

ORDINANCE NO. 4808

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, RELATING TO TITLE 14 IMPACT FEES; RENAMING AND AMENDING CHAPTER 14.02 “IMPACT FEES” TO “PARK IMPACT FEES” AND AMENDING CHAPTER 14.04 “TRAFFIC IMPACT FEES” OF THE ELLENSBURG CITY CODE.

WHEREAS, the Growth Management Act of 1995 (GMA), Chapter 36.70A RCW, grants counties and cities the authority to assess impact fees for transportation, or more specifically, “public streets and roads”; and

WHEREAS, RCW 82.02.050 - .110 and WAC 365-196-850, authorize cities to adopt by ordinance a schedule of impact fees to ensure that adequate facilities are available to serve new growth and development; and

WHEREAS, the Ellensburg City Council adopted Ordinance 3919 in 1994 and Ordinance 4008 in 1995, implementing Park Impact Fees in the City of Ellensburg; and

WHEREAS, the Ellensburg City Council adopted Ordinance 4534 in 2009, implementing Traffic Impact Fees in the City of Ellensburg; and

WHEREAS, these traffic impact fees asses new development, based on development type, an amount outlined in the December 2007 report, titled “Impact Fee Report with Recommendations”; and

WHEREAS, the “Impact Fee Report with Recommendations” was based on traffic modeling and growth forecasting completed as part of the 2006 Comprehensive Plan; and

WHEREAS, on December 18, 2017, a new update to City of Ellensburg’s Comprehensive Plan was adopted, which included new in depth traffic modeling and forecasting; and

WHEREAS, this new traffic modeling and forecasting was used to complete a new “Traffic Impact Fee Rate Study,” dated July 2018 outlining necessary Traffic Impact Fee projects and establishing updated ‘Traffic Impact Fees’ for Council Consideration;

NOW, THEREFORE, the City Council of the City of Ellensburg, Washington do hereby ordain as follows:

**Section 1. Chapter 14.02 “Impact Fees” of the Ellensburg City Code, as last amended by Section 1 of Ordinance 4533, is hereby renamed and amended to read as follows:**

## Chapter 14.02

### PARK IMPACT FEES

Sections:

- 14.02.050 Findings.
- 14.02.100 Definitions.
- 14.02.120 Park Impact fees.
- 14.02.150 Assessment of park impact fees.
- 14.02.200 Concurrency.
- 14.02.240 Exemptions.
- 14.02.260 Adjustments.
- 14.02.300 Appeals.
- 14.02.340 Severability.
- 14.02.360 Effective date.

#### **14.02.050 Findings.**

The city council of the city of Ellensburg determines and finds as follows:

- A. In order to address new growth, development activity, maintain park standards and continue to promote and protect the public health, safety, and welfare in the face of a growing population, the city of Ellensburg must expand its park and open space system including but not limited to residential, commercial, industrial, and institutional development in the city of Ellensburg, will create additional demand for public facilities beyond the extent to which current city facilities are able to provide existing levels and quality of service.
- B. The city of Ellensburg has not secured other financial commitments or sources necessary sufficient to serve the new growth and development with public park facilities at the level of service established by the city.
- C. The imposition of park impact fees is a preferred method of ensuring that (1) adequate parks and recreational facilities are available to serve new growth and development, and (2) new growth and development should pay a proportionate share of the cost of the new public park facilities occasioned by such growth and development activity; and (3) such payments should be used to address deficiencies in park facilities that are reasonably related to the new development.
- D. Accurate and equitable procedures for measuring the impact of new growth and development activity on public park facilities, establishing the existing level of service provided by such public park facilities, and determining the cost to maintain the existing level of service have been developed by the city in its Growth Management Act comprehensive planning effort. The fee schedules and other procedures established by this chapter are based upon those studies.
- E. The provisions of this title meet all the requirements of and are consistent with the authority granted by the State Growth Management Act, Chapter 36.70A RCW and Chapter 82.02 RCW, and shall be liberally construed in order to carry out the purposes of the city council in establishing this park impact fee chapter.

F. In developing the schedule of park impact fees contained in this chapter, adjustments have been made for past and future taxes which have or will be paid by the new developments activity into the city's general fund and earmarked for the general maintenance and operation of all city services.

G. The adoption of the park impact fee chapter codified in this chapter is necessary for the support of city government and its existing institutions.

H. The provisions of this chapter and its adoption fulfill an urgent need to: assess new development activities with their proportionate share of public facility impacts; to minimize any potential disruption to the customary and reasonable city review of development activity; and to ensure equitable treatment of all development activities subject to park impact fee assessments.

I. The incorporated limits of the city represents the reasonable and appropriate service area for the use of park impact fee proceeds for park, open space, recreation, street, and fire protection facilities.

J. ~~The statutory limits of Ellensburg School District No. 401 represent the reasonable and appropriate service area for use of the park impact fee proceeds for school facilities.~~

K. ~~At the time this chapter was adopted in 1994, For consistency with the ad hoc committee report, recommended that cumulative park impact fees should not exceed \$2,000. Future adjustment of park impact fees above the amount, if any, should be based on the findings in subsections A through F above.~~ [Ord. 4008 § 1, 1995; Ord. 3919 § 1, 1994.]

#### **14.02.100 Definitions.**

The following words and terms shall have the following meanings for the purposes of this title, 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.

