

ORDINANCE NO. 11-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, PERTAINING TO SCHOOL IMPACT FEES, REPEALING CHAPTER 18.120 OF THE COVINGTON MUNICIPAL CODE ENTITLED SCHOOL IMPACT FEES; TERMINATING THE INTERLOCAL AGREEMENT WITH KENT SCHOOL DISTRICT REGARDING THE SAME; ESTABLISHING SEVERABILITY; DECLARING AN EMERGENCY AND ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR CORRECTIONS.

WHEREAS, the 1990 Growth Management Act (“GMA” or “the Act”), Chapter 36.70A of the Revised Code of Washington (“RCW”), requires that “uncoordinated and unplanned growth together with a lack of common goals expressing the public’s interest in the conservation of and the wise use of our lands, pose a threat to the environment, sustainable development, and the health, safety, and high quality of life enjoyed by residents of this state” (RCW 36.70A.010); and

WHEREAS, the GMA includes adopted goals to guide the development and adoption of comprehensive plans and development regulations for those counties and cities that are required or choose to plan under the Act; and

WHEREAS, the City of Covington (the “City”) plans under the GMA; and

WHEREAS, the GMA allows only counties and cities planning under the Act to impose impact fees on development activity as a means of funding a proportionate share of the cost of new facilities needed to serve new growth and development (RCW 82.02.050); and

WHEREAS, though counties and cities that plan under the Act are authorized to impose impact fees on development activity as part of the financing for public facilities, the GMA expressly forbids the use of impact fees to fund completely the system improvements needed to serve new development; the financing system for such improvements must also provide for a balance between impact fees and other sources of public funds (RCW 82.02.050(2)); and

WHEREAS, the GMA also provides flexibility in the process of developing impact fees and permits an impact fee ordinance adopted by a county or city to include exemptions for low-income housing and other development activities with broad public purposes (RCW 82.02.060(2)); and

WHEREAS, accordingly, the GMA impact fee requirements and guidelines assist jurisdictions in determining the public and private shares of the costs of new facilities while leaving specific determinations to be made by the local jurisdiction, which is consistent with the GMA’s emphasis on local responsibility and control over the growth process; and

WHEREAS, in 1997 the City passed Ordinance No. 17-97 to adopt by reference Title 21A of the King County Code (“KCC”) as its interim zoning code; the City subsequently passed Ordinance No. 42-02 to codify the same code under Chapter 18.120 of the Covington Municipal Code (“CMC”); and

WHEREAS, since 1997 the City’s code has provided for the collection of school impact fees upon request of a school district, as well as provided for the City to grant an exemption or reduction from school impact fees for housing developments that include low- or moderate-income housing (CMC 18.120.080; previously KCC 21A.43.080); and

WHEREAS, pursuant to CMC 18.120.040, in 1999 the City and the District executed an interlocal agreement for the collection, distribution, and expenditure of school impact fees collected by the City on behalf of the District (the “ILA”); and

WHEREAS, since the City began collecting school impact fees on behalf of the District in 1999, the City has remitted over \$5 million to the District to help fund their capital facility needs as outlined in the District’s Capital Facilities Plan; and

WHEREAS, King County and the cities of Kent, Auburn, and Renton also collect and remit school impact fees to KSD; pursuant to state law, the amount of the school impact fee collected by each local jurisdiction on behalf of the District is determined at the sole discretion of each jurisdiction and can and does vary between each jurisdiction; and

WHEREAS, in April 2014, the Inland Real Estate Group of Companies, Inc. (“Inland Group”) submitted building applications to the City to develop two housing projects within the City’s Town Center—specifically, a senior housing community and a mixed-use, affordable housing community including 200 deed-restricted apartments for low- to moderate-income households; and

WHEREAS, as part of its application, Inland Group requested that the City grant a partial exemption from school impact fees applied to the affordable housing portion of the development, pursuant to RCW 82.02.060 and CMC 18.120.080; and

WHEREAS, this was the first development project in Covington that requested an affordable housing exemption from school impact fees; prior to Inland Group’s project, all development in Covington subject to school impact fees paid those impact fees in full; and

WHEREAS, exemptions from school impact fees—specifically, exemptions for affordable housing developments—are governed by state law, CMC 18.120.080, and the ILA between the City and the District; and

WHEREAS, in addition to the general requirements under state law, the CMC requires the City’s community development department to consider a host of factors and required criteria when determining if an exemption from school impact fees should be approved; the ILA also specifically gives authority to the City’s community development director to make the final decision of whether to approve an exemption from school impact fees; and

WHEREAS, though Inland Group requested a partial exemption from school impact fees, as part of their overall project they will build additional infrastructure in the form of 1,100 lineal feet of two-lane road, which includes underground utilities, at their cost of \$700,000, which will raise the property value of District-owned property adjacent to the development; and

WHEREAS, in May 2014, the City preliminarily granted Inland Group an exemption from school impact fees and on June 9, 2014, notified the District of said exemption via email, pursuant to CMC 18.120.080 and the ILA, with no objection received from the District; and

WHEREAS, in September 2014, as the City neared issuing their final development approval for Inland Group's project, the District objected to the City granting an exemption from school impact fees for the project; and

WHEREAS, the District referenced a 2012 amendment to the state impact fee statutes (RCW 82.02.060(3)) and indicated that, in their opinion, the City did not have the legal right to grant an exemption from school impact fees without first receiving approval of the exemption from the District; and

WHEREAS, the City disagreed with the District's reading of the state statute in question, and informed the District that they provided their approval to such exemptions when entering into the ILA with the City; and

WHEREAS, Inland Group and City staff attended numerous District board meetings and provided additional information to District staff to further explain the reasoning for the City's desire to grant Inland Group's school impact fee exemption request and how the development of affordable housing within the Town Center addresses the City's housing and economic development goals in its Comprehensive Plan, supports the City's short- and long-term goals to create a vibrant community with affordable housing options, increases employment opportunities created through economic growth, and creates a thriving Town Center to benefit all Covington residents; and

WHEREAS, despite the City's efforts to reach consensus with the District, the City and District could not agree on the interpretation of RCW 82.02.060(3) or the exemption from school impact fees to be granted to Inland Group; and

WHEREAS, the City feels strongly that affordable housing and economic development in the city's Town Center are important elements for the City's future and the City Council is excited to have Inland Group's development project as an anchor in the Town Center and provide housing for underserved portions of Covington's residents (seniors and low-income households); and

WHEREAS, the City also recognizes that though school impact fees support the District's infrastructure, without impact fee exemptions affordable housing development, which is an equally important public need governed and required to be provided for by state growth management regulations, would not be built; impact fees add to the cost of development over and

above normal construction costs and that cost is traditionally passed on to buyers; in the case of affordable housing, it is not financially feasible for the developer to pass those costs on to residents, as state law sets pricing limits on low-income housing to ensure that the housing remains affordable for low- or moderate-income households; and

WHEREAS, on October 22, 2014, the City issued a final decision regarding the exemption of school impact fees for the Inland Group project, granting Inland Group an eighty percent (80%) exemption from the school impact fees owed for the low-income housing units included as part of their project; Inland Group remitted to the District the remaining twenty percent (20%) of school impact fees applied to their project (\$135,120); and

WHEREAS, the City's decision to partially exempt the school impact fees for the Inland Group development was a land use decision subject to a limited twenty-one (21) day appeal period under the state's Land Use Petition Act ("LUPA"), and the District did not file a timely LUPA appeal of the City's decision; and

WHEREAS, over seven months after the City issued the school impact fee exemption for the Inland Group project, on June 5, 2015, the District chose to file a legal action against the City in King County Superior Court, seeking a declaratory judgment from the court to assert that RCW 82.02.060(3) requires the City to obtain approval from the District before the City is able to grant any exemption from school impact fees; and

WHEREAS, the District's legal challenge applies not only to exemption requests for low-income housing, but also to any exemptions or exclusions granted by the City for a broad public purpose, which includes all exceptions under CMC 18.20.070, including senior housing, the reconstruction or remodeling of existing homes, temporary dwellings, and accessory dwelling units; and

WHEREAS, the City Council has taken into consideration the substantial amount of time and expense that continuing the litigation will cause; and

WHEREAS, the City Council has carefully assessed the additional benefits and burdens of continuing said litigation; and

WHEREAS, the City Council has also weighed the costs and benefits to the citizens of Covington of continuing the litigation; and

WHEREAS, although the City is confident in its ability to defend the matter currently before the court, the City Council has determined that repealing the City's ordinance for the collection of school impact fees and terminating the ILA with the District is the most efficient method to dismiss the present litigation with the District; such action will make the District's current court action moot because the City will no longer collect school impact fees and there will no longer be a justiciable controversy, as required by law, under which the District may seek a declaratory judgment from the court; and

WHEREAS, the City Council has determined that such action will best serve the interests of the City and the community by limiting the public funds used for litigation costs, by both the City and the District; preserving the City's authority under the GMA to independently regulate development within the city; and allowing the City and District to resume their normal, productive working relationship; and

WHEREAS, under state law, the collection of school impact fees is not required and the City is free to repeal its ordinance and no longer collect school impact fees at any time; and

WHEREAS, pursuant to the ILA, the City may terminate the ILA and its obligation to collect school impact fees on behalf of the District at any time, for any reason; and

WHEREAS, similarly, the City Council recognizes that they may pass an ordinance at any time to reinstitute the collection of school impact fees should the state legislature amend RCW 82.02.060(3) to clearly state the city's authority to independently issue final approvals for exemption requests or exclusions from school impact fees and/or should the City and District together reach a similar agreement; and

WHEREAS, the City Council still recognizes the importance of supporting the District in serving the children and families in Covington; and

WHEREAS, the City Council still greatly values the long-standing, positive, and productive working relationship between the City and the District and the importance of the District and City to continue to work together to support the mutual services and programs each offer to the children and families within the District and Covington;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Chapter 18.120 CMC Repealed. Ordinance No. 42-02, codified as Chapter 18.120 of the Covington Municipal Code, and those portions of Ordinance Nos. 23-04, 06-05, 17-05, 20-07 and 03-12 that subsequently amended Ordinance No. 42-02 are hereby repealed, subject to the provisions of this ordinance.

Section 2. ILA with Kent School District Terminated. The December 15, 1999 Interlocal Agreement between the City of Covington and the Kent School District for the collection, distribution, and expenditure of school impact fees (the "ILA") is hereby terminated as of the Effective Date of this ordinance and pursuant to the terms of the ILA. A copy of this ordinance shall be remitted to the Kent School District to serve as written notification of termination.

Section 3. Refunding Unexpended or Unencumbered Impact Fees.

a. Pursuant to the ILA and RCW 82.02.080(2), all unexpended or unencumbered school impact fee funds received by Kent School District from the City of Covington up to the Effective Date of this ordinance, including interest earned, shall be refunded to the current owner of the property for which the associated school impact fee was paid. All funds available for refund shall

be retained by Kent School District for a period of one (1) year. At the end of one (1) year, any remaining funds shall be remitted to the City of Covington, but must be expended for the benefit of Kent School District public facilities.

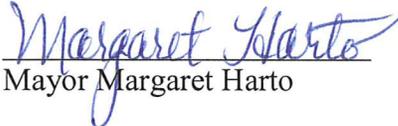
b. Pursuant to RCW 82.02.080(2), The City of Covington shall place notice of this ordinance and the availability of refunds in a newspaper of general circulation at least two (2) times and shall notify all potential claimants by first class mail addressed to the owner of the property as shown in the City tax records. This notice requirement shall not apply if Kent School District has no unexpended or unencumbered balances within the account or accounts being terminated.

Section 4. 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 5. Declaration of Emergency - Effective Date. The Covington City Council declares that an emergency exists necessitating that this ordinance become effective immediately for the protection of the public health and safety, public peace, and public property. This ordinance shall take effect immediately upon passage.

Section 6. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the Code Reviser are authorized to make necessary technical corrections to this ordinance, including the correction of clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or section/subsection numbering.

**PASSED BY THE CITY COUNCIL OF THE CITY OF COVINGTON,
WASHINGTON, AT A REGULAR MEETING THEREOF ON THIS 27th DAY OF
OCTOBER, 2015.**

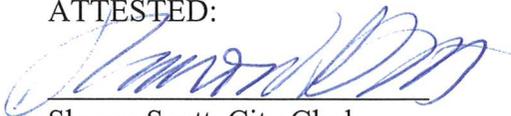


Mayor Margaret Harto

PUBLISHED: October 30, 2015

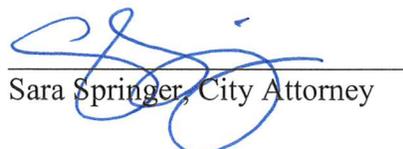
EFFECTIVE: October 27, 2015

ATTESTED:



Sharon Scott, City Clerk

APPROVED AS TO FORM:



Sara Springer, City Attorney