CITY OF SAMMAMISH

WASHINGTON

ORDINANCE NO. 02004-136

AN ORDINANCE OF THE CITY OF SAMMAMISH ADDING CHAPTER 14A.15 AUTHORIZING THE COLLECTION OF IMPACT FEES FOR ROADS; PROVIDING FINDINGS AND DEFINITIONS; PROVIDING FOR THE TIME OF PAYMENT; PROVIDING EXEMPTIONS AND CREDITS; PROVIDING FOR THE APPEAL OF FEES AND OTHER DETERMINATIONS; PROVIDING FOR THE ESTABLISHMENT OF IMPACT FEE ACCOUNTS, REFUNDS, AND THE USE OF FUNDS; PROVIDING FOR REVIEWS AND ANNUAL ADJUSTMENT OF FEE SCHEDULES; PROVIDING THE SCHEDULES FOR IMPACT FEES AND AUTHORIZING INDEPENDENT FEE CALCULATIONS; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the City Council of the City of Sammamish (the "Council") finds that development activity in the City of Sammamish will create additional demand and need for public facilities; and

WHEREAS, the City of Sammamish is authorized by Chapter 82.02 RCW to require new growth and development within the City of Sammamish to pay a proportionate share of the cost of new facilities to serve such new growth and development through the assessment of impact fees; and

WHEREAS, impact fees assessed pursuant to Chapter 82.02 RCW must be based upon a showing that new development activity creates additional demand and need for public facilities, that the impact fees do not exceed a proportionate share of the costs of such additional public facilities, and that the fees are spent for facilities reasonably related to the new development; and

WHEREAS, the City of Sammamish is authorized by Chapter 82.02 RCW to impose impact fees for system improvement costs previously incurred by the City of Sammamish to the extent that new growth and development will be served by the previously constructed improvements; and

WHEREAS, impact fees may be collected and spent for public facilities that are included within a capital facilities plan element of a comprehensive plan; and

WHEREAS, RCW 58.17.110 and RCW 58.17.060 require the Council and administrative personnel to make written findings that public facilities such as roads, streets, parks, recreation, open spaces, schools, and school grounds are adequate before approving proposed subdivisions, dedications, short plats, and short subdivisions; and

WHEREAS, the Council finds that it is in the public interest, and consistent with the intent and purposes of the Growth Management Act, Chapter 17, Laws of 1990, 1st Ex. Sess., RCW 36.70A et seq., and Chapter 32, Laws of 1991, 1st Sp. Sess., for the City of Sammamish to adopt an impact fee ordinance; and

WHEREAS, in developing the impact fees contained in this ordinance for public facilities, the City of Sammamish has provided adjustments for past and future taxes paid or to be paid by the new development which are earmarked or proratable to the same new public facilities that will serve the new development; and

WHEREAS, Policy LUP-3.4 of the adopted Comprehensive Plan of the City of Sammamish identifies specific housing targets for new development; and

WHEREAS, the City of Sammamish has conducted extensive research documenting the procedures for measuring the impact of the target new development on public facilities, and has prepared technical reports which serve as the basis for the actions taken by the Council; and

WHEREAS, the Council hereby incorporates the following study into this ordinance by reference: "Rate Study for Impact Fees for Roads," City of Sammamish, dated November 17, 2003; and

WHEREAS, the Council intends that as of the effective date of this ordinance the impact fees imposed by Chapter 14A.15 shall replace the mitigation payment system imposed by Chapter 14.20, and that Chapter 14.20 shall remain in force only to the extent that it is needed to fulfill obligations of the City and Development that were created under Chapter 14.20 prior to the effective date of this ordinance.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SAMMAMISH DOES ORDAIN AS FOLLOWS:

Section 1. The following new Chapter 14A.15 is added to Title 14A of the Sammamish Municipal Code:

