Exhibit B

Chapter 3.40

PROPERTY DEDICATION FOR PUBLIC PARKS, RECREATION FACILITIES AND OPEN SPACES

3.40.010 - Applicability.

The provisions of this chapter shall be applicable to all property development within the city. "Property development" shall mean any application for any residential or nonresidential building permit or conditional use permit for a single-family dwelling, mobile home, duplex, multifamily dwelling, industrial or commercial building; and any application for approval of a mobile home park, mobile home subdivision, planned residential development, or planned unit development; and any application for approval of a short plat or long plat subdivision or subdivision in zones allowing for development purposes.

(Ord. 1197 § 1, 2004).

3.40.020 - Basis for dedication or assessment.

All land dedications or mitigation assessments shall be made on a per unit basis or square foot basis. "Unit" shall mean each dwelling unit, mobile home or lot as applicable and as defined in Chapter 17 of this code. "Unit" for nonresidential development shall mean each additional square foot added to an existing structure or each square foot of building in a new structure.

Where the number of dwelling units or mobile homes is not precisely known at the time of property development, "unit" shall mean at least one single-family dwelling unit or mobile home for each lot, to be increased when the number of dwelling units or mobile homes become known or fixed through application for a building permit or other applicable permit.

(Ord. 1197 § 2, 2004).

3.40.030 - Credit for prior dedication, system improvement, or assessment.

This chapter is not intended to require new dedications or assessments for a unit previously subject to full and complete dedication requirements or mitigation assessments for the unit, individually or as part of a larger project. Dedication requirements or mitigation assessments shall not result in imposition of more than the cost of one unit for any single dwelling unit or mobile home. Full or partial credit shall be given for the value of any dedication of land, system improvement, or mitigation assessment previously provided by the developer for land or facilities identified in the

capital facilities plan and required by the city as a condition of approving the property development.

(Ord. 1197 § 3, 2004).

3.40.040 - Land dedication suitability.

Dedication of land that is improved for public parks, recreation facilities and open spaces is one method of mitigating the impacts on such facilities caused by property development proposals within the city. Every property development proposal shall be reviewed by the park and recreation director and planning director for recommendation of suitable lands for dedication and for the level of improvements for parks, recreation facilities and open spaces in accordance with the standards set forth in the park and trail master plan. Dedication shall generally not be a suitable alternative for providing parks, recreation facilities and open spaces in the following cases:

A. Where the area that would be required to be dedicated for the purpose would be less than twenty-five thousand square feet in any one location;

B. Where safe and convenient access is not available;

C. Where the property development is in close proximity to land already dedicated for such purposes and such land is in need of improvement for recreation purposes; and

D. In cases where such dedication would not be consistent with the city's comprehensive plan, park and trail master plan, or capital improvement plan.

All property development applications shall be subject to mitigation assessments established by formula unless prior dedication or assessment for parks, recreation facilities and open space has been made such that the total dedication or assessment obligations otherwise applicable to the property development have been met.

(Ord. 1197 § 4, 2004).

3.40.050 - Dedication standards.

Where dedication is determined to be suitable, feasible, and in the best interests of the city, it shall be required in conformance with the requirements contained in "Exhibit A," Section 6—"Dedication Requirements" of the ordinance codified in this chapter.

The city council, upon recommendation of the parks and recreation director, shall determine the final suitability, location and improvements to lands proposed for dedication. Dedications of land shall be consistent with the standards adopted within the park and trail master plan.

Dedications required under this section shall be completed at the earliest applicable date as a condition of approval of any property development permit. Dedication shall be made through the delivery to the city of a fully executed and acknowledged statutory warranty deed. The statutory warranty deed shall be recorded with the Whatcom County auditor.

(Ord. 1197 § 5, 2004).

3.40.060 - Alternative to public dedication.

In some cases, it may be determined that land for parks, recreation facilities and open spaces should not be dedicated to the public, but remain under control of a property owner, homeowner's association or other similar body. Where it is consistent with the provisions and policies of the park and trail master plan, the city council may approve lands to be set aside for private recreational or open space purposes subject to such conditions of ownership and perpetual maintenance as may be deemed acceptable. This alternative shall be subject to the same minimum requirements contained in "Exhibit A," Section 6—"Dedication Requirements" of the ordinance codified in this chapter.

(Ord. 1197 § 6, 2004).

3.40.070 - Mitigation assessments.

