ORDINANCE NO. 3960

AN ORDINANCE of the City Council of the City of Kent, Washington, relating to the deferral of fees imposed to mitigate the impact of new development.

RECITALS

A. Pursuant to the provisions of state law, Chapter 35A.63 of the Revised Code of Washington (RCW) and Chapter 36.70A RCW, the Kent City Council has adopted the Kent City Code (KCC), which includes regulation of fees imposed to mitigate the impact of new development.

B. As a result of the current downturn in the local economy, a diminishing number of new residential units are being built, which adversely impacts the local economy and revenue for governmental services. Unless the City acts, the housing market may continue to languish and adverse consequences of decreased revenues, abandoned projects, and underutilized land will occur.

C. Current regulations require that mitigation fees be paid well before new homes are occupied. This results in larger construction loans and increased finance costs that add to the cost of a new home. To mitigate these negative economic impacts, the City can amend the Kent City Code to afford more flexibility to applicants on the timing of fee payments while maintaining consistency with the Comprehensive Plan. Deferred Land Use Fees
Changing the timing of collection would result in a lower cost to the builders, who could pass the savings to buyers.

D. The City’s State Environmental Policy Act (SEPA) official has determined that these amendments to the Kent City Code are procedural in nature, and therefore exempt from SEPA review.

E. On April 13, 2010, notice was sent to the Washington State Department of Commerce requesting expedited review for an amendment to development regulations. On April 29, 2010, the City was granted expedited review and was informed that it had met the Growth Management Act notice requirements under RCW 36.70A.106.

F. The Economic and Community Development Committee considered this matter at its January 11, 2010, and April 12, 2010 meetings. The Committee also held a public hearing on May 10, 2010 regarding this issue.

G. The deferral provisions in this ordinance shall remain in effect until December 31, 2013.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Amendment. Section 7.02.160, of the Kent City Code, is amended as follows:

Sec. 7.02.160. Installation and Connection Charges Inside City Limits.
A. **Tap charge – Connection by water utility.** Any property owner within the city limits applying for water service shall pay in full a tap charge plus a system development charge prior to issuance of the water service permit. The tap charge will include the cost of connection and laying the pipe from the city water main to the property line of the property to which service is desired, or at a distance of sixty (60) feet from the main toward such property line, whichever is shorter. The minimum tap charge so established for service installed by the water utility is as follows:

1. Two hundred seventy-five dollars ($275) for each five-eighth (5/8) inch by three-quarter (3/4) inch connection.
2. Three hundred twenty-five dollars ($325) for each three-quarter (3/4) inch connection.
3. Three hundred fifty dollars ($350) for each one (1) inch connection.
4. Six hundred dollars ($600) for each one and one-half (1-1/2) inch connection.
5. Eight hundred dollars ($800) for each two (2) inch connection.

On any connection over two (2) inches, the minimum tap charge shall be the actual cost of the meter and installation, plus twenty-five (25) percent.

B. **Tap charge – Connection by licensed contractor.** If the workload of the water utility as determined by the director of public works is such that the installation of the water connection would interfere with the proper operation and maintenance of the water system, the director of public works may require that the property owner employ a licensed contractor to make the connection and install the necessary line and materials except the water meter. All such water services shall meet or exceed the standards and specifications approved by the director of public works. The minimum tap charge is as follows:
1. One hundred dollars ($100) for each five-eighth (5/8) inch by three-quarter (3/4) inch connection.

2. One hundred twenty-five dollars ($125) for each three-quarter (3/4) inch connection.

3. One hundred seventy-five dollars ($175) for each one (1) inch connection.

4. Three hundred sixty dollars ($360) for each one and one-half (1-1/2) inch connection.

5. Five hundred dollars ($500) for each two (2) inch connection.

All such contractor-installed connections shall be guaranteed by the contractor for a period of one (1) year.

C. System development charge. The system development charge is as follows

<table>
<thead>
<tr>
<th>Meter Size (inches)</th>
<th>Charge Effective Through March 31, 2009</th>
<th>Charge Effective April 1, 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1</td>
<td>$2,600</td>
<td>$5,949</td>
</tr>
<tr>
<td>1</td>
<td>$4,627</td>
<td>$14,872</td>
</tr>
<tr>
<td>1-1/2</td>
<td>$10,400</td>
<td>$29,743</td>
</tr>
<tr>
<td>2</td>
<td>$18,486</td>
<td>$47,589</td>
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<td>4</td>
<td>$73,933</td>
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<td>$222,932</td>
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<tr>
<td>6</td>
<td>$166,376</td>
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<tr>
<td>8</td>
<td>$295,786</td>
<td>$475,894</td>
</tr>
<tr>
<td>10</td>
<td>$462,162</td>
<td>$654,354</td>
</tr>
</tbody>
</table>

After April 1, 2009, this system development charge will increase annually, on the first day of each calendar year, by an amount equal to the Deferred Land Use Fees.
percentage increase in the Construction Price Index for Seattle-Tacoma-Bremerton for the twelve (12) months October 31 through September 30 of the previous calendar year.

