

City of Cheney
609 Second Street
Cheney, Washington 99004

**CITY OF CHENEY, WASHINGTON
ORDINANCE NO. X-63**

**AN ORDINANCE OF THE CITY OF CHENEY, WASHINGTON AMENDING TITLE 23
TO ADD A NEW SECTION ENTITLED "GENERAL PROVISIONS – IMPACT FEES"
AND PROVIDING FOR OTHER MATTERS RELATING THERETO**

WHEREAS, on December 11, 2018, the City Council adopted Ordinance X-58 entitled "An Ordinance of the City of Cheney, Washington Imposing A Moratorium On The Development Of Property And The Acceptance And Processing Of Land Use Applications For Multi-Family Development In The Area Generally Described As South Of Alki Street, West Of Cheney-Spangle Road And Cheney Plaza Road To The Southern Edge Of The Urban Growth Area";

WHEREAS, on February 5, 2019, the City Council held a Public Hearing on the Moratorium for purposes set forth in RCW 35A.63.220 plus other matters where the City Council ultimately remanded this item to the Planning Commission for addition investigation;

WHEREAS, on February 11, 2019; March 11, 2018; and April 8, 2019; the Planning Commission held multiple Public Hearings to study and measure the impact of the potential future development on real property located south of the Railroad Tracks identified on Appendix A, including reasonable and timely access for pedestrians, bicyclists, vehicles and emergency services;

WHEREAS, RCW 82.02.050 through 82.02.090 and WAC 365-196-850 provide cities the authority to impose impact fees as a part of financing public facilities to serve new growth and development; and

WHEREAS, to provide for general provisions relating to the assessment of impact fees for park and transportation system development, the following general provisions are adopted by the City Council.

NOW, THEREFORE, the City Council of the City of Cheney does ordain as follows.

Section 1. New Chapter. A new Chapter 23.115 entitled “General Provisions – Impact Fees” is hereby added to the Development Code as set forth herein.

CHAPTER 23.115 General Provisions – Impact Fees

- 23.115.010 Findings and Authority
- 23.115.020 Definitions
- 23.115.030 Concurrency
- 23.115.040 Assessment of Impact Fees
- 23.115.050 Independent Fee Calculations
- 23.115.060 Exemptions (Reserved)
- 23.115.070 Credits
- 23.115.080 Administrative Costs
- 23.115.090 Appeals
- 23.115.100 Establishment of Impact Fee Account
- 23.115.110 Refunds
- 23.115.120 Use of Funds
- 23.115.130 Administrative Guidelines
- 23.115.140 Review
- 23.115.150 Residential Single-Family Impact Fee Deferral
- 23.115.160 Existing Authority Unimpaired

Section 2. New Section. A new Section 23.115.010 entitled “Findings and Authority” is hereby added to read as follows:

- A. New residential, commercial, retail, office, industrial and institutional development growth and development in the City of Cheney creates additional demand and need for public park (including open space) and transportation facilities such as public streets, sidewalks and related safety improvements in the City of Cheney.
- B. The new growth and development should pay a proportionate share of the cost of new public land and facilities necessary to serve the new growth and development.
- C. Impact fees are authorized and commonly used pursuant to the Growth Management Act as a means to ensure land use development has supportive public land and infrastructure.
- D. The City has conducted extensive studies documenting the procedures for measuring the impact of new growth and development that results in the need for public land and

public facilities to include preparing studies which contain formulas and methods of calculating impact fees.

E. The financing for land and public facilities must provide a balance between impact fees and other sources of public funds consistent with the comprehensive plan.

F. Whenever impact fees are imposed the following shall apply:

1. The impact fees imposed for system improvements are reasonably related to the new development.

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

3. The fees will be used for system improvements that will reasonably benefit the new development.

Section 3. New Section. A new Section 23.115.020 entitled "Definitions" is hereby added to read as follows:

As used in this chapter, the following words and terms shall have the following meanings unless the context clearly requires otherwise. Terms otherwise not defined herein shall be defined pursuant to RCW 82.02.090, or given their usual and customary meaning.

A. "Capital facilities" means the facilities or improvements included in the capital facilities plan.

B. "Complete street" means a landscaped, tree-lined street corridor designed for multiple modes of transportation. Complete streets balance the various needs of pedestrian and vehicular use. Some include bicycle and transit improvements as well. Pedestrian amenities on Complete streets may include street furniture, decorative lighting, wide sidewalks with curb extensions (bulb-outs) at street corners, decorative crosswalks, public art, outdoor restaurants, plazas, and improved sidewalk-building interfaces (e.g., awnings, street-oriented retail activity).

