

ORDINANCE NO. 2015-07-029

AN ORDINANCE AMENDING TITLE 15 AND TITLE 19 OF THE BELLINGHAM MUNICIPAL CODE REGARDING AN EXEMPTION FOR IMPACT FEES AND UTILITY SYSTEM DEVELOPMENT CHARGES FOR LOW-INCOME HOUSING PROJECTS.

WHEREAS, the Legislature, in 2012, authorized municipalities to exempt qualified low-income housing from impact fees (RCW 82.02.060); and

WHEREAS, the Legislature authorized municipalities to grant an exemption of eighty percent of the impact fees with no requirement to pay the exempted portion of the fees from public funds; and

WHEREAS, the Legislature authorized waiver or delay of collection of tap-in charges, connection or hookup fees, also known as system development charges, for low income persons (RCW 35.92.380); and

WHEREAS, the City Council considers and annually adopts a Consolidated Action Plan required by the U.S. Department of Housing and Urban Development ("HUD") for the allocation of HUD funds that benefit low-income persons and low-income housing; and

WHEREAS, the voters of Bellingham, in 2012, approved a lift on property taxes (Proposition 1) for low-income and very low-income housing (the "Home Fund"); and

WHEREAS, the City Council has directed that the expenditure of the Home Fund for low-income housing be done in coordination with the Annual Consolidated Plans required by HUD; and

WHEREAS, very low-income and low-income housing projects which receive financial assistance from the city are subject to income, rent and price restrictions enforced through recorded covenants, ensuring affordability but also limiting funds available for development costs; and

WHEREAS, exemption of impact fees and system development charges will enable low-income housing projects to become economically viable and produce more low-income housing units; and

WHEREAS, exemption of impact fees and system development charges is categorically exempt from review under the State Environmental Policy Act.

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

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Section 1. Section 19.04.130 of the Bellingham Municipal Code, concerning park impact fees, is amended as follows:

A. [UNCHANGED]

B. ~~The following development activities may be exempted from payment of impact fees: low income housing projects/development activities with broad public purposes. Upon application by the owner, the city council may exempt a partial exemption of not more than eighty percent of park impact fees, with no explicit requirement to pay the exempted portion of the fee from public funds, may be granted to a low-income housing development, as defined below: by the current city of Bellingham consolidated plan (or successor thereto), from all or part of the required fees upon such conditions as the city council deems appropriate. The city council may also vote to exempt specific projects, or components thereof, within proposed development activities with broad public purposes from all or part of the required fees upon such conditions as the city council deems appropriate. The determination to grant or deny an exemption shall be in the sole discretion of the city council after consideration in an open public meeting of the public benefit of the specific project, the hardship to the project of the fees, the impacts of the project, the availability of public funding to pay the fees payable on the project and any other factors deemed relevant by the city council. If an exemption is granted, the fees attributable to the development shall be paid from public funds other than park impact fee accounts.~~

1. The director of planning and community development, after consultation with the director of parks, may grant an exemption to a low-income housing project listed in an annual Consolidated Action Plan approved by city council.
2. The city council may grant an exemption to a low-income housing project not included in an annual Consolidated Action Plan.
3. The decision to grant, partially grant or deny an exemption shall be based on the public benefit of the specific project, the extent to which the applicant has sought other funding sources, the financial hardship to the project of paying the impact fees, the impacts of the project on public facilities and services, and the consistency of the project with adopted city plans and policies relating to low-income housing.
4. An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the director of planning and community development that prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and require that, if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner must pay the applicable impact fees in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Whatcom County Auditor.

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5. "Low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent of eighty percent of the median family income adjusted for family size, for Bellingham, as reported by the United States department of housing and urban development.

Section 2. Section 19.06.030 of the Bellingham Municipal Code, concerning transportation impact fees, is amended as follows:

A. [UNCHANGED]

B. [UNCHANGED]

C. [UNCHANGED]

D. [UNCHANGED]

E. Upon application by the owner, the city council may exempt a partial exemption of not more than eighty percent of transportation impact fees, with no explicit requirement to pay the exempted portion of the fee from public funds, may be granted to a low-income housing development, as defined below: by the current city of Bellingham consolidated plan (or successor thereto), from all or part of the TIF upon such conditions as the city council deems appropriate. The city council may also vote to exempt specific projects, or components thereof, within proposed development activities with broad public purposes from all or part of the required fees upon such conditions as the city council deems appropriate. The determination to grant or deny an exemption shall be in the sole discretion of the city council after consideration in an open public meeting of the public benefit of the specific project, the hardship to the project of the TIF, the impacts of the project, the availability of public funding to pay the TIF payable on the project and other factors deemed relevant by the city council. If an exemption is granted, the TIF attributable to the development shall be paid from public funds other than TIF accounts, consistent with RCW 82.02.060(2).

