

**CITY OF LAKE STEVENS  
LAKE STEVENS, WASHINGTON**

**Ordinance No. 955**

**AN ORDINANCE OF THE CITY OF LAKE STEVENS, ESTABLISHING A  
TEMPORARY TRAFFIC IMPACT FEE ADJUSTMENT FOR A PERIOD OF  
THREE YEARS TO STIMULATE GROWTH OF NEW RETAIL BUSINESSES  
WITHIN ESTABLISHED SUBAREAS; REPEALING RESOLUTION 2014-13;  
AND ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR  
SUMMARY PUBLICATION.**

WHEREAS, the city of Lake Stevens (City), Washington is a city in Snohomish County, Washington, planning under the Growth Management Act, Chapter 36.70A Revised Code of Washington; and

WHEREAS, Chapter 82.02 RCW authorizes cities planning under the Growth Management Act to assess, collect, and use impact fees to help finance public facilities needed to accommodate growth; and

WHEREAS, the City Council adopted Ordinance No. 876 effective October 8, 2012 amending Lake Stevens Municipal Code 14.112 relating to traffic impact fees establishing a traffic fee calculation; and

WHEREAS, the City issued the "Traffic Impact Fee Cost Basis for the City of Lake Stevens" Policy Memorandum on October 1, 2012; and

WHEREAS, the City established a specific traffic impact fee pursuant to Resolution No. 2013-13; and

WHEREAS, Chapter 82.02 RCW authorizes cities to adjust impact fees for future or reasonably anticipated payments to be made by new development to pay for system improvements including taxes earmarked for or pro-ratable to the particular system improvement; and

WHEREAS, the City Council adopted Ordinance No. 922 on December 8, 2014, establishing the City Council's authority to adjust traffic impact fees;

WHEREAS, the City Council approved Resolution No. 2014-7 supporting the City's intent to create economic development incentives to stimulate job and retail sales tax growth; and

WHEREAS, on December 8, 2014 the City Council adopted Resolution No. 2014-13, establishing a temporary traffic impact fee incentive for designated retail land use for a period of three years to stimulate growth of new retail businesses within the City; and

WHEREAS, the City Council has adopted a growth strategy for economic development that supports commercial and industrial development in defined growth centers as a central tenet of its Comprehensive Plan; and

WHEREAS, the City Council has adopted two subarea plans and is developing a third to implement its growth strategy for economic development; and

## LAKE STEVENS CODE

WHEREAS, the City has analyzed specific retail markets and fiscal impacts of economic development; and

WHEREAS, the City Council would like to replace Resolution 2014-13, which created a broad traffic impact fee reduction program, with a focused traffic impact fee adjustment limited to new businesses within subareas; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE STEVENS DO ORDAIN AS FOLLOWS:

Section 1. Traffic Fee Adjustment. Pursuant to RCW 82.02.060(1)(b), and Lake Stevens Municipal Code 14.112.080(d), this Ordinance establishes a temporary adjustment of traffic impact fees, set forth in LSMC 14.112.080(b), for development activity that meets the criteria of Section 3.

Section 2. Application for Traffic Impact Fee Adjustment. Any individual applying for a development permit, which meets the criteria set forth in Section 3, may apply to the City Administrator or designee for an adjustment to traffic impact fees. The application shall be on forms provided by the City. The application shall be accompanied by all information and data the City deems necessary to process the application including an administrative application fee. To the extent authorized by law, the City shall endeavor to keep all proprietary information, submitted with said application confidential; however, this section shall not create or establish a special duty to do so.

Section 3. Adjustment Criteria and Methodology. To be eligible for an adjustment to traffic impact fees, established by this Ordinance, the applicant shall meet each of the following criteria:

- A. The new development must be a new commercial retail business/center located within an established subarea. For purposes of this section, “new commercial retail business/center” shall mean any business or group of businesses located on a single site or complex, which sells retail goods and services subject to the retail sales tax provisions of Chapters 3.20, 3.28, 3.32 LSMC and Washington State Law; applies for a development permit; and is subject to the payment of traffic impact fees pursuant to Chapter 14.112 LSMC.
- B. The traffic fee adjustment applies to new commercial retail business/center based on the intensity of the development and its anticipated ability to repay prorated traffic impact fees for system improvements through future sales taxes per the following table.