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

D. "Development approval" means any written authorization from the City that authorizes the commencement of development activity.

E. "Encumbered" means to have reserved, set aside or otherwise earmarked the impact fees in order to pay for commitments, contractual obligations, or other liabilities incurred for public facilities.

F. "Feepayer" is a person, corporation, partnership, an incorporated association, or any other similar entity, or department or bureau of any governmental entity or municipal corporation commencing a land development activity that creates the demand for additional public facilities, and which requires the issuance of a building permit. "Feepayer" includes an applicant for an impact fee credit.

G. "Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit fee, an application fee, or the cost for reviewing independent fee calculations.

H. "Impact fee account" or "account" means the account(s) established for each service area for the system improvements for which impact fees are collected. The accounts shall be established pursuant to this chapter, and shall comply with the requirements of RCW 82.02.070.

I. "Independent fee calculation" means the impact fee calculation and or economic documentation prepared by a feepayer to support the assessment of an impact fee other than by the use of schedule set forth in CMC 23.115.180, or the calculations prepared by the Public Works Director where none of the fee categories or fee amounts are otherwise established through ordinance.

J. "Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.

K. "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development and that are necessary for the use and convenience of the occupants or users of the project, which are not system improvements. No improvement or facility included in the City's capital facilities plan shall be considered a project improvement.

L. "Public facilities" means public parks, open space and related facilities and/or publicly owned streets, including sidewalk, lighting and related improvements plus stormwater control required by the City's comprehensive plan and related development regulations.

M. "Rate study" means the park or transportation impact fee rate study as updated and amended from time to time.

N. "System improvements" means public facilities included in the capital facilities plan that are designed to provide service to the community, in contrast to project improvements.

Section 4. New Section. A new Section 23.115.030 entitled "Concurrency" is hereby added to read as follows:

The concurrency determination process is set forth in CMC Chapter 23.110.

Section 5. New Section. A new Section 23.115.040 entitled "Assessment of Impact Fees" is hereby added to read as follows:

A. The City shall collect impact fees, based on the schedules in CMC Chapter 23.116. and CMC Chapter 23.117, or through an independent fee calculation as provided in CMC 23.115.050, from an applicant seeking development approval from the City. The amount of impact fees are generated from the formula set forth in the relevant rate study. Except as otherwise provided in this chapter, all new project approvals will be charged impact fees.

B. For purposes of this chapter only, the following shall not constitute development activity:

1. Replacement of a commercial structure with a new structure of the same size and use on the same site or lot. Replacement of a commercial structure with a new commercial structure of the same size shall be interpreted to include any structure for which the gross square footage of the building will not be increased by more than one hundred twenty square feet. It shall be the feepayer's responsibility to establish the existence of a qualifying prior use to the director's reasonable satisfaction.

2. Expansions of existing residential structures that do not add residential dwelling units.

3. Alteration of an existing nonresidential structure that does not expand the usable space, add any residential units, or result in a change in use.

4. Miscellaneous improvements that do not create additional demand and need for public facilities, including, but not limited to, fences, walls, swimming pools, and signs.

5. Demolition or moving of a structure.

6. Re-use or change in use of existing structure.

a. Re-use or change in use of an existing structure that does not create additional demand and need for public facilities (i.e., where the trip generation of the re-use is equal to or less than trip generation of prior use) shall not constitute development activity for purposes of this chapter.

b. It shall be the feepayer's responsibility to establish the existence of a qualifying prior use to the Director's reasonable satisfaction.

c. For a change in use of an existing structure that does create additional demand and need for public facilities (i.e., where the trip generation of the re-use is greater than the trip generation of the prior use), the City shall collect impact fees for the new use based on the schedules in CMC Chapters 23.116 and 23.117, less the fees that would have been payable as a result of the prior use.

B. The public works director shall be authorized to determine whether a particular development activity is subject to the payment of impact fees under this chapter. Determinations of the director shall be in writing issued within fourteen (14) days of submitting a complete project application and shall be subject to the appeal procedures set forth in CMC 23.120.020.

C. Impact fees shall be assessed prior to the issuance of a building permit for each unit in a development, using either the impact fee schedules then in effect or an independent fee calculation, at the election of the applicant and pursuant to the requirements set forth in CMC 23.115.050. For commercial development involving multiple users, impact fees shall be assessed and collected prior to issuance of building permits that authorize completion of tenant improvements for each use. Furthermore, the City shall not accept an application for a building permit unless, prior to submittal or concurrent with submittal, the feepayer submits complete applications for all other discretionary reviews needed including, but not limited to, the environmental checklist and determination.

