

ORDINANCE NO. 4285

AN ORDINANCE OF THE CITY OF KIRKLAND AUTHORIZING THE COLLECTION OF IMPACT FEES FOR SCHOOLS AND ADDING CHAPTER 27.08 TO THE KIRKLAND MUNICIPAL CODE.

WHEREAS, the City Council of the City of Kirkland finds that new residential development will create additional demand and need for school capacity; and

WHEREAS, the Washington State Legislature passed the Growth Management Act of 1990 and 1991, RCW 36.70A et seq. and RCW 82.02 et seq. (the "Act"), which authorizes the collection of impact fees on development activity to provide public school facilities to serve new development; and

WHEREAS, the Act requires that impact fees may only be collected for public facilities which are addressed by a capital facilities element of a comprehensive land use plan; and

WHEREAS, the Lake Washington School District has requested that the City of Kirkland impose school impact fees on the District's behalf in order to address the continued impact of growth within the City on the District's capital facilities; and

WHEREAS, the City Council of the City of Kirkland recognizes the proportionate share of the expense of school facilities necessitated by the impacts of new residential development should be borne by the developers of new growth through the imposition of school impact fees as authorized by the Growth Management Act (RCW 82.02.050 – 82.02.100); and

WHEREAS, the Lake Washington School District has prepared a Capital Facilities Plan in compliance with the Act; and

WHEREAS, school impact fees have been calculated for residential uses based upon a specified formula; and

WHEREAS, the City Council of the City of Kirkland desires to phase in the school impact fee rate for residential units over a period of time, as set forth in the fee schedule in this Ordinance; and

WHEREAS, provision has been made to consider annual adjustments to the school impact fees based upon demographics and capital construction costs.

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

Section 1. A new Chapter 27.08, "School Impact Fees," is added to Title 27 of the Kirkland Municipal Code to read as follows:

27.08.010 Findings and Authority.

The City Council finds and determines that new residential growth and development in the city will create additional demand and need for public facilities (school capacity) in the city and finds that new residential growth and development should pay a proportionate share of the cost of facilities needed to serve the new growth and development. Lake Washington School District #414 has requested that the city impose school impact fees on the District's behalf and has prepared a capital facilities plan documenting the impact of new development within the Lake Washington School District on Lake Washington School District facilities. The city council accepts the methodology and data contained in the capital facilities plan. Therefore, pursuant to Chapter 82.02 RCW, the city council adopts this chapter to assess impact fees for public schools within the Lake Washington School District #414.

27.08.020 Definitions.

The following words and terms shall have the following meanings unless the context clearly requires otherwise. Terms otherwise not defined herein shall be defined pursuant to RCW 82.02.090, or given their usual and customary meaning.

(a) "Act" shall mean the Growth Management Act, Chapter 36.70A RCW.

(b) "Applicant" means the owner of real property according to the records of the King County Department of Records and Elections, or the applicant's authorized agent.

(c) "Building permit" means the official document or certification that is issued by the building division of the fire and building department and that authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, tenant improvement, demolition, moving or repair of a building or structure.

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

(e) "Capital facilities plan" means the "Lake Washington School District #414 Six-Year Capital Facilities Plan," and such plan as amended.

(f) "City" means the City of Kirkland.

(g) "Council" means the city council of Kirkland.

(h) "Department" means the Planning and Community Development Department.

(i) "Director" means the Director of the Department of Planning and Community Development Department.

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

(k) "Impact fee" means a payment of money imposed by the city on an applicant prior to issuance of a building permit as a condition of granting a building permit in order to pay for the public facilities needed to serve new residential growth and development. "Impact fee" does not include a reasonable permit fee or application fee.

(l) "Impact fee account" or "Account" means the account established for the system improvement for which impact fees are collected. The account shall be established pursuant to this chapter, and shall comply with the requirements of RCW 82.02.070.

(m) "Independent fee calculation" means the study of data submitted by an applicant to support the assessment of an impact fee other than the fee in the schedule attached as set forth in KMC 27.08.150 of this chapter.

(n) "Interest" means the interest rate earned by the City sweep account, if not otherwise defined.

(o) "Interlocal agreement" or "Agreement" means a school impact fee interlocal agreement, authorized by this chapter, by and between the city and the Lake Washington School District concerning the collection and expenditure of impact fees.

