ORDINANCE NO. 0172

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Title 12 of the Kent City Code by adding a new Chapter 12.20, "Adoption and Administration of Impact Fees," establishing a process for adoption of new impact fee ordinances imposed on development activity to help finance system improvements to public facilities; requiring a public hearing prior to adoption of any ordinance establishing impact fees for a new category of public facility; adopting a system for limited deferrals of collection of impact fees imposed on single-family residential construction; and authorizing the collection of reasonable administrative fees to help fund the cost of maintaining the impact fee deferral program.

RECLUS

A. The state legislature has authorized counties, cities and towns that regulate development pursuant to Chapter 36.70A RCW, the Growth Management Act (GMA), to impose impact fees on development activity to ensure that new growth and development partially fund the cost of certain public facilities needed to serve new growth and development.

B. The impact fee program requirements are contained in Sections 82.02.050 through 82.02.100 RCW.

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C. The City of Kent has adopted a number of different impact fees to help ensure that new growth pay a proportionate share of system improvements to public facilities, pursuant to the GMA and Sections 82.02.050 through 82.02.100 RCW, including school impact fees (Chapter 12.13, Kent City Code (KCC)); transportation impact fees (Chapter 12.14 KCC); and fire impact fees (Chapter 12.15 KCC).

D. During the past legislative session, the State legislature passed Engrossed Senate Bill 5923 (ESB 5923), requiring all counties, cities and towns that collect impact fees to adopt and maintain a system for the deferred collection of impact fees for single-family residential construction, subject to certain conditions, no later than September 1, 2016.

E. While not a requirement of ESB 5923, The City Council finds that mandating a public hearing prior to the adoption of any ordinance establishing impact fees for a new category of public facility will ensure greater participation and input from the general public, including developers, both large-scale and small-scale, who would be directly affected by imposition of the new impact fee. It is not the intent of the City Council to require public hearings for amendments to any impact fees that the Council has previously adopted, as identified in paragraph “C” of these Recitals, unless otherwise required by statute.

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

ORDINANCE

2 Impact Fees Adoption and Administration Amend Title 12
SECTION 1. - Amendment. Title 12 of the Kent City Code, entitled "Planning and Land Development," is hereby amended by adding a new Chapter 12.20, entitled "Adoption and Administration of Impact Fees" as follows:

Sec. 12.20.010. Purpose. Pursuant to Chapters 36.70A and 82.02 RCW, the council adopts this chapter to establish a framework for the imposition and administration of all city impact fees. The provisions of this chapter shall be liberally construed in order to carry out the purposes of the council to govern all existing and future impact fee programs.

Sec. 12.20.020. Definitions. The following words and terms shall have the following meanings for the purpose of this chapter:

A. Applicant means a person or entity who applies for a city permit authorizing development activity, and includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.

B. City means the city of Kent.

C. Development activity means any construction or expansion of a building, structure or use, any change in use of a building or structure, or any change in the use of land that creates additional demand and need for public facilities.

D. Director means the city of Kent economic and community development director or the director’s designee.
E. **Impact fee** means a payment of money imposed upon development activity as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. “Impact fee” does not include a reasonable permit or application fee, or other administrative fee.

F. **Public facilities** means the following capital facilities owned or operated by government entities: (a) Public streets and roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and (d) fire protection facilities.

**Sec. 12.20.030. Impact fees for new categories of public facilities – Hearing and public comment.**

A. The city council will hold a public hearing at least 14 calendar days prior to adoption of any ordinance establishing impact fees for a new category of public facility, as described in KCC 12.20.035. In the alternative, the city council may elect to delegate this authority to any committee.

B. Anyone may provide written comments to the city council or its delegee prior to the public hearing. Any agency, group, or member of the public is presumed to have no written comments if comments are not received by 5:00 p.m. on the last business day prior to the date of the scheduled public hearing. Comments may be mailed, personally delivered to the city clerk, or sent by facsimile or e-mail. Texts, tweets, or comments placed through other social media sites, whether or not the city
has a presence on those sites, will not be considered. Written comments should be as specific as possible.

C. Notwithstanding the provisions of subsection (B) above, anyone may provide written or oral testimony, or both, at the public hearing itself.

D. The city council may:

1. Adopt, modify or otherwise amend the proposed impact fee ordinance after the public hearing;

2. Call for a subsequent public hearing in order to elicit further input from staff or from the public; or

3. Refer the impact fee ordinance back to committee for further review.

E. If the city council chooses to proceed with adoption of the impact fee ordinance for a new category of public facility, whether modified or amended, it must do so within 45 days of the final public hearing held pursuant to this section. If the city council fails to vote to adopt the ordinance within this 45-day period, the council must provide new notice of another public hearing, in accordance with KCC 12.20.035, before the council may adopt the ordinance.

F. This section specifically does not apply to amendments to any chapter of the city code adopted prior to the effective date of this ordinance, which pertains to impact fees for existing categories of public facilities.
Sec. 12.20.035. Impact fee ordinance for new categories of public facilities- Public hearing notice.

A. At least seven calendar days prior to the public hearing, the city will provide notice in the following manner:

1. Post the notice on the city’s website and on the public notice board in the lobby of the Kent City Hall;

2. Publish a notice summarizing the proposed action one time in a manner most likely to reach the persons, agencies, or entities that may be affected by the ordinance. Examples of appropriate publications for notice include, without limitation, publishing in a newspaper of general circulation within the city, publishing in a regional, neighborhood, ethnic, or trade journal, or publishing through one or more trade or community websites. At its option, the city may elect to publish under this subsection in more than one publication;

3. Mail or e-mail notice to any person, group or agency who has requested notice at least seven calendar days prior to the hearing, using the contact information provided by the requestor. Unless specifically requested otherwise, the city will provide notice via e-mail.

