

ORDINANCE NO. 2016-08-031

AN ORDINANCE AMENDING BELLINGHAM MUNICIPAL CODE (BMC) TITLE 19 IMPACT FEES, INCLUDING CHAPTERS 19.04, 19.06, 19.08 AND ADDING A NEW CHAPTER 19.10 TO ALLOW FOR THE DEFERRAL OF IMPACT FEE COLLECTION FOR NEW SINGLE-FAMILY DETACHED AND ATTACHED RESIDENTIAL CONSTRUCTION.

WHEREAS, the City of Bellingham has adopted park (BMC 19.04), transportation (BMC 19.06) and school (BMC19.08) impact fees; and

WHEREAS, the Washington State Legislature passed, and the Governor signed, Engrossed Senate Bill (ESB) 5923 that amended the Revised Code of Washington (RCW) 82.02.050 so as to mandate that cities collecting impact fees adopt and maintain a deferral program for the collection of impact fees for single-family detached and attached residential construction; and

WHEREAS, ESB 5923 sets forth specific requirements for the deferral program including, but not limited to, the time for deferral, the number of deferrals, and the collection of a reasonable administrative fee from applicants seeking a deferral; and,

WHEREAS, ESB 5923 authorizes cities to withhold certification of final inspections, certificates of occupancy, or equivalent certification until the fees have been paid in full; and,

WHEREAS, the deadline for counties, cities and towns to implement a deferral program is September 1, 2016; and,

WHEREAS, pursuant to this legislative mandate, the City Council seeks to amend the Bellingham Municipal Code;

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. BMC 19.04.060 B. concerning the imposition of park impact fees is amended as follows:

B. No new residential building permit or new permit for residential mobile home installation for any activity requiring payment of an impact fee pursuant to BMC 19.04.070 shall be issued unless and until the park impact fee hereby required has been paid. However, payment of the park impact fee for single-family detached and attached residential construction may also be deferred as allowed per BMC 19.10.

Section 2. BMC 19.04.080 concerning the payment of park impact fees is amended as follows:

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A-B: [No Change]

C. Payment of the impact fee for single-family detached and attached residential construction may also be deferred as allowed per BMC 19.10.

Section 3. BMC 19.06.030 B. concerning the payment of traffic impact fees is amended as follows:

B. Payment of the TIF shall be made prior to issuance of a building permit, or if no building permit is required, prior to approval by the city of the development. Payment of the TIF for single-family detached and attached residential construction may also be deferred as allowed per BMC 19.10.

Section 4. BMC 19.08.060 E.3. concerning the payment of school impact fees is amended as follows:

3. In all cases, the amount of school impact fees shall be that which is in effect at the time of application for building permit. The fee shall be paid at building permit issuance. Payment of the school impact fee for single-family detached and attached residential construction may also be deferred as allowed per BMC 19.10.

Section 5. A new Chapter BMC 19.10 concerning the deferral of impact fees for single-family detached and attached residential construction is hereby created as follows:

Chapter 19.10 Impact Fee Deferral Program

19.10.010 Purpose and Intent

As required under Revised Code of Washington (RCW) 82.02.050, the purpose and intent of this chapter is to create an optional impact fee payment deferral program for single-family detached and attached residential construction.

19.10.020 Residential Single-Family Impact Fee Deferral

A. An applicant for a new single-family detached or attached building permit may request to defer the payment of an impact fee required under BMC 19.04, 19.06, or 19.08. For purposes of the deferral program, "applicant" includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant. The request to defer impact fees shall be subject to all of the following terms and conditions:

1. The request shall be submitted on forms provided by the city and shall be submitted at the time each individual building permit application is submitted. A separate request must be submitted for each single-family residence for which an impact fee deferral is requested.

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2. Each deferral request shall include an administrative processing fee equal to the Extra Services Fee as adopted on the Land Use Application Fee Schedule.
3. An applicant may submit 20 deferral requests per calendar year. If an applicant wishes to request more than 20 deferrals in a calendar year, the Planning and Community Development Director may approve each additional request after consultation with other city departments and the applicable school district. The Director shall give substantial weight to recommendations of the applicable school district and shall only approve additional requests if it is determined that the deferral will not be detrimental to capital facility planning for either the city or the school district.
4. Each deferral request shall be subject to the impact fees in effect at the time the applicant submits the deferral request.
5. The term of deferral shall expire and the impact fee shall be paid at the earliest of:
 - a. The time of final inspection by the city;
 - b. The time of issuance of certificate of occupancy or equivalent certification;
 - c. The time of closing of the first sale of the property occurring after the issuance of the applicable building permit; or
 - d. Eighteen (18) months from the date of original building permit issuance.

- B. Prior to issuance of a building permit, the applicant for a deferral request must grant, record at the applicant's expense, and submit to the City a deferred impact fee lien against the property upon which the development activity allowed by the building permit is to occur. The lien shall be in favor of the City in the amount of the deferred impact fee(s) and shall be in a form approved by the City Attorney.

The lien must be signed by all owners of the property and persons or entities holding any interest in the property, with all signatures acknowledged as required for a deed, and recorded among the appropriate land records of Whatcom County.

The lien must specify that it is binding on all successors in title after the recordation and that it is subordinate to one mortgage for the purpose of construction upon the same real property granted by the applicant for impact fee deferral. The lien shall become due at the expiration of the deferral date.

- C. The City shall not conduct, approve or issue final inspection and/or final certificate of occupancy until the deferred impact fees have been paid in full. Upon the first sale of property, the deferred impact fees shall be paid at closing if they have not been previously paid.
- D. Upon receipt of final payment of the deferred impact fee, the City shall execute a release of deferred impact fee lien for the property. The applicant, or property owner at the time of release, shall be responsible for recording the lien release at his or her own expense.

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E. 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 fee as a condition of final inspection, certificate of occupancy or equivalent certification, or at the time of closing of the first sale.

F. In the event that the deferred impact fee is not paid within the time provided in this section, the city may institute foreclosure proceedings in accordance with Chapter 61.12 RCW. The applicable school district may also institute foreclosure proceedings as set forth in RCW 82.02.050.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

PASSED by the Council this 29th day of August, 2016



Council President

APPROVED by me this 12th day of September, 2016



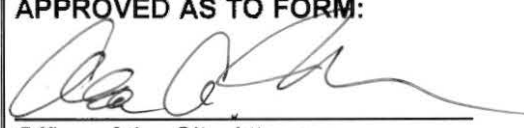
Mayor

ATTEST:



Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

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