



CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033
425-587-3225 - www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Dawn Nelson, Planning Supervisor
Eric Shields, Planning Director

Date: October 25, 2012

Subject: IMPACT FEE EXEMPTIONS FOR AFFORDABLE HOUSING, FILE CAM12-01289

RECOMMENDATION

Staff recommends that the City Council adopts the enclosed ordinance amending the Kirkland Municipal Code chapters related to the exemption of impact fees for low-income (affordable) housing.

BACKGROUND DISCUSSION

After several years of considering amendments to allow local jurisdictions to exempt low-income housing from impact fees, the state legislature adopted Engrossed House Bill 1398 (EHB 1398) last spring. The legislation went into effect on June 7, 2012. The City of Kirkland adopted passage of this bill as one of its priority legislative agenda items for 2012 and lobbied for the amendments in order to give cities an additional tool to help support the creation of low-income (affordable) housing.

The amendments to [RCW 82.02.060](#) allow cities to grant an exemption of up to 80 percent of the impact fees on low-income housing without the city being required to pay the exempted fees from public funds. The City originally proposed exempting 100% of the waived impact fees, but that is not what passed the legislature. A full waiver of the impact fees is also allowed, but the portion above 80 percent is required to be paid by the city from other public fund accounts. Prior to this amendment, cities could grant exemptions for low-income housing but were required to pay all exempted fees from public funds other than impact fee accounts. Low-income housing is defined as housing affordable to those earning no more than 80 percent of county median income, adjusted for family size.

Amendments to the Kirkland Municipal Code (KMC) are required if the City wants to enact the changes allowed by EHB 1398. [KMC 27.04](#) is the regulations for Transportation Impact Fees, [KMC 27.06](#) is the regulations for Park Impact Fees and [KMC 27.08](#) pertains to School Impact Fees that the City collects on behalf of the Lake Washington School District. Each of those chapters defines low-income housing as owner occupied housing units affordable to households whose income is less than 80 percent of county median and renter occupied housing units affordable to households whose income is less than 60 percent of county median. Those definitions are consistent with the state statute and do not need to be changed.

The transportation and park impact fee regulations currently contain the following language:

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 and budgeted for this purpose by the Kirkland city council. If claims for exemptions under this subsection exceed the funds the Kirkland city council has budgeted for the payment of impact fees for low-income housing, this subsection shall not apply to claims made after the budgeted funds were committed or allocated until additional funds are budgeted.

The language about budgeting funds to pay impact fees for low-income housing was added in late 2009 when the City adopted mandatory requirements for affordable housing. However, the City has never budgeted funds for impact fee exemptions. Other incentives, such as increased density, building height and multifamily tax exemptions, were also adopted to offset the cost to private developers of creating affordable housing. There is no similar language in the school impact fee regulations because any waived impact fees are addressed by the Lake Washington School District.

The Council Housing Committee provided initial direction on this issue. The following sections outline staff's rationale for the proposed amendments shown in the attached ordinance.

MAJOR ISSUES – TRANSPORTATION AND PARK IMPACT FEES

A. What types of projects should be granted exemptions? The enclosed ordinance establishes that impact fee exemptions be considered for developments creating a greater number of affordable units or providing greater affordability than mandated by the current regulations. Also, the need for impact fee waivers to make the project economically viable will be considered. Waivers would apply to:

- Impact fees for low-income units created above the minimum required by City codes; or
- Impact fees for all of the units in projects that will be using public assistance targeted for affordable housing.

Since 2010, affordable housing units have been required to be constructed as part of market rate housing and mixed use developments in many zones throughout the City of Kirkland. The current regulations require 10 percent of units to be affordable. The developments usually include just a few units of required affordable housing and are granted the incentives previously identified. The value of the available incentives, to date, has been comparable to the cost to the developer of providing the affordable units. Therefore, impact fee exemptions for the affordable units are not needed for the economics of those projects to work.

Offering impact fee exemptions may make it more enticing for a developer to create a greater number of affordable units or provide greater affordability than the regulations would require. The value of all available incentives should be considered in determining whether to grant an exemption. Those developments could be undertaken by for profit or non-profit developers.

The City has seen a recent increase in affordable housing projects developed by non-profit housing providers within the City. Imagine Housing recently completed a 61 unit affordable rental housing project in Totem Lake and has requested funding through ARCH this fall for a second phase, which would include 95 units of affordable senior housing. They are also in the process of developing 58 units of affordable housing as part of the South Kirkland Transit Oriented Development. *Friends of Youth* currently has a building permit application in for Youth Haven, a group facility for up to 17 homeless youth. They have also applied for funding from ARCH this fall for two residences at their north Kirkland campus to be used as transitional housing for young adults.

