ORDINANCE NO. 3973

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Kent City Code Chapter 12.14 to eliminate deposit requirements, identify a more expansive category of land uses to which the downtown fee rate applies, establish lien fees for deferral of fees, and make other clarifications.

RECITALS

A. Upon review, city staff have determined that the requirement for an impact fee deposit at the time of application was not consistent with the policy underlying the provisions for fee deferral.

B. Charges for transportation impact fee deferral liens should be the same as other deferral liens.

C. Staff and consultants have determined that the discounted fees for downtown retail land uses shown on the Downtown Kent Rate Memorandum, Exhibit 2, apply to a broader category of retail sales requiring an amendment to that exhibit.

D. In the interests of clarity, certain other amendments are in order.

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

ORDINANCE

SECTION 1. Amend. Kent City Code Chapter 12.14 is hereby amended as follows:

Chapter 12.14
TRANSPORTATION IMPACT FEES

Sec. 12.14.010. Title. This code chapter shall be hereinafter known as the city of Kent Transportation Impact Fees.

Sec. 12.14.020. Purpose and Intent. The purpose and intent of this chapter is for the collection of transportation impact fees for streets and roads, and providing for certain other matters in connection therewith.

Sec. 12.14.030. Findings and Authority. The City Council of the City of Kent hereby finds and determines that development activities, including but not limited to new residential, commercial, retail, office, and industrial development in the City of Kent will create additional demand and need for system improvements in the City, and the Council finds that such new growth and development should pay a proportionate share of the cost of system improvements needed to serve the new growth and development. The City of Kent has conducted extensive research documenting the procedures for measuring the impact of new developments on public facilities, has prepared the “Rate Study for Transportation Impact Fees,” city of Kent, dated May 2010 ("Rate Study"), attached as Exhibit 1, and incorporates that Rate Study into this chapter by this reference. In recognition that fewer trips are generated and...
average trip lengths are reduced to and from Downtown Kent, as hereinafter defined, the city has also prepared a memorandum entitled "Impact Fee Rate Adjustment for Downtown Kent," dated June 28, 2010 ("Downtown Kent Rate Memorandum"), attached as Exhibit 2, and incorporates that memorandum into this chapter by this reference. The Rate Study and the Downtown Kent Rate Memorandum utilize a methodology for calculating transportation impact fees that incorporate, among other things, all of the requirements of RCW 82.02.060(1). A copy of the most current versions of the Rate Study and the Downtown Kent Rate Memorandum shall be kept on file with the city Clerk and are available to the public for review. Therefore, pursuant to Chapter 82.02 RCW, the Council adopts this chapter to assess transportation impact fees for streets and roads. The provisions of this chapter shall be liberally construed in order to carry out the purposes of the Council in providing for the assessment of transportation impact fees.

Sec 12.14.040. Definitions. The following words and terms shall have the following meanings for the purposes of this chapter, 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. Accessory Dwelling Unit shall be defined in KCC 15.02.003 and such provision as amended.

B. Building Permit means an official document or certification which is issued by the city building official and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving, or repair of a building or structure or any portions thereof.

C. Capital Facilities Plan means the capital facilities element of the City's Comprehensive Plan adopted pursuant to RCW 36.70A and such plan as amended.
BC. City means the City of Kent.

ED. Council means the City Council of the City of Kent.

FE. Department means the City's Department of Public Works.

GE. Development Activity means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land, that generates at least one PPM, peak hour trip.

HG. Development Approval means any written authorization from the City of Kent which authorizes the commencement of a development activity.

IH. Director means the Public Works Director or the Director's designee.

JI. Downtown Kent means that area shown on the map incorporated into the Downtown Kent Rate Memorandum. A legal description of Downtown Kent will be prepared and kept on file with the Downtown Kent Rate Memorandum for further reference.

KJ. Downtown Kent Rate Memorandum means that the Exhibit 2 memorandum entitled “Impact Fee Rate Adjustments for Downtown Kent,” dated June 28, 2010, or as hereinafter amended.

L. Dwelling Unit shall be as defined in KCC 15.02.130 or such provision as amended.

MK. Encumbered means to reserve, set aside, or otherwise earmark the transportation impact fees in order to pay for commitments, contractual obligations, or other liabilities incurred for system improvements.

