

ORDINANCE NO. 16-2016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, ESTABLISHING A NEW TITLE 19 OF THE COVINGTON MUNICIPAL CODE ENTITLED, "IMPACT FEES"; REPEALING CHAPTERS 12.105 AND 18.120 CMC; AMENDING AND ADDING DEFINITIONS TO CHAPTER 18.20 CMC RELATED TO THE SAME; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Washington State Legislature passed the Growth Management Act of 1990 and 1991, Chapter 36.70A RCW and Chapter 82.02 RCW (the "Act"), which authorizes the collection of impact fees on development activity to provide public facilities to serve new development; and

WHEREAS, the City of Covington (the "City"), has adopted code provisions governing the assessment and collection of impact fees for transportation in chapter 12.105 of the Covington municipal Code (CMC), and for schools in chapter 18.120 CMC; and

WHEREAS, on October 27, 2015, the city council passed Ordinance No. 11-15, repealing Ordinance No. 42-02, as codified as chapter 18.120 CMC, and those portions of Ordinance Nos. 23-04, 06-05, 17-05, 20-07, and 03-12 that subsequently amended it; and

WHEREAS, pursuant to the stipulated settlement agreement with Kent School District dated March 17, 2016, and the stipulated order of King County Superior Court dated March 21, 2016, Ordinance No. 11-17 was invalidated, thereby reinstating Ordinance No. 42-02, as codified as chapter 18.120 CMC, and all aforementioned amending ordinances, as if never repealed; and

WHEREAS, in the 2015 legislative session, the state legislature enacted ESB 5923, which requires cities, towns, and counties to adopt a deferral system for the collection of impact fees for new single-family detached and attached residential construction; and

WHEREAS, the deadline for cities, towns, and counties to implement an impact fee deferral system by September 1, 2016; and

WHEREAS, the City desires to restructure and combine all existing CMC chapters and future impact fee code provisions, including a new deferral system, into one new Title 19 CMC, to be entitled "Impact Fees", for ease of review and application; and

WHEREAS, in addition to restructuring and reorganizing existing CMC impact fee chapters into the new Title 19 CMC, city staff has identified additional housekeeping edits needed to update existing impact fee code provisions for consistency and clarity, all of which are incorporated into the new Title 19 CMC; and

WHEREAS, as a result of adopting the new Title 19 CMC, city staff have also identified several amendments and additions needed in chapter 18.20 CMC, “Technical Terms and Land Use Definitions”, to correspond with the new Title 19 CMC; and

WHEREAS, the City’s SEPA Responsible Official for the City determined that adoption of this ordinance is categorically exempt as a procedural action under WAC 197-11-800(19);

WHEREAS, upon providing appropriate public notice, the Covington City Council conducted a public hearing on August 9, 2016, to receive testimony regarding the proposed new Title 19 CMC, Impact Fees, which includes the addition of the state required impact fee deferral program;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Title 19 CMC, Impact Fees, Established. A new Title 19 of the Covington Municipal Code (CMC), entitled “Impact Fees”, is hereby established in its entirety as set forth in Exhibit A, attached hereto and incorporated fully herein by this reference.

Section 2. Chapter 12.105 CMC, Transportation Impact Fees, Repealed. Chapter 12.105 CMC, “Transportation Impact Fees”, as adopted by Ordinance No. 08-10 and all amendments thereafter, is hereby repealed in its entirety and replaced by Title 19 CMC established in Section 1 of this ordinance. All references in the CMC to chapter 12.105 shall hereby be amended to reference Title 19 CMC.

Section 3. Chapter 18.120 CMC, School Impact Fees, Repealed. Chapter 18.120 CMC, “School Impact Fees”, as adopted by Ordinance No. 42-02 and all amendments thereafter, is hereby repealed in its entirety and replaced by Title 19 CMC established in Section 1 of this ordinance. All references in the CMC to chapter 18.120 shall hereby be amended to reference Title 19 CMC.

Section 4. CMC 18.20.170 Amended. Section 18.20.170 CMC, “Capital facilities plan, school” is hereby amended as follows:

18.20.170 Capital facilities plan, school.

“Capital facilities plan, school” means a district’s facilities plan adopted by the Kent School District school ~~board consisting of~~board .:

- ~~(1) A forecast of future needs for school facilities based on the district’s enrollment projections;~~
- ~~(2) The long-range construction and capital improvements projects of the district;~~
- ~~(3) The schools under construction or expansion;~~
- ~~(4) The proposed locations and capacities of expanded or new school facilities;~~
- ~~(5) At least a six-year financing plan component, updated as necessary to maintain at least a six-year forecast period, for financing needed school facilities within projected~~

~~funding levels, and identifying sources of financing for such purposes, including bond issues authorized by the voters and projected bond issues not yet authorized by the voters;~~
~~(6) Any other long-range projects planned by the district;~~
~~(7) The current capacity of the district's school facilities based on the districts adopted standard of service, and a plan to eliminate existing deficiencies, if any, without the use of impact fees; and~~
~~(8) An inventory showing the location and capacity of existing school facilities.~~

Section 5. CMC 18.20.171 Adopted. A new section 18.20.171 CMC, "Capital facilities plan, transportation", is hereby adopted as follows:

18.20.171 Capital Facilities plan, transportation

"Capital facilities plan, transportation" means the transportation capital facilities plan adopted by the city of Covington's comprehensive plan.