Chapter 14A.15 Impact Fees

14A.15.010 Findings and authority. The City Council of the City of Sammamish (the "Council") hereby finds and determines that new growth and Development, including but not limited to new Residential, commercial, retail, and office Development in the City of Sammamish will create additional demand and need for Public Facilities in the City of Sammamish, and the Council finds that new growth and Development should pay a proportionate share of the cost of new facilities needed to serve the new growth and Development. The City of Sammamish has conducted extensive studies documenting the procedures for measuring the impact of new Development on Public Facilities, has prepared the Roads Study, and hereby incorporates this study into this title by reference. Therefore, pursuant to Chapter 82.02 RCW, the Council adopts this title to assess Impact Fees for Roads. The provisions of this title shall be liberally construed in order to carry out the purposes of the Council in establishing the Impact Fee program.

14A.15.020 Assessment of Impact Fees. A. The City shall collect Impact Fees, based on the rates in SMC 14A.15.110, from any Applicant seeking a Development Permit from the City for any Development within the City, where such development requires the issuance of a Building Permit. This shall include, but is not limited to, the development of Residential, commercial, retail, and office, land, and includes the expansion of existing uses that creates a demand for additional Public Facilities, as well as a change in existing use that creates a demand for additional Public Facilities.

B. For a change in use of an existing building or Dwelling Unit, including any alteration, expansion, replacement or new accessory building. the Impact Fee for the new use shall be reduced by an amount equal to the current Impact Fee rate for the prior use.

C. For mixed use developments, Impact Fees shall be imposed for the proportionate share of each land use based on the applicable measurement in the Impact Fee rates set forth in SMC 14A.15.110.

D. Applicants seeking an Occupancy Permit for a change in use shall be required to pay a Road Impact Fee if the change in use increases the existing trip generation by the lesser of 5% or 10 Peak Hour trips.

E. Impact fees shall be assessed at the time the complete application for a Building Permit or Occupancy Permit is submitted for each unit in the Development, using the Impact Fee rates then in effect. Impact fees shall be paid at the time the Building Permit is issued by the City.

F. Applicants that have been awarded credits prior to the submittal of the complete Building Permit application pursuant to SMC 14A.15.040, shall submit, along with the complete Building Permit application, a copy of the letter or certificate prepared by the Director pursuant to SMC 14A.15.040 setting forth the dollar amount of the credit awarded. Impact fees, as determined after the application of appropriate credits, shall be collected from the Feepayer at the time the Building Permit is issued for each unit in the Development.

G. Where the Impact Fees imposed are determined by the Square Footage of the Development, 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 Square Footage of the Development is in excess of the initial estimate, any difference 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 Sammamish then earns. If the final Square Footage is less than the initial estimate, the Department shall give a credit for the difference, plus Interest at the Interest rate which the City of Sammamish then earns.

H. The Department shall not issue the required Building Permit or Occupancy Permit unless and until the Impact Fees set forth in SMC 14A.15.110 have been paid in the amount that the fees exceed exemptions or credits provided pursuant to SMC 14A.15.030 or SMC 14A.15.040.

I. The service area for Impact Fees shall be a single citywide service area.

14A.15.030 Exemptions. A. Except as provided for below, the following shall be exempted from the payment of all Impact Fees:

1. Alteration of an existing nonresidential structure that does not expand the usable space or add any Residential units;

2. Miscellaneous improvements, including, but not limited to, fences, walls, swimming pools, and signs;

3. Demolition or moving of a structure;

4. Expansion of an existing structure that results in the addition of one hundred (100) square feet or less of Gross Floor Area;

5. Replacement of a residential structure with a new residential structure at the same site or lot when such replacement occurs within twelve (12) months of the demolition or destruction of the prior structure;

6. Replacement of a non-residential structure with a new non-residential structure of the same size and use at the same site or lot when such replacement occurs within twelve (12) months of the demolition or destruction of the prior structure. Replacement of a non-residential structure with a new non-residential structure of the same size shall be interpreted to include any structure for which the gross Square Footage of the building will not be increased by more than one hundred (100) square feet;

7. Any Building Permit application that has been submitted to the City before 5:00 p.m. the business day before the effective date of this Chapter and subsequently determined to be a complete application, based on the information on file as of the effective date of this Chapter; or

8. Any Development by the City of Sammamish; or

9. Any Building Permit application for development for which a mitigation payment pursuant to King County or City of Sammamish requirements existing prior to the effective date of this ordinance has been paid in full prior to the effective date of this ordinance; or

10. Expansion of a residential structure provided the expansion does not result in the creation of an additional Dwelling Unit or Accessory Dwelling Unit.

