

CITY OF BUCKLEY, WASHINGTON

ORDINANCE NO. 02 - 16

**AN ORDINANCE OF THE CITY OF BUCKLEY,
WASHINGTON, AMENDING BMC 3.50 RELATED
TO IMPACT FEES.**

WHEREAS, impact fees are authorized for those jurisdictions planning under the Growth Management Act and are charges assessed by local governments against new development projects that attempt to recover the cost incurred by government in providing the public facilities required to serve the new development; and

WHEREAS, the City has adopted code provisions governing the assessment and collection of impact fees for parks and recreation, schools and transportation in Chapter 3.50 of the Buckley Municipal Code; and

WHEREAS, the current fees listed in BMC 3.50 were developed through evaluation and fee calculation in separate elements of the 2005 Comprehensive Plan; and

WHEREAS, in December, 2016 the City Council approved amendments to Elements 1-4 and 6 through adoption of Ordinance No. 31-15; and

WHEREAS, Element 6 of the Comprehensive Plan is the Parks, Recreation & Open Space Element that includes new updated capital improvement projects, construction estimates proportionate impact fee calculations; and

WHEREAS, the City Council desires to replace the existing impact fees for parks and recreation with the new fees identified in the Comprehensive Plan; and

WHEREAS, the 2015 Legislature enacted changes to how impact fees are to be collected by Washington counties, cities, and towns. ESB 5923 requires counties, cities, and towns to adopt a deferral system for the collection of impact fees for new single-family detached and attached residential construction;

WHEREAS, the deadline for counties, cities, and towns implementation of the new law is September 1, 2016; however since BMC 3.50 is being amended the City Council desires to incorporate a deferral system for the collection of impact fees now in order to comply with the law;

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. BMC 3.50 is hereby amended to read as follows:

3.50.010 Definitions.

The following words and terms shall have the following meanings for the purposes of this title, unless the context clearly requires otherwise. Terms otherwise not defined herein shall be defined pursuant to RCW 82.02.090, or given their usual and customary meaning.

“Act” means the Growth Management Act, Chapter 17, Laws of 1990, 1st Extraordinary Session, Chapter 36.70A RCW, et seq., and Chapter 32, Laws of 1991, 1st Special Session, RCW 82.02.050, et seq., as now in existence or as hereafter amended.

“Boeckh Index” means the area cost allowances for school construction determined under WAC 180-27-060.

“Capacity” means the number of students the White River School District’s facilities can accommodate district-wide at each grade span, based on the district’s adopted level of service.

“Capital facilities” means the facilities or improvements included in the city of Buckley capital facilities element of the city of Buckley comprehensive plan adopted pursuant to the Act.

“City Comprehensive Parks, Recreation and Open Space Plan – Buckley” means the planning document that includes a park and recreation inventory, facility demand, policy and guidance on developing regional/city-wide and local park and recreation facilities.

“Department” means the planning department.

“Development activity” means any construction or expansion of a building, structure or use, any change in use of a building or structure, or any change in use of land that creates additional demand and need for public facilities.

“Development approval” means any written authorization from the city which authorizes the commencement of a development activity.

“Encumber” means to reserve, set aside or otherwise earmark the impact fees in order to pay for commitments, contractual obligations or other liabilities incurred for public facilities.

“Impact fee” means the fee levied pursuant to this chapter as a condition of issuance of a building permit or development approval. “Impact fee” does not include a reasonable permit or application fee and does not preclude a SEPA mitigation fee.

“Impact fee account” or “account” means the account established for each type of public facility for which impact fees are collected. Such account shall be established pursuant to this chapter and shall comply with the requirements of RCW 82.02.060.

“Impact fee schedule” means the fee schedules set forth in this chapter.

“Independent fee calculation” means the park impact calculation, the traffic engineering calculation, the school impact fee calculation, and/or economic documentation prepared by a feepayer to support the assessment of an impact fee other than by the use of impact fee schedules.

“Level of service (LOS)” means an established minimum capacity for public facilities or services that is planned to be provided per unit demand or other appropriate measure of need and is used as a gauge for measuring the quality of service.

“Park and recreation facilities” means those parks and recreation facilities so designated in the Parks, Recreation and Open Space element of the city of Buckley comprehensive plan adopted pursuant to the Act.

“Project improvements” mean site improvements and facilities that are planned and designed to provide service for a particular development or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the council shall be considered a project improvement.

“Public facilities” means publicly owned parks and recreational facilities, public roads and the White River School District.

“Service area” means a geographic area described in the city’s capital facilities plan in which a defined set of public facilities provides service to development within the area; provided, that the service area for schools shall be the White River School District. Service areas may be separately described for each type of public facility.

“Square footage” means the square footage of the gross floor area of the development.

“State” means the state of Washington.

“Street” means a right-of-way that affords the principal means of access to abutting property, and its accompanying signalization improvements, including an avenue, place, way, drive, lane, boulevard, highway, road and other thoroughfare, except an alley.

“System improvements” mean public facilities that are included in the capital facilities plan and are designed to provide service within the community at large, in contrast to project improvements.

“Transportation plan” means the transportation element of the city of Buckley comprehensive plan adopted pursuant to the Act.

“White River School District study” means the “White River School District Capital Facilities Plan,” and such study as amended, which is incorporated herein by reference, a copy of which is on file with the department.

3.50.020 Exemptions.

The following development activities shall be exempt from the payment of impact fees:

- (1) Replacement of a structure with a new structure of the same size and use at the same site or lot when the application for a building permit for such replacement occurs within six months of the demolition or destruction of the prior structure;
- (2) Alterations or expansion or enlargement or remodeling or rehabilitation or conversion of an existing dwelling unit where no additional units are created and the use is not changed;
- (3) The construction of accessory residential structures that will not impact on public facilities;
- (4) Alterations of an existing nonresidential structure that does not expand the usable space or will not create additional impacts on public facilities greater than the highest level of impact that previously has been caused by use of that structure;
- (5) Miscellaneous improvements, including but not limited to fences, walls, swimming pools and signs;
- (6) Demolition or moving of a structure.

Nonresidential new development will not be charged a park impact fee or a school impact fee; provided, however, that a nonresidential development may still be required to dedicate land for parks under SEPA.

The planning director shall be authorized to determine whether a particular development activity falls within an exemption identified in this section or any other section. Determinations by the director shall be subject to city council approval.

3.50.030 Credits.

A feepayer may request that a facilities credit be awarded to them for the value of land, facilities, or monetary compensation that the city or school district has agreed to accept as an off-set against a park or school impact fee from a feepayer regarding the development activity. Determination as to whether to accept land and/or proposed improvements as a credit against park or school impact fees and the amount of that credit shall be in the sole discretion of the city or school district. For each request for a credit, the city or school district may require the feepayer to provide an appraisal prepared by an approved appraiser so as to help determine the value of the dedicated land and/or improvements to that land. All appraisal costs shall be borne by the feepayer. Any claim for credit must be made not later than the time of application for a building permit.

3.50.035 Assessment of impact fees.

A. The City shall collect impact fees, based on the provisions of BMC 3.50.040 through BMC 3.50.060, or an independent transportation fee calculation as provided for in BMC 3.50.070, from any applicant seeking development approval from the City for any development activity within the City, where such development activity requires the issuance of a building or occupancy permit. This shall include, but is not limited to, the development of residential, commercial, retail, office, and industrial 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. Where a change in use triggers review under the State Environmental Policy Act or increases the trip generation by more than 5% or ten peak hour trips, whichever is less, the Director shall calculate a transportation impact fee based on the increases in the trip generation rate.

C. Impact fees shall be assessed at the time the complete building permit application is submitted for each unit in the development, using either the impact fee schedules then in effect or

an independent transportation fee calculation as provided for in BMC 3.50.070. The City shall not accept an application for a building permit if final plat, PRD, or binding site plan approval is needed and has not yet been granted by the City. Furthermore, the City shall not accept an application for a building permit unless prior to submittal or concurrent with submittal, the feepayer submits complete applications for all other discretionary reviews needed, including, but not limited to, design review, the environmental determination, and the accompanying checklist.

D. Applicants that have been awarded credits prior to the submittal of the complete building permit application pursuant to BMC 3.50.030 or 3.50.090, shall submit, along with the complete building permit application, a copy of the letter prepared by the Director and/or designee 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 or prior to final building inspection as set forth in Subsection (F) below.

E. Except as provided in subsection (F) below, the Department shall not issue a building permit unless and until the impact fees required by this Chapter, less any permitted exemptions, credits or deductions, have been paid.

F. Impact fee payments may be deferred for single-family detached and attached residential construction until prior to the City conducting a final building inspection as authorized by RCW 82.02.020(3). All applicants and/or legal owners of the property upon which the development activity allowed by the building permit is to occur must sign an Impact Fee Deferral Agreement in a form acceptable by the City Attorney. The applicant will pay a \$50 administrative fee, along with fees necessary for recording the agreement in the office of the Pierce County Auditor. The Impact Fee Deferral Agreement shall require the applicant to grant and record an impact fee lien as required by RCW 82.02.020(3). The City shall withhold certification of final inspection, certificate of occupancy or equivalent final certification until the deferred impacts fees have been paid in full. The term of an impact fee deferral shall not exceed 18 months.

In the event that the fees are not paid within the time provided in this subsection, the City shall institute foreclosure proceedings under the process set forth in Chapter 61.12 RCW, except as revised herein, and also except that the City may elect to have the school district institute foreclosure proceedings for the collection of school impact fees as authorized by RCW 82.02.020(3). The then-present owner shall also pay the City's reasonable attorney fees and costs incurred in the foreclosure process. Notwithstanding the foregoing, the City shall not commence foreclosure proceedings less than thirty (30) calendar days prior to providing written notification to the then-present owner of the property via certified mail with return receipt requested advising of its intent to commence foreclosure proceedings. If the then-present owner cures the default within the thirty-day cure period, no attorney fees and/or costs will be owed. In addition, the City retains its full authority to withhold inspections and to suspend, revoke or refuse to issue occupancy and other building permits and to commence enforcement actions due to non-payment of impact fees.

3.50.040 Impact fee for parks and recreation facilities.

The park and recreation impact fee imposed on residential development is based on the cost of capital projects listed in the Parks, Recreation and Open Space Element of the Comprehensive Plan. The parks and recreation impact fee imposed shall be that which is set forth in the parks impact fee calculation identified in the comprehensive plan. The fees shall be assessed and collected pursuant to BMC 3.50.035.

(1) Park and recreation impact fee shall be assessed to all new residential construction as follows:

| Type of Construction | Impact Fee per Dwelling Unit |
|-----------------------------|------------------------------|
| Single-family homes | \$1,624.70 |
| Multiple-family residential | \$1,331.52 |

(2) The park and recreation impact fees in BMC 3.50.40(1) may be reviewed annually to consider adjustments to the fees to account for increased costs of labor, construction materials and real property. The City Council intends that such review should occur concurrently with the annual review of the Capital Facilities Plan element of the City's Comprehensive Plan.

3.50.050 Impact fee accounts for the White River School District.

White River School District impact fees shall be submitted to the White River School District upon receipt. The fee shall be collected pursuant to BMC 3.50.035.

(1) White River School District impact fees shall be assessed to all new construction as follows:

| Type of Construction | Impact Fee per Dwelling Unit |
|-----------------------------|------------------------------|
| Single-family homes | \$0.00 |
| Multiple-family residential | \$0.00 |

3.50.060 Impact fee for street facilities.

Street impact fees shall be deposited in the street construction fund. The fees shall be assessed and collected pursuant to BMC 3.50.035. The assessments shall be made in accordance with Appendix 6-F, Table 11 of the 2005 City of Buckley Comprehensive Plan, a copy of which is attached to the ordinance codified in this section as Exhibit A.

3.50.070 Alternative street facilities impact fee calculation.

The applicant may petition the planning director for an alternative calculation of the impact fee by providing evidence of a study more specifically related to the proposed use, warranting a different trip generation estimate than the trip generation numbers provided in Appendix 6-F, Table 11 of the transportation element of the city of Buckley comprehensive plan. The petition will be considered only if the proposed use is not specifically included in Appendix 6-F, Table 11, or if the applicant is able to show site-specific information warranting a reduction for pass-through traffic. If the planning director approves the petition, the applicant shall pay the alternative impact fee calculated by using the approved trip generation numbers multiplied by the fee per trip identified in the transportation element of the city of Buckley comprehensive plan, as now constituted or hereafter amended or modified, in lieu of the fees provided for in BMC 3.50.060.

3.50.080 Reference to ITE Handbook authorized in lieu of Appendix 6-F, Table 11 for street facilities impact fee calculation.

Where the proposed use is not specifically listed under Appendix 6-F, Table 11 of the 2005 City of Buckley Comprehensive Plan, the planning director may determine the appropriate trip generation estimate by referring to the ITE Handbook, as now constituted or as hereafter amended or modified. The trip generation estimate shall be applied to the same cost per trip identified in the city of Buckley street plan, as it now exists or is hereafter modified.

3.50.090 Street impact fee credit for off-site improvements.

Fee payers may request that a facilities credit be awarded to them for the value of off-site, nonfrontage, transportation facilities constructed; provided, that the facilities are identified in the list of projects used to determine the impact fee.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional 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.

Section 3. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

APPROVED by the Buckley City Council this 12th day of January, 2016.


MAYOR, PAT JOHNSON

ATTEST/AUTHENTICATED:


JOANNE STARR, CITY CLERK

APPROVED AS TO FORM

OFFICE OF THE CITY ATTORNEY:

BY 

PUBLISHED: February 3, 2016

EFFECTIVE: February 8, 2016