

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6298

AN ORDINANCE amending Bellevue City Code Chapters 22.16 (Transportation Impact Fee Program) and 22.18 (School Impact Fees for Issaquah School District No. 411 and Renton School District No. 403) to provide an option for deferral of payment of impact fees for single family attached and detached residential construction and make other necessary amendments for clarity and consistency with Chapter 82.02 of the Revised Code of Washington (RCW); adopting a new Chapter 22.19 (Option for Deferred Payment of Impact Fees) to the Bellevue City Code to establish the process for optional deferral of payment of impact fees for single family attached and detached residential construction; and establishing an effective date.

WHEREAS, the Washington State Legislature adopted Engrossed Senate Bill (ESB) 5923 in April 2015, which amended Revised Code of Washington (RCW) 82.02.050 so as to mandate that cities collecting impact fees adopt and maintain a deferral program for collection of impact fees for single family detached and attached residential construction; and

WHEREAS, ESB 5923 sets forth specific requirements for the deferral program while also allowing the City certain discretion, including the time for deferral and the collection of an administrative fee; and

WHEREAS, pursuant to this legislative mandate, the City seeks to amend Chapters 22.16 and 22.18 of the Bellevue City Code and to adopt a new Chapter 22.19 to the Bellevue City code to establish a process for deferral of payment of impact fees for single family attached and detached residential construction; and

WHEREAS, the City also wishes to make other necessary amendments to Chapters 22.16 and 22.18 of the Bellevue City Code to provide clarity and consistency with Chapter 82.02 RCW; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES
ORDAIN AS FOLLOWS:

Section 1. Section 22.16.070 of the Bellevue City Code is hereby amended to read as follows:

22.16.070 Imposition of transportation impact fees.

A. Any development in the service area, except a development or portion thereof specifically exempt pursuant to subsection B of this section shall be required to pay a transportation impact fee to the extent and in the amount provided herein.

B. The following types of development or portion thereof are development activities with broad public purposes, and are exempt from the requirement to pay a transportation impact fee as otherwise required by this Chapter 22.16 BCC:

1. Any development or portion thereof used exclusively for “child care services” as defined in LUC 20.50.014 now or as hereafter amended; provided, that no such exemption shall be provided unless the developer has first signed an agreement satisfactory to the city which provides assurance that such child care services use shall continue for at least that term specified in such agreement;

2. Any development or portion thereof used exclusively for affordable housing; provided, that no such exemption shall be provided unless the developer has first signed an agreement satisfactory to the city which provides assurance that any units granted an exemption under this section shall remain affordable for the life of the project;

3. Public transportation facilities;

4. City parks or public parks each as defined in LUC 20.50.040, now or as hereafter amended;

5. Privately operated not-for-profit social service facilities recognized by the Internal Revenue Service under Internal Revenue Code Section 501(c)(3);

6. Public libraries;

7. Publicly funded educational institutions;

8. Hospitals, as defined in LUC 20.50.024 now or as hereafter amended, if not operated for profit.

Impact fees for these exemptions shall be paid from public funds other than the impact fee fund.

C. **Timing of Calculation and Payment.** Impact fees shall be calculated based on the impact fee rate schedule in effect at the time of building permit issuance, or if a building permit is not required, at the time of issuance of the City’s decision approving the development. Impact fees shall be payable at the time of building permit issuance, or if a building permit is not required, at the time the City issues its decision approving the development. The provisions of this section shall not apply if the payment of impact fees have been deferred pursuant to Chapter 22.19 BCC.

The timing of payments may be modified in a development agreement approved by the city council pursuant to Chapter 36.70B RCW.

Section 2. Section 22.16.080 of the Bellevue City Code is hereby amended to read as follows:

22.16.080 Calculating transportation impact fees.

A. Concurrently with adoption of an updated transportation facilities plan, the director shall prepare an updated transportation impact fee program report using the following methodology:

1. Determine the share of costs attributable to growth. For the transportation improvements listed in the impact fee project list, calculate any transportation deficiencies based upon the adopted level of service standards. Remove the proportion of the total costs of such transportation improvements attributable to deficiencies. The remaining “growth share of costs” are attributable to new growth occurring within and outside of the city.

2. Calculate the city development percentage of growth on the transportation improvements. Multiply this percentage by the total growth share of costs to determine the share of the transportation costs attributable to development in the city. This total constitutes the “city development share of cost.”

3. Divide the “city development share of cost” by the total number of p.m. peak hour vehicle trips generated by development within the city. The resulting value is the “impact fee per trip.”