However, if (1) the city’s fire marshal has required that, in conjunction with the city’s issuance of a single-family residential building permit, the applicant must install a fire sprinkler system, and (2) the need for a meter size greater than three-quarters (3/4) of an inch is based solely on the fire marshal’s requirement that the sprinkler system be installed, the single-family residential permit applicant shall pay only the system development charge listed above for a meter less than one (1) inch in diameter. It is not the city’s intent to require an applicant to pay a higher system development charge when the larger meter size is needed only in the unusual event of a fire demand rather than for normal daily user demand.

D. Installation of undersized meter. If an undersized meter is installed, a deduction will be allowed from the above charges, including system development charges, which will reflect the difference in cost between the undersized meter and the regular size meter. All service material (including water meter) will remain the property of the city.

E. Tap change. If the tap is changed to one of a larger size, the cost and expense of such charge must be paid before the larger size tap is installed.

F. Paving replacement – Charge. If it becomes necessary during the installation of such connection on a time and material basis to break and replace either concrete or blacktop paving, then in each instance an additional charge shall be made to cover the cost of such repair.
G. Fee deferral

(1) Until December 31, 2013, at the time of issuance of any single family residential building permit for a dwelling unit that is being constructed for initial sale, the owner of the subject real property may defer payment of the water system development charge in subsection “A” of this section, executing a first position lien in favor of the City in the amount of the water system development charge. The City shall record the lien against the real property and the lien amount shall be paid by the seller to the City at the time of closing of the sale of the real property and single family residence. An owner who chooses to defer the water system development charge must combine the lien with a lien deferring the transportation improvement fee in KCC 12.11.090 or Chapter 43.21C RCW, and drainage system development charge in KCC 7.05.165.

SECTION 2. - Amendment. Section 7.05.165, of the Kent City Code, is amended as follows:

Sec. 7.05.165 Drainage systems development charge.

A. Effective April 1, 2009, the city shall assess and collect a drainage systems development charge against all new development or redevelopment in the amount of one thousand and seven hundred and eighty-seven dollars ($1,787) per ESU, as defined in KCC 7.05.090(6)(3). This drainage system development charge will increase annually, on the first day of each calendar year, by an amount equal to the percentage increase in the Construction Price Index for Seattle-Tacoma-Bremerton for the twelve (12) month period October 1 through September 30 of the previous calendar year.

All drainage system development charges collected by the storm and surface water utility shall be placed in a separate revenue account for the storm and surface water utility.
B. **Fee deferral**

   (1). Until December 31, 2013, at the time of issuance of any single family residential building permit for a dwelling unit that is being constructed for initial sale, the owner of the subject real property may defer payment of the drainage system development charge in subsection “A” above by executing a first position lien in favor of the City in the amount of the drainage system development charge. The City shall record the lien against the real property and the lien amount shall be paid by the seller to the City at the time of closing of the sale of the real property and single family residence. An owner who chooses to defer the drainage system development charge must combine the lien with a lien deferring the transportation improvement fee in KCC 12.11.090 or Chapter 43.21C RCW, and water system development charge in KCC 7.02.160.

**SECTION 3. - Amendment.** Section 12.11.090 of the Kent City Code is amended as follows:

**Sec. 12.11.090 Mitigation.**

A. **General.** If mitigation is required to meet the area-average level of service standard, the applicant may instead choose to (1) reduce the size of the development until the standard is met, (2) delay development schedule until city and/or others provide needed improvements, or (3) provide the mitigation as provided for in this chapter. Mitigation must be acceptable to the city in form and amount, to guarantee the applicant’s pro rata share of the financial obligation for capital improvements for the benefit of the subject property.

B. **Mitigation approval.** If concurrency does not exist as set forth in KCC 12.11.050, to obtain concurrency, the applicant may provide mitigation to the satisfaction and approval of the director as follows:
1. **Payment for and timing of improvements.**

   a. Payment for developer-funded transportation improvements affecting critical arterials and key intersections within the city’s direct operational control necessary to meet the requirements for concurrency must be made prior to issuance of a development permit, final plat approval or other approval requiring improvements under this chapter. Any such improvements required to be constructed by a developer to meet the requirements for concurrency must be under construction within six (6) months after issuance of a certificate of occupancy, final plat approval or such other approval for the proposed development. All improvements shall comply with the city’s construction standards, as adopted pursuant to Ordinance 3117, and as thereafter amended. Furthermore, the director shall require an assurance device to guarantee completion of such improvements in accordance with said construction standards. The finance manager shall be responsible for maintaining all mitigation funds received under this chapter.