NL. Feepayer is a person, corporation, partnership, an incorporated association, or any other similar entity, or department or bureau of any governmental entity or municipal corporation commencing a development activity which creates the demand for additional system improvements and which requires the issuance of a building permit or a permit for a change of use. “Feepayer” includes an applicant for an

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transportation impact fee credit.

QN. Hearing Examiner shall mean that person or persons appointed by the mayor pursuant to KCC 2.32.

P. Impact fee or Transportation Impact Fee means a payment of money imposed by the City of Kent on development activity pursuant to this title as a condition of granting development approval. "Impact fee" does not include a reasonable permit fee, an application fee, the administrative fee for collecting and handling impact fees, or the cost of reviewing independent fee calculations.

QN. Independent Fee Calculation means the transportation impact fee calculation, and/or economic documentation prepared by a Feepayer, to support the assessment of a transportation impact fee other than by the use of the rates published pursuant to KCC 12.14.190, or the calculations prepared by the Director where none of the fee categories or fee amounts published pursuant to KCC 12.14.190 accurately describe or capture the impacts of the development activity on public facilities.

RO. KCC means the Kent City Code or, when followed by a numerical designation, a provision of the Kent City Code.

SP. Owner means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

TQ. Permit for change of use or change of use permit means an official document which is issued by the Building Official or Planning Manager or their designees and which authorizes a change of use of an existing building or structure or land, when a building permit is not required and does not require a building permit.

U. Planned Unit Development or PUD shall have the same meaning as set forth in the KCC 15.08.400.

VR. P.M. Peak Hour means the sixty-minute period between 4:00 and 6:00 p.m. which experiences the highest volume of traffic on a road.
or street or passing through a road or street intersection.

WS. P.M. Peak Hour Trips means the total vehicular trips entering and leaving a place of new development activity on the adjacent public road or street during the P.M. peak hour.

XT. Project Improvements means site improvements and facilities that are planned and designed to provide service for a particular development project, and 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 a capital facilities plan adopted by the Council shall be considered a project improvement.

YU. Public Facilities, for purposes of this chapter, means the following capital facilities owned or operated by the City of Kent or other governmental entities: public streets and roads.

ZV. Rate Study means the Exhibit 1 "Rate Study for Transportation Impact Fees," City of Kent, dated May 2010, or as hereinafter amended as provided in this ordinance.

AA. Residential or Residential Development means all types of construction intended for human habitation. This shall include, but is not limited to, single-family, duplex, triplex, and other multifamily development.

BB. RCW means the Revised Code of Washington or, when followed by a numerical designation, a provision of the Revised Code of Washington.

BBW. Single Family Residential Permit means a permit for a "single-family dwelling" as that term is defined in KCC 15.02.115.

CCX. Street or Road means a public right-of-way and all related appurtenances, including lawfully required off-site mitigation, which enables motor vehicles, transit vehicles, bicycles, and pedestrians to travel between destinations, and affords the principal means of access to abutting property. For purposes of this chapter, public streets and roads are collectively referred to as "transportation."
**DDY. System Improvements** for purposes of this chapter means public transportation facilities that are included in the City of Kent's capital facilities plan, and such plan as amended, and are designed to provide service to the community at large, in contrast to project improvements.

**EEZ. Transportation** means public streets and roads and related appurtenances.

**AA. Transportation Impact Fee** means a payment of money imposed by the City of Kent on development activity pursuant to this chapter as a condition of granting development approval. "Transportation impact fee" does not include a reasonable permit fee, an application fee, the administrative fee for collecting and handling impact fees, or the cost of reviewing independent fee calculations.

**FFBB. Transportation Impact Fee Account(s)** means the separate accounting structure(s) within the city's established accounts which structure(s) shall identify separately earmarked funds and which shall be established for the transportation impact fees that are collected. The account(s) shall be established pursuant to KCC 12.14.100, and shall comply with the requirements of RCW 82.02.070.

**Sec. 12.14.045. Establishment of Service Area.**

A. The city hereby establishes, as the service area for transportation impact fees, the City of Kent, including all property located within the corporate city limits.

B. The scope of the service area is hereby found to be reasonable and established on the basis of sound planning and engineering principles, and consistent with RCW 82.02.060.

