

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING OLYMPIA MUNICIPAL CODE SECTION 15.04.120 TO EXTEND THE AMOUNT OF TIME THE CITY HAS TO EXPEND OR ENCUMBER IMPACT FEES PURSUANT TO RCW 82.02.070**

WHEREAS, RCW 82.02.050 - .090 authorizes the City of Olympia to adopt an ordinance imposing impact fees; and

WHEREAS, in Ordinance Nos. 5490 and 6164, the City of Olympia did adopt such impact fees, also known as "transportation impact fees," "parks impact fees," and "school impact fees"; and

WHEREAS, RCW 82.02.070 was amended to allow a city a maximum of ten years to expend or encumber impact fees; and

WHEREAS, the City Council wishes to amend Olympia Municipal Code Section 15.04.120 to be consistent with state law;

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1. Amendment of OMC 15.04.120.** Olympia Municipal Code 15.04.120 is hereby amended to read as follows:

**15.04.120 Refunds**

- A. If the City or District No. 111 fails to expend or encumber the impact fees within ~~six (6) years~~ ten (10) years of when the fees were paid, or where extraordinary or compelling reasons exist, such other time periods as established pursuant to Sections 15.04.100 or 15.04.110, 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. The potential claimant must be the owner of the property for which the impact fee was paid.
- C. Current owner(s) seeking a refund of impact fees must submit a written request for a refund of the fees to the Director and/or District No. 111 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 by the claimant within this one-year period shall be retained by the City or District No. 111 and expended on the appropriate public facilities. Claimants shall have no rights to a refund if not timely requested pursuant to Subsection 15.04.120(C).
- E. Refunds of impact fees under this Section shall include any interest earned on the impact fees by the City or District No. 111.

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 activity for which the impact fees were imposed did not occur; provided that, if the City or District No. 111 has expended or encumbered the impact fees in good faith prior to the application for a refund, the Director or District No. 111 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 activity, the owner can petition the Director or District No. 111 for an offset against the actual impact fee amounts paid. 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. In the case of park or transportation impact fees, the Director shall determine whether to grant an offset, and the determinations of the Director may be appealed pursuant to the procedures in OMC Chapter 18.75. In the case of school impact fees, District No. 111 shall determine whether to grant an offset. District No. 111 shall forward its determination to the Director, and the Director may adopt the determination of District No. 111 and may grant or decline to grant an offset, or the Director may make an alternative determination and set forth the rationale for the alternative determination. Determinations of the Director shall be in writing and shall be subject to the appeals procedures set forth in OMC Chapter 18.75.

**Section 2. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

**Section 3. Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 4. Effective Date.** This Ordinance shall take effect five (5) days after publication, as provided by law.

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MAYOR

**ATTEST:**

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CITY CLERK

**APPROVED AS TO FORM:**

*Darren Menaber*

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DEPUTY CITY ATTORNEY

**PASSED:**

**APPROVED:**

**PUBLISHED:**