1077-ORD
04/30/09

CITY OF BELLEVUE, WASHINGTON
ORDINANCE NO. 5871

AN ORDINANCE amending the Bellevue City Code to update the City's transportation impact fee program; amending Sections 22.16.010, 22.16.020, 22.16.040, 22.16.050, 22.16.070, 22.16.080, 22.16.090, and 22.16.095 of the Bellevue City Code; creating new Sections 22.16.085 and 22.16.087 in the Bellevue City Code; deleting Section 22.16.110 of the Bellevue City Code; and establishing an effective date.

WHEREAS, the State of Washington Growth Management Act, Chapter 36.70A RCW and related sections ("GMA") requires the city to adopt a Comprehensive Plan that provides adequate public facilities to serve development; and

WHEREAS, Counties, cities, and towns that are required or choose to plan under RCW 36.70A.040 are authorized to impose impact fees on development activity as part of the financing for public facilities, provided that the financing for system improvements to serve new development must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees; and

WHEREAS, the city council finds that new development activity in the City of Bellevue will create additional demand and need for public facilities; and

WHEREAS, the City of Bellevue has previously adopted a transportation impact fee program pursuant to the authority provided in Chapter 82.02 RCW; and

WHEREAS, the city council finds that the city's transportation impact fee program generates impact fees: that are imposed for system improvements that are reasonably related to new development; that do not exceed a proportionate share of the costs of system improvements that are reasonably related to new development; and that shall be used for system improvements that will reasonably benefit the new development; and

WHEREAS, this ordinance is exempt from the requirements of the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, and the City's Environmental Procedures Code, BCC 22.02; now, therefore,

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

Section 1. Section 22.16.010.B of the Bellevue City Code is hereby amended as follows:

B. This Chapter 22.16 BCC supplements existing authority of the city to regulate development. This chapter does not supplant the requirements of environmental review and mitigation under the State Environmental Policy Act ("SEPA") and Chapter 22.02 BCC. Any transportation impact fees paid in accordance with the program established by this chapter shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development. This program may serve as one method by which the developer may meet, in part or in whole, its obligations under SEPA; provided, that a developer required to pay a fee as mitigation under SEPA and Chapter 22.02 BCC for system improvements shall not be required to pay any portion of an impact fee under this chapter imposed for those same system improvements.

Section 2. Section 22.16.020 of the Bellevue City Code is hereby amended as follows:

22.16.020 Definitions.

A. "Affordable housing" means all categories of affordable housing as defined in the Bellevue Land Use Code, Section 20.50.010, now or as hereafter amended. "Affordable housing" as used in this chapter is determined to be consistent with "low-income housing" referred to in RCW 82.02.060 and is considered a development activity with broad public purposes.

B. "Developer" means an individual, group of individuals, partnership, corporation, association, municipal corporation, state agency, or other person undertaking development and their successors and assigns.

C. "Development" means any construction or expansion of a building, structure, or use for which a permit, approval, or other authorization is required that creates additional demand and need for transportation improvements; provided, that such development generates at least one new p.m. peak hour trip, when the permit, approval, or other authorization for the development is processed pursuant to Bellevue City Code (Land Use Code) Title 20 or Bellevue City Code (Construction Code) Chapter 23.10. In the case of tenant improvement permits, "development" means any proposed new use or expanded existing use for which SEPA review is required; the threshold for imposing the impact fee for a tenant improvement is eleven new trips in the P.M. peak hour. Development does not include buildings or structures constructed by a regional transit authority.

D. "Director" means the director of the transportation department or his or her designee or any other person designated by the city manager.

E. "Downtown" shall have the same definition as set forth in Bellevue Land Use Code section 20.50.016, now or as hereafter amended.

F. "Fair market value" means the price in terms of money that a property will bring in a competitive and open market under all conditions of a fair sale, the buyer and seller each prudently knowledgeable, and assuming the price is not affected by

undue stimulus, measured at the time of the dedication to local government of land or improved transportation facilities.

G. "Gross floor area" means the sum in square feet of the area at each floor level of a building that is included within the principal outside faces of exterior walls. The gross floor area of any parking garages within the building shall not be included.

H. "Impact fee area" means one or more geographic areas within the service area, as shown on the map in the transportation impact fee program report.

I. "Impact fee project list" means those transportation improvement projects in the Transportation Facilities Plan which are determined to be reasonably related to new development, as developed pursuant to Section 22.16.050. Unless otherwise specified, references to the impact fee project list shall refer to such list in effect at the time of application of this chapter to a particular development.

J. "Impact fee schedule" means a schedule of impact fee rates per development unit (e.g., square footage) for specific land uses within each impact fee area calculated pursuant to section 22.16.080, supported by the concurrently-adopted transportation impact fee program report, and adopted by ordinance. Unless otherwise specified, references to the impact fee schedule shall refer to such schedule in effect at the time of application of this chapter to a particular development.