(p) "Low-income housing" means (1) an owner-occupied housing unit affordable to households whose household income is less than 80% of the King County median income, adjusted for household size, as determined by the United States Department of Housing and Urban Development (HUD), and no more than 30% of the household income is paid for housing expenses or (2) a renter-occupied housing unit affordable to households whose income is less than 60% of the King County median income, adjusted for household size, as determined by HUD, and no more than 30% of the household income is paid for housing expenses (rent and appropriate utility allowance). In the event that HUD no longer publishes median income figures for King County, the city may use or determine such other method as it may choose to determine the King County median income, adjusted for household size. The director will make a determination of sales prices or rents which meet the affordability requirements of this section. An applicant for a low income housing exemption may be a public housing agency, a private non-profit housing developer or a private developer.

(q) "Multifamily dwelling" means attached, stacked, duplex, or assisted living unit as defined in Chapter 5 of Title 23 of this code (Zoning Code) and cottage, carriage and two/three units homes approved under Chapter 113 of Title 23 of this code (Zoning Code).

(r) "Owner" means the owner of real property according to the records of the King County Department of Records and Elections, provided, that if the real property is being purchased under a recorded real estate contract, the purchaser shall be considered the owner of the real property.

(s) "Public facilities" means capital facilities owned or operated by Lake Washington School District #414.

(t) "Residential" means housing, such as detached, attached or stacked dwelling units (includes cottage, carriage and two/three unit homes approved under Chapter 113 of Title 23 (zoning code)), and senior and assisted dwelling units intended for occupancy by one or more persons. For the purpose of this chapter, an accessory dwelling unit, as regulated in Chapter 115 of Title 23 (zoning code) of this code, is considered an adjunct to the associated primary structure and is not charged a separate impact fee.

27.08.030 Assessment of impact fees.

(a) The city shall collect impact fees, based on the schedule in Section 27.08.150 of this chapter, from any applicant seeking a residential building permit from the city.

(b) All impact fees shall be collected from the applicant prior to issuance of the building permit based on the land use categories in Section 27.08.150. Unless the use of an independent fee calculation

has been approved, or unless a development agreement entered into pursuant to RCW 36.70B.170 provides otherwise, the fee shall be calculated based on impact fee schedule in effect at the time a complete building permit application is filed.

(c) For building permits for mixed use developments, impact fees shall be imposed on the residential component of the development found on the schedule in Section 27.08.150 of this chapter.

(d) For building permits within new subdivisions approved under Title 22 (subdivisions) in this code, a credit shall be applied for any dwelling unit that exists on the land within the subdivision prior to the subdivision if the dwelling unit is demolished. The credit shall apply to the first complete building permit application submitted to the City subsequent to demolition of the existing dwelling unit, unless otherwise allocated by the applicant of the subdivision as part of approval of the subdivision.

(e) For complete building permit applications received on or prior to May 31, 2012, at the time of issuance of any single family residential building permit for a dwelling unit that is being constructed for resale, the applicant may elect to record a covenant against the title to the property that requires payment of the impact fees due and owing, less any credits awarded, by providing for automatic payment through escrow of the impact fee due and owing to be paid at the time of closing of sale of the lot or unit. Applicants electing to use this process shall pay a \$240 administration fee for each individual lien filed.

(f) Unless payment has been scheduled under Subsection (e) herein, the building division of the fire and building department shall not issue any building permit unless and until the impact fee has been paid.

27.08.040 Independent fee calculations.

(a) If, in the judgment of the director, none of the fee categories or fee amounts set forth in the schedule in Section 27.08.150 of this chapter accurately describes the impacts resulting from issuance of the proposed building permit, the applicant shall provide to the department for its review and evaluation an independent fee calculation. The director shall consult with the Lake Washington School District and the District shall advise the director prior to the director making the final impact fee determination. The director may impose on the proposed building permit an alternative impact fee based on the independent fee calculation. With the independent fee calculation, the applicant shall pay to the department an administrative processing fee of one hundred dollars per calculation unless a different fee is provided for in Title 5 of this code.

(b) If an applicant requests not to have the impact fees determined according to the schedule in Section 27.08.150 of this chapter, then the applicant shall submit to the director an independent fee calculation, paid for by the applicant, for the building permit. The independent fee calculation shall show the basis upon which it was

made. With the request, the applicant shall pay to the department the administrative processing fee provided for in Title 5 of this code.

(c) An applicant may request issuance of a building permit prior to completion of an independent fee study; provided, that the impact fee is collected based on the fee schedule in Section 27.08.150. A partial refund may be forthcoming if the fee collected exceeds the amount determined in the independent fee calculation and the department agrees with the independent fee calculation.