| <u>Traffic Impact Fee Adjustment Eligibility Table</u>                                                       |                                                            |                          |
|--------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|--------------------------|
| Development Category                                                                                         | City Portion of the Average Annual Sales & Use Tax Revenue | Percentage of Adjustment |
| Large Format Retailers / Large Centers<br>(approximately 55,000 square feet)                                 | \$80,000 annually for the 36 best consecutive months       | 50%                      |
| Mid-sized Retailers / Small Centers <sup>1</sup><br>(approximately 15,000 square feet to 54,999 square feet) | \$40,000 annually for the 36 best consecutive months       | 25%                      |

1. If mid-sized retailers / small centers achieve local, annual tax revenues equal to or in excess of \$80,000 over the defined 36 best consecutive months, said business will be eligible for a 50% adjustment.

- C. The methodology for determining the fee adjustment must be based on similar business sales or other reliable data, as determined by the City, when the applicant demonstrates that the commercial retail business/center is likely to generate revenues such that the City's average annual portion of sales and use tax meets the criteria in the above table.

The City's portion of the average annual sales tax revenue will be measured over 60 months, commencing upon acceptance of a complete application and will be based on the 36 best consecutive months.

1. In the case of single-occupant buildings, the measurement of the fee adjustment will commence when the City issues a certificate of occupancy.
  2. In the case of retail centers with multiple tenants, the measurement of the fee adjustment will commence when the City issues a certificate of occupancy for the final tenant or one year after completion of the underlying building, whichever comes first.
- D. Any new commercial retail business/center that applies for a retail sales tax adjustment to traffic impact fees shall not qualify for more than one incentive program otherwise allowed by the City.

Section 4. Administration of Traffic Impact Fee Adjustment. Upon acceptance of a complete application for an adjustment to traffic impact fees, pursuant to Section 2, the applicant shall pay the City the full amount of the traffic impact fee required pursuant to the current fees resolution in effect along with an administrative application fee. Following full payment of the traffic impact fees, the City shall deposit and manage the fees as set forth in Section 5.

- A. The original applicant is responsible to provide the City with documentation that the new commercial retail business/center has met the City's average annual portion of sales and use tax revenue for the best three consecutive years, as described in Section 3.

Within 90 calendar days of the end of the 60-month period, as described in Section 3C, the applicant must provide documentation that demonstrates how the new commercial retail business/center meets the eligibility requirements established in Section 3. However, an applicant can apply for the refund immediately after 36 months, if the new commercial retail business/center meets the eligibility requirements established in Section 3.

The applicant must submit the following information for refund consideration:

1. Actual City portion of average annual sales tax revenues, for the 36 best consecutive months, generated for each individual sales tax generating business within the designated site over the defined 60-month period; and
2. Unified Business Identifier (UBI) and name of each business including the actual revenue generation calculation.

If an applicant does not request a refund within 90 days, the adjusted portion of the traffic impact fee held pursuant to Section 5 shall immediately belong to and be released to the City, subject to the provisions of RCW 82.02.080 and LSMC 14.112.120.

- B. The City Administrator or designee shall determine if the City's portion of the average annual sales and use tax revenue received by the City meets the minimum amount stated in Section 3, based on documentation provided by the original applicant, within 60 days of receipt. The City

shall base its determination upon the sales tax reporting requirements of Chapter 3.28 LSMC and Washington State law as it now reads or is hereafter amended. After the City Administrator or designee determines eligibility, the adjusted portion of the traffic impact fee held pursuant to Section 4 will be returned to the applicant as follows:

1. In the event that the City's average annual portion of sales and use tax revenue criteria pursuant to Section 3 has been met, as determined by the City Administrator or designee, the adjusted portion of the traffic impact fee held pursuant to Section 4 will be returned to the applicant, plus any accrued interest from the adjusted portion.
2. In the event that the City's average annual portion of sales and use tax revenue criteria of Section 3 has not been met, the adjusted portion of the traffic impact fee held pursuant to Section 4 shall immediately belong to and shall be released to the City. In cases where the applicant has met at least 75 percent of the amount set forth in Section 3B, the applicant shall receive a partial adjustment, which shall result in a refund of 25 percent of the amount of the traffic fee adjustment paid to the City plus any accrued interest from the adjusted portion. The remainder of the funds deposited shall belong to the City and shall be released to the City upon payment of the refund to the applicant, subject to the provisions of RCW 82.02.080 and LSMC 14.112.120.
3. In the event that the City's average annual portion of sales and use tax revenue, pursuant to Section 3 has not been met, as determined by the City Administrator or designee, the adjusted portion of the traffic impact fee held pursuant to Section 5, plus any accrued interest from the adjusted portion, shall belong to the City, subject to the provisions of RCW 82.02.080 and LSMC 14.112.120.