Affordable housing developed by non-profit housing providers relies extensively on public funding from cities, counties, the state and federal governments. Kirkland provides its share of that funding through contributions to the ARCH Housing Trust Fund. Impact fee exemptions would be another way the City could contribute to the package of public funding needed to make these projects possible. Impact fee exemptions would be regarded by other funders as a source of local contribution and would be taken into account in determining the total amount of public funding that should be provided to a project.

- B. How much of an exemption should be granted?** The proposed amendments allow an applicant to request an exemption of 100 percent of the transportation and park impact fees for low-income housing.

RCW 82.02.060 allows exemption of 100 percent of the impact fees on low-income housing. However, only an 80 percent exemption is allowed without the City offsetting the exempted fees from other public funds. To be consistent with state law, the impact fee exemption language has been updated to address this limitation. The requirement that the City Council budget funds to pay impact fees for low income housing is now limited to the portion *above* 80 percent.

Exempting development from impact fees means that there will be less revenue available for the necessary public transportation and park facilities that impact fees are intended to support. There is no way to predict how many projects will request an exemption in a given year or Capital Facilities Plan cycle. However, based on past experience, private developers have rarely provided additional affordability, and the limitation of public funding sources limits the number of non-profit, publicly assisted projects that are developed.

The following table shows an example of the magnitude of impact fees that would be exempted for Imagine Housing’s proposed Senior Housing project in Totem Lake.

| | Impact Fee Per Unit of Senior Housing | Total for Project |
|-----------------------------------|--|--------------------------|
| Transportation Impact Fees | \$1,121 ¹ | \$106,495 |
| Park Impact Fees | \$2,515 | \$238,925 |
| School Impact Fees | N/A ² | N/A |
| Total | \$3,636 | \$345,420 |
| 80% of Total | | \$276,336 |
| 20% of Total | | \$69,084 |

¹Transportation Impact Fee for Senior Housing is half the impact fee for multifamily housing.

²School Impact Fees are not required for Senior Housing.

- C. Who should make the exemption decision?** The ordinance provides a process and criteria for the City Manager to make the decision on impact fee exemptions for low-income housing.

The impact fee regulations currently allow the Public Works Director and the Director of Parks and Community Services, respectively, to make the determination on transportation and park impact fee exemptions. Allowed exemptions are listed in KMC 27.04.050 and KMC 27.06.050 and are straight forward. They include replacement of structures, accessory dwelling units, minor site improvements and low-income housing where the City Council had previously set aside funds for the impact fees.

The one exception is for transportation impact fee exemptions associated with the facilities of community based human service agencies. Those exemption decisions are made by the City Manager and this provides greater neutrality in the decision making process. Currently the agencies seeking the exemption could be supported by funding through the City's Human Services function administered by Parks and the loss of revenue affects the Capital Facilities Plan administered by Public Works. Having the City Manager make the decision avoids the perception of a conflict of interest with either department.

The ordinance makes the City Manager the decision maker for low-income housing exemptions to maintain a similar level of neutrality.

Under the ordinance as drafted, there is no appeal to the City Manager's decision.

SCHOOL IMPACT FEES

The City began collecting school impact fees on behalf of the Lake Washington School District in 2011. KMC 27.08.050(5)(B) states:

The amount of impact fees not collected from low-income housing pursuant to this exemption shall be paid by the Lake Washington School District. The impact fees for these units shall be considered paid for by the Lake Washington School District through its other funding sources, without the district actually transferring funds from its other funding sources into the impact fee account.

EHB 1398 added the distinction that 80 percent of impact fees for low-income housing can be exempted without offsetting the cost, and 100 percent can be exempted as long as the remaining 20 percent are paid from public funds. Based on the language in KMC 27.08.050(5)(B), the change to the RCW has no impact on what the LWSD is already providing in terms of fee waivers for low-income housing. The District can continue to exempt 100% of the school impact fees for low-income housing without any change to the KMC.

Staff recommends adoption of this ordinance in furtherance of the Council's Housing Goal which states:

The City's housing stock meets the needs of a diverse community by providing a wide range of types, styles, sizes and affordability.

Council Goal: To ensure the construction and preservation of housing stock that meet a diverse range of incomes and needs.

ORDINANCE O-4383

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TRANSPORTATION AND PARK IMPACT FEE EXEMPTIONS FOR CREATION OR CONSTRUCTION OF LOW-INCOME HOUSING 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 27.04.050 is hereby amended to read as follows:

27.04.050 Exemptions.

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

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

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

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

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

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

(6) Demolition or moving of a structure.