B. The Director shall be authorized to determine whether a particular Development falls within an exemption identified in this Section, in any other Section, or under other applicable law. Determinations of the Director shall be in writing and shall be subject to the appeals procedures set forth in SMC 14A.15.060.

14A.15.040 Credits. A. A Feepayer can request that a credit or credits for Impact Fees be awarded to him/her for the total value of dedicated land, improvements, or construction provided by the Feepayer. Credits will be given only if the land, improvements, and/or the facility constructed are:

1. For one or more of the System Improvements from the Capital Facilities Plan that are included in the Roads Study as the basis of the Impact Fee; and

2. At suitable sites and constructed at acceptable quality as determined by the City.

B. The Director shall determine if requests for credits meet the criteria in subsection A, above.

C. The value of a credit for structures, facilities or other improvements shall be established by original receipts provided by the Applicant for one or more of the same System Improvements for which the Impact Fee is being charged.

D. The value of a credit for land, including right of way and easements, shall be established on a case-by-case basis by an appraiser selected by, or acceptable to the Director. The appraiser must be licensed in good standing by the State of Washington for the category of the property appraised. The appraiser must possesse an MAI or other equivalent certification and shall not have a fiduciary or personal interest in the property being appraised. A description of the appraiser's certification shall be included with the appraisal, and the appraiser shall certify that he/she does not have a fiduciary or personal interest in the property being appraised. The appraisal shall be in accord with the most recent version of the Uniform Standards of Professional Appraisal Practice and shall be subject to review and acceptance by the Director.

E. The Feepayer shall pay for the cost of the appraisal or request that the cost of the appraisal be deducted from the credit which the Director may be providing to the Feepayer, in the event that a credit is awarded.

F. After receiving the appraisal the Director shall provide the Applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, the legal description of the site donated where applicable, and the legal description or other adequate description of the project or Development to which the credit may be applied. The Applicant must sign and date a duplicate copy of such letter or certificate indicating his/her agreement to the terms of the letter or certificate, and return such signed document to the Director before the Impact Fee credit will be awarded. The failure of the Applicant to sign, date, and return such document within sixty (60) calendar days shall nullify the credit.

G. No credit shall be given for Project Improvements.

H. A Feepayer can request that a credit or credits for Impact Fees be awarded to him/her for Significant Past Tax Payments for Road Impact Fees. For each request for a credit or credits for Significant Past Tax Payments for Road 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 Significant Past Tax Payments for Road Public Facilities.

I. Any claim for credit must be made no later than sixty(60) calendar days after the submission of an application for a Building Permit. The failure to timely file such a claim shall constitute a final bar to later request any such credit.

J. Determinations made by the Director pursuant to this Section shall be subject to the appeals procedures set forth in SMC 14A.15.060.

14A.15.050 Tax adjustments. Pursuant to and consistent with the requirements of RCW 82.02.060, the Roads Study provides adjustments for future taxes to be paid by the new Development which are earmarked or proratable to the same new Public Facilities which will serve the new Development. The Impact Fee rates in SMC 14A.15.110 have been reasonably adjusted for taxes and other revenue sources which are anticipated to be available to fund public improvements.

14A.15.060 Appeals. A. Any Feepayer may pay the Impact Fees imposed by this title under protest in order to obtain a Building Permit. No appeal shall be permitted until the Impact Fees at issue have been paid.