**Sec. 12.14.050. Transportation Impact Fees Methodology and Applicability.** The transportation impact fees published pursuant to rates in KCC 12.14.190 are generated from the formulae for calculating...
transportation impact fees set forth in the Rate Study and the Downtown Kent Rate Memorandum, which are incorporated herein by these references. Except as otherwise provided for independent fee calculations in KCC 12.14.070, exemptions in KCC 12.14.080, and credits in KCC 12.14.090, all new development activity in the city will be charged the transportation impact fee applicable to the type of development listed in the fee schedule adopted pursuant to KCC 12.14.190, as set forth in the Transportation Impact Fee Schedule in KCC 12.14.190.


A. The City shall collect transportation impact fees, based on the rates published pursuant to KCC 12.14.190, from any applicant seeking development approval from the City for any development activity within the City, where such development activity requires the issuance of a building permit or a permit for a change in use, and creates a demand for additional public facilities.

B. The maximum allowable transportation impact fees are established by the Rate Study and the Downtown Kent Rate Memorandum. as $13,614.00 per P.M. peak hour trip. The rate for the year July 1, 2010 through June 30, 2011 shall be 30% of the maximum allowable amount. The rate for the year July 1, 2011 through June 30, 2012 shall be 41.67%; for the year July 1, 2012 through June 30, 2013 shall be 53.33%; for the year July 1, 2013 through June 30, 2014 shall be 65%; for the year July 1, 2014 through June 30, 2015 shall be 76.67%; for the year July 1, 2015 through June 30, 2016 shall be 88.33% and from July 1, 2016 and thereafter shall be 100%.

C. Annually, and prior to the first day of July, the director shall adjust the fees by the maximum allowable transportation impact fees rate is subject to adjustment in accordance with KCC 12.14.060. The Department will annually adjust the maximum allowable transportation
impact fee rate using the same percentage change as in the most recent annual amendment to the Washington State Department of Transportation Construction Cost Index. The director shall make the percentage calculations required by KCC 12.14.060(B), when applicable, after making the transportation construction cost index changes. The first adjustment will occur in July 2011.

D. When a transportation impact fee, pursuant to KCC 12.14.060(A), applies for a change of use permit of an existing building or dwelling unit, including any alteration, expansion, replacement or new accessory building, the transportation impact fee shall be the applicable transportation impact fee for the land use category of the new use, less any transportation impact fee previously paid for the land use category of the prior use. If no transportation impact fee was paid for the prior use, the transportation impact fee for the new use shall be reduced by an amount equal to the current transportation impact fee rate for the prior use. No reduction based on prior use shall be made for a structure property that has been vacant or otherwise not actively in that prior use for a period of one three years or longer.

E. For mixed use developments, transportation impact fees shall be imposed for the proportionate share of each land use, based on the applicable measurement in the transportation impact fee rates published pursuant to set forth in KCC 12.14.190.

F. Time of Assessment

1. Transportation Impact fees shall be assessed determined at the time the complete application for a building permit or a permit for a change in use is submitted using the transportation impact fees rates then in effect. Transportation impact fees shall be due and payable before the building permit or permit for a change of use is issued by the City.

G. 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 payment of the transportation impact
fee may be deferred if the owner of the underlying real property, the
Feepayer may defer payment of the transportation impact fee by
executing a first position lien in favor of the city in the amount of the
transportation impact fee to be in effect at the time of the deferral,
closing of the sale of the dwelling unit. 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.

a1. A Feepayer who chooses to defer the
transportation impact fee must combine the lien with any other liens for
a lien for deferring the water development system charge in KCC
7.02.160, for the transportation improvement fee in KCC 12.11.090 or
Chapter 43.21C RCW, and for the drainage development charge in KCC
7.05.165. deferral fees as set forth in KCC 12.11.090:

b. A Feepayer selling real property subject to the
lien under this subsection (2) must provide written disclosure of the lien to
a purchaser or a prospective purchaser at the same time the seller
provides disclosure as required by Chapter 64.06 RCW. The disclosure of
the lien must include the dollar amount of the lien and that the lien
amount will be paid to the City by the seller at the time of closing.

2c. A deferral fee, in the amount set by city council
resolution for city of Kent Planning and Land Use Fees: "Fee Deferral Lien"
will be due at the time of the application for deferral. The administrative
fee set out in KCC 12.14.170 will not be deferred.