When dedication of land for public purposes is determined by the city to be infeasible, unwarranted, or not in the best interests of the city, mitigation assessments shall be required in conformance with this chapter.

(Ord. 1197 § 7, 2004).

3.40.080 - Mitigation assessment formulas.

Mitigation assessments for public parks, recreation facilities and open spaces shall be calculated in accordance with the formulas established by Ordinance 1596 (adoption of 2020 budget) and subject to review and increase as approved through the City's budget process. Mitigation assessments contributed under this section shall be due and payable as follows; provided that, fees due at the time of building permit for a single-family home may be eligible to be deferred consistent with provisions of chapter 3.47 LMC:

Development Type	**Assessment due at project approval**	**Assessment due at building permit application**
Development including the subdivision of property and a building permit approval	50% of assessment for all proposed units	50% of assessment for each unit
Creation of new, additional lots on property	50% of assessment	50% of assessment

where one or more previously existing units are located	for net new units	for each new unit
Non-subdivision development approval (e.g., conditional use permit)		Total assessment
Development for which building permit only is required		Total assessment
Building of a structure on a lot of record as defined in Section 17.01.030 LMC established prior to September 1994		50% of assessment
Development for which no building permit will be required following project approval (including conditional use permit where applicable)	Total assessment	

(Ord. 1197 § 8, 2004).

3.40.090 - Administration of assessments.

There is created and established a special purpose, nonoperating park impact fund, to which all mitigation assessments are paid. Fund administration shall be as follows:

A. Separate Account for Each Development. Any assessments paid to the city shall be deposited in the fund and administered as a separate account for the development in question, and the account balance shall be applied only to the completion of improvements or acquisition projects specified in the capital improvement plan as approved or amended by the city council.

B. Interest Earned. Interest and investment income earned by the fund shall be redeposited in the fund and allocated proportionally to each subaccount.

C. Time Limit for Expenditures. Any funds remaining in a development's account shall be refunded with interest to the property owner of record within six years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than six years. Such extraordinary or compelling reasons shall be identified in written findings by the city council.

D. Impact Fees Paid Under Protest. Impact fees may be paid under protest in order to obtain a property development permit or approval.

E. Refund for Expired Property Development Permit or Approval. If a developer pays any assessments to the park impact fund for mitigation purposes, and the development's building permit or other approval expires before any substantial construction has commenced, the developer or the developer's successors in interest shall be entitled to a refund of the payments made plus interest, less a charge of ten percent of the original assessment for processing of the account. Any amount erroneously paid or collected shall be refunded in full.

F. Administration of Impact Fee Refunds. All refunds of impact fees authorized in this chapter shall be administered in accordance with RCW 82.02.080 and as it is hereafter amended.

(Ord. 1197 § 9, 2004).

3.40.100 - Impact fee—Exception.

Any person(s) required to pay a fee or dedicate land pursuant to RCW 43.21C.060 for system improvements shall not be required to pay an impact fee or dedicate land under this chapter for those same system improvements.

(Ord. 1197 § 10, 2004).

3.40.110 - Deferral, Appeals and adjustments.

A. Application to defer the payment of impact fees due at the time of building permit in association with the construction of a single-family home may be made in accordance with chapter 3.47 LMC.

B. Any person(s) seeking an adjustment to the dedication or mitigation assessments required by this chapter shall have a right to appeal to the city council. Any such appeal shall be filed with the city clerk in writing within ten days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required by this chapter. Following receipt of such an appeal, the city council shall hold a public hearing to consider the appeal at its next available meeting. In considering the appeal the city council may, in its discretion, take into account unusual circumstances in a specific case and may consider studies and data submitted by the appellant(s). The city council shall issue such determination as it deems fair and equitable. The decision of the city council shall be in writing and shall be the final decision of the city.

(Ord. 1197 § 11, 2004).

Chapter 3.44

FIRE FACILITIES MITIGATION FUND

3.44.010 - Applicability.

The provisions of this chapter shall be applicable to all property development within the city. "Property development" shall mean any application for a building permit for a single-family dwelling, manufactured home, duplex or multifamily dwelling; and any application for approval of a manufactured home park, manufactured home subdivision or residential planned unit development; and any application for approval of a short plat or long plat subdivision or subdivision in zones allowing for development purposes.

(Ord. 1330 § A(part), 2008: Ord. 960 § 1, 1994).

3.44.020 - Basis for mitigation assessment.

