



CITY OF KIRKLAND

City Attorney's Office

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MEMORANDUM

To: Kurt Triplett, City Manager

From: Oskar Rey, Assistant City Attorney

Date: September 8, 2011

Subject: Extension of Time for Expenditure of Impact Fees

RECOMMENDATION:

City staff recommends that the Council adopt the attached Ordinance amending Kirkland Municipal Code ("KMC") Chapters 27.04 and 27.06 relating to the expenditure of transportation and park impact fees.

BACKGROUND:

Earlier this year, the State legislature adopted ESHB 1478, which (among other things) extended the period in which cities must expend impact fees from six to ten years from date of payment. ESHB took effect on July 22, 2011. The attached ordinance would amend the KMC to provide for a ten year period for expending transportation and park impact fees that matches the state legislation. The ten year period would apply both to impact fee funds currently held by the City and funds collected in the future. No amendments are required to the City's school impact fee provisions because the expenditure of those funds is the responsibility of the Lake Washington School District.

ORDINANCE 4322

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE EXPENDITURE OF TRAFFIC AND PARK IMPACT FEES AND AMENDING KIRKLAND MUNICIPAL CODE CHAPTERS 27.04 AND 27.06.

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

Section 1. Kirkland Municipal Code ("KMC") Section 27.04.080 is hereby amended to read as follows:

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 impact fee account. Impact fees shall be earmarked specifically and deposited in the special interest-bearing account. Funds withdrawn from this account shall be used in accordance with the provisions of Section 27.04.110.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~~ ten 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-ten~~-year period. Under such circumstances, the council shall establish the period of time within which the impact fees shall be expended or encumbered.

Section 2. KMC Section 27.04.100 is hereby amended to read as follows:

27.04.100 Refunds.

(a) If the city fails to expend or encumber the impact fees within ~~six~~ ten 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.

Section 3. KMC Section 27.06.080 is hereby amended to read as follows:

27.06.080 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 "park impact fee account." Impact fees shall be earmarked specifically and deposited in the special interest-bearing account. Funds withdrawn from this account shall be used in accordance with the provisions of Section 27.06.110. 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~~ ten 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-ten~~-year period. Under such circumstances, the council shall establish the period of time within which the impact fees shall be expended or encumbered.

Section 4. KMC Section 27.06.100 is hereby amended to read as follows:

27.06.100 Refunds.

(a) If the city fails to expend or encumber the impact fees within six ten years of payment (or where extraordinary or compelling reasons exist, such other time periods as established pursuant to Section 27.06.080), 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 27.06.130.

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 five days from and after its passage by the Kirkland City Council and publication

pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2011.

Signed in authentication thereof this _____ day of _____, 2011.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4322

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE EXPENDITURE OF TRAFFIC AND PARK IMPACT FEES AND AMENDING KIRKLAND MUNICIPAL CODE CHAPTERS 27.04 AND 27.06.

SECTION 1. Amends Kirkland Municipal Code ("KMC") Section 27.04.080 to extend the period for expending or encumbering transportation impact fees from six to ten years.

SECTION 2. Amends KMC Section 27.04.100 to change the time at which a property owner may request a refund of unexpended transportation impact fees from six to ten years.

SECTION 3. Amends KMC Section 27.06.080 to extend the period for expending or encumbering park impact fees from six to ten years from the date of payment.

SECTION 4. Amends KMC Section 27.06.100 to change the time at which a property owner may request a refund of unexpended transportation impact fees from six to ten years from the date of payment.

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 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2011.

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

City Clerk