

ORDINANCE NO. 1631

AN ORDINANCE OF THE LYNDEN CITY COUNCIL ESTABLISHING A PEPIN CREEK TRANSPORTATION IMPACT FEE OVERLAY AREA AND ASSOCIATED IMPACT FEES, ESTABLISHING NEW CITY-WIDE IMPACT FEES, UPDATING THE TRANSPORTATION IMPROVEMENT PROJECTS AND PROGRAMS LIST TO IDENTIFY CITY-WIDE AND PEPIN CREEK SUBAREA SYSTEMS IMPROVEMENT PROJECTS, AND RESCINDING A CITY POLICY DISCOUNTING TRANSPORTATION AND PARK FEES.

WHEREAS, the City of Lynden (“City”) desires to mitigate the transportation impacts of growth in a manner which is fair and equitable to all developers and citizens of the City and guided by the City’s Comprehensive Plan; and

WHEREAS, the City desires to plan for growth in a manner that is adequate for the long-range future and consistent with the plans and policies of the surrounding region to the extent required by state laws; and

WHEREAS, the City wishes to document its plans in the Transportation Element of the Comprehensive Plan, Subarea Plans, and the Transportation Improvement Projects and Programs list; and

WHEREAS, the City is authorized by Ch. 36.70A RCW, and Ch. 82.02 RCW to develop and implement a transportation impact fee program to provide for joint public and private financing of transportation improvements necessitated in whole or in part by the development in the City; and

WHEREAS, the City Council adopted Ordinance 1205 in April 2004, which established a Transportation Impact Fee program in Lynden Municipal Code (“LMC”) 3.46 TRANSPORTATION IMPACT FEES; and

WHEREAS, the City’s existing transportation impact fees have not been revised since January 1, 2017; and

WHEREAS, the needed transportation system improvements associated with the development of the Pepin Creek Subarea have been intensively studied and planned for; and

WHEREAS, as a culmination of that planning process, the City is simultaneously proposing Ordinance 1632 which amends the Pepin Creek Subarea, the Transportation Element, and the Transportation Project and Programs Improvements List which identifies the 13 transportation system improvement projects associated with what is known as the “Pepin Lite” plan; and

WHEREAS, the transportation systems improvements associated with the Pepin Lite warrant additional private funding due to significant and documented constraints associated with site conditions which are unique to this area of the City; and

WHEREAS, the City seeks to establish a transportation impact fee policy that is consistent with the adopted Transportation Element of the Comprehensive Plan and the Pepin Creek Subarea Plan and equitably distributes the cost of growth-related transportation improvements between the development community, the City, and other sources; and

WHEREAS, in 2005 the City Council adopted Resolution No. 709 which identified a desire to incentivize commercial and industrial growth in the west Lynden area. The resolution provided that transportation and park mitigation fees may be recouped through grants for economic development purposes, increases in real estate excise tax, and removal of property from open space taxation program. The result of this resolution was a City policy offering a fifty percent discount of transportation and park impact fees to those properties in west Lynden which held zoning designations of I-1 (Industrial), I-2 (Light Industrial), and CS-3 (Commercial Services) in 2005; and

WHEREAS, the recoup of the discounted impact fees has not been realized in recent years and the cost of systems improvements have significantly increased; and

WHEREAS, LMC 3.46.060 provides for the Planning Director to calculate the formulas for impact fees based on the improvements identified as growth related within the Transportation Element of the Comprehensive Plan; and

WHEREAS, the City Council has considered the proposed amendments to Chapters 3.46 and 3.47 LMC and the discounted impact fee policy at Council Committee meetings and an open record public hearing; and

WHEREAS, an open record public hearing was appropriately noticed in the Newspaper of Record on August 4, 2021; and

WHEREAS, the City issued a Determination of Non-Significance for this non-project action on June 4, 2021, following a two-week comment period; and

NOW THEREFORE, the City Council of the City of Lynden does ordain as follows:

Section 1. The Pepin Creek Transportation Impact Fee Overlay Area is hereby established, and associated transportation impact fees are hereby adopted. The Pepin Creek Transportation Impact Fee Overlay Area coincides with the boundaries of the Pepin Creek Subarea. Ch. 3.46 of the Lynden Municipal Code entitled "Transportation Impact Fees" are hereby amended to read as follows:

Chapter 3.46 TRANSPORTATION IMPACT FEES

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 chapter 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.

