

ORDINANCE NO. 2023-13

CITY OF KUNA

AN ORDINANCE OF THE CITY COUNCIL OF KUNA, IDAHO,

- AMENDING SECTION 2, OF CHAPTER 1 OF TITLE 12 KUNA CITY CODE BY ADDING A DEFINITION FOR “OWNER OF RECORD;” AND
- AMENDING SECTION 7 OF CHAPTER 1 OF TITLE 12 KUNA CITY CODE BY ADDING TWO SUBSECTIONS AND MAKING TECHNICAL CORRECTIONS (MULTIPLE SUBSECTIONS) PROVIDING DEVELOPMENT IMPACT FEE REFUNDS BE PAID TO THE OWNER OF RECORD; PROVIDING THAT THE IMPACT FEE ADMINISTRATOR IS THE DECISIONMAKER ON DEVELOPMENT IMPACT FEE REFUNDS; PROVIDES A REFUND WHEN A FEE IS PAID IN ERROR; PROVIDING THAT A DEVELOPMENT IMPACT SHALL BE REFUNDED WITHIN EIGHT (8) YEARS AFTER THE DATE ON WHICH THE FEE WAS PAID; PROVIDING THAT THE CITY MAY HOLD DEVELOPMENT IMPACT FEES FOR UP TO ELEVEN (11) YEARS IN CERTAIN CIRCUMSTANCE; PROVIDING TIME FRAMES FOR WHEN A REFUND SHALL BE PAID AFTER IT IS DETERMINED TO BE DUE; PROVIDING THAT A REFUND WILL NOT BE PAID UNTIL ANY APPEAL TO THE CITY COUNCIL IS CONCLUDED OR THE TIME FOR APPEAL HAS PASSED; AND
- AMENDING SECTION 11 OF CHAPTER 1 OF TITLE 12 KUNA CITY CODE BY MAKING TECHNICAL CORRECTIONS AND CHANGING THE SUBSECTION LETTERING; PROVIDING THAT AN OWNER OF RECORD A REFUND DETERMINATION AND MAKING MULTIPLE LANGUAGE ADDITIONS TO SUBSECTIONS TO DEFINE HOW AN OWNER OF RECORD MAY PARTICIPATE IN THE APPEAL AND MEDIATION PROCESS; AND
- DIRECTING THE CITY CLERK; AND
- PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Kuna, Ada County, Idaho:

Section 1: That sections 2 of Chapter 1, of Title 12 Kuna City Code be and is hereby amended to include the following definition for “owner of record:”

12-1-2: - DEFINITIONS:

...

Owner of Record shall mean the person or legal entity on record with the county assessor’s office as the current property owner.

...

Section 2: That section 7 of Chapter 1, of Title 12 Kuna City Code be and is hereby amended to read as follows:

12-1-7: - REFUNDS:

A. Refund to Owner of Record: In the event it is determined a refund is due for development impact fees paid on a particular property, the refund shall be paid to the owner of record as of the date it is determined the refund is due.

B. Decision Maker: The impact fee administrator shall make the determination whether there is a duty to refund a development impact fee. Such determination shall be subject to appeal as set forth in this Chapter.

C. Duty to refund:

1. Development impact fees shall be refunded to the owner of record in the following circumstances:

a. Service is available but never provided;

b. A building permit, or permit for installation of a manufactured home, is denied or abandoned;

c. The fee payer pays a development impact fee under protest and a subsequent review of the fee paid or the completion of an individual assessment determines that the fee paid exceeded the proportionate share to which the city was entitled to receive;

d. The city has collected a development impact fee and has failed to appropriate or expend the collected fees pursuant to section below;

e. Failure of the city to commence construction or encumber the fund in the development impact fee trust fund; or

f. The impact fee administrator determines the fee was paid in error.

2. Any development impact fees paid shall be refunded if the city has failed to commence construction of system improvements in accordance with this chapter, or to appropriate funds for such construction, within eight (8) years after the date on which such fee was paid. The city may hold development impact fees for longer than eight (8) years if it identifies in writing: (a) a reasonable cause why the fees should be held longer than eight (8) years; and (b) an anticipated date by which the fees will be expended, but in no event greater than eleven (11) years from the date they were collected. If the city complies with the previous sentence, then any development impact fees identified in such writing shall be refunded to the owner of record if the city has failed to commence construction of system improvements in accordance with this chapter, or to appropriate funds for such construction on or before the date identified in such writing.