GH. Feeayers that have been allowed credits prior to the
submittal of the complete building permit application or an application for
a permit for a change of use shall submit, along with the complete
application, a copy of the letter or certificate prepared by the director
pursuant to KCC 12.14.190 setting forth the dollar amount of the credit
allowed, awarded: Transportation Impact Fees, as determined after the
application of any appropriate credits, shall be collected from the Feepayer.
no later than the at-the-time a building permit or permit for a change of use is issued.

H. Where the impact fees imposed are for development other than single family residential, a deposit shall be due from the Feepayer at the same time that a complete application for a building permit is submitted. The deposit shall be based on an estimate, submitted by the Feepayer, of the size and type of structure which will be constructed on the property. In the absence of an estimate provided by the Feepayer, the Department shall calculate a deposit amount based on the maximum allowable density/intensity permissible on the property. If the final size of the development is in excess of the initial estimate, any difference in impact fees will be due prior to the issuance of a certificate of occupancy or an occupancy permit, using the rate in effect at that time. The Feepayer shall pay any such difference plus interest, calculated at the interest rate which the City of Kent then earns. If the final size of the development is less than the initial estimate, the Department shall give an impact fee credit for the difference, including interest earned.

I. The Department shall not issue the required building or the permit for the change of use until the transportation impact fees set forth in KCC 12.14.19 have been paid as set forth in the fee schedule or in the amounts that they exceed any credits allowable under this chapter.


A. If, in the judgment of the director, none of the fee categories or fee amounts set forth in foregoing section of this title accurately describes or captures the impacts of a new development on streets, the department may conduct independent fee calculations and the director may impose alternative fees on a specific development based on those calculations. The alternative fees and the calculations shall be set forth in writing and shall be mailed to the Feepayer.

B. A Feepayer may opt not to have the transportation impact
fees determined according to the fee structure published pursuant to in KCC 12.14.190, in which case the Ffeepayer shall prepare and submit to the director an independent fee calculation for the development activity for which a building permit is being sought. The documentation submitted shall show the basis upon which the independent fee calculation was made. An independent fee calculation shall use the same methodology used to establish transportation impact fees set forth in adopted pursuant to KCC 12.14.190, shall be limited to adjustments in trip generation rates and lengths used in the Rate Study or Downtown Kent Rate Memorandum, and shall not include travel demand forecasts, trip distribution, transportation service areas, costs of road projects, or cost allocation procedures.

C. Any Ffeepayer submitting an independent fee calculation will be required to pay the City of Kent a fee to cover the cost of reviewing the independent fee calculation. The fee required by the City for conducting the review of the independent fee calculation shall be five hundred dollars ($500.00), unless otherwise established by the director, and shall be paid by the Ffeepayer prior to initiation issuance of review the director's determination.

D. There is a rebuttable presumption that the calculations set forth in the Rate Study and Kent Downtown Rate Memorandum and the fees set forth in the Fee Schedules are valid. The director shall consider the documentation submitted by the Ffeepayer, but is not required to accept such documentation or analysis which the director reasonably deems to be inapplicable, inaccurate, incomplete, or unreliable. The director may require the Ffeepayer to submit additional or different documentation for consideration. The director is authorized to adjust the transportation impact fees on a case-by-case basis based on the independent fee calculation, the specific characteristics of the development, and/or principles of fairness. The fees or alternative fees and the calculations therefore shall be set forth in writing and shall be
mailed to the缴费者.

E. Determinations made by the director pursuant to this section may be appealed to the office of the hearing examiner under the procedures set forth in KCC 12.14.110.

A. Except as provided for below, the following shall be exempted from the payment of all transportation impact fees:

1. Alteration or replacement of an existing nonresidential structure that does not expand the usable space or change the existing land use;

2. Miscellaneous improvements which do not generate increased peak trips, including, but not limited to, fences, walls, residential swimming pools, and signs;

3. Demolition or moving of a structure when additional peak hour trips are not generated.

4. A change of use that does not generate one or more peak hour trips.

B. The director shall be authorized to determine whether a particular development activity falls within an exemption identified in this KCC chapter, in any other KCC, or under other applicable law. Determinations of the director shall be in writing and shall be subject to the appeals procedures set forth in KCC 12.14.110.

