

## **OPEN SPACE/RECREATIONAL REQUIREMENTS - IMPACT FEES**

**(Ordinances #853 and 854, passed on 1<sup>st</sup> Reading by Sultan City Council June 23, 2004; second, and last, reading scheduled for Council's Wednesday's, July 14<sup>th</sup> meeting.)**

### **EXPENDITURES AND REFUNDS OF FEES:**

#### **16.112.110 Expenditures.**

Impact fees for system improvements shall be expended only in conformance with the capital facilities plan. *[G.R.I.T. NOTE: The city has not had a valid or adequate capital facilities plan since 1994.]* 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. Such extraordinary and compelling reasons shall be identified in written findings by the city planning commission. (Ord. 630 § 2 [16.13.110], 1995) *[G.R.I.T. NOTE: This code is incorrect, as the Planning Commission is no longer the authority for this decision. This statement also applies to 16.112.120, "Refunds" shown below.]*

#### **16.112.120 Refunds.**

A. The current owner of property on which an impact fee has been paid may receive a refund of such fee if the city fails to expend or encumber the impact fees **within six years of collection, or such greater time as may be established in written findings by the city planning commission documenting extraordinary or compelling reasons for extension beyond six years.** In determining whether there has been an encumbrance, impact fees shall be considered encumbered on a first-in, first-out basis. The current owner likewise may receive a proportionate refund when the public funding of applicable service area projects by the end of such six-year period has been insufficient to satisfy the ratio of public to private funding. The city shall notify potential claimants by certified mail (return receipt requested) deposited with the United States Postal Service at the last known address of each claimant.

B. The request for a refund must be submitted to the city council in writing within one year of the date the right to claim a refund arises or within one year of the date notice is given, whichever is later. Any impact fees that are not expended within these time limitations, and for which no application for refund has been made as herein provided, shall be retained and expended on the indicated capital facilities. **Refunds of impact fees under this subsection shall include any interest earned on the impact fees.**

C. A developer may request and shall receive a refund, including any interest earned on the impact fees, when the developer does not proceed with the development activity and no impact has resulted. (Ord. 630 § 2[16.13.120], 1995)

## PAYMENT/COLLECTION OF IMPACT FEES

*(The point at which the 6-year clock, in which to spend or "encumber" the funds, starts ticking):*

### **16.112.060 Collection of impact fees.**

The impact fee imposed under this code shall be due and payable at the time of issuance of an occupancy permit for the developer. (Ord. 630 § 2[16.13.060], 1995)

### **Conflicts with....**

### **16.112.020 Imposition of impact fees.**

A. After the effective date of this code, any person who seeks to develop land within the city of Sultan by applying for a building permit for a residential building or manufactured home installation, shall be obligated to pay an impact fee in the manner and amount set forth in this chapter.

B. The fee shall be determined and paid to the designated city of Sultan official at the time of issuance of a building permit for the development. For manufactured homes, the fee shall be determined and paid at the time of issuance of an installation permit. (Ord. 630 § 2[16.13.020], 1995) *[G.R.I.T. NOTE: SMC 16.112.060 and 16.112.020 conflict, despite numerous verbal and written notifications to the City of Sultan (including at least once in a Sultan Hearing Examiner decision), advising of a significant conflict which exists relative to the timing of when impact fees are collected. The City, to our knowledge, has yet to resolve this issue. The logical conclusion is, "How can the City competently oversee a complicated financial accounting and tracking system required for the payment/crediting of impact fees over a 6-year period, if they cannot resolve a simple codification conflict of when fees are required to be paid?"]*

## IMPACT FEE FINANCIAL ACCOUNTING:

### **16.112.100 Impact fee fund.**

There is hereby created and established a special purpose, non-lapse impact fee fund. The city clerk shall establish separate accounts within such fund and maintain records for each such account whereby impact fees collected can be segregated by type of facility.

A. All interest shall be retained in the account and extended for the purposes for which the impact fees were imposed.

B. Each year, the city clerk shall provide a report for the previous calendar year

on each impact fee account showing the source and amount of monies collected, earned, or received and system improvements that were financed by impact fees. (Ord. 630 § 2[16.13.100], 1995) *{G.R.I.T. Note: Has such a report ever been provided? In our four-years-plus we've been watching over council capers, we've never seen one, or even heard it mentioned.}*

(Read proposed ordinances, in Acrobat, 853-04 and 854-04)