1. The director of planning and community development, after consultation with the director of public works, may grant an exemption to a low-income housing project listed in an annual Consolidated Action Plan approved by city council.

2. The city council may grant an exemption to a low-income housing project not included in an annual Consolidated Action Plan.

3. The decision to grant, partially grant or deny an exemption shall be based on the public benefit of the specific project, the extent to which the applicant has sought other funding sources, the financial hardship to the project of paying the impact fees, the impacts of the project on public facilities and services, and the consistency of the project with adopted city plans and policies relating to low-income housing.

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4. An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the director of planning and community development that prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and require that, if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner must pay the applicable impact fees in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Whatcom County Auditor.
5. "Low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent of eighty percent of the median family income adjusted for family size, for Bellingham, as reported by the United States department of housing and urban development.

Section 3. Section 19.08.080 of the Bellingham Municipal Code, concerning school impact fees, is amended as follows:

A. Administrative Adjustment of Fee Amount.

1. An applicant for a building permit or the school district may, within 21 days of acceptance by the city of a complete building permit application, submit a letter to the director requesting an adjustment to the impact fees imposed by this title. The director may adjust the amount or waive the entire fee, in consideration of studies and data submitted by the developer and the district, if one of the following circumstances exists:

- a. It can be demonstrated that the school impact fee assessment was incorrectly calculated;
- b. Unusual circumstances of the development activity demonstrate that application of the school impact fee to the development would be unfair or unjust;
- c. A credit for in-kind contributions by the developer, as provided for under BMC 19.08.060(F), is warranted;

~~d. Upon application by the owner, the city council may exempt a low income housing development, as defined by the current city of Bellingham consolidated plan (or successor thereto), from all or part of school impact fees upon such conditions as the city council deems appropriate. The city council may also vote to exempt specific projects, or components thereof, within proposed development activities with broad public purposes from all or part of the required fees upon such conditions as the city council deems appropriate. The determination to grant or deny an exemption shall be in the sole discretion of the city council after consideration in an open public meeting of the public benefit of the specific project, the hardship to the project of the school impact fee, the impacts of the project, the availability of public funding to pay the~~

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school impact fees payable on the project and other factors deemed relevant by the city council. If an exemption is granted, the school impact fee attributable to the development shall be paid from public funds other than impact fee accounts, consistent with RCW 82.02.060(2); or

de. Any other credit specified in RCW 82.02.060(1)(b) may be warranted.

2. Upon application by the owner, a partial exemption of not more than eighty percent of school impact fees, with no explicit requirement to pay the exempted portion of the fee from public funds, may be granted to a low-income housing development, as defined below:

- a. The director of planning and community development, after approval by the Bellingham School District, may grant an exemption to a low-income housing project listed in an annual Consolidated Action Plan approved by city council.
- b. The city council, after approval by the Bellingham School District, may grant an exemption to a low-income housing project not included in an annual Consolidated Action Plan.
- c. The decision of the director of planning and community development or the city council, as applicable, to grant, partially grant or deny an exemption shall be based on the public benefit of the specific project, the extent to which the applicant has sought other funding sources, the financial hardship to the project of paying the impact fees, the impacts of the project on school facilities and services, and the consistency of the project with adopted city plans and policies relating to low-income housing.
- d. An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the director of planning and community development that prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and require that, if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner must pay the applicable impact fees in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Whatcom County Auditor.
- e. "Low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent of eighty percent of the median family income adjusted for family size, for Bellingham, as reported by the United States department of housing and urban development.

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32. To avoid delay pending resolution of the adjustment or appeal, school impact fees may be paid under protest in order to obtain a development approval.

43. Failure to exhaust this administrative remedy shall preclude appeals of the school impact fee pursuant to subsection (B) of this section.

