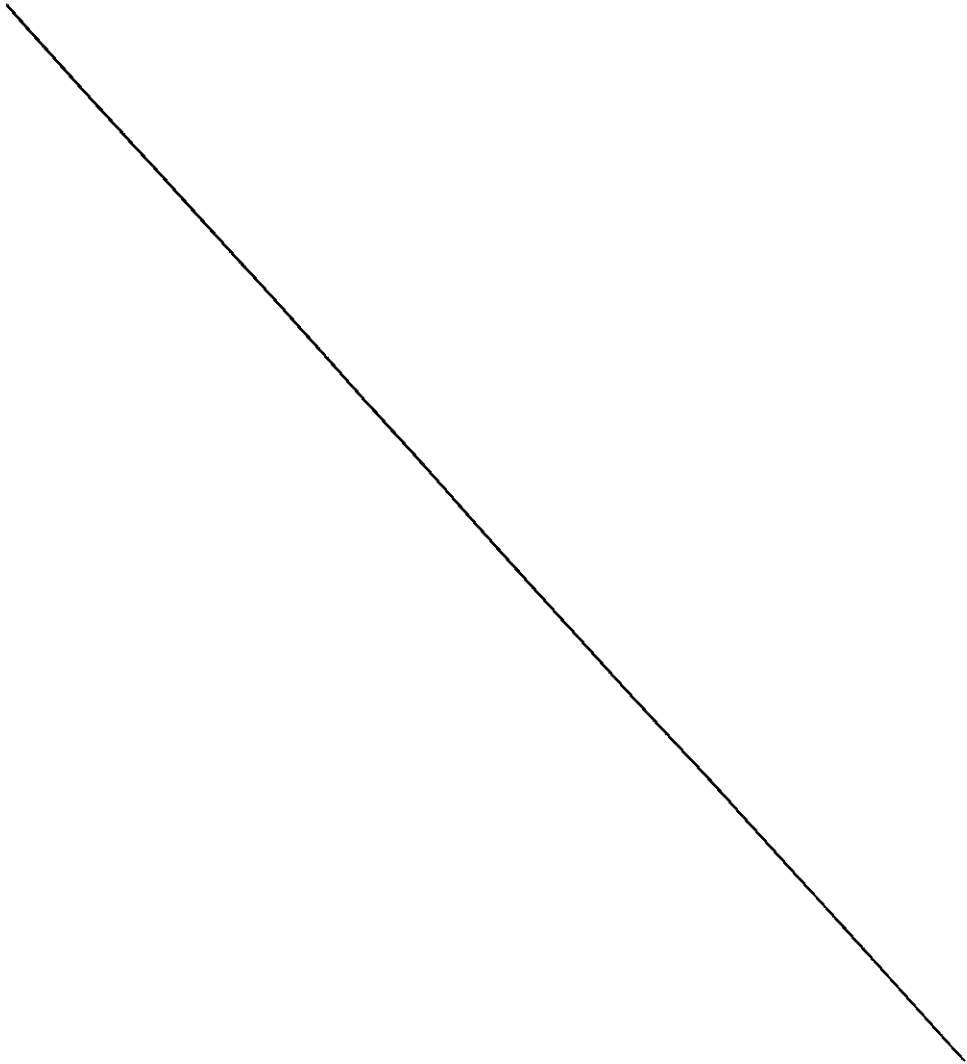
(d) If a property owner or occupant fails to appeal the issuance of a fee notice under subsection (b) or (c) of this section, or if the property owner or occupant's appeal is unsuccessful, the City is authorized to institute collection proceedings for the purpose of recovering the unpaid impact fees.

27.04.140 Existing authority unimpaired.

Nothing in this chapter shall preclude the city from requiring the applicant for a building permit, or a change in use certificate of occupancy if no building permit is required, to mitigate adverse environmental impacts of a specific development pursuant to the State Environmental Policy Act, RCW Chapter 43.21C, based on the environmental documents accompanying the underlying development approval process, and/or RCW Chapter 58.17, governing plats and subdivisions; provided, that the exercise of this authority is consistent with the provisions of RCW 82.02.050(1)(c).