~~(7)(A) Construction or Creation of Low-Income Housing may request an exemption of 100 percent of the required impact fee for low-income housing units subject to the criteria in subsection (a)(7)(C). The amount of impact fee not collected from low-income housing that is in excess of 80 percent of the required fees shall be paid from public funds other than the impact fee account and budgeted for this purpose by the city council. If claims for exemptions under this subsection exceed the funds the city council has budgeted for the payment of impact fees for low-income housing, this subsection shall not apply to claims made after the budgeted funds were committed or allocated until additional funds are budgeted. 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 and budgeted for this purpose by the Kirkland city council. If claims for exemptions under this subsection exceed the funds the Kirkland city council has budgeted for the payment of impact fees for low income housing, this subsection shall not apply to claims made after the budgeted funds were committed or allocated until additional funds are budgeted.~~

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

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

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

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

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

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

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

(F) Any claim for exemption must be made before payment of the impact fee. Any claim not so made shall be deemed waived. The claim for exemption must be accompanied by a draft lien and covenant against the property guaranteeing that the low-income housing use will continue. Before approval of the exemption, the Planning department shall approve the form of lien and covenant, which shall, at a minimum, meet the requirements of RCW 82.02.060. Prior to issuance of a certificate of occupancy for any portion of the

development, the applicant shall execute and record the approved lien and covenant with the King County department of records and elections. The lien and covenant shall run with the land. In the event the property is no longer used for low-income housing, the current owner shall pay the current impact fee plus interest to the date of the payment.

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

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

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

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

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

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

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

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

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

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

(E) The determination of the city manager shall be the final decision of the city with respect to the applicability of the community-based human services exemption set forth in this subsection ~~subject to the appeals procedures set forth in Section 27.04.130.~~

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

draft lien and covenant against the property guaranteeing that the human services use will continue. Before approval of the exemption, the department shall approve the form of lien and covenant. Within ten days of approval, the applicant shall execute and record the approved lien and covenant with the King County department of records and elections. The lien and covenant shall run with the land. In the event the property is no longer used for human services, the current owner shall pay the current impact fee plus interest to the date of the payment.

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

(b) Unless otherwise established in this section, the planning director shall be authorized to determine whether a particular development for a proposed building permit, or a change in land use when no building permit is required, falls within an exemption of this chapter or in this code. Determinations of the director shall be subject to the appeals procedures set forth in Section 27.04.130.

Section 2. KMC Section 27.06.050 is hereby amended to read as follows:

27.06.050 Exemptions.

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

(1) Replacement, alteration, expansion, enlargement, remodeling, rehabilitation or conversion of an existing dwelling unit where no additional units are created and the use is not changed. Replacement must occur within five years of the demolition or destruction of the prior structure. For replacement of structures in a new subdivision, see Section 27.04.030(f).

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

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

(4) Demolition or moving of a structure.

(5)(A) Construction or Creation of Low-Income Housing may request an exemption of 100 percent of the required impact fee for low-income housing units subject to the criteria in subsection (a)(5)(C). The amount of impact fee not collected from low-income housing that is in excess of 80 percent of the required fees shall be paid from public funds other than the impact fee account and budgeted for this purpose by the city council. If claims for exemptions under this subsection exceed the funds the city council has budgeted for the payment of impact fees for low-income housing, this subsection shall not apply to claims made after the budgeted funds were committed or allocated until additional funds are budgeted. 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 and budgeted for this purpose by the Kirkland city council. If claims for exemptions under this subsection exceed the funds the Kirkland city council has budgeted for the payment of impact fees for low-income housing, this subsection shall not apply to claims made after the budgeted funds were committed or allocated until additional funds are budgeted.~~

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

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

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

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

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

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

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

(F) Any claim for exemption must be made before payment of the impact fee. Any claim not so made shall be deemed waived. The claim for exemption must be accompanied by a draft lien and covenant against the property guaranteeing that the low-income housing use will continue. Before approval of the exemption, the planning department shall approve the form of lien and covenant, which shall, at a

minimum, meet the requirements of RCW 82.02.060. Prior to issuance of a certificate of occupancy for any portion of the development, the applicant shall execute and record the approved lien and covenant with the King County department of records and elections. The lien and covenant shall run with the land. In the event the property is no longer used for low-income housing, the current owner shall pay the current impact fee plus interest to the date of the payment.

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

Section 3. 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 4. 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 _____, 2012.

Signed in authentication thereof this ____ day of _____, 2012.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4383

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TRANSPORTATION AND PARK IMPACT FEE EXEMPTIONS FOR CREATION OR CONSTRUCTION OF LOW-INCOME HOUSING AND AMENDING KIRKLAND MUNICIPAL CODE CHAPTERS 27.04 AND 27.06.

SECTION 1. Amends Kirkland Municipal Code ("KMC") Section 27.04.050 relating to low income housing exemptions to payment of transportation impact fees.

SECTION 2. Amends KMC Section 27.06.050 relating to low income housing exemptions to payment of park impact fees.

SECTION 3. Provides a severability clause for the ordinance.

SECTION 4. 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 _____, 2012.

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

City Clerk