3. *No refund due for subsequent reduction in size of development or service units.* After a development impact fee has been paid pursuant to this chapter and after a certificate of occupancy has been issued, no refund of any part of such fee shall be made if the project for which the fee was paid is later demolished, destroyed, or is altered, reconstructed, or reconfigured so as to reduce the size of the project or the number of units in the project.

4. *Interest.* Each refund shall include a refund of interest at one-half the legal rate provided for in IC § 28-22-104 from the date on which the fee was originally paid.

5. *Timing.* The impact fee administrator shall make a determination of whether a refund is due within thirty (30) days after receipt of a written request for a refund from the owner of record of the property for which the fee was paid. When the right to a refund exists, the city shall send the refund to the owner of record within ninety (90) days after the impact fee administrator determines that a refund is due. In the event the impact fee administrator's determination is appealed, then the determination shall not be deemed final until the date the city council issues its decision on appeal. A refund shall not be due or paid until the determination is final.

Section 3: That section 11 of Chapter 1, of Title 12 Kuna City Code be and is hereby amended to read as follows:

12-1-11: - APPEALS, PROTEST AND MEDIATION:

A. *Appeals:* Any fee payer that is or may be obligated to pay a development impact fee, or that claims a right to receive a reimbursement, exemption or credit under this chapter, and who is dissatisfied with a decision made by development impact fee administrator in applying this chapter, may appeal such decision to the city council. Additionally, an owner of record who requests an impact fee refund, and is dissatisfied by the impact fee administrator's determination may appeal such determination.

B. The fee payer or owner of record shall have the burden of proving by clear and convincing evidence that the decision was in error.

C. In order to pursue the appeal described in this section, the fee payer or owner of record shall file a written notice of the appeal with the development impact fee administrator within thirty (30) days after the date of the impact fee administrator's decision, or the date on which the fee payer submitted a payment of development impact fees under protest, whichever is later. Such written application shall include a statement describing why the fee payer or record of owner believes that the decision was in error, together with copies of any documents that the fee payer or owner of record believes support the claim.

D. The city council shall hear the appeal within sixty (60) days after receipt of a written notice of appeal. The fee payer or owner of record shall have a right to be present and to present evidence in support of the appeal. The development impact fee administrator who made the decision under appeal or his or her representative shall likewise have the right to be present and to present evidence in support of the decision. The criteria to be used by the city council in considering the appeal shall be whether: (a) the decision or interpretation made by the development impact fee

administrator; or (b) the alternative decision or interpretation offered by the fee payer or owner of record, more accurately reflects the intent of this chapter that new development in the city pay its proportionate share of the costs of system improvements to parks and recreational facilities necessary to serve new development and whether the chapter has been correctly applied. The city council shall issue a decision upholding, reversing, or modifying the decision being appealed within thirty (30) days after hearing the appeal.

E. *Payment under protest*: A fee payer may pay a development impact fee under protest in order to avoid delay in the issuance of a building permit. A fee payer making a payment under protest shall not be estopped from exercising the right to appeal provided herein, nor shall such fee payer be estopped from receiving a refund of any amount deemed to have been illegally collected. Provided, in order to receive a refund, the fee payer must still be the owner of record on the date it is determined the refund is due.

F. *Mediation*:

1. Any fee payer that has a disagreement with the impact fee administrator regarding a development impact fee that is or may be due for a proposed development pursuant to this chapter, may enter into a voluntary agreement with the city to subject the disagreement to mediation by a qualified independent party acceptable to both the fee payer and the city.

2. Mediation may take place at any time following the filing of a timely appeal pursuant to this section, or as an alternative to such appeal, provided that the request for mediation is filed no later than the last date on which a timely appeal could be filed pursuant to this section.

3. Participation in mediation does not preclude the fee payer from pursuing other remedies provided for in this section.

4. If mediation is requested, any related mediation costs shall be shared equally by the fee payer and the city, and a written agreement regarding the payment of such costs shall be executed prior to the commencement of mediation.

5. In the event that mediation does not resolve the issues between the parties, the fee payer retains all rights to seek relief from a court of competent jurisdiction.

Section 4: Directing the City Clerk

The City Clerk is directed to file this Ordinance in the official records of the City and to provide the same to the City's codifier for inclusion and publication in the Kuna City Code.

Section 5: Effective Date

This Ordinance shall take effect and be in force from and after its passage, approval, and publication as required by law and at the discretion of the City Clerk and in lieu of publication of the entire ordinance, a summary thereof in compliance with Section 50-901A, Idaho Code, may be published.


DATED this 7th day of March, 2023

CITY OF KUNA



Joe L. Stear, Mayor

ATTEST:


Chris Engels, City Clerk