4. Adjust the “impact fee per p.m. peak hour trip” for specific land use types to account for:

a. Pass-by trips, as defined in the Institute of Transportation Engineers’ Trip Generation Report, now or as hereafter amended; and

b. Average trip length; and

c. Expected levels of ridesharing and transit usage.

5. Produce a schedule of impact fee rates per development unit (e.g., square footage, housing units) for specific land use types for consideration pursuant to BCC 22.16.085.

B. The director shall calculate the amount of the applicable transportation impact fee for each development by:

1. Verifying the development land use type and units of development;

2. Determining the applicable per unit transportation impact fee from the impact fee schedule;

3. Multiplying the applicable per unit transportation impact fee by the development unit to obtain the transportation impact fee for such development.

C. If the development does not fit into any of the categories specified in the transportation impact fee schedule, the director shall use the impact fee applicable to the most directly comparable type of land use specified in the impact fee schedule. If the development includes mixed uses, the fee shall be determined by apportioning the space committed to uses specified in the impact fee schedule.

D. The director shall be authorized to adjust the impact fees for any development based on analysis of specific trip generating characteristics of the development. Such adjustments may consider mixed-use characteristics and/or expected levels of ridesharing and transit usage of the development.

E. No transportation impact fee shall be collected if the transportation improvements are incapable of being reasonably accomplished because of lack of public funds. No impact fee shall be imposed by the city on a development when mitigation for the same transportation impact of the development is being required by any other governmental agency pursuant to any other local, state, or federal law.

F. The director shall consider unusual circumstances for specific developments and shall adjust the otherwise applicable impact fee for specific developments in order to ensure that impact fees are imposed fairly. The director shall set forth his/her reasons for adjusting the impact fee in written findings.

G. Through a development agreement approved by the city council pursuant to Chapter 36.70B RCW, the impact fees calculated for a specific development may be adjusted or reduced upon a finding that the public interest is served by such adjustment and so long as any reduction of impact fees is paid from public funds other than the impact fee fund.

Section 3. Section 22.16.090 of the Bellevue City Code is hereby amended to read as follows:

22.16.090 Determination, collection and administration of fees.*

A. The director shall determine the amount of the transportation impact fee required for any development pursuant to the transportation impact fee schedule and the provisions of this chapter.

B. Consistent with the provisions of BCC 22.16.070(C), no building permit, or other development approval if a building permit is not required, for any development requiring payment of a transportation impact fee pursuant to this Chapter 22.16 BCC

shall be issued until the transportation impact fee has been paid in full unless the applicant has deferred payment of impact fees pursuant to Chapter 22.19 BCC.

C. There is hereby created and established a special purpose, nonoperating transportation impact fee fund (“the impact fee fund”). All transportation impact fees, and investment income received pursuant to this Chapter 22.16 BCC shall be deposited into the impact fee fund. Procedures for administration of the fund shall be established by the director of the finance department. The impact fee fund is not intended as a fund from which direct transportation capital expenditures will be made. This fund is intended to serve as an accounting device to receive revenues generated as described herein for automatic transfer to other fund(s) where expenditure purposes associated with these revenues have been budgeted. In consideration of this, appropriations in this fund may be administratively adjusted periodically; that is, without additional ordinance requirements, in order to equal revenue expectations. Appropriation changes by ordinance will continue to be provided for the funds in which expenditures will actually occur.

D. The transportation department shall pool impact fees whenever necessary to ensure that the fees are expended or encumbered for a permissible use within ten years of receipt, unless there exists an extraordinary or compelling reason for fees to be held longer than ten years. The city council shall adopt written findings setting forth its reasons for holding any fees longer than ten years. Pooling for such purpose shall be accomplished by determining which project has the highest priority among the projects for which impact fees were collected, and the fees shall be transferred to the budget of that project. Any interest earned on impact fee installment payments, or on invested monies in the impact fee fund may be pooled and expended on any one or more of the transportation improvements for which impact fees have been collected.

E. Fees may be collected for system improvement costs previously incurred by the city to the extent that new growth and development will be served by the previously constructed improvements; provided such fee shall not be imposed to make up for any system improvement deficiencies.

F. The director is authorized to establish rules and regulations to administer the provisions of this chapter.

Section 4. Section 22.16.100 of the Bellevue City Code is hereby amended to read as follows:

22.16.100 Refund of fees.

A. If a building permit or other approval expires or if the application is withdrawn or canceled and no construction has commenced, the current property owner shall be entitled to a refund of any transportation impact fee paid plus interest earned less a reasonable administrative charge for the processing of said fee. Any fee erroneously paid or collected shall be refunded in full, with interest earned.