B. Appeals regarding the Impact Fees imposed on any Development may only be filed by the Feepayer of the property where such Development will occur.

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 twenty-one (21) calendar days of the Feepayer's payment of the Impact Fees 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 determination in writing.

D. Determinations of the Director with respect to the applicability of the Impact Fees to a given Development, the availability or value of a credit, or the Director's decision concerning the Independent Fee Calculation which is authorized in SMC 14A.15.110, or the fees imposed by the Director pursuant to SMC 14A.15.110, or any other determination which the Director is authorized to make pursuant to this title, can be appealed to the Hearing Examiner.

E. Appeals shall be taken within twenty-one (21) calendar days of the Director's issuance of a written determination by filing with the Department a notice of appeal specifying the grounds thereof, and depositing the necessary fee, which is set forth in the existing fee schedules for appeals of such decisions. The Director shall transmit to the office of the Hearing Examiner all papers constituting the record for the determination, including where appropriate, the Independent Fee Calculation.

F. The Hearing Examiner shall fix a time for the hearing of the appeal, give notice to the parties in interest, and decide the same as provided in the Sammamish Municipal Code. At the hearing, any party may appear in person or by agent or attorney.

G. The Hearing Examiner is authorized to make findings of fact regarding the applicability of the Impact Fees to a given Development, the availability or amount of the credit, or the accuracy or applicability of an Independent Fee Calculation. The decision of the Hearing Examiner shall be final, except as provided in this Section.

H. The Hearing Examiner may, so long as such action is in conformance with the provisions of this title, reverse or affirm, in whole or in part, or may modify the determinations of the Director with respect to the amount of the Impact Fees imposed or the credit awarded.

14A.15.070 Establishment of Impact Fee Accounts. A. Impact fee receipts shall be earmarked specifically and deposited in a trust fund maintained by the City.

B. There is hereby established the Roads Impact Fee Account for the fees collected pursuant to this title. Funds withdrawn from these accounts must be used in accordance with the provisions of SMC 14A.15.090 and applicable State law. Interest earned on the fees shall be allocated to the account and expended for the purposes for which the Impact Fees were collected.

C. On an annual basis, the Finance Director shall provide a report to the Council on the 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 Impact Fees.

D. Impact fees shall be expended or Encumbered within six (6) years of receipt, unless the Council identifies in written findings extraordinary and compelling reason or reasons for the City to hold the fees beyond the six (6) year period. Under such circumstances, the Council shall establish the period of time within which the Impact Fees shall be expended or Encumbered.

14A.15.080 Refunds. A. If the City fails to expend or encumber the Impact Fees within six (6) years of when the fees were paid, or where extraordinary or compelling reasons exist, such other time periods as established pursuant to SMC 14A.15.070, the current Owner of the property on which Impact Fees have been paid may receive a refund of such fees. In determining whether Impact Fees have been expended or Encumbered, 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 Owner of the property.

C. Owners seeking a refund of 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 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 appropriate Public Facilities.

E. Refunds of Impact Fees under this Section shall include any Interest earned on the Impact Fees by the City.

F. When the City seeks to terminate any or all components of the 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. 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 Impact Fees have been paid all Impact Fees paid, including Interest earned on the Impact Fees, if the Development for which the Impact Fees were imposed did not occur; provided that, if the City has expended or Encumbered the Impact Fees in good faith prior to the application for a refund, the Director can 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, the Owner can petition the Director for an offset. The petitioner must provide receipts of Impact Fees previously paid for a Development of the same or substantially similar nature on the same property or some portion thereof. The Director shall determine in writing whether to grant an offset, and the determinations of the Director may be appealed pursuant to the procedures in SMC 14A.15.060.

14A.15.090 Use of funds. A. Pursuant to this title, Impact Fees:

1. shall be used for public improvements that will reasonably benefit the new Development; and

2. shall not be imposed to make up for deficiencies in Public Facilities serving existing Developments; and

3. shall not be used for maintenance or operation.