(d) While there is a presumption that the calculations set forth in the capital facilities plan used to prepare the fee schedule in Section 27.08.150 are correct, the director shall consider the documentation submitted by the applicant, but is not required to accept such documentation which the director reasonably deems to be inaccurate or not reliable, and may, in the alternative, require the applicant to submit additional or different documentation. The director shall consult with the Lake Washington School District and the District shall advise the director prior to the director making the final impact fee determination. The director is authorized to adjust the impact fee on a case-by-case basis based on the independent fee calculation, the specific characteristics of the building permit and/or principles of fairness.

(e) Determinations made by the director pursuant to this section may be appealed to the hearing examiner subject to the procedures set forth in Section 27.08.120.

27.08.050 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 27.08.030(d).

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

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

(4) Demolition or moving of a structure within the City's jurisdiction.

(5)(A) **Construction or Creation of Low-Income Housing.** Any claim for an exemption must be made before payment of the impact fee. Any claim not so made shall be deemed waived. The claim for exemption must be accompanied by a draft lien and covenant against the property guaranteeing that the low-income housing will continue. Before approval of the exemption, the department shall approve the form of the lien and covenant. Within ten days of approval, the applicant shall execute and record the approved lien and covenant

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

(B) The amount of impact fees not collected from low-income housing pursuant to this exemption shall be paid 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.

(6) Construction or creation of any form of housing for the elderly, including nursing homes, retirement centers, and any type of housing units for persons age 55 and over, which have recorded covenants or recorded declaration of restrictions precluding school-aged children as residents of those units. In the event that the housing unit is no longer used for senior housing as defined in this subsection, the current owner shall pay the current impact fee plus interest to the date of the payment.

(7) Any development activity that is exempt from the payment of an impact fee pursuant to RCW 82.02.100, due to mitigation of the same system improvement under the State Environmental Policy Act.

(8) Any development activity for which school impacts have been mitigated pursuant to a voluntary agreement entered into with the Lake Washington School District to pay fees, dedicate land or construct or improve school facilities, unless the terms of the voluntary agreement provide otherwise and provided that the voluntary agreement predates the effective date of the fee imposition.

(b) The director shall be authorized to determine whether a particular proposed development 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 27.08.120.

27.08.070 Adjustments.

Pursuant to and consistent with the requirements of RCW 82.02.060, the Lake Washington School District capital facilities plan has provided adjustments for past and future taxes paid or to be paid by the new development which are earmarked or proratable to the same new system improvements that will serve the new development. The schedule set forth in Section 27.08.150 of this chapter has been reasonably adjusted for taxes and other revenue sources that are anticipated to be available to fund system improvements.

27.08.080 Authorization for interlocal agreement.

The city manager is authorized to execute, on behalf of the city, an interlocal agreement with the Lake Washington School District for the collection, expenditure, and reporting of impact fees.

27.08.090 Impact Fee Administration.

The process for administering school impact fees, including refunding fees, shall be established upon approval of and according to an interlocal agreement between the city and the Lake Washington School District.

27.08.100 Use of funds.

(a) Impact fees may be spent for system improvements, including but not limited to, architectural and/or engineering design studies, land surveys, land acquisition, engineering, permitting, financing, administrative expenses, relocatable facilities, capital equipment pertaining to educational facilities, construction, site improvements, necessary off-site improvements, applicable impact fees or mitigation costs and other expenses which could be capitalized, and which are consistent with the Lake Washington School District's capital facilities plan.

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

(c) Impact fees may be used to recoup costs for system improvements previously incurred by the Lake Washington School District by the city to the extent that new growth and development will be served by the previously constructed system improvements.

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

27.08.110 Review of schedule and fee increases.

The Lake Washington School District shall annually submit to the City a six-year capital facilities plan or an update of a previously adopted plan, which meets the requirements of the Act. The materials submitted annually by the District shall include proposed impact fee amounts for single family residential units and multi-family residential units. The schedule in Section 27.08.150 may be amended to reflect changes to the capital facilities plan. Amendments to the schedule for this purpose shall be adopted by the council.

27.08.120 Appeals.

(a) An appeal of an impact fee imposed on a building permit may only be filed by the Lake Washington School District or the applicant of the building permit for the subject property. An applicant may either file an appeal and pay the impact fee imposed by this chapter under protest, or appeal the impact fee before issuance of the building permit. No appeal may be filed after the impact fee has been paid and the building permit has been issued.