D. Except as set forth in CMC 23.115.150, impact fees shall be collected from the feepayer at the time the building permit is issued.

E. For mixed use buildings or development, impact fees shall be imposed for the proportionate share of each land use based on the applicable unit of measurement found on the schedule in CMC Chapter 23.116 or CMC Chapter 23.117.

F. The director shall place a hold on permits for development unless and until the impact fees required by this chapter, less any permitted exemptions, credits or deductions, have been paid.

Section 6. New Section. A new Section 23.115.050 entitled "Independent Fee Calculations" is hereby added to read as follows:

A. If in the reasonable judgment of the director, a proposed development activity does not fall under one of the fee categories set forth in CMC Chapter 23.116 or CMC Chapter 23.117, the department may prepare an independent fee calculation and the director may impose an alternative fee on a specific development based on those calculations. The alternative fee and the calculation shall be delivered in writing and shall be mailed to the feepayer.

B. If an applicant believes that the applicant's proposed development activity does not fall under one of the fee categories set forth above, the applicant may, at the applicant's option, identify a development activity or refer to generally accepted publications which support a reasonable methodology to calculate an impact fee (such as the land use code in the ITE manual that most closely resembles the applicant's proposed development activity) and thereafter calculate the applicant's fees based on the development activity.

C. When the applicant elects an independent fee calculation, the applicant shall prepare and submit an independent fee calculation prior to issuance of the building permit for the development. If the applicant elects to prepare its own independent fee calculation, the applicant must submit documentation showing the basis upon which the independent fee calculation was made. Independent fee calculations shall use the same formulas and methodology used by the City or other generally accepted and relevant practices found in Washington State which for transportation shall include mutual agreement with the City on adjustments in trip generation rates used in the rate study, and shall not include travel demand forecasts, trip distribution, transportation service areas, costs of road projects, or cost allocation procedures. For the purpose of calculating park impact fee costs, the City and feepayer shall reach mutual agreement upon a reasonable estimate of land value (through an appraisal process or other methodology) and the cost incurred by the public to construct related facilities with no further adjustments allowed.

D. Any applicant electing an independent fee calculation shall be required to pay the City of Cheney a fee to cover the cost of reviewing the independent fee calculation, as follows: two hundred fifty dollars plus a deposit of two hundred fifty dollars towards the City's actual costs incurred in reviewing the independent fee calculation; no such fee shall apply to calculations performed under subsections (A) and (B) of this section. The applicant shall remit all remaining actual costs of the City's review of the independent fee calculation prior to and as a precondition of the City's issuance of the building permit. If the City's actual costs are lower than the deposit amount, the difference shall be remitted to the applicant.

F. Determinations made by the director pursuant to this section may be appealed to the Hearing Examiner subject to the procedures set forth in chapter 23.120.020 CMC.

Section 7. New Section. A new Section 23.115.070 entitled "Credits" is hereby added to read as follows:

A. A feepayer can request a credit for the total value of dedicated land or public facilities provided by the feepayer if the land and public facilities are identified as system improvements or in cases where the director, in the director's discretion, determines that such dedication of land or public facilities would serve the goals and objectives of the capital facilities plan.

B. To receive a credit for dedicated public facilities which are reasonable and necessary system improvements, the feepayer shall submit to the City a verified (under oath) declaration setting forth the incurred design and construction costs (including paid

invoices) associated with the system improvement(s). Based upon a reasonable exercise of discretion, the City may accept all or part of the system improvements constructed by the developer and determine the appropriate credit against impact fees.

C. For a land dedication (or transfer) credit, under subsection (A) above, if appropriate, the director shall select an appraiser or the feepayer may select an independent appraiser acceptable to the director. The appraiser must be a Washington State certified appraiser or must possess other equivalent certification and shall not have a financial or personal interest in the property being appraised. A description of the appraiser's certification shall be included with the appraisal, and the appraiser shall certify that he/she does not have a fiduciary or personal interest in the property being appraised.

D. The appraiser shall be directed to determine the total value of the dedicated land and/or public facilities provided by the feepayer on a case-by-case basis.

E. The feepayer shall pay for the cost of the appraisal. The feepayer may request that the cost of the appraisal be deducted from the credit which the director may be providing to the feepayer, in the event that a credit is awarded.