B. At least three days prior to the public hearing, the city will mail or e-mail the public hearing agenda to any person or group who provided written comments to the city pursuant to KCC 12.20.030.

C. This section specifically does not apply to amendments to any chapter of the city code adopted prior to the effective date of this
ordinance, which pertains to impact fees for existing categories of public facilities.


A. Each applicant for a single-family residential building permit, in accordance with his or her contractor registration number or other unique identification number, is entitled to annually receive deferrals of all applicable impact fees that would otherwise be collected for the first 20 single-family residential construction permits issued by the city to the applicant. The applicant must request the deferral of all impact fees in writing, on a form prepared and approved by the director and the city attorney, and eligibility is limited to the first 20 permits actually issued by the city to the applicant each calendar year, beginning on January 1.

B. At the time of issuance of a single-family residential building permit, all impact fees shall be assessed based on the impact fee schedules then in effect.

Sec 12.20.050. Deferred impact fees – Applicant requirements.

A. An applicant who receives a deferral under KCC 12.20.040 must grant and record a deferred impact fee lien against the property, at the applicant’s sole expense, in favor of the city, in the amount of all impact fees deferred for the permit authorizing construction on the property. The deferred impact fee lien, which must include the legal description, tax account number, and address of the property, must also be:
1. In a form approved by the city;

2. Signed by all owners of the property, with all signatures acknowledged as required for a deed, and recorded in the county where the property is located;

3. Binding on all successors in title after the recordation; and

4. Junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

B. If impact fees are not paid in accordance with the deferral system authorized by KCC 12.20.060 and this section, the city may institute foreclosure proceedings in accordance with chapter 61.12 RCW.

C. If the city does not institute foreclosure proceedings for unpaid school impact fees within 45 days after receiving notice from a school district requesting that it do so, the school district may institute foreclosure proceedings with respect to the unpaid impact fees.

**Sec. 12.20.060. Collection of deferred impact fees.**

A. The city authorizes collection of all impact fees deferred pursuant to this chapter until the time of closing of the first sale of the property occurring after the issuance of the building permit for which the impact fees were deferred; provided, however, that in no event may deferral of the collection of the impact fees exceed 18 months from the date on which the building permit for which the impact fees were deferred was issued to the applicant by the city.
1. If closing of the first sale of the property for which impact fees were deferred occurs within 18 months of the granted deferral, payment of all deferred impact fees must take place upon closing, and the seller shall be strictly liable for payment of all deferred impact fees to the city at that time. The city bears no responsibility for determining whether the seller and the buyer have contractually agreed for the buyer to pay the deferred fees, and the city reserves the right to institute legal proceedings against the seller, if necessary, to collect any deferred impact fees that remain unpaid after closing. In addition, the city may withhold issuance of a certificate of occupancy, final inspection approval, or equivalent certification required for occupancy of the residence until all impact fees have been paid in full.

2. If closing of the first sale of the property for which impact fees were deferred does not occur within 18 months of the granted deferral, then all deferred impact fees shall become immediately due and owing to the city, and the applicant shall be strictly liable for payment of all deferred impact fees to the city at that time. If the applicant fails, upon request by the city, to immediately pay all deferred impact fees pursuant to this subsection 12.20.060(A)(2), then the city may foreclose on the lien in the manner provided for in KCC 12.20.050.


A. Upon receipt of final payment of all deferred impact fees for a property, the city must execute a release of deferred impact fee lien for the property. The property owner at the time of the release, at his or her expense, is responsible for recording the lien release.
B. The extinguishment of a deferred impact fee lien by the foreclosure of a lien having priority does not affect the obligation to pay the impact fees as a condition of final inspection, certificate of occupancy, or equivalent certification, or at the time of closing of the first sale.

Sec. 12.20.080. Authorization for collection of administrative fees — Reporting requirements.

A. Pursuant to RCW 82.02.050(3)(h), the city may collect a reasonable administrative fee at the time of building permit issuance from any applicant seeking to defer collection of impact fees for the permit, in order to implement and administer the impact fee deferral system created by this chapter. Any administrative fee imposed hereunder shall be as established by council resolution.

B. Pursuant to RCW 82.02.050(3)(i), the city shall cooperate with and provide requested data, materials, and assistance to the state department of commerce and the joint legislative audit and review committee established by sections 3 and 4 of ESB 5923 to determine the effectiveness of the state-mandated impact fee deferral process.

Sec. 12.20.090. Conflict with other code provisions — Superseded. In the event any provision of this chapter conflicts with other sections of city code pertaining to the assessment and collection of impact fees, the director is authorized to resolve any conflicts or ambiguities in the manner designed to give maximum effect to the deferral process established in this chapter, and its provisions shall supersede any earlier-adopted codes to the contrary.
SECTION 2. – Severability. If one or more sections, subsections, or sentences of this ordinance is held to be unconstitutional or invalid, that decision will not affect the validity of the remainder of this ordinance and it will remain in full force and effect.

SECTION 3. – Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser may make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state or federal laws, codes, rules, or regulations.

SECTION 4. – Effective Date. This ordinance shall take effect and be in force thirty days from and after its passage, as provided by law.

Suzette Cooke, Mayor

ATTEST:

Ronald F. Moore, MMC
RONALD F. MOORE, CITY CLERK

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

Impact Fees
Adoption and Administration
Amend Title 12
PASSED: 20th day of October, 2015.
APPROVED: 20th day of October, 2015.
PUBLISHED: 25th day of October, 2015.

I hereby certify that this is a true copy of Ordinance No. 4172
passed by the city council of the city of Kent, Washington, and approved
by the Mayor of the city of Kent as hereon indicated.

[Signature]
RONALD F. MOORE, CITY CLERK

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