A. A缴费者 may request that a credit or credits for impact fees be awarded to him/her for the total value of system improvements, including dedications of land and improvements and/or construction provided by the缴费者. The application for credits shall be presented by the缴费者 on forms to be provided by the department.
and shall include the content designated in such forms. Credits will be given only if the land, improvements, and/or the facility constructed are:

1. Included within the capital facilities plan or would serve the goals and objectives of the capital facilities plan; and
2. Are at suitable sites and constructed at acceptable quality as determined by the City; and
3. Serve to offset impacts of the Feepayer's development activity; and
4. Are for one or more of the transportation projects listed in the Rate Study as the basis for calculating the transportation impact fee.

B. For credits for dedications:
1. The director shall determine if requests for credits meet the criteria in subsection A, above, or under other applicable law. Determinations of the director shall be in writing and shall be subject to the appeals procedure set forth in KCC 12.14.110.

2. For each request for a credit or credits, the director shall select an appraiser or, in the alternative, the Feepayer may select an independent appraiser acceptable to the director.

3. Unless approved otherwise by the director, the appraiser must be an MAI (Member of the American Institute of Appraisers), and be licensed in good standing pursuant to under RCW 18.40 et seq., in the category for the property to be appraised, and shall not have a fiduciary or personal interest in the property being appraised.

4. The appraisal will be accepted or rejected by the director and may be subject to independent review. The appraiser shall be directed to determine the total value of the dedicated land, improvements, and/or construction provided by the Feepayer on a case-by-case basis. The resulting appraisal shall be in accord with the most recent version of the Uniform Standards of Professional Appraisal Practice and shall be subject to review by the director and, at the director's discretion, an
independent review appraiser selected by the director.

5.F. The Feepayer shall pay for the actual costs for the appraisal and the review an independent review, if required, unless the director determines that payment for independent review should not be at the feepayer’s expense.

6.G. After receiving considering the appraisal and the review, the director shall provide the applicant with a determination letter or certificate setting forth the dollar amount of any credit, the reason for the credit, the legal description of the real property dedicated where applicable, and the legal description or other adequate description of the project or development to which the credit may be applied. The Feepayer must sign and date a duplicate copy of such letter or certificate determination indicating his/her agreement to the terms of the letter or certificate, and return such signed document to the director before the transportation impact fee credit will be awarded. The failure of the Feepayer to sign, date, and return such document within sixty (60) calendar days of the date of the determination shall nullify the credit. If credit is denied, the Feepayer shall be notified in a letter that includes the reasons for denial, therefore:

ZH. No credit shall be given for project improvements.

CI. A Feepayer may request that a credit or credits for transportation impact fees be awarded to him/her for past tax payments. For each request for a credit or credits for past tax payments for transportation impact fees, the Feepayer shall submit receipts and a calculation of past tax payments earmarked for or proratable to the particular system improvement. The director shall determine the amount of credits, if any, for past tax payments for system improvements.

DJ. Any claim for credit must be received by the city made no later than thirty (30) calendar days after the submission of an application for a building permit or an application for a permit for a change in use. The failure to timely file such a claim shall constitute a final bar to later
request any such credit.

EK. Determinations made by the director pursuant to this section shall be subject to the appeals procedures set forth in KCC 12.14.110, below; Provided, however, that appeals under this section must be made within fourteen (14) calendar days after the director's decision is mailed to the Feepayer seeking the credit, such time to be calculated pursuant to KCC-12.01.190.

**Sec. 12.14.100. Adjustments for Future Tax Payments and Other Revenue Sources.** Pursuant to and consistent with the requirements of RCW 82.02.060, the Rate Study and Downtown Kent Rate Memorandum have provided adjustments for future taxes to be paid by the development activity which are earmarked or proratable to the same new public facilities which will serve the new development. The transportation impact fees published pursuant to rates in KCC 12.14.190 have been reasonably adjusted for taxes and other revenue sources which are anticipated to be available to fund public improvements.

**Sec. 12.14.110. Review by Director and Subsequent Appeals.**

A. A Feepayer may pay the impact fees imposed by this title under protest so that the building permit or permit for a change in use can be issued. No appeal shall be permitted until the impact fees at issue have been paid.

B. Requests for review regarding the impact fees imposed on any development activity may be filed only by the Feepayer for the development activity at issue.