Section 6. CMC 18.20.912 Adopted. A new section 18.20.912 CMC, "Proportionate share", is hereby adopted as follows:

18.20.912 Proportionate share

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

Section 7. CMC 18.20.1268.5 Adopted. A new section 18.20.1268.5 CMC, "System Improvements", is hereby adopted as follows:

18.20.1268.5 System Improvements

"System improvements" means public facilities that are included in the City's capital facilities plan and are designed to provide service to service areas within the City, in contrast to project improvements.

Section 8. Savings Clause. The repeal of any section of Chapter 12.105 CMC and/or Chapter 18.120 CMC, or amendment to chapter 18.20 CMC, pursuant to this ordinance shall not affect any right or duty accrued or any proceeding commenced under the provisions of such repealed sections which were in existence on the effective date of the repealed CMC chapters herein.

Section 9. Severability. Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 10. Corrections. Upon the approval of the city attorney, the city clerk and/or code publisher is authorized to make any necessary technical corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

Section 11. Effective Date. This ordinance shall be published in the official newspaper of the city and shall take full force and effect five (5) days after the date of publication. A summary of this ordinance in the form of the ordinance title may be published in lieu of publishing the ordinance in its entirety.

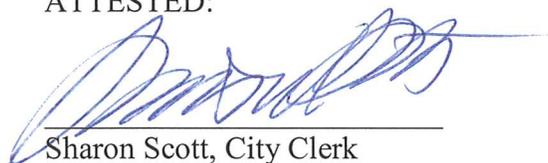
PASSED BY THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, at a regular meeting thereof on the 9th day of August, 2016, and signed in authentication of its passage.



Mayor Jeff Wagner

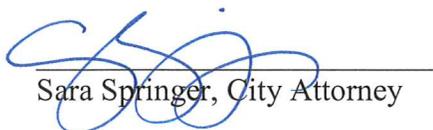
PUBLISHED: August 12, 2016
EFFECTIVE: August 17, 2016

ATTESTED:



Sharon Scott, City Clerk

APPROVED AS TO FORM ONLY:



Sara Springer, City Attorney

Exhibit A

TITLE 19 IMPACT FEES

- 19.10 GENERAL PROVISIONS**
- 19.20 IMPOSITION OF FEES**
- 19.30 TRANSPORTATION IMPACT FEES**
- 19.50 SCHOOL IMPACT FEES**

CHAPTER 19.10 GENERAL PROVISIONS

- 19.10.010 Purpose.**
- 19.10.020 Authority.**
- 19.10.030 Definitions.**
- 19.10.040 Relationship to SEPA authority.**

19.10.010 Purpose.

The purpose of this title is to implement the Capital Facilities Element of the Covington Comprehensive Plan and the policies and requirements of the Growth Management Act by:

- (1) Ensuring that adequate public facilities are available to serve new development;
- (2) Maintaining a high quality of life in Covington by requiring that new development bear a proportionate share of the cost of capital facilities necessary to support planned land uses and does not decrease the level of service available to existing residents and businesses;
- (3) Allowing recovery of the cost of completed public facilities to the extent that new growth is served by those facilities; and
- (4) Ensure fair collection and administration of such impact fees.

19.10.020 Authority.

This title is enacted pursuant to the City's police powers, the Growth Management Act as codified in Chapter 36.70A RCW ("the Act"), and the impact fee statutes as codified in RCW 82.02.050 through 82.02.100. The provisions of this title shall be liberally construed in order to carry out the purposes of the city council in providing for the assessment of impact fees.

19.10.030 Definitions.

Except for as provided herein, and unless the context clearly requires otherwise, the words and terms in this title shall have the ascribed meaning as provided for in chapter 18.20 CMC. Words and terms otherwise not defined in chapter 18.20 CMC shall be defined pursuant to RCW 82.02.090, or given their usual and customary meaning.

(1) For the purposes of this title, these words and terms shall have the following meaning:

- (a) "Applicant" is any person, collection of persons, corporation, partnership, an incorporated association, or any other similar entity, or department or bureau of any governmental entity or municipal corporation obtaining a building permit. "Applicant" includes an applicant and owner for the purpose of the impact fee deferral program pursuant to Title 19.
- (b) "Department" means both and either the City of Covington Community Development department and/or the City of Covington Public Works department.
- (c) "Director" means both and either the City of Covington Community Development Director and/or the City of Covington Public Works Director, or each of their respective designees.
- (d) "Fee payer" 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 development activity which creates the demand for additional system improvements and which requires the issuance of a permit for a given development activity. "Fee payer" includes an applicant for a transportation impact fee credit.
- (e) "Low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent (30%) of eighty percent (80%) of the median family income adjusted for family size, for the county where the project is located, as reported by the United States Department of Housing and Urban Development, in accordance with RCW 82.02.060.

19.10.040 Relationship to SEPA authority.

Nothing in this title shall preclude the City from also requiring the applicant for a land use or building permit, or a change in use if no building permit is required, to mitigate adverse environmental impacts of a specific development pursuant to the State Environmental Policy Act, Chapter 43.21C RCW, 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.

**CHAPTER 19.20
IMPOSITION OF IMPACT FEES**

- 19.20.010** **Application.**
- 19.20.020** **Impact fee program elements.**
- 19.20.030** **Service area.**
- 19.20.040** **Imposition of impact fees.**
- 19.20.050** **Fee calculations; payment.**
- 19.20.060** **Exclusions.**
- 19.20.070** **Deferral of impact fee payment.**
- 19.20.080** **Low-income housing exemption.**
- 19.20.090** **Credits.**
- 19.20.100** **Independent fee calculation.**
- 19.20.110** **Adjustment of fees.**
- 19.20.120** **Refunds.**
- 19.20.130** **Payments under protest; appeals.**
- 19.20.140** **Impact fee accounts; reporting.**

19.20.010 **Application.**

This chapter shall apply to all impact fees imposed under this title.