All mitigation assessments shall be made on a per unit basis or square foot basis. "Unit" shall mean for residential development each dwelling unit, manufactured home or lot as applicable and as defined in Chapter 17 of the Lynden Municipal Code. Where the number of dwelling units or manufactured homes is not precisely known at the time of the development, "unit" shall mean at least one dwelling unit or manufactured home for each lot, to be increased when the number of dwelling units or manufactured homes become known or fixed through application for a building permit or other applicable permit. Mitigation assessments shall not be imposed so as to have the effect of imposing more than the cost of one unit for any dwelling unit or manufactured home. These requirements are not intended to have the effect of requiring new fire service facility assessments for units which have previously been subject to dedication or assessment individually or as part of a larger project. "Unit" for nonresidential development shall mean each additional square foot added to an existing structure or each square foot of building in a new structure.

(Ord. 1330 § A(part), 2008: Ord. 960 § 2, 1994).

3.44.030 - Mitigation assessment formulas.

The formulas used to calculate mitigation assessments for fire facilities are established by Ordinance 1596 (adoption of 2020 budget) and subject to review and increase as approved through the City’s budget process.

Mitigation assessments contributed under this section shall be due and payable as follows; provided that, fees due at the time of building permit may be eligible to be deferred consistent with chapter 3.47 LMC:

Development Type	Amount of Per Unit Assessment Payable At:	
	Project* Approval	**Building Permit Application**
1. Development requiring both project* and building permit approvals.	½ of assessment for all units	½ of assessment per unit
2. Creation of new, additional lots for future single-family residential use on property where one or more previously existing single-family units are located.	½ of assessment for net new lots	½ of assessment per new unit
3. Development for which building permit only is required.	——	total assessment
4. Building of a structure on a lot-of-record existing when the ordinance codified in this chapter was adopted.	——	½ of assessment
5. Development for which no individual building permit will be required following project approval.	total assessment	

* "Project" includes conditional use permit, manufactured home park, manufactured home subdivision, planned residential development, short plat, long plat, or any other subdivision of property.

(Ord. 1330 § A(part), 2008: Ord. 960 § 3, 1994).

3.44.040 - Administration of cash payments to city.

There is created and established a special purpose nonoperating fire facilities mitigation fund, to which all mitigation assessments are paid. Fund administration shall be as follows:

A. Separate Account for Each Development. Any cash payments made shall be deposited in the fund and administered as a separate account for the development in question, and the account balance shall be applied only to completion of improvements or acquisition projects specified in the city fire facilities capital improvement plan as approved or amended by the city council.

B. Interest Earned. Interest and investment income earned by the fund shall be redeposited in the fund and allocated proportionally to each sub-account.

C. Time Limit for Expenditures. Any funds remaining in a development's account shall be refunded with interest to the property owner of record when the time periods for expenditure of those funds have passed, as provided in applicable state laws.

D. Refund of Amounts Paid. If a developer makes any payments to the fire facilities mitigation fund for mitigation purposes, and the development's building permit or other approval expires before any substantial construction has commenced, the developer or the developer's successors in interest shall be entitled to a refund of the payments made plus interest, less a reasonable charge for processing of the account. Any amount erroneously paid or collected shall be refunded in full.

(Ord. 1330 § A(part), 2008: Ord. 960 § 4, 1994).

3.44.050 – Deferral, Exception, Appeals and adjustments.

A. Application to defer the payment of impact fees due at the time of building permit in association with the construction of a single-family home may be made in accordance with chapter 3.47 LMC.

B. Pursuant to RCW 82.02.100(2), a person installing a residential fire sprinkler system in a single-family home shall not be required to pay the fire operations portion of the impact fee. The exempted fire operations impact fee shall not include the proportionate share related to the delivery of emergency medical services.

C. Any person desiring to appeal from a decision made in the enforcement of the provisions of this chapter or any person seeking an adjustment to the dedication or mitigation assessments required by this chapter due to unusual circumstances in specific cases, shall submit an appeal in accordance with the provisions of Chapter 17.11 of the Lynden Municipal Code and shall be heard by the city council as an open record appeal as provided in Chapter 17.03 of the Lynden Municipal Code.

(Ord. 1330 § A(part), 2008: Ord. 960 § 5, 1994).

3.44.060 - Penalty.

Violation of this chapter is a gross misdemeanor punishable by a fine of not more than five thousand dollars and a jail term of not more than one year. Each day that such violation is allowed to continue shall be considered a separate and additional violation of this chapter.