F. After receiving the appraisal, and where consistent with the requirements of this section, the director shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, the legal description of the site donated where applicable, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter or certificate indicating his/her agreement to the terms of the letter or certificate, and return such signed document to the director before the impact fee credit will be awarded. The failure of the applicant to sign, date, and return such document within sixty (60) calendar days shall nullify the credit. The credit must be used within seventy-two months of the award of the credit.

G. Any claim for credit must be made prior to issuance of a building permit.

H. In no event shall the credit exceed the amount of the impact fees that would have been due for the proposed development activity.

I. No credit shall be given for project improvements.

J. Determinations made by the director pursuant to this section shall be subject to the appeal procedures set forth in CMC 23.120.020.

Section 8. New Section. A new Section 23.115.080 entitled "Administrative Costs" is hereby added to read as follows:

A. All development approvals subject to payment of impact fees under CMC Chapter 23.115 shall pay an administrative fee. The administrative fee shall be established by City Council resolution but no greater than two percent of the impact fees

payable under this chapter as a result of the development approval, not to exceed one thousand dollars. The administrative fee shall be deposited in an administrative fee account within the impact fee account and shall be used to defray the City's costs of processing and accounting for impact fees and other costs including updates of the rate study. Payment of the administrative fee does not constitute payment of the fees relating to independent fee calculations as provided in CMC 23.115.050.

B. The administrative fee, in addition to the actual impact fees, shall be paid by the applicant to the City at the same time as the impact fee is paid.

Section 9. New Section. A new Section 23.115.090 entitled "Appeals" is hereby added to read as follows:

A. Any feepayer may pay the impact fees imposed by this chapter under protest in order to obtain a building permit or occupancy permit. Any appeal filed prior to the payment of impact fees shall constitute a waiver and suspension of timelines established by state and/or local law for the processing of permit applications.

B. Appeals regarding the impact fees imposed on any development activity shall only be filed by the feepayer of the property where such development activity will occur.

C. The feepayer must first file a request for review regarding impact fees with the director, as provided herein.

1. The request shall be in writing.

2. The request for review by the director shall be filed no later than fourteen (14) calendar days after the feepayer pays the impact fees at issue.

3. No administrative fee will be imposed for the request for review by the director; and

4. The director shall issue a determination in writing.

D. Determinations of the Director with respect to the applicability of the impact fees to a given development activity, the availability or value of a credit, or the director's decision concerning the independent fee calculation, or any other determination which the director is authorized to make pursuant to this title, can be appealed to the hearing examiner subject to the procedures set forth in chapter CMC 23.120.020.

Section 10. New Section. A new Section 23.115.100 entitled "Establishment of Impact Fee Accounts" is hereby added to read as follows:

A. Impact fee receipts shall be earmarked specifically and deposited in an interest-bearing account. The fees received shall be invested in a manner consistent with the investment policies of the City and State of Washington.

B. There is hereby established two (2) impact fee accounts for the fees collected pursuant to this chapter known as the: (1) park impact fee account and (2) transportation impact fee account.

C. On an annual basis, the finance director shall provide a report to the council on the account showing the source and amount of all moneys collected, earned, or received, and purchases and improvements that were financed in whole or in part by impact fees.

D. Impact fees shall be expended or encumbered within six (6) years of receipt, unless the council identifies through written findings an extraordinary and compelling reason or reasons for the City to hold the fees beyond the six-year period. Under such circumstances, the council shall establish the period of time within which the impact fees shall be expended or encumbered.

Section 11. New Section. A new Section 23.115.110 entitled "Refunds" is hereby added to read as follows:

A. If the City fails to expend or encumber the impact fees within six (6) years of when the fees were paid, the current owner of the property may receive a refund of such fees, provided a refund is not required where extraordinary or compelling reasons exist for holding the fees longer than six (6) years, as identified in written findings by the City Council. In determining whether impact fees have been expended or encumbered, impact fees shall be considered expended or encumbered on a first in, first out basis.

B. The City shall notify potential claimants by first class mail deposited with the United States postal service at the last known address of the claimants.

C. Property owners seeking a refund of impact fees must submit a written request for a refund of the fees to the director within one year of the date the right to claim the refund arises or the date that notice is given, whichever is later. Any impact fees for which no application for a refund has been made within the one- year period shall be retained by the City and expended on the appropriate public facilities.