Section 4. A new Section 27.04.150 is hereby added to the Kirkland Municipal Code 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
<i>Residential</i>			
Detached Housing	dwelling	210	\$3,432
Attached and Stacked Housing	dwelling	220,221,230,233	\$2,012
Senior Housing	dwelling	See Note 1	\$1,006
Nursing Home	bed	620	\$598
Congregate Care/ Assisted Living	dwelling	253,254	\$462
<i>Commercial - Services</i>			
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
Extended Stay Motel	room	311	\$1,553
Service Station	VFP	944	\$9,151
Service Station/Minimart	VFP	945	\$6,625
Service Station/Minimart/Car Wash	VFP	946	\$9,901
Carwash	stall	947	\$5,594
Movie Theater	seats	445	\$550
Health Club	sq ft/GFA	492	\$9.14
Racquet Club	sq ft/GFA	491	\$4.12
Marina	Berth	420	\$512
<i>Commercial - Institutional</i>			
Elementary School/Jr. High School	student	520	\$435
High School	student	530	\$272
University/College	student	550	\$553
Church	sq ft/GFA	560	\$2.37
Hospital	sq ft/GFA	610	\$4.58
<i>Commercial - Restaurant</i>			
Restaurant	sq ft/GFA	931	\$19.78
Fast Food Restaurant w/o drive thru	sq ft/GFA	933	\$25.39
Fast Food Restaurant w drive thru	sq ft/GFA	934	\$33.63
Tavern	sq ft/GFA	936	\$19.32
<i>Industrial</i>			
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

Land Uses	Unit of Measure	ITE Land USE Code	Fee Per Unit
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
Free Standing 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
Video Rental	sq ft/GFA	896	\$7.72
Supermarket	sq ft/GFA	850	\$15.98
Tire Store	Service Bay	849	\$4,379
Commercial - Office			
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 Area

GFA= Gross Floor Area

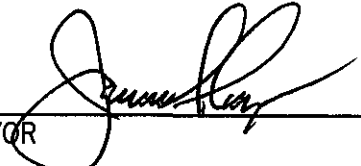
Note 1. Senior Housing rate is 1/2 of Attached and Stacked Housing rate

Section 5. 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 6. This ordinance shall be in force and effect on February 1, 2008 after 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.

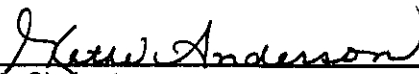
Passed by majority vote of the Kirkland City Council in open meeting
this 5th day of June, 2007.

Signed in authentication thereof this 5th day of
June, 2007.



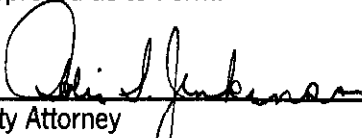
MAYOR

Attest:



City Clerk

Approved as to Form:



City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4100

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING CHAPTER 27.04 OF THE KIRKLAND MUNICIPAL CODE RELATING TO TRANSPORTATION IMPACT FEES; ADOPTING A NEW TRANSPORTATION IMPACT FEE SCHEDULE; PROVIDING FOR PERIODIC REVIEW AND ANNUAL ADJUSTMENT OF THE IMPACT FEE SCHEDULE; AND ADDRESSING OTHER RELATED MATTERS.

SECTION 1. Changes the title of Chapter 27.04 of the Kirkland Municipal Code ("KMC") to "Transportation Impact Fees."

SECTION 2. Repeals Appendix A to Chapter 27.04 of the KMC.

SECTION 3. Amends numerous sections of Chapter 27.04 of the KMC relating to transportation impact fees.

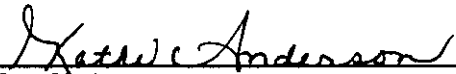
SECTION 4. Adds a new section 27.04.150 to the KMC containing an impact fee schedule.

SECTION 5. Provides a severability clause for the ordinance.

SECTION 6. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 of the Kirkland Municipal Code and establishes the effective date as February 1, 2008.

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 5th day of June, 2007.

I certify that the foregoing is a summary of Ordinance 4100 approved by the Kirkland City Council for summary publication.



City Clerk