“Capital improvements plan” means the plan for construction, including the timing and financing necessary to accomplish the construction of public facilities owned and operated by the city of Ellensburg. Included in this definition is the city’s comprehensive plan, including but not limited to: vision and goals statement; utilities chapter; and capital facilities chapter.

“City” means the city of Ellensburg.

“Concurrency” means that the public facilities are in place at the time the impacts of development occur, or that the necessary financial commitments are in place, as outlined in the provisions of this chapter.

“Council” means the city council of the city of Ellensburg.

“Development activity” means any construction or expansion of a building or structure that creates additional demand and need for public facilities.

“Director” means the director of community development for the city of Ellensburg.

“Feepayer” means any person, corporation, partnership, incorporated association, or any other similar entity, or department or bureau of any governmental entity or municipal corporation,

including the state or federal government, which commences a land development activity that creates the demand for additional public facilities and requires the issuance of a building permit.

“Park Impact fee” means a payment of money imposed by the city on development activity pursuant to this chapter, as a condition of granting development approval, in order to pay for the public facilities needed to serve the new growth and development. “Park Impact fee” does not include a reasonable permit fee, application fee, or the administrative costs of carrying out the provisions of this chapter.

“Public facilities” means the following capital facilities owned or operated by the city or Ellensburg School District No. 401:

1. Publicly owned parks, open space, and recreational facilities;
2. Fire protection facilities owned and operated by the city of Ellensburg, including both permanent structures and major pieces of fire-fighting equipment and vehicles;
3. Public school facilities owned and operated by Ellensburg School District No. 401, including both structures, site improvements, and major pieces of educational equipment; and
4. Streets and transportation facilities owned by the city which are not wholly contained upon the site of the development activity, but which are determined to serve the needs of the development activity, and which are necessary to provide for the transportation impact created by the development activity. [Ord. 4008 § 2, 1995; Ord. 3919 § 1, 1994.]

#### **14.02.120 Park Impact fees.**

The following fee schedules and assessment methods shall be used to determine the amount of money to be charged for park impact fees applicable to residential projects which result in new growth and development within the city limits.

##### **A. Park, Open Space and Recreation Facilities.**

###### **1. Residential.**

a.—Each single-family residential ~~or accessory dwelling unit lot or structure~~:

~~2009~~ \$1,050;

~~2010~~ \$1,487.50;

~~Beginning January 1, 2011~~ \$1,925.

###### **B. b.—Each multifamily residential dwelling unit:**

~~2009~~ \$900.00;

~~2010~~ \$1,275;

~~Beginning January 1, 2011~~ \$1,650.

C. e.—Each manufactured or mobile home space or lot:

2009—\$900.00;

2010—\$1,275;

Beginning January 1, 2011—\$1,650.

D. Each accessory dwelling unit: \$962.

2. ~~Commercial, Industrial and Institutional. Impact fees to be assessed against commercial, industrial, and institutional projects for park, open space and recreation facilities shall be made according to and under the city's adopted SEPA ordinance, based upon the impact the project will have on such facilities.~~ [Ord. 4533 § 1, 2008; Ord. 4175, 1998; Ord. 4008 § 3, 1995; Ord. 3919 § 1, 1994.]

**14.02.150 Assessment of park impact fees.**

The city shall collect park impact fees, based upon the schedules or methods outlined in this chapter, for any development activity within the city limits of Ellensburg, if such activity requires the issuance of a subdivision, conditional use, building, or other development-enabling permit which will result in new building construction, the creation of a new lot of record, or any additional new principal use occupancy.

Collection of the park impact fee shall occur when application is made for a building permit; provided, however, fees applicable to a single-family subdivision may be subject to an in-lieu-of fee arrangement at the preliminary plat stage. The appropriate park impact fee as determined by this chapter shall be added to the cost of the building permit for those projects which have, prior to the adoption of the ordinance codified in this chapter, obtained permit approvals leading up to the building permit stage. [Ord. 3946 § 1, 1994; Ord. 3919 § 1, 1994.]

**14.02.200 Concurrency.**

Prior to approving proposed subdivisions, conditional uses, SEPA clearance, building permit, or any other development-enabling permit, the city shall make a determination that the public facilities covered by this chapter and required to serve the development will be provided concurrent with development.

The concurrency requirement shall be considered satisfied if the public facilities deemed necessary to serve the development are in place at the time of the development, or if financial commitments are in place to complete the improvements. Any combination of the following shall constitute the “necessary financial commitments” for the purposes of this title:

A. For those facilities deemed necessary to serve the project impact and which are included in the city's six-year capital improvement plan: collection of the project's park impact fee, together with evidence that the city has either received voter approval or has sufficient legal bonding capacity to pay for facility construction.

B. For those public facilities deemed necessary to serve the proposed development but are not included in the city's six-year capital improvement plan: a secured commitment from a feepayer to construct the facility improvements that are deemed necessary to serve the project impact.

C. Receipt by the city of approval for federal, state or other funds sufficient to construct the necessary improvements. [Ord. 3919 § 1, 1994.]

**14.02.240 Exemptions.**

The following are exempt from the payment of park impact fees:

A. Building or other development permits for projects or developments assessed some form of mitigation payment or land dedication which assessment preceded the effective date of the ~~Ordinance 3919 codified in this chapter~~.

B. Alterations, expansions, enlargements, remodeling, rehabilitation, or conversion of an existing residential structure, if no additional dwelling units are created and the use is not changed.