Section 5. Deposit and Management of Traffic Impact Fees. The City shall deposit the pro-rated portion of the traffic impact fee due, pursuant to Section 3, into an exclusive interest bearing account with any qualified public depository for local government, as determined by the City. The pro-rated portion is defined as the maximum percentage of the adjustment pursuant Section 3. The City shall be the account holder. Funds deposited in the exclusive account shall be used solely for payment of refunds to eligible applicants and balances, if any, to which the City is entitled. The applicant will be responsible for any fees associated with maintaining the account in relation to the funds deposited. Such fees will be deducted from any refund. Pursuant to Section 3, the City shall pay all refunds and interest to which an applicant is entitled within 30 days of the City Administrator or designee determination of eligibility pursuant to Section 4.

Section 6. Appeals. Any applicant aggrieved by the determination of the City Administrator or designee as to whether the criteria of Section 3 have been met or the eligibility for an adjustment from LSMC 14.112.030 or the amount of refund to which an applicant is entitled to pursuant to Section 4 may file a written appeal to the Hearing Examiner as established by Chapter 2.48 LSMC and LSMC 14.16A.350. The Hearing Examiner is hereby specifically authorized to hear and decide such appeals and the decision of the Hearing Examiner shall be final action of the City and subject to appeal pursuant to LSMC 14.16B.140 for a Type I application.

Section 7. Application of Sales and Use Tax Revenue from Businesses Receiving an Adjustment or Partial Adjustment. All sales and use taxes received by the City from applicants who receive an adjustment or partial adjustment from the requirements of this title shall be deposited in a special account to be administered by the City for 60-months. Said amounts shall only be expended for purposes authorized by and in accordance with the provisions of this Ordinance and the provisions of the City's transportation capital improvement plan. All sales and use tax revenues in excess of the amount of the taxpayer's adjustment to traffic impact fees received by the City from the applicant may be deposited in the City's

general fund and may be expended for any lawful purpose as directed by the City Council.

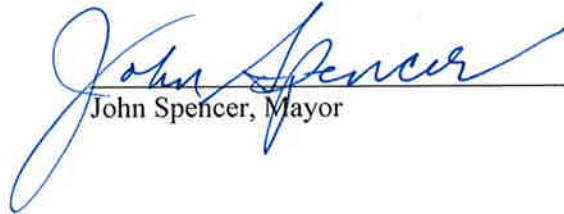
Section 8. Construction and intent of adjustments. The conditions described in Section 3 and 4 are to be strictly constructed and interpreted as they relate to the values assigned to Average Annual Sales Tax Revenue, Adjustments of Traffic Impact Fees and Partial Adjustments.

Section 9. Severability. If a court of competent jurisdiction should hold any section, sentence, clause or phrase of this Ordinance invalid or unconstitutional it shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Resolution.

Section 10. Repealer. This ordinance hereby repeals and replaces Resolution 2014-13 to provide traffic adjustments.

Section 11. Effective Date and Publication. This ordinance shall become effective five days after the date of its publication by summary. This ordinance shall automatically terminate three (3) years from the date of passage of this Ordinance unless otherwise extended by an ordinance of the Lake Stevens City Council. Any new commercial retail business/center that has received a certificate of occupancy after the adoption of Resolution 2014-13, but prior to passage of this Ordinance shall be eligible to apply for an adjustment retroactively.

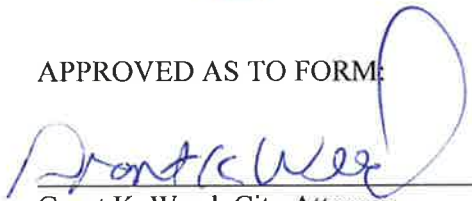
PASSED by the City Council of the city of Lake Stevens this 23<sup>rd</sup> day of August, 2016.

  
John Spencer, Mayor

ATTEST:

  
Kathy Pugh, Deputy City Clerk

APPROVED AS TO FORM:

  
Grant K. Weed, City Attorney

First and Final Reading: August 23, 2016

Published: August 26, 2016

Effective Date: August 31, 2016