B. [UNCHANGED]

C. [UNCHANGED]

Section 4. Section 15.08.230 of the Bellingham Municipal Code, concerning water service system development charges, is amended as follows:

A. [UNCHANGED]

B. [UNCHANGED]

C. Upon application by the owner, a partial exemption of not more than eighty percent of the system development charge imposed by this chapter may be granted to a low-income housing development, as defined below:

1. The director of planning and community development, after consultation with the director of public works, may grant an exemption to a low-income housing project listed in an annual Consolidated Action Plan approved by city council.
2. The city council may grant an exemption to a low-income housing project not included in an annual Consolidated Action Plan.
3. The decision to grant, partially grant or deny an exemption shall be based on the public benefit of the specific project, the extent to which the applicant has sought other funding sources, the financial hardship to the project of paying the system development charge, the impacts of the project on public facilities and services, and the consistency of the project with adopted city plans and policies relating to low-income housing.
4. An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the director of planning and community development that prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and require that, if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner must pay the applicable system development charge in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Whatcom County Auditor.

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5. "Low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent of eighty percent of the median family income adjusted for family size, for Bellingham, as reported by the United States department of housing and urban development.

Section 5. Section 15.12.170 of the Bellingham Municipal Code, concerning sewer system development charges, is amended as follows:

A. [UNCHANGED]

B. [UNCHANGED]

C. [UNCHANGED]

D. Upon application by the owner, a partial exemption of not more than eighty percent of the system development charge imposed by this chapter may be granted to a low-income housing development, as defined below:

1. The director of planning and community development, after consultation with the director of public works, may grant an exemption to a low-income housing project listed in an annual Consolidated Action Plan approved by city council.

2. The city council may grant an exemption to a low-income housing project not included in an annual Consolidated Action Plan.

3. The decision to grant, partially grant or deny an exemption shall be based on the public benefit of the specific project, the extent to which the applicant has sought other funding sources, the financial hardship to the project of paying the system development charge, the impacts of the project on public facilities and services, and the consistency of the project with adopted city plans and policies relating to low-income housing.

4. An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the director of planning and community development that prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and require that, if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner must pay the applicable system development charge in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Whatcom County Auditor.

5. "Low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent of eighty percent of the median family income adjusted for

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family size, for Bellingham, as reported by the United States department of housing and urban development.

Section 6. Section 15.16.040 of the Bellingham Municipal Code, concerning storm and surface water utility system development charges, is amended as follows:

A. Exemption. Upon application by the owner, a partial exemption of not more than eighty percent of the system development charge imposed in this chapter may be granted to a low-income housing development, as defined below. An exemption from the charge imposed in this chapter shall be granted to any low or moderate income housing project duly approved by the city council pursuant to standards adopted therefor.

1. The director of planning and community development, after consultation with the director of public works, may grant an exemption to a low-income housing project listed in an annual Consolidated Action Plan approved by city council.
2. The city council may grant an exemption to a low-income housing project not included in an annual Consolidated Action Plan.
3. The decision to grant, partially grant or deny an exemption shall be based on the public benefit of the specific project, the extent to which the applicant has sought other funding sources, the financial hardship to the project of paying the system development charge, the impacts of the project on public facilities and services, and the consistency of the project with adopted city plans and policies relating to low-income housing.
4. An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the director of planning and community development that prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and require that, if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner must pay the applicable storm and surface water utility system development charges in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Whatcom County Auditor.
5. "Low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent of eighty percent of the median family income adjusted for family size, for Bellingham, as reported by the United States department of housing and urban development.

B. [UNCHANGED]

C. [UNCHANGED]

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D. [UNCHANGED]

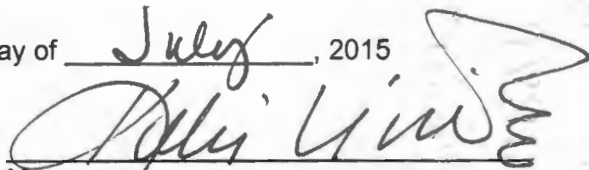
E. [UNCHANGED]

PASSED by the Council this 6th day of July, 2015



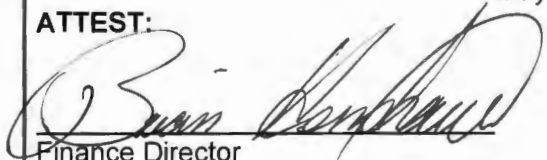
Council President

APPROVED by me this 9th day of July, 2015



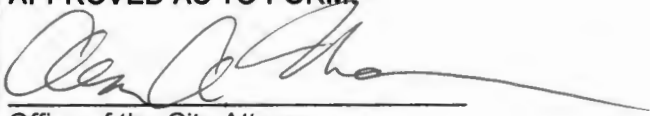
Mayor

ATTEST:



Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

Published: July 10, 2015

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT

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TO: Kelli Linville, Mayor
City Council
FROM: David Stalheim, Block Grant Programs Manager
DATE: June 3, 2015
RE: Low-income Housing Impact Fee and System Development Exemptions

The Legislature, in 2012, authorized a new exemption from impact fees for low-income housing (RCW 82.02.060(3)). The new authorization allows eighty percent (80%) of the impact fees to be exempt without an explicit requirement to pay the exempted portion of the fee from public funds. An exemption for low-income housing was previously allowed, but required the impact fees to be paid from public funds other than impact fee accounts.