C. ~~Alterations, expansions, enlargements, remodeling or the rehabilitation of an existing nonresidential structure that does not increase the usable space by more than 30 percent of the gross floor area at the time of the construction.~~

D. ~~Construction of accessory residential structures that will not create significant impacts upon public facilities.~~

E. ~~Construction of accessory nonresidential structures that will neither create additional principal uses nor increase the usable space of the existing principal use by more than 15 percent of the gross floor area at the time of such construction.~~

F. Demolition or moving of an existing structure.

G. Replacement of a structure with a new structure of the same or similar size and use at the same site when such replacement occurs within 12 months of the demolition or destruction of the prior structure. [Ord. 3919 § 1, 1994.]

E. Dormitories or student housing owned by Central Washington University.

**14.02.260 Adjustments.**

A. A feepayer may request, and the director may determine, that a credit should be awarded for the value of dedicated land, improvements, or construction which has been provided by the feepayer, either as required by the city or which has been accepted as the result of the voluntary offer of the feepayer. In order to qualify for a credit, the director shall determine that such dedication, improvement or construction is directly related to the public improvement covered by the park impact fee schedules, is included in the city's adopted capital facilities plan, or would directly serve the goals and objectives of the capital facilities plan and adopted comprehensive plan.

B. For each request for a credit, the director shall, as appropriate, prepare an estimate and appraisal of the value of land or cost of improvement or construction for which the credit is requested. The director shall choose the services of an independent appraiser, in the case of existing land and/or improvements. In the case of proposed improvements or construction, the director shall prepare estimates of the value utilizing appropriate city or other professional staff qualified to address the appropriate subject area.

C. The city may require dedication of land, or construction of improvements for facilities covered by this park impact fee chapter, in lieu of the payment of an park impact fee. If the value of the land dedication or construction of improvements is determined to exceed the amount of the park impact fees which would otherwise be required of the feepayer, the city shall pay the feepayer an amount equal to the difference between the park impact fee amount and the value of the credit. If the applicable park impact fees are greater than the value of the credit determined by the director, the feepayer shall pay the city the difference between the value of the credit and the park impact fee amount.

D. The feepayer shall reimburse the city for the cost of the appraisal or the estimate of value developed by city or other professional staff. The director shall provide the feepayer with a written report detailing the basis of the appraisal or estimate of value upon which the credit is to be determined and an itemized bill for such service.

E. Any claim for credit must be made before the issuance of a development permit is requested, or not later than 30 calendar days after the dedication of land or the completion of construction.

F. Credit shall be given only for the value of land dedication or project improvements directly related to those facilities covered by the impact fee chapter, or otherwise determined to qualify by the director under the provisions of this section.

G. A feepayer may request an adjustment to the park impact fees assessed to a particular development activity based upon unusual circumstances or alternative methods of computing the park impact fee amount which is justified by special circumstances. A request for an adjustment in the park impact fee amount or application shall not be made before the full amount of the park impact fee for the development activity is paid to the city. If an adjustment is made which reduces the park impact fee amount, any excess payment shall be returned to the feepayer. The feepayer must include a description of the unusual or special circumstances which serve as the basis for the request for adjustment and provide documentation supporting the adjustment request. The director shall consider any studies and data submitted by the feepayer which support alternative methods of computing the park impact fee to be assessed. The director shall base a determination on the information supplied by the feepayer, and notify the feepayer in writing of the determination.

H. Determinations made by the director pursuant to this section shall be subject to the appeals procedures set forth in this chapter. [Ord. 3919 § 1, 1994.]

#### **14.02.300 Appeals.**

A. Any feepayer may pay the park impact fees imposed by this title under protest in order to obtain a building or other development permit. Appeals regarding the park impact fees imposed on any development activity or the credit established by the director under this chapter may only be taken by the feepayer of the property where such development activity will occur. No appeal shall be permitted unless and until the park impact fees at issue have been paid, the dedication of land or posting of a cash bond made, or other form of security acceptable to the director has been given. The amount of the bond or other security shall be equal to the value of land or construction of improvements claimed by the feepayer.

B. Appeals shall be taken within 10 working days of the payment of the park impact fees, dedication of land, or posting of a cash bond or other acceptable form of security.

C. Appeals shall be made in writing and submitted to the city council. The city council shall fix a date and time for hearing of the appeal and provide for the giving of notice to the parties in interest. The city council shall hear presentations of fact from the appellant and the director regarding the park impact fee or credit finding in dispute. The city council may, so long as its action is supported by testimony and evidence provided at the hearing, reverse or affirm, in whole or in part, or modify the park impact fee to be required of the feepayer, or the determination of the director regarding an allowable credit. The city council shall adopt a set of findings in support of its decision. [Ord. 3919 § 1, 1994.]

**14.02.340 — Severability.**

~~If any portion of this title is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other section or any other chapter of this title.~~ [Ord. 3919 § 3, 1994.]

**14.02.360 — Effective date.**

This chapter shall take effect March 16, 1994. [Ord. 3919 § 4, 1994.]