(Ord. 1330 § A(part), 2008).

Chapter 3.46

TRANSPORTATION IMPACT FEES

Sections:

3.46.010 Authority and purpose.
3.46.015 Definitions
3.46.020 Applicability.
3.46.030 Geographic scope.
3.46.040 Imposition of transportation impact fees.
3.46.050 Fee schedules and establishment of service area.
3.46.060 Calculation of impact fees.
3.46.070 Payment of fees.
3.46.080 Project list.
3.46.090 Funding of projects.
3.46.100 Refunds.
3.46.110 Appeals.
3.46.120 Relationship to SEPA.
3.46.130 Relationship to concurrency.
3.46.140 Necessity of compliance.

3.46.010 Authority and purpose.

A. This title is enacted pursuant to the city's authority under the Growth Management Act as codified in Chapter 36.70A RCW, the enabling authority in Chapter 82.02 RCW, Chapter 58.17 RCW relating to platting and subdivisions, and the State Environmental Policy Act (SEPA) Chapter 42.21C RCW.

B. The purpose of this title is to:

1. Develop a transportation impact fee program consistent with the Lynden Comprehensive Plan, for joint public and private financing of transportation improvements necessitated in whole or in part by development in the city;

2. Ensure adequate levels of transportation and traffic service within the city consistent with the Comprehensive Plan;

3. Create a mechanism to charge and collect fees to ensure that new development bears its proportionate share of the capital costs of off-site transportation facilities needed to serve new development, in order to provide an adequate level of transportation service consistent with the Comprehensive Plan;

4. Ensure that the city pays its fair share of the capital costs of transportation facilities necessitated by public use of the transportation system; and

5. Ensure fair collection and administration of such impact fees.

6. Ensure that new development pays its fair share of the costs to meet urban standards including adequate pavement width, curbs, gutters, pedestrian facilities and other improvements outlined in the City's adopted development standards.

C. The provisions of this chapter shall be liberally construed to effectively carry out its purpose in the interests of the public health, safety and welfare.

3.46.015 Definitions.

The following are definitions provided for administering the transportation impact fee. The Planning Director shall have the authority to resolve questions of interpretation or conflicts between definitions.

A. "Adequate level of transportation service" means a system of transportation facilities which have the capacity to serve development without decreasing levels of service below the city's established minimum or meet the City's development standards for urban streets. (LMC 17.15).

B. "City" means the City of Lynden.

C. "Development" or "Development activity" means any final short or long plat approval, any construction or expansion of a building, structure, or use, or any changes in the use of land, that creates additional demand and need for public facilities.

D. "Director" means the Planning Director of the City of Lynden or his/her designee.

E. "Finance Director" means the finance director of the city of Lynden or his/her designee.

F. "Impact fee or transportation impact fee" means an assessment imposed upon the approval or permitting of a development activity pursuant to this ordinance. "Impact fee" does not include a reasonable permit or application fee otherwise established by city council resolution.

G. “Jurisdiction” means a municipality or county.

H. “Ordinance” means the Ordinance adopting the 2020 City of Lynden Budget and applicable impact fee schedules or as amended thereafter.

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

J. “Resolution” means Resolution 958 that provides the transportation impact fee schedule as currently adopted or amended thereafter.

K. “Service area” means a geographic area defined by ordinance or intergovernmental agreement in which a defined set of public streets and roads provide service to the development within the area.

L. “System improvements” means public facilities that are included in the Transportation Projects and Programs list contained within the Transportation Element of the Comprehensive Plan and are designed to provide service areas within the community at large, in contrast to project improvements.

3.46.020 Applicability.

A. The requirements of this chapter apply to all development activity in the city of Lynden.

B. Mitigation of impacts on transportation facilities located in jurisdictions outside the city will be required when:

1. The other effective jurisdiction has reviewed the development’s impact under its adopted impact fee/mitigation regulations and has recommended to the city that the city impose a requirement to mitigate the impacts; and

2. There is an interlocal agreement between the city and the effective jurisdiction specifically addressing transportation impact identification and mitigation.

C. Under no circumstances shall the city impose impact fees under this ordinance on development located outside the corporate city limits.

3.46.030 Geographic scope.

The boundaries within which impact fees shall be charged and collected are co-extensive with the corporate city limits. Unincorporated areas later annexed to the city shall be subject to impact fees under this chapter upon the effective date of annexation.