K. "Level of service" means a measure of traffic congestion along a roadway or at an intersection identified by a letter from A to F as defined by the Institute of Transportation Engineers and as adopted in the Transportation Element of the City's Comprehensive Plan, now or as hereafter amended.

L. "P.M. peak hour" means the 60-minute period between 3:00 p.m. to 7:00 p.m. which experiences the highest volume of traffic on a roadway or passing through a roadway intersection.

M. "P.M. peak hour trips" means the total vehicular trips entering and leaving a development during the p.m. peak hour on the adjacent roadway.

N. "P.M. peak hour trip generation rate" means the trip generation rate per unit of development, as specified in the transportation impact fee program report. A unit of development is the element used to describe the size of the development, e.g., gross floor area in square feet for an office building, students for a school. Other trip generation definition sources may be used where the proposed development has special trip-generating characteristics, subject to approval of the transportation department.

O. "Project improvements" mean site improvements and facilities that are planned and designed to provide service for a particular development project and that 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 the capital facilities plan shall be considered a project improvement.

P. "Proportionate share" means that portion of the cost of transportation improvements that are reasonably related to the service demands and needs of new development.

Q. "Service area" means the geographic area which is benefited by the transportation improvements proposed to be constructed with transportation impact fees collected under this Chapter 22.16 BCC and within which transportation impact

fees will be imposed. The boundaries of the service area shall be the same as the legal boundaries of the city of Bellevue and shall include all unincorporated areas annexed to the city on and after the effective date of the ordinance codified in this chapter. Pursuant to the adoption of interlocal agreements with other local and regional governments, including any transportation benefit district created pursuant to Chapter 36.73 RCW, the geographic boundaries of the service area may be expanded consistent with the provisions of such interlocal agreements.

R. "System improvements" mean transportation improvements that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements.

S. "Transportation Facilities Plan" means the 12-year program adopted by the city council for jointly funding, from public and private sources, transportation improvements necessitated in whole or in part by development within the service area. The Transportation Facilities Plan is based on the transportation facility plans adopted in the city's Comprehensive Plan. Unless otherwise specified, references to the Transportation Facilities Plan shall refer to such Plan in effect at the time of application of this chapter to a particular development.

T. "Transportation impact fee" means a payment of money imposed upon development as a condition of development approval to pay for transportation improvements needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for transportation improvements, that is a proportionate share of the cost of the transportation improvements, and that is used for improvements that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

U. "Transportation impact fee program report" means the report entitled "Transportation Impact Fee Program for Bellevue, Washington". Unless otherwise specified, references to the transportation impact fee program report shall refer to the edition of such report in effect at the time of application of this chapter to a particular development.

V. "Transportation improvement" means any and all capital improvements to the transportation infrastructure of the city constructed pursuant to city design and development standards and requirements, including without limitation roads, bridges, overpasses, sidewalks, curbs, turn lanes, traffic signals, traffic signs, HOV lanes, bus shelters, associated landscaping. The cost of the transportation improvement shall include any debt service payments, including interest, for any of these improvements.

Section 3. Section 22.16.040 of the Bellevue City Code is hereby amended as follows:

22.16.040 Designation of capital facilities plan.

The city designates the Transportation Facilities Plan as the city's comprehensive capital facilities plan for the purpose of identifying the proposed transportation improvements reasonable and necessary to meet the future development needs of

the service area consistent with the city's level of service policy, as required by RCW 82.02.050.

Section 4. Section 22.16.050 of the Bellevue City Code is hereby amended as follows:

22.16.050 Transportation improvements.

A. The Transportation Facilities Plan is a 12-year list of transportation improvements in the service area. These transportation improvements include design, acquisition of right-of-way, and construction. Every two years or as otherwise directed by the Council, the transportation commission shall review and as necessary present an update of the Transportation Facilities Plan to the city council for consideration.

B. The impact fee project list consists of the transportation improvements in the Transportation Facilities Plan needed to provide capacity on city of Bellevue roadways, where the capacity needs are reasonably related in part or in whole to new development. The impact fee project list is adopted by the city council when it adopts the Transportation Facilities Plan.

Section 5. Section 22.16.070 of the Bellevue City Code is hereby amended 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 Bellevue City Code (Land Use Code) Section 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 Bellevue City Code (Land Use Code) 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 Bellevue City Code (Land Use Code) 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. This chapter shall be applied at and impact fees for development shall be paid at the time of issuance of a building permit based on the impact fee rate schedule then in effect. In the event the development does not require a building permit, application of this chapter and payment of impact fees shall be at the time of issuance of the approval of the development. The timing of payments may be modified in a development agreement approved by the city council pursuant to RCW chapter 36.70B.