**Section 2. Chapter 14.04 “Traffic Impact Fees” of the Ellensburg City Code, as last amended by Section 1 of Ordinance 4675, is hereby amended to read as follows:**

**Chapter 14.04**

**TRAFFIC IMPACT FEES**

Sections:

- 14.04.010 Purpose.
- 14.04.020 Authority.
- 14.04.030 Definitions.
- 14.04.040 Applicability.
- 14.04.050 Exemptions.
- 14.04.055 Additional exemptions.
- 14.04.060 Service area.
- 14.04.070 Traffic impact fee fund established.
- 14.04.080 Use of funds.
- 14.04.090 Traffic impact fee determination and collection.
- 14.04.100 Traffic impact fee adjustments, independent calculations.
- 14.04.110 Traffic impact fee credits.
- 14.04.120 Traffic impact fee refunds.
- 14.04.130 Appeals and payments under protest.
- 14.04.140 Council review of traffic impact fees.
- 14.04.150 Administrative fees.
- 14.04.160 Traffic impact fee calculations.
- 14.04.170 Schedule of fees.

14.04.175 Fee reductions.

14.04.180 Existing authority unimpaired.

**14.04.010 Purpose.**

This chapter is intended to:

- A. Assist in the implementation of the comprehensive plan for the city of Ellensburg.
- B. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use, or shortly thereafter, without decreasing current service levels below established minimum standards for the city.
- C. Establish standards and procedures so that new development pays a proportionate share of costs for new facilities and services and does not pay arbitrary or duplicative fees for the same impact. [Ord. 4534 § 1, 2009.]

**14.04.020 Authority.**

A. This chapter is enacted pursuant to the provisions of RCW 82.02.050 through 82.02.100, as currently enacted or hereafter amended.

B. The city has conducted a study documenting cost and demand for new facilities and services. This study entitled “~~Impact Fee Report with Recommendations, dated December 2007~~  
~~Traffic Impact Fee Rate Study Update, dated July 2018~~” is hereby approved and adopted. A complete copy of the “Traffic Impact Fee Rate Study Update, dated July 2018 ~~Impact Fee Report with Recommendations, dated December 2007~~” shall be retained in the office of the city clerk for use and examination by the public. The most recent city of Ellensburg comprehensive plan as amended is also incorporated into this chapter by reference. [Ord. 4534 § 1, 2009.]

**14.04.030 Definitions.**

**KA.** “Applicant” means a person, individual, or organization seeking permission to develop land within the city of Ellensburg by applying for a building permit.

**MB.** “Central commercial district” means the established commercial area of the city of Ellensburg which has historically supported intensive urban usage and is zoned for C-C.

**AC.** Commercial. For the purposes of this chapter, “commercial” shall be defined as those activities allowable within the following zones as defined in ECC Title 13: commercial neighborhood zone (C-N), tourist commercial zone (T-C), highway commercial zone (C-H), master site plans for regional retail commercial projects, central commercial zone (C-C), central commercial II zone (C-C II).

**CD.** “Dwelling unit” means one or more rooms designed for or occupied by one family for living or sleeping purposes and containing kitchen, sleeping, and sanitary facilities for use solely by one family.

DE. “Duplex” means ~~two dwelling units which are attached to one another a building that is entirely surrounded by open space on the same lot and contains two dwelling units or two dwelling units that are physically separated but on the same lot.~~

HE. “Encumber” means to transfer traffic impact fee dollars from the traffic impact fee fund to a fund for a particular system improvement that is fully funded in the current year’s budget. Funds may only be encumbered by an action of the city council. The fund encumbering the traffic impact fee dollars shall bear the name of the system improvement financed with such money.

G. “Gross floor area” means the total square footage of livable area of any dwelling unit and the gross leasable square footage area of any nonresidential building, structure, or use, including accessory uses.

FH. Industrial. For the purposes of this chapter, “industrial” shall be defined as those activities allowable within the following zones as defined in ECC Title 4315: light industrial zone (I-L) and heavy industrial zone (I-H).

LI. “Interest” means the interest earned by the account during the period the fees were retained.

SJ. “Low-income housing” means ~~any unit of housing where the eligibility requirements for rental require the renter to have certified household income equal to or less than 50 percent of area median income (“AMI”), adjusted for household size, or where the eligibility requirements for homeownership require the purchaser to have certified household income equal to or less than 80 percent of AMI, adjusted for household size~~ housing with a monthly housing expense, that is no greater than thirty percent of eighty percent of the median family income adjusted for family size for Kittitas County, as reported by the United States department of housing and urban development. In addition, the developer and/or owner shall have entered into a binding, irrevocable programmatic commitment with one or more federal, state, or local governmental agencies and/or nonprofit agencies qualified as 501(c)(3) under the Internal Revenue Service Code. Development activity that is comprised of a mix of affordable and market rate housing and/or affordable housing and commercial space shall be defined as low-income housing only for those specific units that are set aside as low-income housing with the aforementioned income limits. Programs that may otherwise be defined elsewhere as “low-income housing” and/or “affordable housing,” but have income eligibility limits above those described above or no income limits, shall not be defined as low-income housing.

EK. “Multifamily dwelling unit” means ~~a structure on lot that containsing~~ three or more dwelling units, with the units joined to one another. Multifamily may include duplexes located on contiguous lots.

BL. “New development” means any land use action which culminates in the issuance of a building permit for new construction and/or expansion of existing gross floor area.

IM. “Project improvements” means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements.

No improvement or facility included in the city's transportation facilities plan or transportation improvement plan approved by the city council shall be considered a project improvement.

**ON.** "Peak hour" means the consecutive 60-minute period during the 4:00 p.m. and 6:00 p.m. peak period during which the highest volume occurs.

**JO.** "System improvements" means transportation facilities that are included in the city's six-year transportation facilities plan, and are designed to provide service to the community at large, in contrast to project improvements.