B. All transportation impact fees not expended or encumbered within ten years of collection shall be refunded in full to the property owner currently of record, with interest earned unless the city council has made written findings extending the ten-year period.

Section 5. Section 22.18.050 of the Bellevue City Code is hereby amended to read as follows:

22.18.050 Assessment of impact fees.

A. The city shall collect school impact fees, based on the fee schedule in BCC 22.18.100, from any applicant seeking development approval from the city for dwelling units located within the district's boundaries where such development activity requires final plat or PUD approval or the issuance of a residential building permit or a mobile home permit.

B. For a plat or PUD, 50 percent of the impact fees due on the plat or the PUD shall be assessed and collected from the applicant at the time of final approval, using the fee schedule in effect when the plat or PUD is approved. The balance of the assessed fee shall be allocated to the dwelling units in the project, and shall be collected when the building permit for each dwelling unit is issued, unless the applicant has deferred payment of impact fees pursuant to Chapter 22.19 BCC. Residential developments proposed for short plats shall not be governed by this subsection, but shall be governed by subsection C below.

C. For existing lots or lots not covered by subsection B above, applications for single-family and multifamily residential building permits, mobile home permits, and site plan approval for mobile home parks proposed, the total amount of the impact fees shall be assessed and collected from the applicant when the building permit is issued, using the fee schedule then in effect, unless the applicant has deferred payment of impact fees pursuant to Chapter 22.19 BCC. Irrespective of the date that the application for a building permit or mobile home permit or site plan approval was submitted, no approval shall be granted and no permit shall be issued until the required school impact fees set forth in the fee schedule have been paid, unless the applicant has deferred payment of impact fees pursuant to Chapter 22.19 BCC.

D. The city shall not grant final plat or PUD approval nor issue the required building permit or mobile home permit nor grant the required site plan approval for a mobile home park for projects located within the district's boundaries unless and until the impact fees set forth in the fee schedule have been paid, unless the applicant has deferred payment of impact fees pursuant to Chapter 22.19 BCC.

Section 6. Section 22.18.080 of the Bellevue City Code is hereby amended to read as follows:

22.18.080 Impact fee account, uses of impact fees, and refunds.

A. Impact fee receipts shall be earmarked specifically and retained in a special interest-bearing account established by the district solely for the district's school impact fees as provided for in BCC 22.18.090. All interest shall be retained in the account and expended for the purpose or purposes identified in subsection B. Annually the city, based on the report submitted by the district pursuant to BCC 22.18.090, shall prepare a report on school impact fees showing the source and amount of all moneys collected, earned or received, and capital or system improvements that were financed in whole or in part by impact fees.

B. Impact fees for the district's system improvements shall be expended by the district for capital improvements, including but not limited to school planning, land acquisition, site improvements, necessary off-site improvements, construction, engineering, architectural, permitting, financing, and administrative expenses, relocatable facilities, capital equipment pertaining to educational facilities, and any other expenses which could be capitalized, and which are consistent with the district's capital facilities plan.

C. In the event that bonds or similar debt instruments are issued for the advanced provision of capital facilities for which impact fees may be expended and where consistent with the provisions of the bond covenants, 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 section.

D. School impact fees shall be expended or encumbered within ten years of receipt, unless the council identifies in written findings extraordinary and compelling reason or reasons for the district to hold the fees beyond the ten-year period. The district may petition the council for an extension of the ten-year period and the district shall set forth any such extraordinary or compelling reason or reasons in its petition. Where the council identifies the reason or reasons in written findings, the council shall establish the period of time within which the impact fees shall be expended or encumbered, after consultation with the district.

E. The current owner of property on which an impact fee has been paid may receive a refund of such fees if the impact fees have not been expended or encumbered within ten years of receipt of the funds by the city, except as provided for in subsection D. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first-in, first-out basis. The city shall notify potential claimants by first-class mail deposited with the United States Postal Service addressed to the owner of the property as shown in the city's tax records.

F. An owner's request for a refund must be submitted to the council 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. Any impact fees that are not expended or

encumbered within the limitations in subsection D, and for which no application for a refund has been made within this one-year period, shall be retained and expended consistent with the provisions of this section. Refunds of impact fees shall include any interest earned on the impact fees.

G. Should the city seek to terminate any or all school impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded to the current owner of the property for which a school impact fee was paid. Upon the finding that any or 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 city's 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 district, consistent with the provisions of this section. The notice requirement set forth above shall not apply if there are no unexpended or unencumbered balances within the account or accounts being terminated.