3.46.040 Imposition of transportation impact fees.

A. The city is hereby authorized to impose transportation impact fees on new development according to the provisions of this chapter.

B. Transportation impact fees:

1. Shall only be imposed for system improvements that are reasonably related to the new development;

2. Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development;

3. Shall be used for system improvements that will reasonably benefit the new development; and

4. May be collected and spent only for system improvements which are included in the Transportation Projects and Programs list within the Transportation Element of the City's Comprehensive Plan.

5. Should not be imposed to mitigate the same off-site transportation facility impacts that are mitigated pursuant to any other law;

6. Should not be collected for improvements to state transportation facilities outside the city boundaries unless the state requests such improvements and an agreement to collect such fees has been executed between the state/county and the city;

7. Shall not be collected for improvements to transportation facilities in other jurisdictions unless the affected jurisdiction requests such improvement and an interlocal agreement has been executed

between the city and the affected jurisdiction for the collection of such fees;

8. Shall be collected only once for each building permit, unless changes or modifications to the building permit are proposed which result in greater direct impacts on transportation facilities than were considered when the building permit was first approved.

3.46.050 Fee schedules and establishment of service area.

A. An impact fee schedule setting forth the amount of the transportation impact fees to be paid by a development is set out in the Resolution, incorporated herein by this reference.

B. The impact fee schedule of costs, as set out in the Resolution shall be updated annually at a rate adjusted in accordance with the Engineering News Record (ENR) Construction Cost Index for the Seattle area, using a June-June annual measure to establish revised fee schedules effective July 1 of the current year.

C. For the purpose of this chapter, the entire city and its urban growth area shall be considered one service area.

3.46.060 Calculation of impact fees.

A. The Director shall calculate the transportation impact fees as set forth in the Resolution, attached to the ordinance codified in this section, subject to the provisions of this chapter.

B. In determining the proportionate share, the method of calculating impact fees shall incorporate, among other things, the following:

1. The cost of public streets and roads necessitated by new development;

2. An adjustment to the cost of the public streets and roadways for past or future payments made or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes, or other payments earmarked for or proratable to the particular system improvement;

3. The availability of other means of funding public street and roadway improvements;

4. The cost of existing public street and roadway improvements; and

5. The methods by which public street and roadway improvements were financed.

C. A credit, not to exceed the impact fee otherwise payable, shall be provided for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified the Transportation Projects and Programs list within the Transportation Element of the city's Comprehensive Plan and that are required by the city as a condition of approving the development activity. The determination of "value" shall be consistent with the assumptions and methodology used by the city in estimating the capital improvement costs.

D. The Director may adjust the standard impact fee at the time the fee is imposed to consider unusual circumstances in specific cases to ensure that impact fees are imposed fairly.

E. The amount of fee to be imposed on a particular development may be adjusted by the Director giving consideration to studies and other data available to the Director or submitted by the developer demonstrating to the satisfaction of the Director that an adjustment should be made in order to carry out the purposes of this chapter.

F. The impact fee shall provide for system improvement costs previously incurred by the city to the extent that new growth and development will be served by the previously constructed improvements; provided, that such fees shall not be imposed to make up for any system improvement deficiencies.

3.46.070 Payment of fees.

A. All developers shall pay an impact fee in accordance with the provisions of this chapter at the time that final approval is granted as listed below. Impact fees due at the time of building permit for a single-family home may be eligible for deferral consistent with provisions of chapter 3.47 LMC. The fee paid shall be the amount in effect as of the date the development application is deemed completed.

Application Type	**Assessment payable at time of:**
Residential Subdivision	Final Plat approval
Residential building permit for lot of record created prior to adoption of this ordinance or on an unplatted parcel of land, except where mitigation for the impact has been previously provided as determined by the Director.	Building Permit issuance
Non-residential subdivision or binding site plan	Building permit issuance
Non-residential building permit except where mitigation for the impact has been previously provided as determined by the Director	Building permit issuance

C. The impact fee, as initially calculated after issuance of a final approval, shall be recalculated at the time of payment if the development is modified or conditioned in such a way as to alter the trip generation rate for the development.

D. No final permit or approval shall be issued until the impact fee is paid.

E. Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.

F. Application to defer the payment of impact fees due at the time of building permit for a single-family home may be made in accordance with chapter 3.47 LMC.