**NP.** "Traffic impact fee" means payment of money imposed by the city of Ellensburg upon development activity pursuant to this chapter as a condition of granting development approval and/or a building permit for new development in order to pay for the public facilities needed to serve the new development. Traffic impact fees do not include permit fees, an application fee, the administrative fee for collecting and handling traffic impact fees, the cost of reviewing independent fee calculations or the administrative fee required for an appeal.

**PQ.** "Traffic impact fee fund" means the fund established for the public facilities for which traffic impact fees are collected, pursuant to ECC 14.04.070 and in compliance with the requirements of RCW 82.02.060.

**QR.** The "Traffic impact fee schedule" is means that schedule adopted by ECC 14.04.170 or as amended by city council. Trip generation rates in the schedule shall be those rates derived from the "9th Edition Trip Generation" manual published by the Institute of Transportation Engineers, or subsequent editions.

**RS.** "Traffic Impact Fee Rate Study Update Traffic impact fee study" means the study which determined the traffic impact fee dated December 2007 and subsequent updates updated July 2018.

[Ord. 4675 § 1, 2014; Ord. 4646 § 1, 2013; Ord. 4534 § 1, 2009.]

#### **14.04.040      Applicability.**

All persons receiving building permits for new development within the city of Ellensburg, but outside of the central commercial district (C-C), after the effective date of the ordinance codified in this chapter shall be required to pay traffic impact fees in an amount and manner set forth in this chapter. [Ord. 4534 § 1, 2009.]

#### **14.04.050      Exemptions.**

The following development activities are exempt from paying traffic impact fees because they do not have a measurable impact on the city's transportation facilities, or because the city has chosen to exempt them, pursuant to RCW 82.02.060(2), as development with broad public purposes.

A. Existing Dwelling Unit. Any alteration, expansion, reconstruction, remodeling, replacement, or demolition/removal of an existing single-family, duplex or multifamily dwelling unit that does not result in the generation of additional peak hour trips.

B. Existing Nonresidential Building. Any alteration, reconstruction, remodeling, replacement, or demolition/removal of an existing nonresidential building that does not result in the generation of any new peak hour trips.

C. Any development activity in the central commercial district is considered to be redevelopment, not new development, and therefore is not subject to this chapter.

D. The director of public works shall be authorized to determine whether a particular development activity falls within an exemption from traffic impact fees identified in this section or under other applicable law. Determinations of the director of public works shall be in writing and shall be subject to appeal to the city council as provided in ECC 14.02.300.

E. Low-income housing, as defined in ECC 14.04.030(S), shall be exempted from the payment of traffic impact fees.

1. Any claim for an exemption under this section must be made before payment of the traffic impact fee. Any claim not so made shall be deemed waived.

2. The claim for exemption must be accompanied by a draft lien and covenant against the property guaranteeing that the low-income housing will continue for a period of not less than 15 years. Before final approval of the exemption, the department shall approve the form of the lien and covenant. Within 10 days of exemption approval, the applicant shall execute and record the approved lien and covenant with the county auditor. The lien and covenant shall run with the land.

3. In the event that the housing unit is not used for low-income housing for the prescribed period, or in the event that other exempted development activity is converted to a nonexempt use during the prescribed period, the current owner shall pay the traffic impact fees then in effect plus interest to the date of the payment.

F. Transitional Exemption. This chapter is not applicable to building permits for development projects for which the city's SEPA official has issued a final SEPA determination prior to the effective date of the ordinance codified in this chapter for which a final traffic impact mitigation has been determined. For purposes of this exemption, a SEPA determination will include the issuance of a final declaration of nonsignificance (DNS), final mitigated declaration of nonsignificance (MDNS), and, if an environmental impact statement (EIS) was required, issuance of a final EIS. [Ord. 4534 § 1, 2009.]

#### **14.04.055 Additional exemptions.**

Reserved. [Ord. 4534 § 1, 2009.]

#### **14.04.060 Service area.**

This section establishes one service area which shall be consistent with the city limits of the city of Ellensburg. [Ord. 4534 § 1, 2009.]

#### **14.04.070 Traffic impact fee fund established.**

A. This section establishes a special purpose traffic impact fee fund to receive traffic impact fees. All traffic impact fees and any investment income generated by such fees shall remain in that fund until spent, encumbered or refunded pursuant to the provisions of this chapter.

B. On an annual basis, the finance director shall provide a report to the city council on the traffic impact fee fund showing the source and amount of all monies collected, earned, or received, and system improvements that were financed in whole or in part by traffic impact fees. Additionally, on an annual basis, the public works and utilities director shall provide a report to the city council on the amount of traffic impact fee that was not collected as a result of the provisions of ECC 14.04.175. [Ord. 4534 § 1, 2009.]

**14.04.080      Use of funds.**

A. Traffic impact fees shall:

1. Be used for public facility improvements that will reasonably benefit new development; and
2. Not be imposed to make up for deficiencies in the facilities serving existing development; and
3. Not be used for maintenance or operation.

B. Traffic impact fees will be spent for improvements listed in the six-year transportation plan and identified as being funded in part by traffic impact fees. Expenditures may include but are not limited to facility planning, land acquisition, site improvements, necessary off-site improvements, construction, engineering, permitting, financing, grant match funds and administrative expenses, mitigation costs, capital equipment pertaining to public facilities, and any other capital cost related to a particular system improvement.