D. Refunds of impact fees under this chapter shall include any interest earned on the impact fees by the City.

E. A feepayer may request and shall receive a refund, including interest earned on the impact fees, when the feepayer and/or the feepayer's successors and assigns do not proceed with the development activity and there has been no impact to the City's transportation system. A request for a refund pursuant to this section must be accompanied by an acknowledgement that the feepayer's underlying development approval, including any associated permits, has expired and that any application to reinstate the development approval shall be subject to the payment of impact fees pursuant to this chapter.

Section 12. New Section. A new Section 23.115.120 entitled "Use of Funds" is hereby added to read as follows:

Impact fees may be used only as allowed by RCW Chapter 82.02.

Section 13. New Section. A new Section 23.115.130 entitled "Administrative Guidelines" is hereby added to read as follows:

The director shall be authorized to adopt forms, applications, and guidelines for the implementation of this chapter as approved by the Mayor.

Section 14. New Section. A new Section 23.115.140 entitled "Review" is hereby added to read as follows:

A. The fee schedules set forth in this title shall be reviewed by the plan commission and city council as it may deem necessary and appropriate every two years in conjunction with the annual update of the capital facilities plan element of the City's comprehensive plan.

Section 15. New Section. A new section 23.115.150 entitled "Residential single-family impact fee deferral" is hereby added as follows.

A. An applicant for a new single-family detached or attached building permit may, prior to issuance of a building permit, request to defer the payment of an impact fee required under this chapter, subject to the following terms and conditions.

1. The request shall be submitted on forms provided by the city. A separate request must be submitted for each single-family residence for which an impact fee deferral is requested.
2. Each deferral request shall include an administrative processing fee by city council resolution.
3. Each deferral request shall be subject to the impact fees in effect at the time the applicant submits the deferral request.
4. The term of deferral shall expire and the impact fee shall be paid at the earliest of:
 - a. The date of final inspection by the city; or
 - b. The time of issuance of certificate of occupancy or equivalent certification.

B. Prior to issuance of a building permit, the applicant for a deferral request must grant, submit to the city a deferred impact fee lien (in a form approved by the city attorney) and record the lien with the Spokane County Auditor, against the property upon which the development activity allowed by the building permit is to occur.

The lien must: be signed by all owners of the property and persons or entities holding any interest in the property, with all signatures acknowledged as required for a deed, and recorded among the appropriate land records of Spokane County; specify that it is binding on all successors in title after the recordation; and that it is subordinate to one mortgage for the purpose of construction upon the same real property granted by the applicant for impact fee deferral.

C. The city shall not conduct, approve or issue final inspection and/or final certificate of occupancy until the deferred impact fees have been paid in full. The term of an impact fee deferral may not exceed eighteen (18) months from the date of the building permit issuance.

D. Upon receipt of final payment of the deferred impact fee, the city shall execute a release of deferred impact fee lien for the property. The applicant, or property owner at the time of release, shall be responsible for recording the lien release at his or her own expense.

E. The extinguishment of a deferred impact fee lien by the foreclosure of a lien having priority does not affect the obligation to pay the impact fee as a condition of final inspection, certificate of occupancy or equivalent certification, or at the time of closing of the first sale.

F. In the event that the deferred impact fee is not paid within the time provided in this section, the city may institute foreclosure proceedings in accordance with Chapter 61.12 RCW. The applicable school district may also institute foreclosure proceedings as set forth in RCW 82.02.050.

Section 16. New Section. A new Section 23.115.160 entitled "Existing Authority Unimpaired" is hereby added to read as follows:

Nothing in this chapter shall preclude the City from requiring the applicant for development approval to mitigate adverse environmental impacts of a specific development pursuant to the State Environmental Policy Act, chapter 43.21C RCW (see RCW 82.02.100), based on the environmental documents accompanying the underlying development approval process, and/or chapter 58.17 RCW, governing plats and subdivisions; provided, that the exercise of this authority is consistent with the provisions of RCW 82.02.050(1)(c). Nothing in this chapter shall preclude the City from entering into a development agreement as authorized in RCW 36.70B.170 et seq. addressing, without limitation, the amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications.

Section 17. Severability. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 18. Effective Date. This ordinance shall become effective thirty (30) days after its passage, approval, and publication.

Introduced this _____ day of _____, 2019.

Passed by the City Council this _____ day of _____, 2019.

Approved by the Mayor this _____ day of _____, 2019.

Chris Grover, Mayor

ATTEST:

Cynthia L. Niemeier, City Clerk

APPROVED AS TO FORM:

Stanley M. Schwartz, City Attorney