C. The Feepayer must first file a request for review regarding impact fees with the director, as provided herein:

1. The request shall be in writing on the form provided by the City;

2. The request for review by the director shall be filed
within fourteen (14) calendar days after the Feepayer's payment of the impact fee at issue. The failure to timely file such a request shall constitute a final bar to later seek such review;

3. No administrative fee will be imposed for the request for review by the director; and

4. The director shall issue his/her notice of determination in writing.

DA. Determinations of the director with respect to the applicability of the impact transportation impact fees to a given development activity, the availability or value of a credit, or the director's decision concerning the independent fee calculation which is authorized in KCC 12.14.070, or any other determination which the director is authorized to make pursuant to this chapter, may be appealed by the Feepayer to the hearing examiner, per KCC 2.32.090(5). No building or change of use permits will be issued until the transportation impact fee is paid; provided, however, that the feepayer may pay the fee under protest pending appeal to avoid delays in the issuance of building permits or change of use permits.

EB. Appeals to the hearing examiner shall be taken in accord with the processes set forth in Chapter 12.01 for open record appeals; KCC 12.01.190., provided, however, that only the Feepayer may bring an appeal. provided, however, that appeals are to be delivered to the city's permit center.

FC. At the time of filing of the appeal, the Feepayer shall pay the fee set by council resolution for city of Kent Planning and Land Use Fees "Appeal of Administrative Interpretation/Decision." n-appeal fee in the amount of two hundred and fifteen dollars ($215.00).

GD. The hearing examiner is authorized to make findings of fact regarding the applicability of the transportation impact fees to a given development activity, the availability or amount of the credit, or the accuracy or applicability of an independent fee calculation. There is a presumption of validity of the director's determination; feepayer has the
burden of proof. The decision of the hearing examiner shall be the final
determination of the City unless remanded to the department as provided
in section H-KCC 12.14.110(E) below.

HE. The hearing examiner may, so long as such action is in
conformance with the provisions of this chapter, reverse, affirm, modify or
remand, in whole or in part, the determinations of the director with
respect to the amount of the transportation impact fees imposed or the
credit awarded.

Sec. 12.14.120. Establishment of Transportation Impact Fee
Accounts.

A. Transportation Impact fee receipts shall be earmarked
specifically and deposited in one or more specially interest-bearing
accounts.

B. The City shall establish one or more separate transportation
impact fee accounts for the fees collected pursuant to this chapter. Funds withdrawn from the account or accounts must be used in
accordance with the provisions of this chapter and applicable state law.
Interest earned on the fees shall be retained in the account(s) and
expended for the purposes for which the transportation impact fees were
collected.

C. On an annual basis, the finance director shall provide a report
to the City Council on the transportation impact fee account showing the
source and amount of all moneys collected, earned, or received, and the
public improvements that were financed in whole or in part by
transportation impact fees.

D. Transportation impact fees shall be expended or encumbered
within six (6) years of receipt, unless the City Council identifies in written
findings of extraordinary and compelling reasons for the City to hold the
fees beyond the six (6) year period, pursuant to RCW 82.02.070(3). Under
such circumstances, the Council shall establish the period of time

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within which the impact fees shall be expended or encumbered.

Sec. 12.14.130. Administrative Guidelines. The Public Works Director is hereby authorized to adopt internal guidelines for the administration of transportation impact fees, which may include the adoption of a procedural rules guide for transportation impact fees.

A. If the City fails to expend or encumber the transportation impact fees within six (6) years of the date when the fees were paid, unless or where extraordinary or compelling reasons are established, such other time periods as established pursuant to KCC 12.14.120, the current owner of the property on which transportation impact fees have been paid may receive a refund of such fees. In determining whether transportation impact fees have been expended or encumbered, transportation impact fees shall be considered expended or encumbered on a first in, first out basis.

B. The City shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of such claimants. A potential claimant or claimant must be the current owner of record of the real property against which the transportation impact fee was assessed.

C. Owners seeking a refund of transportation impact fees must submit a written request for a refund of the fees to the director within one (1) year of the date the right to claim the refund arises or the date that notice is given, whichever is later.

D. Any transportation impact fees for which no application for a refund has been made within this one-year period shall be retained by the City and expended on the system improvements for which they were collected.

E. Refunds of transportation impact fees or offsets against subsequent transportation impact fees under this section shall include any...
interest earned on the transportation impact fees by the City.