C. Traffic impact fees may also be used to recoup costs previously incurred by the city to finance system improvements identified per subsection (B) of this section and directly benefiting new growth and development.

D. In the event that bonds or similar debt instruments are or have been issued for the construction of a public facility or system improvement for which traffic impact fees may be expended, traffic impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this chapter and are used to serve new development. [Ord. 4534 § 1, 2009.]

**14.04.090      Traffic impact fee determination and collection.**

A. At the time of building permit issuance, city staff shall determine the total traffic impact fee owed based on the fee schedule in effect at the time of such issuance.

B. Traffic impact fee collection shall also occur at the time of building permit issuance. Alternatively, the applicant may post a bond in favor of the city for the traffic impact fee at the time of building permit issuance, subject to the conditions set forth in this section. If bond is posted, cash payment of the traffic impact fee shall be due and payable at the time of issuance of certificate of occupancy or upon such earlier demand by the city in the event the city, in its sole judgment, determines either (1) that the applicant's development is substantially complete (regardless of whether or not a certificate of occupancy has been requested) or (2) that the traffic impact fee is at risk of not being paid. In the event the traffic impact fee is not paid when due, the city shall have immediate recourse against the bond which shall be written in a manner entitling

the city to immediate receipt of the full amount of the bond upon the city's demand. The following conditions also apply:

1. The bond or security shall be in a form and upon such terms deemed acceptable by the city to ensure full payment upon demand of an amount equivalent to the traffic impact fee owed.
2. The bond shall be in an amount equal to 125 percent of the traffic impact fee owed on the development.
3. The bond shall be in the form of a surety bond, performance bond or irrevocable assignment of a savings account, with terms and conditions acceptable to the city attorney and public works director, and with a company authorized to do business in the state of Washington. The terms of the bond shall include a provision entitling the city to recover from the surety the city's costs, expenses and reasonable attorney's fees incurred in bringing any action or litigation to enforce the terms of the bond.
4. Bonds or other security authorized by this section shall remain in effect until the city receives full payment of the traffic impact fee secured by the bond or security.
5. Depletion, failure, or collection of bond funds shall not discharge the obligation of the applicant or development to pay the traffic impact fee.
6. The terms of the bond shall incorporate by reference the provisions of this section.

C. An applicant may request that the traffic impact fee be calculated in advance of building permit issuance, but any such advance calculation shall not be binding upon the city and should only be used as guidance by the applicant. Applicants should note that it is not possible to have a vested right to pay a particular traffic impact fee in advance of building permit issuance. If the city council revises the traffic impact fee formula or the traffic impact fees themselves prior to the time that a building permit is issued for a particular development, the formula or fee amount in effect at the time of building permit issuance shall apply to the development. [Ord. 4534 § 1, 2009.]

#### **14.04.100 Traffic impact fee adjustments, independent calculations.**

An applicant may request an adjustment to the traffic impact fees determined according to the fee schedule adopted by this chapter by preparing and submitting to the public works director an independent fee calculation for the development activity for which a building permit is sought. The documentation submitted shall show the basis upon which the independent fee calculation was made. Independent fee calculations for traffic impact fees shall use the same formulas and methodology used to establish the traffic impact fees in this chapter and shall be limited to adjustments in trip generation rates used in the traffic impact fee study, and shall not include travel demand forecasts, trip distribution, traffic assignment, transportation service areas, costs of road projects, or cost allocation procedures.

A. If the public works director agrees with the independent fee calculation, a written agreement to accept such amount shall be transmitted to the applicant who shall, in turn, present it to the public works department upon traffic impact fee collection.

B. If the public works director does not agree with the independent fee calculation, the fee payer may appeal this decision to the city council through procedures outlined in ECC 14.02.300. [Ord. 4534 § 1, 2009.]

**14.04.110 Traffic impact fee credits.**

A. An applicant shall be entitled to a credit against the applicable traffic impact fee collected under the fee schedule adopted by this chapter for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the applicant, to facilities that are:

1. Included within the six-year transportation improvement plan and identified as system improvements that are to be funded in part by traffic impact fees;
2. At suitable sites and constructed at an acceptable quality as determined by the city; and
3. Are completed, dedicated, or otherwise transferred to the city prior to the determination and award of a credit as set forth in this section.

B. No credit shall be given for project improvements.

C. The value of a credit for improvements shall be established by original receipts provided by the applicant for one or more of the same system improvements for which the traffic impact fee is being charged.

D. The value of a credit for land shall be established on a case-by-case basis by an appraiser selected by or acceptable to the city. The appraiser must be licensed in good standing by the state of Washington for the category of the property appraised. The appraisal and review shall be at the expense of the applicant. The appraisal shall be in accordance with the most recent version of the Uniform Standards of Professional Appraisal Practice, as published by The Appraisal Foundation, and shall be subject to review and acceptance by the city.

E. Upon the effective date of this chapter, whenever a development is granted approval subject to a condition that road improvements that are identified in the six-year transportation plan be constructed or provided, or whenever the applicant has agreed, pursuant to the terms of a voluntary agreement with the city to donate or dedicate land for road facilities that are identified in the six-year transportation plan, and which are included in the list of road projects that are used to determine the traffic impact fee, as listed in the traffic impact fee study, the applicant shall be entitled to a credit for the value of the land or actual costs of capital facility construction against the fee that would be chargeable under the formula provided. The land value or costs of construction shall be determined pursuant to this section.