B. Road Impact Fees may be spent for public improvements, 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. Impact fees may also be used to recoup public 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 public improvements for which Impact Fees may be expended, 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.

14A.15.100 Review. The fee rates set forth in SMC 14A.15.110 may be reviewed and adjusted by the Council as it deems necessary and appropriate. . The fee rates shall be adjusted 12 months after the effective date of this Chapter, or 12 months after the most recent review by the Council. The Council may determine the amount of the adjustment and revise the fee rates set forth in SMC 14A.15.110. If the Council does not determine the amount of the adjustment, the adjustment shall be by the same amount that the Consumer Price Index changed for the most recent 12 month period prior to the date of the adjustment.

14A.15.110 Road Impact Fee. The Road Impact Fee rates in this section are generated from the formula for calculating Impact Fees set forth in the Roads Study, which is incorporated herein by reference. Except as otherwise provided for Independent Fee Calculations in SMC 14A.15.020, exemptions in SMC 14A.15.030, and credits in SMC 14A.15.040, all new Developments in the City will be charged the Road Impact Fee applicable to the type of Development:

ITE Code	ITE Land Use Category	Impact Fee @ $ 6,937.03 per Trip
210	Single family House	7,636.98 per dwelling unit
220	Apartment	4,946.10 per dwelling unit
230	Condominium	4,307.90 per dwelling unit

All other road impact fees shall be in accordance with SMC 14.20.030(4) and SMC 14.20.040. If an Applicant proposes a land use that is not identified above, the Impact Fee shall be an amount equal to $6,937.03 for each p.m. Peak Hour trip generated, adjusted for trip length using methods and data comparable to those in the Roads Study

14A.15.120 Independent fee calculations. A.If in the judgment of the Director, none of the fee categories or fee amounts set forth in SMC 14A.15.110 accurately describe or capture the impacts of a new Development on Roads, 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. If a Feepayer opts not to have the Impact Fees determined according to SMC 14A.15.110, then the Feepayer shall prepare and submit to the Director an Independent Fee Calculation for the Development for which a Building Permit is sought. The documentation submitted shall show the basis upon which the Independent Fee Calculation was made.

C. Any Feepayer submitting an Independent Fee Calculation will be required to pay the City of Sammamish a fee to cover the cost of reviewing the Independent Fee Calculation. The amount of the fee required by the City for conducting the review of the Independent Fee Calculation shall be established by resolution by the City Council and shall be paid by the Feepayer prior to initiation of review.

D. While there is a presumption that the calculations set forth in the Roads Study are valid, the Director shall consider the documentation submitted by the Feepayer, but is not required to accept such documentation or analysis which the Director reasonably deems to be inaccurate or not reliable, and may, in the alternative, require the Feepayer to submit additional or different documentation for consideration. The Director is authorized to adjust the 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 shall be set forth in writing and shall be mailed to the Feepayer.

E. Determinations made by the Director pursuant to this Section may be appealed to the office of the Hearing Examiner as set forth in SMC 14A.15.060.

14A.15.130 Administrative Fees. All development permits subject to the road impact fees pursuant to SMC 14A.15.110 shall pay an administrative processing fee as adopted by the Sammamish City Council.

A. All development permits that require an independently determined road impact fee pursuant to SMC 14A.15.120 shall pay an administrative processing fee as adopted by the Sammamish City Council.

Section 2. Nothing in this title shall preclude the City from requiring the Feepayer or the proponent of a Development 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; provided, that, the exercise of this authority is consistent with the provisions of Chapter 43.21C RCW and Chapter 82.02 RCW.

Section 3. 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 4. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by State or federal law or regulation, such decision or pre-emption shall not affect the validity or enforceability of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 5. Effective date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF SAMMAMISH, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6th DAY OF JANUARY 2004.

CITY OF SAMMAMISH

Mayor Kathleen Huckabay

ATTEST:

Melonie Anderson, City Clerk

APPROVED AS TO FORM:

Bruce L. Disend, City Attorney

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