Section 6. Section 22.16.080 of the Bellevue City Code is hereby amended 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 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 may consider unusual circumstances for specific developments and may 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 RCW chapter 36.70B, 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 7. A new section 22.16.085 is hereby added to the Bellevue City Code as follows:

22.16.085 Impact fee rate schedule.

A. The transportation impact fee schedule determined pursuant to Section 22.16.080.A shall be adopted by a separate ordinance; provided that the schedule of impact fee rates per development unit for specific land use types may be reduced below the amounts determined by Section 22.16.080.A as the Council deems appropriate.

B. In no event shall the impact fee scheduled authorized pursuant to this Chapter exceed the maximum amounts authorized pursuant to Section 22.16.080.A as calculated in the transportation impact fee program report.

C. The transportation impact fee schedule may be revised at any time the Council deems just and appropriate, including but not limited to, concurrent with the update of the Transportation Facilities Plan and transportation impact fee program report. The Council shall revise the impact fee schedule in the event that the transportation impact fee program report prepared in accordance with Section 22.16.080.A above

indicates that the impact fee schedule must be updated to avoid fees in excess of the maximum rate established by such report.

D. The ordinance adopting the impact fee schedule may include authority for the director to adjust the fee rates through the use of the Washington State Department of Transportation Construction Cost Index. This provision shall apply prospectively only. No transportation impact fee for a specific development shall be increased or decreased once said fee has been paid.

Section 8. A new Section 22.16.087 is hereby added to the Bellevue City Code as follows:

22.16.087 Credits

A. A developer shall be given a credit against a transportation impact fee for the fair market value of any dedication of land plus the actual costs of construction of any improvements to or new construction of any system improvements provided by the developer, where such system improvements are identified in the impact fee project list and are required as a condition of approving the development activity. If the value of any such dedication, improvements and/or construction exceeds the amount of the transportation impact fee obligation, the developer shall be entitled to reimbursement from transportation impact fees that are paid by subsequent developers within the service area. To ensure that reimbursements are paid only from impact fees and not from general city funds, the reimbursement amount may not exceed the city growth percentage of the impact fee project multiplied by the value of the dedication, improvement and/or construction. The city growth percentage of a project is identified in the impact fee project list. In the event that the developer donates land for a system improvement in exchange for an increase in floor area ratio, the fair market value of the increase in the floor area ratio provided shall be deducted from the credit calculated pursuant to this subsection A. Any land or system improvement proposed to be dedicated to must be accepted by the city in the form and manner provided by applicable city codes and regulations.

B. A developer shall be given a credit against a transportation impact fee in the amount equal to the amount of the developer's obligation to pay for local improvement district assessments for any transportation improvement project on the impact fee list, provided that no such credit shall be required if the amount of the local improvement district payment for the transportation improvement project was used in the transportation impact fee program report to reduce the cost of the transportation improvement project that is the basis for the impact fee rate schedule.

C. A developer shall be given a credit against a transportation impact fee in the amount of transportation impact mitigation fees already paid or improvements already constructed where a prior recorded concomitant agreement provided for the payment for or the construction of any transportation improvement or portion thereof included in the impact fee project list. This provision applies only where the property subject to the concomitant agreement is the property on which the development is proposed to be located.

D. Payment of the transportation impact fee entitles the developer and its successors or assigns to a credit in the amount of the impact fee against any other fee or assessment made specifically for the designated system improvements covered by the transportation impact fee imposed under this Chapter 22.16 BCC.

Section 9. Section 22.16.090 of the Bellevue City Code is hereby amended 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 22.16.070.C above, 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.

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 six years of receipt, unless there exists an extraordinary or compelling reason for fees to be held longer than six years. The city council shall adopt written findings setting forth its reasons for holding any fees longer than six 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 10. Section 22.16.095 of the Bellevue City Code is hereby amended as follows:

22.16.095 Appeal of fees.

The developer may appeal the determination of the amount of the transportation impact fee, including whether or to what extent an exemption applies or a credit should be provided. The developer must file an appeal with the city clerk within 14 days of the date that notice is given to the developer of the fee. The appeal shall be processed pursuant to the Process II appeal procedures of the LUC 20.35.250 et. seq., now or as hereafter amended. Pending determination on any appeal, a building permit may only be issued if the developer first pays under protest the full amount of the fee, as determined by the director.

Section 11. Section 22.16.110 of the Bellevue City Code is hereby deleted.

Section 12. Chapter 22.16 of the Bellevue City Code shall be known as the "Transportation Impact Fee Program."

Section 13. This ordinance shall take effect and be in force five (5) days after adoption and legal publication.

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04/30/09

PASSED by the City Council this 4th day of May, 2009, and signed in authentication of its passage this 4th day of May, 2009.

(SEAL)

Grant S. Degginger, Mayor

Approved as to form:

Lori M. Riordan, City Attorney

Mary Kate Berens, Deputy City Attorney

Attest:

Myrna L. Basich, City Clerk

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