F. This subsection (F) applies only to residential developments and the residential portion of a mixed use development. In cases where a developer would be entitled to a credit under this section, but the amount of the credit has yet to be determined on a per dwelling unit basis, the city shall take the total credit amount available to the entire plat or project, calculated by applying subsections (A) through (C) of this section, and divide that amount by the number of dwelling units approved for that plat or project. The traffic impact fee and credit may then be calculated and collected on a per dwelling unit basis as building permits are issued for those dwelling units. Where building permits for some, but not all, of the dwelling units within a plat

or project have already been obtained at the time this chapter becomes effective, the credit for the unpermitted dwelling units will be calculated to arrive at a per dwelling unit amount in the same manner. For example, if a plat has been approved for 20 dwelling units, and building permits have only been issued for 10 of those units, the per dwelling unit credit for the remaining 10 units will equal the total credit amount divided by 20 dwelling units.

G. This subsection (G) applies to nonresidential developments, or the nonresidential portion of a mixed use development. In cases where a developer would be entitled to a credit under this section, but the amount of the credit has yet to be determined on a per square foot basis, the city shall take the total credit amount available to the entire plat or project, calculated by applying subsections (A) through (C) of this section, and divide that amount by the number of square feet approved for that plat or project. The traffic impact fee and credit may then be calculated and collected on a per square foot basis as building permits are issued for that square footage. Where building permits for some, but not all, of the square footage within a plat or project have already been obtained at the time this chapter becomes effective, the credit for the unpermitted square footage will be calculated to arrive at a per square footage amount in the same manner. For example, if a 20,000-square-foot commercial project has been approved, and building permits have only been issued for 10,000 square feet of the project, the per square foot credit for the remaining 10,000 square feet will equal the total credit amount divided by 20,000 square feet.

H. Pursuant to and consistent with the requirements of RCW 82.02.060, traffic impact fee schedules have been adjusted for future taxes and other revenue sources to be paid by the new development which are earmarked or pro rata to the same new public facilities which will serve the new development.

I. After receiving the receipts for improvements, the appraisal of land value, the receipts and calculations of prior payments earmarked or pro rata to the same system improvements for which the traffic impact fee is imposed, the director of public works shall provide the applicant with a letter setting forth the dollar amount of the credit, the reason for the credit, the legal description of the site donated where applicable, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter indicating their agreement to the terms of the letter and return such signed document to the city before the traffic impact fee credit will be awarded. The failures of the applicant to sign, date, and return such document within 60 calendar days shall nullify the credit.

J. If the amount of the credit is less than the calculated fee amount, the difference remaining shall be chargeable as an traffic impact fee and paid at the time of application for the building permit. In the event the amount of the credit is calculated to be greater than the amount of the traffic impact fee due, the applicant shall forfeit such excess credit.

K. A claim for credit will be processed by the city using whichever of the following options is selected by the applicant:

1. Claims for credits that are submitted prior to or with an application for a building permit for which an traffic impact fee will be due will be processed by the city before payment of the traffic impact fee is due in order to allow any credit authorized by the city to reduce the amount of the traffic impact fee; or

2. Claims for credits that are submitted no later than 30 days after the issuance of a building permit for which an traffic impact fee is due shall be processed by the city after the traffic impact fee is paid in full, and any credit authorized by the city will be refunded to the applicant within 90 days of receipt of the claim for credit.

L. Claims for credits that are submitted more than 180 calendar days after the issuance of a building permit for which an traffic impact fee is due are deemed to be waived and shall be denied.

M. Determinations made by the director of public works pursuant to this section shall be subject to appeal to the city council subject to the procedures set forth in ECC 14.02.300. [Ord. 4804 s4, 2018, Ord. 4534 § 1, 2009.]

**14.04.120 Traffic iHmpact fee refunds.**

A. The current owner of property on which traffic impact fees have been paid may receive a refund of such fees if the traffic impact fees have not been expended or encumbered within 10 years of their receipt by the city. In determining whether traffic impact fees have been expended or encumbered, traffic impact fees shall be considered expended or encumbered on a first-in, first-out basis.

B. The city shall provide for the refund of fees according to the requirements of this section and RCW 82.02.080.

1. The city shall notify potential claimants of the refund availability by first-class mail deposited with the United States Postal Service addressed to the owner of the property as shown in the county tax records.

2. An owner's request for a refund must be submitted to the city finance director in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever date is later.

C. Any traffic impact fees that are not expended or encumbered within 10 years of their receipt by the city, and for which no application for a refund has been made within this one-year period, shall be retained by the city and expended consistent with the provisions of this chapter.

D. Refunds of traffic impact fees shall include any interest earned on the traffic impact fees.

E. Should the city seek to terminate all traffic impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded to the current owner of the property for which a traffic impact fee was paid. Upon the finding that all fee requirements are to be terminated, the city shall place notice of such 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 addressed to the owner of the property as shown in the county tax records. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the city, but must be expended for the original purposes, consistent with the provisions of this chapter. The notice requirement set forth above shall not apply if there are no unexpended or unencumbered balances within the account or accounts being terminated.