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

(1) The applicability of the impact fees to a given building permit pursuant to Sections 27.08.030 and 27.08.050;

(2) The decision on an independent fee calculation in Section 27.08.040;

(3) The availability or value of a credit in Section 27.08.060; or

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

(c) An appeal, in the form of a letter of appeal, along with the required appeal fee, shall be filed with the department for all determinations by the director, prior to issuance of a building permit. The letter must contain the following:

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

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

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

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

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

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

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

(f) The hearing examiner shall review the appeal from the applicant, the director's memorandum, and the record of determination from the director. No oral testimony shall be given, although legal arguments may be made. The determination of the director shall be accorded substantial weight.

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

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

(i) The department shall distribute a copy of the hearing examiner's decision to the appellant and the Lake Washington School District within five working days of receiving the decision.

(j) In the event the hearing examiner determines that there is a flaw in the impact fee program, that a specific exemption or credit should be awarded on a consistent basis, or that the principles of fairness require amendments to this chapter, the hearing examiner may advise the council as to any question or questions that the hearing examiner believes should be reviewed as part of the council's review of the fee schedule in Section 27.08.150 as provided by Section 27.08.110.

27.08.130 Responsibility for payment of fees.

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

(b) In the event that a building permit is erroneously issued without payment of the fees authorized by this chapter, the building official may issue a written notice to the property owner and occupant advising them of the obligation to pay the fees authorized by this chapter. Such notice shall include a statement of the basis under which the fees under this chapter are being assessed, the amount of fees owed, and a statement that the property owner or occupant may appeal the fee determination within twenty calendar days of the date the notice was issued. Any appeals of such a fee determination shall be processed in accordance with the procedures set forth in Section 27.08.120.

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

27.08.140 Existing authority unimpaired.

Nothing in this chapter shall preclude the city from requiring the applicant for a building permit, 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 RCW 82.02.050(1)(c).

27.08.150 Fee schedule.

(a) **School Impact Fee Schedule:** School impact fees shall be set as a percentage of the District's proposed single family and multi-family residential unit impact fee amounts based on the District's most recent six year capital facility plan ("CFP") or CFP update preceding the applicable Complete Building Permit Application (CBPA) period set forth below:

<u>Type of Land Use</u>	<u>Date of CBPA*</u>	<u>Impact Fee</u>	<u>Per Unit</u>
Single-Family Dwelling (detached unit)	6/1/2011 through 2/29/2012	50% of the single family residential unit impact fee set forth in the most recent CFP or CFP update	Dwelling Unit

preceding
6/1/2011

3/1/2012
through
2/28/2013

80% of the single family residential unit impact fee set forth in the most recent CFP or CFP update preceding 3/1/2012

After 2/28/2013

100% of the single family residential unit impact fee set forth in the most recent CFP or CFP update preceding 2/28/2013

Multifamily Dwelling (attached, stacked, and assisted living unit)

6/1/2011
through
2/29/2012

50% of the multi-family residential unit impact fee set forth in the most recent CFP or CFP update preceding 6/1/2011

Dwelling Unit

3/1/2012
through
2/28/2013

80% of the multi-family residential unit impact fee set forth in the most recent CFP or CFP update preceding 3/1/2012

After 2/28/2013

100% of the multi-family residential unit impact fee set forth in the most recent CFP or CFP update preceding 2/28/2013

*CBPA = Complete Building Permit Application.

(b) The City shall consider CFP or CFP updates submitted by the District after February 28, 2013, in accordance with KMC Section 27.08.110.

(c) The City shall collect an administrative fee of \$65.00 per filing per residential permit in order to cover the administrative cost of collecting, processing, and handling the impact fees described in this chapter.

Section 2. 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 3. The school impact fees and regulations relating to school impact fees shall apply to all complete building permit applications filed on or after (a) June 1, 2011, or (b) the effective date of an interlocal agreement between the City of Kirkland and the Lake Washington School District providing for collection and distribution of school impact fees, whichever occurs later. This ordinance shall take effect in annexation areas of the City of Kirkland on June 1, 2011, or upon the effective date of annexation, whichever is later.

Section 4. This ordinance shall be in force and effect on June 1, 2011 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 15th day of February, 2011.

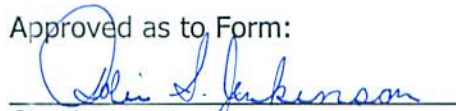
Signed in authentication thereof this 15th day of February, 2011.


MAYOR

Attest:


City Clerk

Approved as to Form:


City Attorney