   b. Payment for or the requirement of the developer to construct any transportation improvement necessary to meet the requirements of concurrency which is partially or wholly outside the city’s direct operational control must be submitted for approval by the appropriate agency(ies) which have control. Should the appropriate agency(ies) elect to postpone the proposed improvements, or refuse to accept the proposed mitigation, the director shall collect and hold the amount estimated for mitigation until the improvement is made as required in this chapter. An assurance device satisfactory to the director may substitute for the payment required in this subsection.

   c. The project proponent may provide funding in an amount equal to the cost estimate of the director, for necessary traffic improvements. The director may require actual construction rather than

   Deferred Land Use Fees
provision of funding. Funds, or other commitments, for projects to be constructed by the city must be paid in full by the project proponent to the city prior to issuance of a development permit, final plat approval or such other approval for the project.

d. Fee deferral

(i). Until December 31, 2013, at the time of issuance of any single family residential building permit for a dwelling unit that is being constructed for initial sale, the owner of the subject real property may defer payment of the transportation improvement fee in subsections a. and c. above by executing a first position lien in favor of the City in the amount of the transportation improvement fee. The City shall record the lien against the real property and the lien amount shall be paid by the seller to the City at the time of closing of the sale of the real property and single family residence. An owner who chooses to defer the transportation improvement fee must combine such deferral with deferral of the water system development charge in KCC 7.02.160 and drainage system development charge in KCC 7.05.165.

2. Transportation demand management. As a mitigation measure, the project proponent may establish transportation demand management (TDM) strategies to reduce single occupant vehicle trips generated by the project. The project proponent shall document the specific measures to be implemented and the number of trips to be reduced by each measure. The TDM program may be denied based on the criteria of subsection (B)(3) below. The director must approve the strategies and shall monitor and enforce the performance of agreed upon TDM measures. The director will determine if performance measuring devices shall be imposed, and may require annual documentation of the continued effectiveness of such measures. The director may require that additional measures be implemented if the agreed upon measures fail to result in the reduction of the stated number of trips.

Deferred Land Use Fees
3. **Decision criteria-acceptable mitigation.** Acceptable mitigation requires a finding by the director that:

   a. The mitigation is consistent with the comprehensive plan.
   
   b. The mitigation contributes to system performance.
   
   c. Improvements to an intersection or roadway may not shift traffic to a residential area.
   
   d. Improvements to an intersection or roadway may not shift traffic to other intersections for which there is no acceptable mitigation available.
   
   e. Improvements to an intersection or roadway may not shift traffic to intersections within another jurisdiction which would violate that jurisdiction’s policies and regulations.
   
   f. Improvements to an intersection or roadway may not shift traffic to another mobility management zone and violate that zone’s objectives and standards.
   
   g. The effect of the improvement would not result in a reduction or the loss of another transportation objective, including but not limited to maintaining high occupancy vehicle lanes, sidewalks, or bicycle lanes.
   
   h. The adverse environmental impacts of the facilities’ improvement can be reasonably alleviated.
   
   i. The improvement will not violate accepted engineering standards and practices.
Notwithstanding the foregoing, the director has the authority, in the
director's sole discretion, to require correction of a documented safety-
related deficiency.

C.  **Mitigation denial-appeal process.** If the director determines that the
proposed mitigation does not meet the requirements of this chapter, the
director may deny the proposed improvements and determine the project
is inconsistent with this chapter. The director's decision may be appealed
by the applicant to the hearing examiner pursuant to the provisions of KCC
12.11.080.

**SECTION 4.** - **Severability.** If any one or more section,
subsections, or sentences of this ordinance are held to be unconstitutional
or invalid, such decision shall not affect the validity of the remaining
portion of this ordinance and the same shall remain in full force and effect.

**SECTION 5.** - **Corrections by City Clerk or Code Reviser.** Upon
approval of the City Attorney, the City Clerk and the code reviser are
authorized to make necessary corrections to this ordinance, including the
correction of clerical errors; references to other local, state or federal laws,
codes, rules, or regulations; or ordinance numbering and
section/subsection numbering.

**SECTION 6.** - **Effective Date.** This ordinance shall take effect and
be in force thirty (30) days from and after its passage as provided by law.

ATTEST:

[Signature]
BRENDA JACOBER, CITY CLERK

Deferred Land Use Fees
APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

PASSED: 1 day of June, 2010.
APPROVED: 1 day of June, 2010.
PUBLISHED: 4 day of June, 2010.

I hereby certify that this is a true copy of Ordinance No. 3960 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER CITY CLERK

Deferred Land Use Fees