

ORDINANCE NO. 2023-12

CITY OF KUNA

AN ORDINANCE OF THE CITY COUNCIL OF KUNA, IDAHO

- **AMENDING SECTION 2, OF CHAPTER 2 OF TITLE 12 KUNA CITY CODE ADDING A DEFINITION FOR “OWNER OF RECORD;” AND**
- **AMENDING SECTION 10 OF CHAPTER 2 OF TITLE 12 KUNA CITY CODE BY ADDING TWO SUBSECTIONS AND MAKING TECHNICAL CORRECTIONS PROVIDING THAT KUNA RURAL FIRE DISTRICT IMPACT FEE REFUNDS BE PAID TO THE OWNER OF RECORD; PROVIDING THAT THE ADMINISTRATOR IS THE DECISIONMAKER; PROVIDING A REFUND IF THE FEE WAS PAID IN ERROR; 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 13 OF CHAPTER 2 OF TITLE 12 KUNA CITY CODE BY MAKING TECHNICAL CORRECTIONS AND CHANGING THE SUBSECTION LETTERING; PROVIDING THAT AN OWNER OF RECORD MAY APPEAL A REFUND DETERMINATION TO THE BOARD OF COMMISSIONERS; ADDING LANGUAGE PROVIDING INFORMATION ON THE RECORD OF PROCEEDINGS, SUBSEQUENT APPEAL TO THE CITY COUNCIL, AND CITY COUNCIL DECISION; 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 section 2, of Chapter 2 of Title 12 Kuna City Code be and is hereby amended to include the following definition for “owner of record:”

12-2-2: - 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 10 of Chapter 2, of Title 12 Kuna City Code be and is hereby amended to read as follows:

12-2-10: - REFUNDS:

A. Refund to Owner of Record: In the event it is determined a refund is due for fire district 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 district administrator shall make the determination on whether there is a duty to refund a fire district impact fee. Such determination shall be subject to appeal as set forth in this Chapter.

C. Duty to refund:

1. Fire district 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 by the city or abandoned;
- c. The fee payer pays a fire district 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 district was entitled to receive;
- d. The fire district has collected a fire district impact fee and the fire district has failed to appropriate or expend the collected fees pursuant to section below;
- e. Failure of the fire district to commence construction or encumber the fund in the fire district development impact fee capital projects trust fund; or
- f. The district administrator determines the fee was paid in error.

2. Any fire district impact fee paid shall be refunded if the district 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 collected by the district. The district may hold fire district impact fees for longer than eight (8) years if the fire district identifies in writing and in written notice to the owner of record of the parcel: (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 district complies with the previous sentence, then any fire district impact fees so identified shall be refunded to the owner of record if the fire district has failed to commence construction of system improvements in accordance with the written notice, 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 fire district impact fee has been paid pursuant to this chapter and after a certificate of occupancy has been issued by the city, 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 district 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 district shall send the refund to the owner of record within ninety (90) days after the district administrator determines that a refund is due. In the event the district administrator's determination is appealed, then the determination shall not be deemed final until the date the board of commissioners' decision becomes final, or (in the even the board of commissioners' decision is appealed) until the city council issues a final decision.

Section 3: That Section 13 of Chapter 2, of Title 12 Kuna City Code be and is hereby amended to read as follows:

12-2-13: - APPEALS, PROTEST AND MEDIATION:

A. *Appeals to the Board of Commissioners.* Any fee payer that is or may be obligated to pay a fire district 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 the district administrator in applying this chapter, may appeal such decision to the board of commissioners. Additionally, an owner of record who requests a fire district impact fee refund, and is dissatisfied by the district administrator's determination may appeal such determination to the board of commissioners.

B. The fee payer or owner of record shall have the burden on appeal 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 district administrator within thirty (30) days after the date of the district administrator's decision, or the date on which the fee payer submitted a payment of the fire district impact fee under protest, whichever is later. Such written application shall include a statement describing why the fee payer or owner of record believes that the appealed decision was in error, together with copies of any documents that the fee payer or owner of record believes support the claim.

D. The board of commissioners 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 district 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 board of commissioners in considering the

appeal shall be whether: (a) the decision or interpretation made by the district 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 district facilities necessary to serve new development and whether the chapter has been correctly applied. The board of commissioners shall issue a decision upholding, reversing, or modifying the decision being appealed within thirty (30) days after hearing the appeal.

1. *Record of Proceedings.* The district administrator, or their designee, shall make and keep an audio recording of the hearing described above, and shall preserve all written submissions made to the board of commissioners by either the district administrator or appellant related to such hearing. This recording, the written submissions, and the board of commissioners' written decision shall constitute the record of proceedings from the appeal to the board of commissioners.

E. *Subsequent Appeal to the City Council.* A fee payer or owner of record may appeal the board of commissioners' decision to the city council by delivering a petition for appeal to the city clerk, and by delivering a copy of such petition to the district administrator. Such petition and copy must be delivered and received no later than fourteen (14) days after the board of commissioners' decision to be timely. Upon receipt of a copy of such petition, the district administrator shall deliver the record of proceedings to the city clerk within fourteen (14) days, which deadline may be extended at the discretion of the city clerk. Upon receipt of the record of proceedings, the city clerk shall place the petition for appeal on the city council agenda as a business item as soon as such item may be reasonably be heard by the city council, which in no event shall be more than thirty (30) days after city clerk receives the record of proceedings.

1. *City Council Decision.* The city council shall review the record of proceedings and board of commissioners' decision and either affirm or reverse such decision based upon the information contained in the record of proceedings. The criteria to be used by the city council in considering the appeal shall be whether: (a) the decision or interpretation made by the board of commissioners; 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 district facilities necessary to serve new development and whether the chapter has been correctly applied. Such decision by the city council shall be issued within thirty (30) days of the city council meeting where the item was considered as a business item.

F. *Payment under protest.* A fee payer may pay a fire district impact fee under protest in order to avoid delay in the issuance of a building permit by the city. 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.

G. *Mediation.*

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

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 district, 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 district and the fee payer, 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.

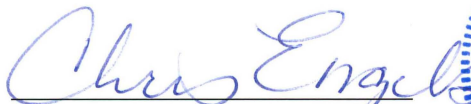
DATED this 7th day of March, 2023

CITY OF KUNA



Joe L. Stear, Mayor

ATTEST:


Chris Engels, City Clerk