The low-income housing exemption from impact fees has the following requirements:

- A local ordinance must allow the exemption;
- Low-income housing is defined as a monthly housing expense no greater than 30% of 80% of the median family income adjusted for family size;
- A covenant must be recorded that prohibits the use of the property for any purpose other than for low-income housing, including price restrictions and income limits;
- If the property is converted to a use other than for low-income housing, the property owner must pay the applicable impact fees in effect at the time of conversion; and
- Any exemption from school impact fees must be approved by the school district.

State law also allows waiver or delay of tap-in charges, connection or hookup fees for low-income persons (RCW 35.92.380). In Bellingham, these costs are generally referred to as "system development charges". Unlike impact fees, there are not specific restrictions in state law other than benefitting low-income persons.

On May 18, 2015, the City Council directed staff to prepare an ordinance that would allow the exemption for low-income housing.

Proposed Ordinance

Staff has prepared the draft ordinance for consideration by City Council. Key points in the proposed ordinance include:

- The Planning and Community Development director, after consultation with affected departments, may grant an exemption for those low-income housing projects included in our Annual Action Plan already approved by City Council.

- The City Council can grant the exemption for any project not in our Action Plan. There could be private projects that don't seek our funding to build the project. However, the repayment and covenant requirements will likely mean that private projects would not seek the exemption.
- Exemptions are not automatic, but have criteria including whether the applicant has sought other funding sources, financial hardship, the impact on public facilities and consistency with local plans and policies relating to low-income housing.
- Any exemption requires a covenant to be recorded restricting the use of the property. If the property is no longer low-income housing, then they must pay the fees in effect at the time of conversion.

Consultation

This incentive for affordable low-income housing is one part of the larger package of incentives that have been discussed with City Council. This particular incentive has been discussed and approved inter-departmentally.

The school impact fee exemption requires Bellingham School District approval. The proposed ordinance was sent to the Bellingham School District, which provided some minor wording changes we have included.

Low-income Projects on Annual Action Plan

The following low-income housing projects are currently on the City's Annual Action Plan and would be eligible for consideration of an exemption:

Agency	Project	# of Units
Catholic Housing Services	Bakerview Family Housing (farmworkers, 13 units serving 30% AMI or below, and 37 units serving 50% AMI or below)	50
Mercy Housing Northwest	Eleanor Apartments (senior housing, 40 units serving 30% AMI or below, and 40 units serving 50% AMI or below)	80
Pioneer Human Services	Unnamed (offender re-entry, veterans, homeless, 25 units serving 30% AMI or below, and 25 units serving 50% AMI or below)	50
Northwest Youth Services	22 North (young adult housing, serving 30% AMI or below)	10
Kulshan Community Land Trust	McKenzie Green (senior housing ownership, 80% AMI or below)	5
TOTAL		195

Fiscal Impact

Using a project with active development permits pending, Bakerview Family Housing, the following is the potential fiscal impact if all exemptions were granted for that project:

Fee	Total	If reduced 80%	Difference
School	57,700.00	11,540.00	(46,160.00)
Park	176,176.50	35,235.30	(140,941.20)
TIF	33,099.99	6,620.00	(26,479.99)
Storm SDC	14,446.37	2,889.27	(11,557.10)
Water SDC	84,831.00	16,966.20	(67,864.80)
Sewer SDC	160,379.00	32,075.80	(128,303.20)
TOTAL	526,632.86	105,326.57	(421,306.29)

The City is providing \$1,553,737 of financial assistance to the Bakerview Family Housing project. The impact fees and SDCs for this project would equal 34% of our funding assistance.

If all 195 units on our current Action Plan list had fees and system development charges per unit equal to the Bakerview Family Housing project (they won't), the total revenue that would not be received as a result of full 80% exemption would be \$1,643,095.

Action Requested

Approve the proposed ordinance for first and second reading.