H. A developer may request and shall receive a refund, including interest earned on the impact fees, when:

1. The developer does not proceed to finalize the development activity as required by statute or city code or the Uniform Building Code; and

2. No impact on the district has resulted. "Impact" shall be deemed to include cases where the district has expended or encumbered the impact fees in good faith prior to the application for a refund. In the event that the district 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. The owner must petition the city 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 BCC 22.18.070.

I. Interest due upon the refund of impact fees required by this section shall be calculated according to the average rate received by the city or the district on invested funds throughout the period during which the fees were retained.

J. Notwithstanding any other provision to the contrary in this code, the city, with the approval of any affected school district, may determine to refund school impact fees in circumstances where a valid issue exists concerning the legality of the imposition and collection of such fees. Refunds shall be made to the current owner of the property upon which the impact fees were imposed.

Section 7. A new Chapter 22.19 of the Bellevue City Code is hereby adopted to read as follows:

Chapter 22.19 Option for Deferred Payment of Impact Fees

Sections	22.19.010	Purpose and Authority
	22.19.020	Definitions
	22.19.030	Application for Optional Deferral of Impact Fees

22.19.010 Purpose and Authority

The purpose of this Chapter is to establish a process for the deferral of the payment of impact fees for single-family detached and attached residential construction pursuant to RCW 82.02.050, as adopted or hereinafter amended.

22.19.020 Definitions

The following definitions apply only to this chapter.

A. "Single-Family Residential Development Unit" means one single-family dwelling unit located on one parcel, which may be attached to an adjacent single-family townhouse. A single-family dwelling unit is a building containing but one kitchen, designed for and occupied exclusively by one family.

B. "District" means either the Issaquah School District No. 411 or the Renton School District No. 403, King County, Washington.

22.19.030 Application for Optional Deferral of Impact Fees.

An applicant may request to defer payment of impact fees imposed pursuant to Chapter 22.16 BCC or 22.18 BCC for a Single-Family Residential Development Unit any time after submittal of a complete building permit application. The following provisions shall apply to any request to defer payment of an impact fee:

A. Application. The applicant shall submit to the City in writing a request to defer the payment of an impact fee for a specifically identified building permit or development approval. The applicant's request shall identify, as applicable, the applicant's corporate identity and contractor registration number, the full names of all legal owners of the property upon which the development activity allowed by the building permit is to occur, the legal description of the property upon which the development activity allowed by the building permit is to occur, the tax parcel identification number of the property upon which the development activity allowed by the building permit is to occur, and the address of the property upon which the development activity allowed by the building permit is to occur. The Director of the Development Services Department shall have the authority to charge a fee to pay for the cost of time required for City staff to administer the impact fee deferral for each building permit.

B. Calculation of Impact Fees. The impact fee amount due under any request to defer payment of impact fees shall be based on the schedule in effect at the time the applicant provides the city with the information required in subsection A of this section.

C. Impact Fee Lien. Prior to the issuance of a building permit that is the subject of a request for a deferred payment of impact fee, all applicants and/or legal owners of the property upon which the development activity allowed by the building permit is to occur must sign and record a deferred impact fee payment lien in a form acceptable to the City Attorney. The deferred impact fee payment lien shall be recorded against the property subject to the building permit and be granted in favor of the City in the amount of the deferred impact fee. Any such lien shall be junior and subordinate only to one mortgage for the purpose of construction upon the same real property subject to the building permit.

D. The City shall not approve a final inspection until the impact fees identified in the deferred impact fee payment lien are paid in full.

E. In no case shall payment of the impact fee be deferred for a period of more than eighteen (18) months from the date of building permit issuance.

F. Upon receipt of final payment of the deferred impact fee as identified in the deferred impact fee payment lien, the City shall execute a release of lien for the property. The property owner may, at his or her own expense, record the lien release.

G. In the event that the deferred impact fee is not paid within the time provided in this subsection, the City may institute foreclosure proceedings under the process set forth in Chapter 61.12 RCW, as adopted or hereinafter amended. The District may also institute foreclosure proceedings as set forth in RCW 82.02.050(3), as adopted or hereinafter amended.

H. An applicant is entitled to defer impact fees pursuant to this section for no more than twenty (20) single family dwelling unit building permits per year in the City. For purposes of this section, an "applicant" includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.

Section 8. This Ordinance shall take effect and be in force five (5) days after its passage and legal publication.

Passed by the City Council this _____ day of _____, 2016
and signed in authentication of its passage this _____ day of _____,
2016.

(SEAL)

John Stokes, Mayor

Approved as to form:

Lori M. Riordan, City Attorney

Monica A. Buck, Assistant City Attorney

Attest:

Kyle Stannert, City Clerk

Published _____