F. When the City seeks to terminate any or all components of the transportation impact fee program, all unexpended or unencumbered funds from any terminated component or components, including interest earned, shall be refunded pursuant to this section. 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 (2) times and shall notify all potential claimants by first class mail at the last known address of the claimants. All funds available for refund shall be retained for a period of one (1) year. At the end of one (1) year, any remaining funds shall be retained by the City, but must be expended for the appropriate public facilities for which the transportation impact fees were collected. This notice requirement shall not apply if there are no unexpended or unencumbered balances within the account or accounts being terminated.

G. The City shall also refund to the current owner of property for which transportation impact fees have been paid all transportation impact fees paid, including interest earned on the transportation impact fees, if the development activity for which the transportation impact fees were imposed did not occur; provided, however, that, if the City has expended or encumbered the transportation impact fees in good faith prior to the application for a refund, the director may decline to provide the refund. If within a period of three (3) years, the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner can petition the director for an offset in the amount of the fee originally paid and not refunded. The petitioner must provide receipts of transportation impact fees previously paid for a development activity of the same or substantially similar nature on the same real property or some portion thereof. Determinations of the director shall be in writing and shall be subject to the appeals procedures set forth in KCC 12.14.110.
Sec. 12.14.150. Use of Funds.

A. Pursuant to this title, transportation impact fees:
   1. Shall be used for system improvements that will reasonably benefit the new development activity;
   2. Shall not be imposed to make up for deficiencies in public facilities; and
   3. Shall not be used for maintenance or operation.

B. Transportation impact fees may be spent for system improvements to streets and roads as herein defined and, including, but not limited to, planning, land acquisition, right-of-way acquisition, site improvements, necessary off-site improvements, construction, engineering, architectural, permitting, financing, and administrative expenses, applicable impact fees or mitigation costs, and any other expenses which can be capitalized.

C. Transportation impact fees may also be used to recoup system improvement costs previously incurred by the City to the extent that new growth and development will be served by the previously constructed improvements or incurred costs.

D. In the event that bonds or similar debt instruments are or have been issued for the advanced provision of system improvements for which transportation impact fees may be expended, such transportation 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, and are used to serve the new development.

Sec. 12.14.160. Review of Rates. The fees and rates set forth in the Rate Study and the Kent Downtown Rate Memorandum may be reviewed and adjusted by the Council as it deems necessary and appropriate in conjunction with the annual update of the capital facilities plan element of the City's comprehensive plan.

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A. For each transportation impact fee assessed, there shall be charged an administrative fee in an amount of the greater of three hundred dollars ($300) or one percent (1%) of the amount of the total transportation impact fee. The administrative fee shall be deposited into an administrative fee account within the transportation impact fee account(s). Administrative fees shall be used to defray the city’s actual costs associated with the assessment and collection and update of the transportation impact fees. An administrative fee is not refundable or creditable.

B. The administrative fee shall be paid by the feepayer at the same time as the transportation impact fee is collected; provided, however that the administrative fee shall be due at the time of building permit issuance when the director has deferred payment of fees assessed.

Sec. 12.14.180. Existing Authority Unimpaired. Nothing in this title shall preclude the city from requiring the feepayer or the proponent of a development activity 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. so long as the exercise of such authority is consistent with the provisions of Chapter 43.21C RCW and Chapter 82.02 RCW. Compliance with this chapter and/or payment of fees under this chapter shall not constitute evidence of a determination of transportation concurrency.

Sec. 12.14.190. City of Kent Transportation Impact Fee Schedule. Annually, prior to July 1 of each year, the director shall publish transportation impact fee schedules for downtown Kent and the

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area outside downtown Kent consistent with the Kent Downtown Rate Memorandum, the Rate Study and this chapter. The following impact fee rates will be effective through June 30, 2011. Adjustments to the rates may be made in accordance with KCC 12.14.060 and KCC 12.14.160.

SECTION 2. - Captions. The chapter and section captions used in this title are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this title.

SECTION 3. - 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 chapter or any other section of this title.

SECTION 4. - Short Title. Ch. 12.14. KCC created by this ordinance shall be known and may be cited as "the City of Kent Transportation Impact Fee Ordinance."

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.

**PASSED:** 17 day of August, 2010.

**APPROVED:** 17 day of August, 2010.

**PUBLISHED:** 20 day of August, 2010.

I hereby certify that this is a true copy of Ordinance No. 3973 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**