19.20.020 **Impact fee program elements.**

- (1) The City shall impose impact fees on every development activity in the city for which an impact fee schedule has been established.
- (2) Any impact fee imposed shall be reasonably related to the impact caused by the development and shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development. The impact fee formula shall account in the fee calculation for future revenues the City will receive from the development.
- (3) The impact fee shall be based on the capital facilities element adopted by the City as part of the City's comprehensive plan.

19.20.030 **Service area.**

- (1) Generally, except as provided for herein, the City of Covington is hereby established as the service area for impact fees under this title, including all property located within the corporate limits of the City.
- (2) School impact fees. For purposes of the school impact fees established in chapter 19.40 CMC of this title, all land within the boundaries of the Kent School District shall be considered a single service area and the City shall impose impact fees within that portion of the Kent School District lying within City corporate limits.

- (3) The scope of the service areas identified in this section is hereby found to be reasonable, established on the basis of sound planning and engineering principles, and consistent with RCW 82.02.060.

19.20.040 Imposition of impact fees.

- (1) The City shall collect applicable impact fees adopted under this title from any fee payer seeking development permits or plat or other land use approval from the City where such development activity requires the recording of a residential subdivision, issuance of a building permit, or approval for a change in use, except for as provided otherwise in this title. This shall include, but is not limited to, the development of residential, commercial, retail, office, and industrial land, and includes the expansion of existing uses that creates a demand for additional system improvements as well as a change in existing use that creates a demand for additional system improvements.
- (2) For a change in use of an existing building or dwelling unit, including any alteration, expansion, replacement or new accessory building that generates additional impact, the impact fee shall be the applicable impact fee for the land use category of the new use, less any impact fee previously paid for the land use category of the prior use. If no impact fee was paid for the prior use, the impact fee for the new use shall be reduced by an amount equal to the current impact fee rate of the current use.
- (3) The impact fees assessed for developments containing more than one type of use shall be calculated separately for each type of use pursuant to this title and the City's current fee resolution.
- (4) Development activities that have been allowed credits pursuant to CMC 19.20.090 prior to the submittal of the complete building permit application or an application for a permit for a change in land use shall submit, along with the complete permit application, a copy of the letter issued by the Director pursuant to CMC 19.20.090 setting forth the dollar amount and basis of the approved credit. The net impact fees, as determined after the reduction of appropriate credits, shall be collected from the fee payer in accordance with this section.

19.20.050 Fee calculations; payment.

- (1) A preliminary impact fee assessment will be provided by the Department during the review and approval of a given development activity, typically a building permit application or a permit for a change in land use.
- (2) A final impact fee assessment, based upon the impact fee rate in effect as of the date the actual permit is issued, shall be made by the Department, and the fee(s) shall be due and payable in full at the time of issuance of the permit.
- (3) All fee payers shall be required to pay an administrative fee for each impact fee collected at the rate set forth for each in the City's current fee schedule.

- (4) Failure to pay the impact fees assessed for a given development activity at the time that such impact fees are due and payable shall result in denial of the underlying permit for which the fee payer has applied, except for as provided in CMC 19.20.070.

19.20.060 Exclusions.

- (1) The following development activities and building permit applications do not create additional impact public facilities and are excluded from the imposition of impact fees adopted under this title. (Additional exceptions from individual impact fees can be found in chapters 19.30 and 19.40 of this title):
- (a) Shelters or dwelling units for temporary placement, which provide housing to persons on a temporary basis as defined in CMC 18.20.220.
 - (b) Reconstruction, remodeling, alteration, or replacement of existing legally established single-family or multi-family dwelling unit(s) that does not result in the creation of additional dwelling units or a change of use.
 - (c) Reconstruction, remodeling, alteration, or replacement of an existing legally established nonresidential building that does not expand the usable space.
 - (d) Replacement of a structure with a new structure of the same gross floor area at the same site or lot when such replacement occurs within one (1) year of the demolition or destruction of the prior structure; provided that there is no change in use.
 - (e) A legal accessory dwelling unit approved under CMC 18.20.350 and 18.25.030(7), as it is considered part of the single-family use associated with this title.
 - (f) Any development activity that is exempt from the payment of an impact fee pursuant to RCW 82.02.100 due to full mitigation of the same system improvement under the State Environmental Policy Act.
 - (g) Mobile homes permitted as temporary dwellings pursuant to CMC 18.85.170.
 - (h) Miscellaneous site improvements that do not affect the use of the property or the primary structure, including, but not limited to, fences, retaining walls, swimming pools, mechanical units, and signs. Determination of the building and land use permits that qualify for exclusion under this subsection shall be at the sole discretion of the Community Development Director, or his/her designee, and shall be final.
 - (i) Demolition or moving of a structure.
- (2) The Director shall be authorized to determine whether a particular development activity falls within an exemption identified in this section or under other applicable law. Determinations of the Director shall be in writing and is final. The Director's determinations are not subject to an independent

appeal process, but may be challenged as a condition of the associated development imposing the impact fee.

19.20.070 Deferral of impact fee payment.

At any time prior to building permit issuance, and pursuant to the requirements of this section, an applicant for a single-family attached or detached dwelling unit may request to defer payment of impact fees assessed on such dwelling unit until final inspection.