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

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.

"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).

"City" means the city of Lynden.

"Comprehensive Plan" for purposes of this chapter and Ch. 3.47 LMC means the city of Lynden comprehensive plan and all applicable subarea plans.

"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.

"Director" means the planning director of the city of Lynden or his/her designee.

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

"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.

"Jurisdiction" means a municipality or county.

~~"Ordinance" means the ordinance adopting the 2020 City of Lynden Budget and applicable impact fee schedules or as amended thereafter.~~

"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.

~~"Resolution" means Resolution 958 that provides the transportation impact fee schedule as currently adopted or amended thereafter.~~

"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.

"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.

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

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.

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

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.

~~The boundaries within which the Pepin Creek Transportation Impact Fee Overlay Area impact fees of the Pepin Creek transportation impact fee overlay area is shall be~~ [co-extensive with the Pepin Creek Subarea as defined in the City of Lynden Comprehensive Plan.](#)

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

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 for~~ the ~~transportation~~ Transportation element Element of the ~~city's comprehensive~~ Comprehensive planPlan;-
5. Transportation impact fees charged for development within the Pepin Creek Transportation Impact Fee Overlay Area may be collected and spent only for system improvements which are included in the transportation projects and programs list for the Pepin Creek Subarea Plan;
- ~~56.~~ Should not be imposed to mitigate the same off-site transportation facility impacts that are mitigated pursuant to any other law;
- ~~67.~~ 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;
- ~~78.~~ 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; ~~and~~
- ~~89.~~ 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.

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

3.46.050 Fee schedules and establishment of service areas.

- A. An impact fee schedule setting forth the amount of the transportation impact fees to be paid by a development is set out in Attachments B1 and B2 of Ordinance 1631~~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 Washington State Department of Transportation Construction Cost Index (CCI) 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.~~ The updated

impact fee schedule of cost will be included as an Addendum to the annual city budget.

- C. For the purpose of this chapter, the City shall be composed of two service areas: District 1 shall include the area contained within the geographic scope of the Pepin Creek Subarea and fees associated with District 1 shall be incorporated into Attachment B1 of Ordinance 1631; District 2 shall include the remaining area of the City, and fees associated with District 2 shall be incorporated into Attachment B2 of Ordinance 1621. For the purpose of this chapter, the entire city and its urban growth area shall be considered one service area.

~~D. Transportation, established in LMC 3.46.055, shall be considered an additional service area within the larger city wide service area.~~

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

3.46.055 Establishment of the Pepin Creek Transportation Impact Fee Overlay Area

- A. The Pepin Creek Transportation Impact Fee Overlay Area is established in recognition of the unique and challenging system improvements which will be required by associated with the development of the Pepin Creek Subarea, which are further described in as described in the Pepin Creek Subarea Plan and the Transportation Element of the City of Lynden Comprehensive Plan.
- B. The boundaries within which the impact fees of the Pepin Creek Transportation Impact Fee Overlay Area shall be assessed are co-extensive with the Pepin Creek Subarea as defined in the Comprehensive Plan.
- ~~B. Fees associated with the overlay area are assessed in addition to the city wide transportation impact fee.~~
- ~~C. The boundaries within which the impact fees of the Pepin Creek transportation impact fee overlay shall be co-extensive with the Pepin Creek Subarea as defined in the City of Lynden Comprehensive Plan.~~
- ~~DC. System improvement pProjects associated with the Pepin Creek Transportation Impact Fee Overlay Area are specifically identified in the City of Lynden Pprojects and Pprograms Llist in the Comprehensive Plan as adopted by City Council and periodically amended.~~
- D. The transportation impact fees assessed on development within the Pepin Creek Transportation Impact Fee Overlay Area are assessed in addition to the transportation impact fees assessed based on the city-wide service area.

E. The Director shall calculate the Pepin Creek transportation impact fee as set forth in Ordinance 1631, subject to the provisions of this chapter including the annual indexing of fees.

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~~ Ordinance 1631 as codified in this section, subject to the provisions of this chapter.
- B. In determining the proportionate share attributable to a development, 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 pro-ratable 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 ~~Element~~ of the city's comprehensive-Comprehensive plan-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.