F. An applicant may request and shall receive a refund, including interest earned on the traffic impact fee, when:

1. The applicant does not proceed to finalize the development activity as required by statute or city code or the International Building Code; and
2. The city has not expended or encumbered the traffic impact fees prior to the application for a refund. In the event that the city has expended or encumbered the fees in good faith, no refund shall be forthcoming. However, if within a period of three years, the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner shall be eligible for a credit against any then-existing traffic impact fee requirement. The owner must petition the city in writing and provide receipts of traffic impact fees paid by the owner for a development of the same or substantially similar nature on the same property or some portion thereof. The city shall determine whether to grant a credit and such determinations may be appealed by following the procedures set forth in this chapter.

G. The amount to be refunded shall include the interest earned by this portion of the account from the date that it was deposited into the traffic impact fee fund. [Ord. 4646 § 2, 2013; Ord. 4534 § 1, 2009.]

**14.04.130 Appeals and payments under protest.**

A. This subsection applies when an applicant seeks a building permit to construct a portion of a development that has already been reviewed and approved by the city. An example of this circumstance would be an application for a permit to build one house in a large subdivision that was previously approved. In this case, any appeal of the decision of the city with regard to the imposition of an traffic impact fee or the amount of any traffic impact fees, impact fee credit, or impact fee refund may be taken before the city council pursuant to ECC 14.02.300 in conjunction with an appeal of the underlying building permit.

B. Any applicant may pay the traffic impact fees imposed by this chapter under protest in order to obtain a building permit.

C. Only the applicant has standing to appeal traffic impact fee matters. [Ord. 4534 § 1, 2009.]

**14.04.140 Council review of traffic impact fees.**

The impact fee schedule adopted by this chapter shall be reviewed by the city council, as it deems necessary and appropriate in conjunction with the update of the city's transportation improvement plan. [Ord. 4534 § 1, 2009.]

**14.04.150 Administrative fees.**

A. The cost of administering the traffic impact fee program shall also include an amount equal to five percent of the amount of the total traffic impact fee determined from the schedule of fees. The administrative fee shall be deposited into an administrative fee account within the traffic impact fee fund. Administrative fees shall be used to defray the cost incurred by the city in the administration and update of the traffic impact fee program, including, but not limited to, review of independent fee calculations and the value of credits. The administrative fee is not creditable or refundable.

B. The administrative fee, in addition to the actual traffic impact fees, shall be paid by the applicant to the city at the same time as the traffic impact fee. [Ord. 4534 § 1, 2009.]

**14.04.160 Impact fee calculations.**

A. The traffic impact fee shall be calculated using a schedule that identifies a particular fee amount for a particular type of development.

B. The traffic impact fee per peak hour vehicle trip has been calculated using the data shown in “Traffic Impact Fee Rate Study Update, dated July 2018Impact Fee Report with Recommendations dated December 2007,” which is filed in the office of the city clerk and incorporated herein by this reference as if set forth in full. [Ord. 4534 § 1, 2009.]

**14.04.170 Schedule of fees.**

A traffic impact fee shall be assessed against all new development based on development type in an amount provided for in the Traffic Impact Fee Schedule, Appendix E, of the “Traffic Impact Fee Rate Study Update, dated July 2018Impact Fee Report with Recommendations,” which is filed in the office of the city clerk and incorporated herein by this reference as if set forth in full. The traffic impact fee is hereby established at \$1,758 1,817.00 per peak hour trip (PHT). This fee schedule represents the city’s determination of the appropriate share of system improvement costs to be paid by new growth and development. [Ord. 4534 § 1, 2009.]

**14.04.175 Fee reductions.**

The traffic impact associated with a building permit in commercial and industrial zones as defined in ECC 14.04.030 shall be reduced by 50 percent. There shall be no traffic impact fee associated with building permits issued within the central commercial (C-C) zone. [Ord. 4534 § 1, 2009.]

**14.04.180 Existing authority unimpaired.**

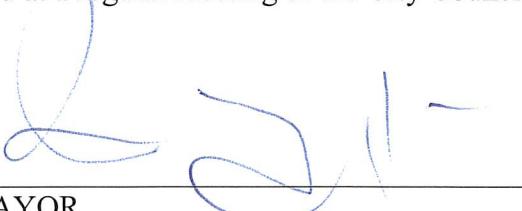
Nothing in this chapter shall preclude the city from requiring the applicant to mitigate adverse environmental impacts of a specific development pursuant to the State Environmental Policy Act, Chapter 43.21C RCW, based on the environmental documents accompanying the underlying development approval process, and/or Chapter 58.17 RCW governing plats and subdivisions; provided, that the exercise of this authority is consistent with the provisions of Chapters 43.21C and 82.02 RCW. [Ord. 4534 § 1, 2009.]

**Section 3. Severability.** If any portion of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portion(s) of this ordinance.

**Section 4. Corrections.** Upon the approval of the City Attorney, the City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

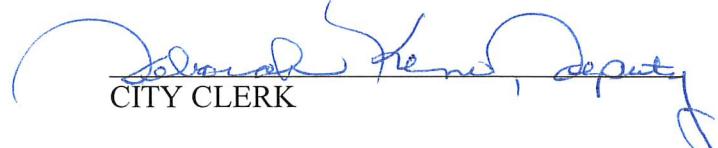
**Section 5. Effective Date.** This ordinance shall take effect and be in force five (5) days after its passage, approval and publication.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 17<sup>th</sup> day of September, 2018.



MAYOR

ATTEST:



CITY CLERK

Approved as to form:



CITY ATTORNEY

Publish:

I, Coreen M. Reno, City Clerk of said City, do hereby certify that Ordinance No. 4808 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4808 was published as required by law.



COREEN M. RENO