

ORDINANCE NO. 4646

AN ORDINANCE of the City Council of the City of Ellensburg, Washington, amending Sections 14.04.030 and 14.04.120 of Chapter 14.04 of the Ellensburg City Code (“ECC”) entitled “Traffic Impact Fees” to amend Section 14.04.030 “Definitions” to designate the current edition of the Trip Generation Manual published by the Institute of Transportation Engineers and to amend Section 14.04.120 “Impact fee refund” to lengthen the time for encumbrance of traffic impact fees from six years to ten years.

WHEREAS, in 2009 the City Council enacted a Traffic Impact Fees ordinance, Chapter 14.04 ECC, to establish and impose traffic impact fees upon certain new development and establish standards and procedures for credits, refunds and appeals from imposition of such fees, and

WHEREAS, in 2011 the State Legislature amended RCW 82.02.080 Impact fees – Refunds to allow cities in Washington ten years instead of six years in which to expend or encumber impact fees collected on property;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ELLENSBURG DOES ORDAIN AS FOLLOWS:

Section 1. Section 14.04.030 of the Ellensburg City Code entitled “Definitions,” and section 1 of Ordinance 4534 is hereby amended to read as follows:

14.04.030 Definitions.

- A. 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).
- B. “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.
- C. “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.
- D. “Duplex” means two dwelling units which are attached to one another.
- E. “Multifamily dwelling unit” means a structure containing three or more dwelling units, with the units joined to one another.

F. Industrial. For the purposes of this chapter, “industrial” shall be defined as those activities allowable within the following zones as defined in ECC Title13: light industrial zone (I-L) and heavy industrial zone (I-H).

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.

H. “Encumber” means to transfer 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 impact fee dollars shall bear the name of the system improvement financed with such money.

I. “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.

J. “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.

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

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

M. “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.

N. “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 impact fees, the cost of reviewing independent fee calculations or the administrative fee required for an appeal.

O. “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.

P. "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.

Q. The "traffic impact fee schedule" is 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 "8th Edition Trip Generation" manual published by the Institute of Transportation Engineers, or subsequent editions.

R. "Traffic impact fee study" means the study which determined the traffic impact fee dated December 2007 and subsequent updates.

S. "Low-income housing" means any unit of housing where the eligibility requirements for rental or purchase requires the renter or purchaser to have certified household income equal to or less than 50 percent of area median income, adjusted for household size ("AMI"), and where the eligibility requirements for homeownership require the purchaser to have certified household income equal to or less than 80 percent of AMI. 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. [Ord. 4534 § 1, 2009.]

Section 2. Section 14.04.120 of the Ellensburg City Code entitled "Impact fee refunds" and Section 1 of Ordinance 4534 is hereby amended to read as follows:

14.04.120 Impact fee refunds.

A. The current owner of property on which impact fees have been paid may receive a refund of such fees if the impact fees have not been expended or encumbered within ~~six~~ ten years of their receipt by the city. 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 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 impact fees that are not expended or encumbered within ~~six~~ ten 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 impact fees shall include any interest earned on the impact fees.

E. Should the city seek to terminate all impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded to the current owner of the property for which an 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 impact fee, when:

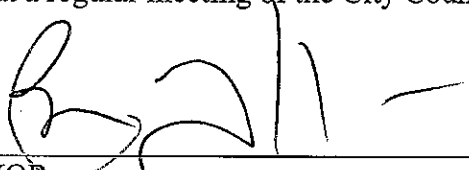
1. The applicant does not proceed to finalize the development activity as required by statute or city code or the International Building Code; and
2. The city has not expended or encumbered the impact fees prior to the application for a refund. In the event that the city has expended or encumbered the 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 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. 4534 § 1, 2009.]

Section 3. - Severability. If any one or more chapters, sections, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion(s) of this ordinance and the same shall remain in full force and effect.

Section 4. - 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 19 day of July, 2013.

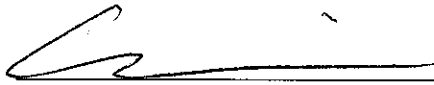


MAYOR


CITY CLERK

Attest:

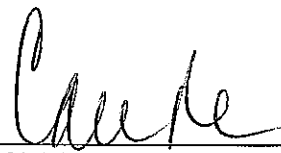
Approved as to form:



CITY ATTORNEY

Publish: July 5, 2013

I, Coreen M. Reno, City Clerk of said City, do hereby certify that Ordinance No. 4646 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, that Ordinance No. 4646 was published as required by law.



COREEN M. RENO, CMC