3.46.080 Transportation System Improvement List.

A. The Director shall commonly review the city's comprehensive land use and transportation plan ("comprehensive plan"), and shall:

1. Identify each transportation system improvement in the comprehensive plan that is growth-related and the proportion of each such system improvement that is growth-related;

2. Forecast the total moneys available from taxes and other public sources for road improvements over the next six years;

3. Calculate the amount of impact fees already paid; and

4. Identify those comprehensive plan system improvements that have been or are being built but whose performance capacity has not been fully utilized.

D. Once a transportation system improvement is included the Transportation Projects and Programs list within the Transportation Element of the city's Comprehensive Plan, a fee shall be imposed on every development that impacts the system improvement until the system improvement is removed from the list by one of the following means:

1. The council, by ordinance, removes the system improvement from the Transportation Projects and Programs list within the Transportation Element of the city's Comprehensive Plan. In which case the fees that have already been collected will be refunded if necessary to ensure that impact fees remain reasonably related to the traffic impacts of development that have paid an impact fee; provided, that a refund shall not be necessary if the council transfers the fees to the budget of another system improvement that the council determines will mitigate essentially the same traffic impacts; or

2. The impact fee share of the system improvement has been fully funded, in which case the Director shall administratively remove the system improvement from the transportation system improvement list.

3.46.090 Funding of System Improvements.

A. A transportation impact fee restricted cash fund is hereby created. The finance director shall be the fund manager. Transportation impact fees shall be placed in appropriate interest-bearing deposit accounts within the transportation impact fee fund.

B. The transportation impact fees paid to the city shall be held and disbursed as follows:

1. The transportation impact fees collected shall be placed in a deposit account within the impact fee fund;

2. When the council appropriates capital improvement project (CIP) funds for a project on the system improvement list, the fees held in the impact fee fund shall be transferred to the CIP fund. The non-impact fee moneys appropriated for the system improvement may comprise both the public share of the system improvement cost and an advancement of that portion of the private share that has not yet been collected in transportation impact fees;

3. The first money spent by the city on a system improvement after a council appropriation shall be deemed to be the fees from the impact fee fund;

4. Fees collected after a system improvement has been fully funded by means of one or more council appropriations shall constitute reimbursement to the city of the public moneys advanced for the private share of the project.

5. All interest earned on transportation impact fees paid shall be retained in the account and expended for the purpose or purposes for which the transportation impact fees were imposed.

C. System improvements shall be funded by a balance between transportation impact fees and public funds, and shall not be funded solely by transportation impact fees.

D. Transportation impact fees shall be expended or encumbered for a permissible use within six years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than six years. The finance director may recommend to the council that the city hold fees beyond six years in cases where extraordinary and compelling reasons exist. Upon entry of written findings of such

extraordinary and compelling reasons, the council may authorize the city to hold the fees beyond said six year time period.

E. The finance director shall prepare an annual report on the transportation impact fee account showing the source and amount of all moneys collected, earned or received and system improvements that were financed in whole or in part by transportation impact fees.

3.46.100 Refunds.

A. A developer may request and shall receive a refund when the developer does not proceed with the development activity for which transportation impact fees were paid, and the developer shows that no impact has resulted; however, the impact fee administrative fee shall not be refunded.

B. The current owner of property on which an impact fee has been paid may receive a refund of such fees if the city fails to expend or encumber the impact fees within six years of when the fees were paid or as otherwise extended pursuant to section 3.46.090 D. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out, basis.

C. If an owner appears to be entitled to a refund of transportation impact fees, the finance director shall notify the owner by first class mail deposited with the United States Postal Service at their last known address. The owner must submit a request for a refund to the finance director in writing within one year of the date the right to claim the refund arises or the date the notice is given, whichever is later. Any transportation impact fees that are not expended or encumbered within the time limitations established by Lynden Municipal Code 3.46 and for which no application for a refund has been made within this one-year period, shall be retained and expended on any system improvement.

D. In the event that transportation impact fees must be refunded for any reason, they shall be refunded with interest earned to the owners as they appear of record with the Whatcom County assessor at the time of refund.

E. When the city seeks to terminate any or all impact fee requirements, all unexpended or unencumbered funds 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

times and shall notify all potential claimants by first class mail to the last known address of claimants. Claimants shall request refunds as in subsection C of this section. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the city, but must be expended on any city system improvements. This notice requirement shall not apply if there are no unexpended or unencumbered balances within an account or accounts being terminated.

3.46.110 Appeals.

A. A developer or property owner shall have the right to file an appeal of the amount of an impact fee determined by the Director. All such appeals shall be filed and reviewed in conformance with the requirements established for filing appeals authorized by Title 17 of the Lynden Municipal Code ("LMC") as set forth in Chapter 17.11 LMC; and shall be heard by the city council as an open record appeal as provided in Chapter 17.03 LMC. The developer or property owner shall bear the burden of proving:

1. That the Director committed error in calculating the developer's/property owner's proportionate share, as determined by an individual fee calculation or, if relevant, as set forth in the fee schedule, or in granting credit for the benefit factors; or

2. That the Director based his determination upon incorrect data; or

3. That the Director's decision was arbitrary and capricious.

3.46.120 Relationship to SEPA.

A. All development shall be subject to environmental review pursuant to SEPA and other applicable city ordinances and regulations.

B. Payment of the impact fee shall constitute satisfactory mitigation of those traffic impacts related to the specific improvements identified on the system improvement list at Table 8. C. Further mitigation in addition to the impact fee shall be required for identified adverse impacts appropriate for mitigation pursuant to SEPA that are not mitigated by an impact fee.

D. Nothing in this chapter shall be construed to limit the city's authority to deny building permits, plat approvals, or other development permits or approvals, when a proposal would result in significant adverse traffic

impacts identified in an environmental impact statement and reasonable mitigation measures are insufficient to mitigate the identified impact.

3.46.130 Relationship to concurrency.

Neither compliance with this chapter or the payment of any fee hereunder shall constitute a determination of concurrency under Chapter 17.15 of the Lynden Municipal Code.

3.46.140 Necessity of compliance.

A building permit issued after the effective date of the ordinance codified in this section shall be null and void if issued without substantial compliance with this chapter.

3.46.150 Credits.

A. Credit Available. After the effective date of the ordinance codified in this chapter and as provided in RCW 82.02.060(4), a transportation impact fee credit shall be granted for the value of any dedication of land for, improvements to, or construction of any system improvements that are included within the city's current adopted capital facilities plan and are required by the city as a condition of approval for the development. Credit eligibility and the credit amount for a particular improvement or facility shall be determined as set forth in the provisions of this chapter, as now or hereafter amended.

B. Credit Determination – Timing. The amount of credit shall be determined by the Director prior to issuance of a building permit, or upon final plat or site plan approval, whichever occurs first.

C. Application for Credit/Determination of Suitability of Land, Improvements, Construction. Applications for credit shall be made to the Director in writing and shall include an estimate of value of improvements prepared by a professional engineer licensed in the state of Washington. The Director shall determine whether the land, improvements, and/or the facilities constructed are included within the city's current adopted capital facilities plan. In making a determination, the Director may consult with other city staff, or such other persons or agencies as deemed necessary. In all cases the Director shall provide the developer with a written determination as provided in subsection (E).

D. Determination of Credit Amount. Once the city has determined that the land, improvements, and/or construction would be suitable for city purposes as provided in subsection (C) of this section, the Director shall determine the

amount of the credit. The applicant shall be entitled to a credit for a reasonable value of the land, improvements, and/or construction that are made or dedicated, based on the actual cost of improvements and/or construction, or the current assessed value according to the county assessor of any land dedicated. In the event an appraisal is necessary to determine value of the land dedicated, the full cost of such appraisal shall be paid by the applicant.

E. Credit Letters/Administration. After determining the amount of a credit, the Director shall issue and provide the developer with a document, hereinafter known as a “credit letter,” setting the dollar amount of the credit, the date of issuance, the reason for the credit, the legal description of property donated, and/or the improvement or construction which was the basis for the credit, and the name and legal description of the development or property to which the credit letter is registered. The developer must sign, date and return the signed credit letter to the Director before the credit will be awarded. The failure of the developer to sign, date, and return the credit letter within 60 calendar days of its issuance by the Director shall nullify the credit. In the event that the amount of any credit exceeds the amount of the impact fee due, the city shall not financially reimburse the difference to the developer and/or applicant; provided, that any unused credit remaining from the amount stated in the credit letter may be applied as credit against future impact fee assessments as described in the credit letter.

F. Administrative Fees. The city shall levy a fee equal to one percent of the total credit to cover costs incurred by the city in administering the provisions of this section authorizing a credit.

D. Appeals. Determination made by the Director pursuant to this section shall be subject to the appeals procedures set forth in LMC 17.11.