- (1) The applicant shall submit a deferred impact fee application, provided by the City, that shall include the following information, as applicable:
 - (a) the applicant's corporate identity and contractor registration number;
 - (b) the full names of all legal owners of the property upon which the development activity allowed by the building permit is to occur;
 - (c) the legal description of the property upon which the development activity allowed by the building permit is to occur;
 - (d) the tax parcel identification number of the property upon which the development activity allowed by the building permit is to occur; and
 - (e) the address of the property upon which the development activity allowed by the building permit is to occur.
 - (f) All applications shall be accompanied by payment of an administrative fee according to the City's current fee resolution.
- (2) The impact fee amount due under any request to defer payment of impact fees shall be based on the schedule in effect at the time the applicant provides the City with the information required in subsection (1) of this section.
- (3) Prior to the issuance of a building permit that is the subject of a request for a deferred payment of impact fees, all applicants and/or legal owners of the property upon which the development activity allowed by the building permit is to occur must sign a deferred impact fee payment lien in a form acceptable to the City.
 - (a) The deferred impact fee payment lien shall be recorded against the property subject to the building permit and be granted in favor of the City in the amount of the deferred impact fee. Any such lien shall be junior and subordinate only to one mortgage for the purpose of construction upon the same real property subject to the building permit.

- (b) In addition to the administrative fee required in subsection (1) of this section, the applicant shall be responsible for, at their own expense, for recording the lien agreement with the King County recorder.
- (4) The City shall not approve a final inspection until the impact fees identified in the deferred impact fee payment lien are paid in full.
- (5) In no case shall payment of the impact fee be deferred for a period of more than eighteen (18) months from the date of building permit issuance.
- (6) Upon receipt of final payment of the deferred impact fee as identified in the deferred impact fee payment lien, the City shall execute a release of lien for the property. The property owner shall be responsible, at their own expense, to record the lien release with King County recorder.
- (7) In the event that the deferred impact fee is not paid within the time provided in this section, the City shall institute foreclosure proceedings under the process set forth in Chapter 61.12 RCW.
- (8) An applicant is entitled to defer impact fees pursuant to this section for no more than twenty (20) single-family dwelling unit building permits per year in the city.

19.20.080 Low-income housing exemption.

Pursuant to RCW 82.02.060, any fee payer intending to develop low-income housing projects developed or owned by public housing agencies, or private nonprofit housing fee payers, may request to be exempt from up to eighty percent (80%) of the impact fees imposed on the low-income housing units to be developed, subject to the following:

- (1) The fee payer shall be responsible for providing documentation to the City that their project qualifies for a low-income housing impact fee exemption pursuant to this section.
- (2) Any claim or request for a waiver under this section shall be made no later than the time of issuance of a building permit. If a building permit is not required for the development activity, the claim shall be made when the impact fees are tendered. Any claim not made when required by this section shall be deemed waived.
- (3) Except for as provided otherwise in this title, the determination to grant or deny an exemption from impact fees under this section shall be in the sole discretion of the city council after consideration in an open public meeting of the following criteria:
 - (a) public benefit of the specific project;
 - (b) the hardship to the project of the impact fees;
 - (c) the impacts of the project; and

(d) any other factors deemed relevant by the city council.

(4) As a condition of receiving an exemption under this section, the owner shall execute and record in King County's real property title records a City-drafted lien, covenant, or other contractual provision against the property that provides that the proposed housing unit or development will continue to be used for low-income housing and remain affordable to those households under the regulations of the U.S. Department of Housing and Urban Development.

(a) The term of this lien, covenant, or contractual provision shall be ten (10) years for individual owners and fifteen (15) years for private and private nonprofit applicants/builders.

(b) The lien, covenant, or other contractual provision shall run with the land and apply to subsequent owners and assigns.

(c) In the event that the housing unit(s) is no longer used for low-income housing during the term of the lien, covenant, or contractual provision, the owner shall be required to promptly pay to the City all impact fees owed for the property according to the current fee resolution at the time of payment.

19.20.090 Credits.

(1) A fee payer may request that a credit or credits for the value of system improvements, including dedications of land, improvements, and/or construction provided by the fee payer, be applied toward assessed impact fees.

(a) Any claim for credit must be made no later than fourteen (14) calendar days after the submission of an application for a building permit or an application for a permit for a change in use. The failure to timely file such a claim shall constitute a final bar to later request any such credit.

(b) Requests for a credit shall be made in writing and on the applicable City form, if provided.

(c) Each request for a credit or credits shall include, at a minimum, a legal description of the dedicated land and/or a detailed description of the improvements or construction provided, and a legal description or other adequate description of the development to which the credit will be applied.

(2) For each request for a credit or credits, the Director shall determine the value of the dedicated land, improvements, and/ or construction on a case-by-case basis.

(a) If appropriate, the Director may select an appraiser from a list of independent appraisers. The appraiser shall be directed to determine the value of the dedicated land, improvements, or construction provided by the developer for the City.

(b) The developer shall pay for the cost of an appraisal conducted by the Department pursuant to this subsection, including time for review by City staff. An estimate of the appraisal and review costs

will be prepared by the Department, and the fee payer shall pay the estimated costs prior to commencement of the appraisal and review. If the final cost of the appraisal and review is in excess of the initial estimate and payment, any difference will be due prior to the issuance of a letter or certificate from the Director. If the final cost of the appraisal and review is less than the initial estimate and payment, the Department shall give a refund for the difference.

- (3) In the event that that fee payer disagrees with the Director's valuation of land, improvements, or construction provided under subsection (2) of this section, the fee payer may submit a valuation for the Director's consideration.
 - (a) The appraiser (or review engineer) used by the fee payer must be qualified, licensed, and shall not have a fiduciary 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.
 - (b) Appraisals and/or engineering valuations submitted by the fee payer shall be subject to review by the Director and, at the Director's discretion, an independent review appraiser/engineer selected by the Director. The fee payer shall pay for the actual costs for the appraisal/valuation and the independent review pursuant to subsection (2)(b) of this section.
- (4) A credit will be given only if the land, improvements, and/or the facility constructed are:
 - (a) Included within the capital facilities plan or would serve the goals and objectives of the capital facilities plan; and
 - (b) Are at suitable sites and constructed at acceptable quality as determined by the Director; and
 - (c) Serve to offset impacts of the fee payer's development activity; and
 - (d) Are for one or more of the projects listed as the basis for calculating the respective impact fee.
 - (e) No credit shall be given for project improvements required of the development by City code and/or SEPA; only dedications in excess of those required by law are eligible for credit.
- (5) The Director shall determine if requests for credits meet the criteria of this section, or under other applicable law.
 - (a) Nothing herein shall be interpreted to limit the discretion of the Director to decline to accept any proposed dedication.
 - (b) In no event shall the credit exceed the amount of the impact fees due. If the total value of any credit for such dedication, improvement, or construction costs exceeds the amount of the applicable impact fee assessment, the fee payer will not be entitled to reimbursement of the difference.

- (c) If credit is awarded, the Director shall provide the fee payer with a letter setting forth the dollar amount of any credit, the reason for the credit, the legal description of the real property dedicated where applicable, and the legal description or other adequate description of the project or development to which the credit may be applied. The fee payer must sign and date a duplicate copy of such letter indicating his/her agreement to the terms of the letter and return such signed document to the Director before the Department will apply the impact fee credit. The failure of the fee payer to sign, date, and return such document within (sixty) 60 calendar days of the Director's issuance of the letter shall nullify the credit.
 - (d) If credit is denied, the Director shall provide the fee payer with a letter setting forth the reasons for denial.
- (6) Determinations made by the Director pursuant to this section shall be subject to the appeal procedures set forth in chapter 14.45 CMC

19.20.100 Independent fee calculation.

- (1) As an alternative to the payment of impact fees as provided in the schedules set forth in this title, if, in the judgment of the Director, none of the fee categories or fee amounts set forth in this title accurately describes or captures the impacts of a new development, the Department may conduct independent fee calculations and the Director may impose alternative impact fees on a specific development based on those calculations.
- (2) A fee payer may also request that assessed impact fees on the proposed development be calculated according to an independent fee calculation study submitted by the fee payer and approved by the Department as provided in this section. A fee payer may submit an independent fee calculation study for one or more impact fees and use the impact fee schedules in this title for one or more impact fees.
- (3) All independent fee calculation studies by a fee payer shall be submitted to the Department for review and approval. The study shall be accompanied by the administrative fee required for conducting the review, as set forth in the current fee schedule. The independent fee calculation study shall meet the following standards:
 - (a) The study shall follow accepted impact fee assessment practices and methodologies.
 - (b) The study shall use acceptable data sources, and the data shall be comparable with the uses and intensities proposed for the proposed development activity.
 - (c) The study shall comply with applicable state laws governing impact fees, including but not limited to RCW 82.02.060, or its successor.
 - (d) The study, including any data collection and analysis, shall be prepared and documented by professionals qualified in their respective fields.

- (e) The study shall show the basis upon which the independent fee calculation was made.
- (4) Director's determination.
- (a) There is a rebuttable presumption that the methodologies and rates set for the impact fees imposed by this title are valid.
 - (b) The Director shall consider the documentation submitted by the fee payer, but is not required to accept such documentation or analysis which the Director reasonably deems to be inapplicable, inaccurate, or not reliable.
 - (c) The Director may require the fee payer to submit additional or different documentation for consideration.
 - (d) The Director is authorized to adjust the impact fees on a case-by-case basis based on the independent fee calculation, the specific characteristics of the development, and/or principles of fairness.
 - (e) The Director's determination regarding the fees or alternative fees, and any associated calculations, shall be provided to the fee payer in writing.
- (5) Determinations made by the Director pursuant to this section shall be subject to the appeals procedures set forth in chapter 14.45 CMC.

19.20.110 Adjustment of fees.

- (1) Impact fees may be adjusted by the City if one of the following circumstances exists and only if any applicable discount set forth in the applicable fee formula fails to adjust for the error in the calculation or fails to ameliorate for the unfairness of the fee:
- (a) The fee payer demonstrates that the impact fee assessment was incorrectly calculated; or
 - (b) Unusual circumstances identified by the fee payer demonstrate that if the standard impact fee were applied it would be unfair or unjust.
- (2) Request for adjustment.
- (a) Any request by a fee payer for an adjustment pursuant to this section shall be provided to the Department in writing. The fee payer shall pay an administrative fee as set forth in the City's current fee schedule for an individually determined impact fee.
 - (b) A fee payer may provide studies and data to demonstrate that any particular factor used by the City may not appropriately apply to the development proposal; provided that the City's data shall be presumed valid unless clearly demonstrated to be otherwise by the fee payer.

(3) Director's Determination.

- (a) The Director shall be authorized to determine whether any adjustment of impact fees shall be awarded pursuant to this section.
- (b) There is a rebuttable presumption that the individual impact fee rate calculations adopted pursuant to this title are valid.
- (c) The Director shall consider the documentation submitted by the fee payer, but is not required to accept such documentation or analysis which the Director reasonably deems to be inapplicable, inaccurate or not reliable.
- (d) The Director may require the fee payer to submit additional or different documentation for consideration.
- (e) The Director is authorized to adjust the impact fees on a case-by-case basis based on the specific characteristics of the development and/or principles of fairness.
- (f) The Director's final determination shall be made in writing and must set forth the reasons for the decision.

(4) For requests to adjust a transportation impact fee assessed pursuant to chapter 19.30 CMC, specifically, the Director shall consider the following sources of information:

- (a) The Institute of Transportation Engineers (ITE) Trip Generation User's Guide, latest edition.
- (b) If the fee payer proposes a trip generation rate other than that set forth in the ITE Trip Generation User's Guide, latest edition, the fee payer shall provide supporting studies or data for a minimum of three comparison sites, at the same level of detail as would be necessary for the data to be accepted by ITE for inclusion in its database for trip generation.
- (c) Any other data or studies submitted by a qualified transportation professional affiliated with the Institute of Transportation Engineers or a professional engineer licensed by the State of Washington.

(5) Determinations made by the Director pursuant to this section shall be subject to the appeals procedures set forth in chapter 14.45 CMC.

19.20.120 Refunds.

(1) The City shall, in accordance with RCW 82.02.080:

- (a) Refund to the current owners of property on which an impact fee has been paid any impact fees paid with respect to such property that has not been expended or encumbered for public facilities

of the type of which such impact fees were collected within the time frame required under RCW 82.02.080.

- (b) Refund to the current owner of property on which an impact fee has been paid all impact fees paid with respect to such property if the development activity for which the impact fee was imposed did not occur and no impact has resulted.
 - (c) Refund all unexpended or unencumbered funds, including interest earned, when the City seeks to terminate any or all impact fee requirements.
- (2) If some, but not all, of the development activity for which the impact fee was imposed occurred, the impact will be deemed to have occurred, and no refund will be payable; provided, however, that the property on which the impact fee was paid shall be eligible to receive a credit toward any subsequent development activity on the property up to the full amount of the payment.
 - (3) Owners seeking a refund of impact fees must submit a written request for a refund of impact fees to the Director or designee within one (1) year of the date the right to claim the refund arises, which, for purposes of refund claims authorized pursuant to subsection (1)(b) of this section only, shall be the date of voluntary or involuntary abandonment of the permit, or the date that notice is given, whichever occurs later.
 - (4) Any impact fees not expended within the time limitations, and for which no application for a refund has been made within the one-year claim period, shall be retained and expended on system improvements for which such impact fees were initially collected, without further limitation as to the time of expenditure.
 - (5) The interest due on the refund of impact fees as required by RCW 82.02.080, or its successor, shall be calculated according to the average rate received by the City on invested funds throughout the period during which the impact fees were retained.

19.20.130 Payments under protest; appeals.

- (1) The determination of the Director or designee regarding the applicability of an impact fee to a given development activity within the service area shall be final; however, a fee payer may pay an impact fee imposed pursuant to this title under protest in order to obtain a permit and, after such payment, file an appeal regarding the amount of the impact fee or a determination made pursuant to this title to the Hearing Examiner pursuant to the procedures for Type II decisions under chapter 14.45 CMC.
- (2) Appeals regarding the amount of the impact fee imposed on any development activity may only be filed by the applicant of the development activity, pursuant to chapter 14.45 CMC.
- (3) In addition to specific appeal procedures outlined in this title, any decision made by the Department in the course of administering this title may be appealed in accordance with the procedures for

appealing the underlying permit and shall not be required to pursue a separate appeal process. This shall include the requirement to pay impact fees.

19.20.140 Impact fee accounts; reporting.

- (1) The City of Covington Finance Department shall earmark all impact fees collected under this title as to the person paying them, the date paid, and the type of impact fee paid. The Finance Department shall promptly deposit all fees collected in appropriate special interest-bearing accounts. A separate account shall be established for each type of impact fee. All interest shall be retained in the account and expended for the purposes for which the impact fee was imposed. While maintaining fees in separate accounts, pooled investments may be used.
- (2) Funds withdrawn from the impact fee accounts must be used in accordance with the provisions of this title and applicable state law.
- (3) On an annual basis, the finance director shall provide a report to the city council on the impact fee accounts showing the source and amount of all moneys collected, earned, or received, and the public improvements that were financed in whole or in part by impact fees.
- (4) Impact fees shall be expended or encumbered for a permissible use within ten (10) years of receipt, unless the city council identifies in written findings that there exists an extraordinary and compelling reason for impact fees to be held longer than (10) ten years. Under such circumstances, the council shall establish the period of time within which the impact fees shall be expended or encumbered.

**CHAPTER 19.30
TRANSPORTATION IMPACT FEE**

- 19.30.010 Purpose.**
- 19.30.020 Application.**
- 19.30.030 Administrative guidelines.**
- 19.30.040 Exemptions.**
- 19.30.050 Assessment of fee.**
- 19.30.060 Rate methodology; fee schedule.**
- 19.30.070 Use of funds.**
- 19.30.080 Relationship to concurrency.**

19.30.010 Purpose.

The purpose of this chapter is to:

- (1) Develop a program consistent with the City’s comprehensive plan for joint public and private financing of public streets and roads (“transportation facilities”) consistent with the capital facilities plan of the City of Covington comprehensive plan, as such transportation facilities are necessitated in whole or in part by development in the City;
- (2) Ensure adequate levels of service in transportation facilities; and
- (3) Establish a mechanism to charge and collect fees to ensure that all new development bears its proportionate share of the capital costs of transportation facilities reasonably related to new development, in order to ensure the availability of adequate transportation facilities at the time new development occurs.

19.30.020 Application.

Except as otherwise provided for under this title, development activity in the City’s service area shall be charged a transportation impact fee pursuant to this chapter.

19.30.030 Administrative guidelines.

The Director shall be authorized to adopt internal guidelines for the administration of transportation impact fees under this chapter, which may include the adoption of standard operating procedures and administrative policy for transportation impact fees.

19.30.040 Exemptions.

Public school districts, as fee payer, shall be exempt from the assessment and collection of transportation impact fees under this chapter, as authorized by exemptions for a broad public purpose under RCW 82.02.060(2).

19.30.050 Assessment of fee.

The transportation impact fee shall be assessed according to the units of daily vehicle trips applicable to

the type of development as set forth in the current transportation impact fee schedule as created pursuant to this chapter and adopted by the city council.

19.30.060 Rate methodology; fee schedule.

- (1) Rate methodology. The City has conducted extensive research and analysis documenting the procedures for measuring the impact of new developments on public facilities, has prepared the "Rate Study for Transportation Impact Fees, City of Covington" dated 2009 ("rate study"), as may be amended from time to time, and incorporates that rate study into this chapter by this reference. The rate study utilizes a methodology (or formula) for calculating impact fees that fulfills all of the requirements of RCW 82.02.060(1). A copy of the rate study shall be kept on file with the City Clerk and is available to the public for review.
- (2) Transportation impact fee schedule.
 - (a) The City's transportation impact fee schedule is generated from the formula for calculating impact fees set forth in the rate study adopted in subsection (1) herein ("transportation impact fee schedule").
 - (b) Either the Department shall establish the traffic impact fee rate for a land use that is not listed in the transportation impact fee schedule.
 - (c) The fee payer shall submit all information requested by the Department for purposes of determining the impact fee rate pursuant to this section.
 - (d) Alternatively, the transportation impact fee schedule may be amended by a City Council resolution.
- (3) For mixed use developments, traffic impact fees shall be imposed for the proportionate share of each land use based on the applicable measurement in the traffic impact as set forth in the traffic impact fee schedule.

19.30.070 Use of funds.

- (1) Pursuant to this chapter, traffic impact fees:
 - (a) Shall be used for public improvements that will reasonably benefit new development; and
 - (b) Shall not be imposed to make up for deficiencies in public facilities serving existing developments; and
 - (c) Shall not be used for maintenance or operations.
- (2) Transportation impact fees may be spent for public improvements to streets and such other uses, including, but not limited to, transportation planning, engineering design studies, land surveying, land

acquisition, right-of-way acquisition, site improvements, necessary off-site improvements, construction, architectural, permitting, financing, and administrative expenses, applicable impact fees or mitigation costs, and any other expenses that can be capitalized.

(3) Transportation impact fees may also be used to recoup public improvement costs previously incurred by the City to the extent that new growth and development will be served by the previously constructed improvements or incurred costs.

(4) In the event that bonds or similar debt instruments are or have been issued for the advanced provision of public improvements for which impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this section and are used to serve the new development.

19.30.080 Relationship to Concurrency

Neither compliance with this chapter nor the payment of any fee hereunder shall constitute a determination of concurrency under chapter 12.95 CMC.

**CHAPTER 19.40
SCHOOL IMPACT FEE**

- 19.40.010 Purpose; authority.**
- 19.40.020 Interlocal agreement required.**
- 19.40.030 Submission of district capital facilities plan and data.**
- 19.40.040 Annual council review.**
- 19.40.050 Exclusions.**
- 19.40.060 Fee calculations.**
- 19.40.070 Assessment of fee.**
- 19.40.080 Use of funds.**
- 19.40.090 Impact fee accounts; payment.**

19.40.010 Purpose; authority.

The continuing growth and development in the City of Covington will create additional demand and need for school facilities. The Washington State Growth Management Act requires that new growth and development should pay a proportionate share of the cost of new facilities needed to serve the new growth and development.

Therefore, pursuant to Chapter 82.02 RCW, the purpose of this chapter is to authorize the assessment and collection of school impact fees. The provisions of this chapter shall be liberally construed in order to carry out the purposes of the city in establishing the school impact fee program.

19.40.020 Interlocal agreement required.

As a condition of the City's authorization and adoption of a school impact fee ordinance, the city and district shall enter into an interlocal agreement governing the operation of the school impact fee program, and describing the relationship and liabilities of the parties thereunder.

19.40.030 Submission of district capital facilities plan and data.

(1) On an annual basis, the district shall submit the following materials to the city council:

- (a) The district's capital facilities plan and adopted by the school board;
- (b) The district's enrollment projections over the next six (6) years, its current enrollment and the district's enrollment projections and actual enrollment from the previous year;
- (c) The district's standard of service;
- (d) The district's overall capacity over the next six (6) years, which shall take into account the available capacity from school facilities planned by the district but not yet built and be a function of the district's standard of service as measured by the number of students which can be housed in district facilities; and
- (e) An inventory of the district's existing facilities.

- (2) To the extent that the district's standard of service identifies a deficiency in its existing facilities, the district's capital facilities plan must identify the sources of funding other than impact fees for building or acquiring the necessary facilities to serve the existing student population in order to eliminate the deficiencies within a reasonable period of time.
- (3) Facilities to meet future demand shall be designed to meet the adopted standard of service. If sufficient funding is not projected to be available to fully fund a capital facilities plan which meets the adopted standard of service, the district's capital facilities plan should document the reason for the funding gap, and identify all sources of funding that the district plans to use to meet the adopted standard of service.
- (4) The district shall also submit an annual report to the city council showing the capital improvements which were serviced in whole or in part by the school impact fees.
- (5) In its development of the financing plan component of the capital facilities plan, the district shall plan on a six (6) year horizon and shall demonstrate its best efforts by taking the following steps:
 - (a) Establish a six (6) year financing plan, and propose the necessary bond issues and levies required by and consistent with that plan and as approved by the school board consistent with RCW 28A.53.020, 84.52.052 and 84.52.056 as amended; and
 - (b) Apply to the state for funding, and comply with the state requirements for eligibility to the best of the district's ability.

19.40.040 Annual council review.

The city council shall review on an annual basis the materials received from the district and required under this chapter. The city council may make adjustments to the school impact fee schedule as necessitated by its review or applicable law, and, if the city council deems appropriate, shall adopt the school impact fee schedule by resolution. The review and fee schedule adoption decision may occur in conjunction with the annual update of the capital facilities plan element of the City's comprehensive plan.

19.40.050 Exclusions

- (1) The following development activities do not create any additional school impacts, or fully mitigate for any school impacts, and are exempt from the collection and assessment of school impact fees under this chapter:
 - (a) Any development of housing for the elderly, including nursing homes, retirement centers, and any type of housing units for persons age fifty-five (55) and over, which have recorded covenants or recorded declaration of restrictions precluding school-aged children as residents in those units.
 - (b) Any construction or building permit that does not include residential sleeping/bedroom space.

- (c) Any change of use that does not increase the scope or nature of the residential use of the property.
 - (d) Any development activity for which school impacts have been fully mitigated pursuant to a condition of development approval (e.g. plat approval) to pay fees, dedicate land, or construct or improve school facilities, unless the condition of the development approval provides otherwise.
 - (e) Any development activity for which school impacts have been fully mitigated pursuant to a voluntary agreement entered into with the district to pay fees, dedicate land, or construct or improve school facilities, unless the terms of the voluntary agreement provide otherwise; provided that the agreement predates the effective date of impact fee imposition.
- (4) The Director shall be authorized to determine whether a particular development activity falls within an exclusion identified in this section or under other applicable law. Determinations of the Director shall be in writing and shall be subject to the appeals procedures set forth in Chapter 14.45 CMC.

19.40.060 Fee calculations.

- (1) The school impact fee shall be based on a formula based on the capital facilities plan developed by the district and approved by the school board, and adopted by reference by the City as part of the capital facilities element of the City's comprehensive plan.
- (2) The school impact fees for the district shall be calculated based on a formula that takes into account:
 - (a) the capital facilities needs of the district as identified in the district's capital facilities plan;
 - (b) the district's student generation rates for single-family and multifamily dwelling units;
 - (c) the school site and school construction costs per student per grade level;
 - (d) the district's standard of service; and
 - (e) the relocatable facilities cost per student per grade level.
- (3) Separate fees shall be calculated for single-family and multifamily dwelling units, and separate student generation rates must be determined by the district for each type of dwelling unit. For purposes of this chapter, manufactured homes shall be treated as single-family dwelling units and duplexes shall be treated as multifamily dwelling units.
- (4) The fee calculations shall be made on a district-wide basis to assure maximum utilization of all school facilities in the district currently used for instructional purposes. Impact fees shall be calculated annually and set forth in a fee schedule adopted by city council.

19.40.070 Assessment of fees.

- (1) The City shall collect school impact fees, based on the fee schedule adopted by city council pursuant to this chapter, from any fee payer seeking development approval from the City where such development activity requires the issuance of a residential building permit or a manufactured home permit, except as otherwise provided for herein.
- (2) School impact fees will be imposed on a district by district basis, on behalf of any school district which provides to the city a capital facilities plan, the district's standards of service for the various grade spans, estimates of the cost of providing needed facilities and other capital improvements, and the data from the district. Any school impact fee imposed shall be reasonably related to the impact caused by the development and shall not exceed a proportionate share of the cost of system improvements that are reasonably related to the development. The school impact fee shall account in the fee calculation for future revenue the district will receive from the development. The resolution adopting the fee schedule shall specify under what circumstances the fee may be adjusted in the interests of fairness.

19.40.080 Use of funds.

School impact fees for the district's system improvements shall be expended by the district only for capital improvements, including, but not limited to, school planning, land acquisition, site improvements, necessary off-site improvements, construction, engineering, architectural, permitting, financing, and administrative expenses, relocatable facilities, capital equipment pertaining to educational facilities, and any other expenses that could be capitalized and are consistent with the district's capital facilities plan.

19.40.090 Impact fee accounts; payment.

- (1) The district shall establish a school impact fee account. The account shall be an interest-bearing account, and the school impact fees received shall be prudently invested in a manner consistent with the investment policies of the district.
- (2) For administrative convenience while processing the fee payments, school impact fees may be temporarily deposited in a City account. On a monthly basis, the City shall deposit the school impact fees collected for the district in the district's school impact fee account or pursuant to the accounting procedures established by the City's finance department.