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

3.46.065 Independent fee calculations.

A. ~~If, in the sole judgment of the director, none of the land use categories set forth in the fee schedule in Attachment B1 and B2 of Ordinance 1631, for Citywide and Pepin Creek respectively, in Ordinance 1631 accurately describe the proposed land use, the applicant shall provide to the department for its review and evaluation an independent fee calculation, prepared by a traffic engineer included in the City's approved consultant list or approved by the director and paid for by the applicant to the department, at the applicant's expense. The independent fee calculation shall show the basis upon which it was made and shall include, but not limited to, trip generation characteristics. The director may accept this calculation and impose an impact fee based on this calculation, or Alternatively, the director may obtain a second independent fee calculation, which and then decide which impact fee calculation is more appropriate. The second independent fee calculation will shall be paid for by the City, but administrative costs necessary to review the second independent fee calculation will be charged to the applicant on an hourly basis. After reviewing both independent fee calculation studies, the director shall determine the impact fee.~~

B. ~~If an applicant requests not to have the impact fees determined according to the fee schedule in Attachment B1 and B2 of Ordinance 1631, then the applicant shall submit to the director an independent fee calculation, prepared by a traffic engineer included in the City's approved consultant list or approved by the director and paid for by the applicant.~~

1. ~~If the director determines the independent fee study submitted by the applicant more accurately captures the impact of the proposed development, he or she may adjust the fee in accordance with said study. The independent fee calculation shall show the basis upon which it was made and shall include, but not be limited to, trip generation characteristics.~~

2. ~~If the director determines, in his or her sole discretion, that the independent fee calculation study is not accurate, reliable, or sufficient, the director may reject the said study and require payment consistent with the fee schedule in Attachment B1 and B2 of Ordinance 1631.~~

3. ~~The director may require the applicant to submit additional or different documentation for consideration at any time. If the director decides that third-~~

party engineers are needed to review the calculation and related documentation, the applicant shall pay for the reasonable cost of a review by such engineers.

C. When an independent fee calculation is sought under subsection (B), 3-46-065(B), the City may issue a building permit, or certificate of occupancy when no building permit is required for a change in use, prior to completion of the independent fee calculation; provided, that the impact fee based on the fee schedule in Attachments B1 and B2 or Ordinance 1631 must be collected based on the fee schedule in Attachment B, at the time of payment as described by this chapterspecified in LMC 3.46.070. If the director ultimately approves the independent fee calculation, the City shall refund the portion of the fee paid that exceeds the approved independent fee calculation.

D. Any independent fee calculation proposed under this section shall be accompanied by a study that complies with the following standards:

1. The study shall follow accepted traffic impact fee assessment practices and methodologies and be consistent with the methods used in developing the City's transportation impact fee schedules.

2. The study shall use acceptable data sources and the data shall be comparable with the uses and intensities proposed for the proposed development activity.

3. The study shall comply with the applicable State laws governing impact fees including RCW 82.02.050 – 82.02.100, as these statutes may be amended from time to time.

4. The study, including any data collection and analysis, shall be prepared and documented by a professional traffic engineer on the City's approved consultant list or otherwise approved by the director.

—The study shall show the basis upon which the independent fee calculation was made and shall include trip generation characteristics among other relevant factors.

5. E. —The director shall consider the independent fee calculation study and related documentation submitted by the applicant but is not required to accept the calculation if the director decides that the study is not accurate or reliable. If the director finds the study to be unreliable, the director may require the applicant to submit additional or different documentation for consideration. If the director decides that third-party engineers are needed to review the calculation and related documentation, the applicant shall pay for the reasonable cost of a review by such engineers. If an acceptable independent fee calculation study is not presented, the applicant shall pay the transportation impact fees based upon the process and schedules referenced in this chapter. If an acceptable independent

~~fee calculation study is presented, the director may adjust the fee to an appropriate amount.~~

FE. Determinations made by the director pursuant to this section may be appealed to the hearing examiner subject to the procedures set forth in Section 03.46.110.

