PLANNING COMMISSION AGENDA
August 18 2016
6:30 PM

CALL TO ORDER

ROLL CALL
Chair Bill Judd, Vice Chair Paul Max, Jennifer Gilbert-Smith, Alex White, Jim Langehough, & Chele Dimmett.

PLEDGE OF ALLEGIANCE

APPROVAL OF CONSENT AGENDA

1. Minutes from May 19, 2016

CITIZEN COMMENTS - Note: The Citizen Comment period is to provide the opportunity for members of the audience to address the Commission on items either not on the agenda or not listed as a Public Hearing. The Chair will open this portion of the meeting and ask for a show of hands of those persons wishing to address the Commission. When recognized, please approach the podium, give your name and city of residence, and state the matter of your interest. If your interest is an Agenda Item, the Chair may suggest that your comments wait until that time. Citizen comments will be limited to four minutes for Citizen Comments and four minutes for Unfinished Business. If you require more than the allotted time, your item will be placed on the next agenda. If you anticipate, in advance, your comments taking longer than the allotted time, you are encouraged to contact the Planning Department ten days in advance of the meeting so that your item may be placed on the next available agenda.

UNFINISHED BUSINESS –

2. Status & Review on Sign Code Revisions (Supreme Court Decision: Reed v. Gilbert)

PUBLIC HEARING – None

NEW BUSINESS – No Action Required

3. Discuss Council Decision on Impact Fee Deferral Program

ATTENDANCE VOTE

PUBLIC COMMENT: (Same rules apply as stated in the 1st CITIZEN COMMENTS)

COMMENTS AND COMMUNICATIONS OF COMMISSIONERS AND STAFF

ADJOURN

Any person requiring a disability accommodation should contact the City at least 24 hours in advance.
For TDD relay service please use the state’s toll-free relay service (800) 833-6384 and ask the operator to dial (253) 480-2400
Web Page: www.covingtonwa.gov
CALL TO ORDER
Vice Chair Max called the regular meeting of the Planning Commission to order at 6:37 p.m.

MEMBERS PRESENT
Chele Dimmett, Jennifer Gilbert-Smith, Jim Langehough, Paul Max, Krista Bates, and Alex White

MEMBERS ABSENT – Bill Judd

STAFF PRESENT
Brian Bykonen, Associate Planner and Code Enforcement Officer
Richard Hart, Community Development Director
Kelly Thompson, Planning Commission Secretary

APPROVAL OF MINUTES AND AGENDA

1. Commissioner Dimmett moved and Commissioner White seconded to approve the May 5, 2016 minutes and agenda. Motion carried 6-0.

CITIZEN COMMENTS - None

UNFINISHED BUSINESS - None

PUBLIC HEARING - None

NEW BUSINESS

2. Discussion of Sign Code Revisions for Temporary Signs

Community Development Director, Richard Hart, introduced the draft temporary sign code regulations. Mr. Hart provided the background on the Reed Supreme Court Decision which has dramatically changed the landscape of temporary sign regulations. The new regulations will evaluate the number, location, size, duration and the type of sign. Mr. Hart reviewed the template outlining the types of signs allowed which have been categorized as residential uses and non-residential uses.
Commissioner Dimmett asked for clarification on the letter identification in the template. Associate Planner and Code Enforcement Officer, Brian Bykonen explained the matrix in the table. Mr. Bykonen described a couple of sign types for clarification. Mr. Hart shared that staff is working to make the sign code easy to understand and easy to enforce. The Planning Commission went on to discuss how time limitations and number of signs are not proposed to be regulated; rather, the location, size and material of signs will be. Commissioner Dimmett asked for a clear definitions section in the final code.

Mr. Hart shared that we anticipate having more discussion with the Planning Commission and public outreach prior to having a Public Hearing. The proposed temporary sign regulations will go to City Council following the Planning Commission Public Hearing.

Commissioner Dimmett asked about legal non-conforming signs once the new sign code is adopted. Mr. Hart responded that we have not yet written in a provision for amortization to remove legal non-conforming signs.

ATTENDANCE VOTE

- