



Date: February 9, 2022
To: City Council
From: Drew Smith, City Attorney
Ellen Hardgrove, City Planning Consultant
XC: Sandy Riffle, Interim City Clerk

Re: Discussion Item: Code Section 110-2(g) Impact Fee Payment Exemptions

Council discussion is requested to provide staff direction on the exemptions to the payment of impact fees should be applied. Code Section 110-2(g) lists exemptions from the payment of impact fees.

One exemption is when a destroyed or partially destroyed building is reconstructed with a new building of the same size and use, **provided that the building was not willfully destroyed or demolished.** This exemption leads to the conclusion that if the building is willfully demolished impact fees must be paid. Another exemption is for an addition to an existing residential structure or when a residential unit is expanded, provided the expansion does not increase the number of dwelling units in the building.

The question becomes, what constitutes an addition or expansion? Can new construction of a residential unit that is willfully **nearly** demolished; e.g., leave one wall remaining, be considered an addition/expansion? The Code does not define a threshold.

Impact fees are established to help pay for the impact of new development. A rational question is, why should a property that burned down be given different treatment than a property that was willfully demolished? No new impacts are created in both scenarios.

Many local governments allow an exemption for replacing a unit. Some have put a replacement date deadline; e.g., the demolished structure must rebuilt and ready for occupancy within a specific time period, e.g. (2) years of its demolition. Others have allowed a complete replacement provided the house that was demolished was built after the impact fee regulation was adopted (assumes the impact fee would have been paid upon its original construction).

Council direction to staff is requested.

From the Code:

110-2(g) *Exemptions*. The following types of development are exempt from the payment of the impact fees imposed pursuant to this section to the extent there is no increase in traffic generation associated with the property or use:

- (1) The construction of any addition or expansion to a residential building which does not increase the number of dwelling units in the building.
- (2) The construction of accessory buildings or structures which will not increase the traffic counts associated with the principal building or structure (or the land).
- (3) Any reconstruction of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use, provided that the destruction of the building or structure occurred other than by willful razing or demolition.
- (4) Expansions of or additions to existing structures, provided that such expansion or addition does not create a new dwelling unit or add over 1,000 square feet to any nonresidential structure.
- (5) Publicly owned and operated buildings or structures used for general governmental purposes (including, but not limited to sewer, stormwater, police, fire, ground transportation, solid waste, parks, recreation, and cultural purposes).
- (6) Agricultural structures.
- (7) Eaves, overhangs, and enclosed canopied walkways.
- (8) Temporary uses as defined in subsection [110-2\(d\)](#).

To the extent that such construction does increase traffic generation rates, the new or additional trips shall be subject to payment of the impact fee under this article.

Any claim of exemption must be made no later than the time for application for a development permit. Any claim not so made shall be deemed invalid.