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
Nonresidential subdivision or binding site plan	Building permit issuance
Nonresidential building permit except where mitigation for the impact has been previously provided as determined by the director	Building permit issuance

B. 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.

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

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

E. 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.

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

3.46.080 Transportation Improvements Projects and Programs system improvement list.

- A. The director shall ~~commonly~~ periodically review the ~~city's comprehensive land use and transportation plan ("comprehensive plan")~~ Transportation Element of the 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.
- B. Once a transportation system improvement is included the transportation projects and programs list within the ~~T~~ transportation element-Element of the ~~city's comprehensive Comprehensive planPlan~~, 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 Transportation element-Element~~ of the ~~city's comprehensive planComprehensive Plan~~. ~~In which case the f~~ 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.

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

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.

Transportation impact fees assessed on development in the Pepin Creek Transportation Impact Fee Overlay Area shall be deposited into a segregated account within the 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 transportation 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-ten (10) years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than six-ten (10) years. The finance director may recommend to the council that the city hold fees beyond six-ten 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-ten 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.

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

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-10 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.

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

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~~hearing examiner 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.

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

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 [Transportation Improvement Projects and Programs List](#). ~~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.

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

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.

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

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.

(Ord. 1205 § 1(part), 2004).

(Ord. No. 1594, § 2, 12-2-2019)

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 sixty 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.
- G. Appeals. Determination made by the director pursuant to this section shall be subject to the appeals procedures set forth in LMC 17.11.

(Ord. No. 1594, § 2, 12-2-2019)

Section 2. Update to the City-wide Transportation Impact Fee

The City hereby establishes the updated City-Wide Schedule of Transportation Impact Fees based on typical land uses using a new PM Peak hour trip cost of \$2,168 per trip as attached in Exhibit (Attachment) B2. The trips generated by various types of land uses shall be as described in the latest edition of the Institute of Transportation Engineers (ITE) Manual. The calculation of city-wide Impact Fees is as follows:

Impact Fee Calculation:

$$\begin{array}{rclclcl} \text{PM Peak Hour} & \times & \text{Pass-By trip} & \times & \$2,168 \text{ per new} & = & \text{Impact fee} \\ \text{trip Rate} & & \text{reduction factor} & & \text{PM Peak hour} & & \text{per unit of} \\ & & & & & & \text{development} \end{array}$$

Section 3: Establishment of the Pepin Creek Subarea Transportation Impact Fee.

The City hereby establishes the Pepin Creek Transportation Impact Fee Overlay Area and associated impact fee as attached in Exhibit (Attachment) B2. transportation improvement projects and programs list which identifies capital projects that are necessary for the development of and particularly benefit the Pepin Creek Subarea and are to be funded using transportation impact fees applied only to the Pepin Creek Transportation Impact Fee Overlay Area. The transportation impact fees within the Pepin Creek Transportation Impact Fee Overlay Area shall be calculated as follows:

$$\begin{array}{rclclcl} \text{PM Peak Hour} & \times & \text{Pass-By trip} & \times & \$17,328 \text{ per} & = & \text{Impact fee} \\ \text{trip Rate} & & \text{reduction factor} & & \text{new PM Peak} & & \text{per unit of} \\ & & & & \text{hour} & & \text{development} \end{array}$$

Section 4: Recognizes the update to the Transportation Improvement Projects and Programs List as adopted into the Transportation Element of the Comprehensive Plan by Ordinance 1632 and attached as Exhibit A.

Section 5: Rescind the policy in Resolution 709 which provided a fifty percent discount of transportation impact fees and park impact fees those properties in west Lynden that held zoning designations of I-1 (Industrial), I-2 (Light Industrial), and CS-3 (Commercial Services) in 2005.

Section 6: Any ordinance or parts of ordinance in conflict herewith are hereby repealed insofar as they conflict with the provisions of this ordinance.

Section 7:

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this Ordinance should be declared invalid or unconstitutional, then the original Ordinance or Ordinances shall be in full force and effect.

Section 8: Sections 1, 3 and 4 of this Ordinance shall be in full force and effect on October 1, 2021.

Sections 2 and 5 of this Ordinance shall be in full force and effect on January 1, 2022.

PASSED by the City Council of the City of Lynden, Whatcom County, Washington on the _____ day of _____, 2021 and signed and approved by the Mayor on the same date.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY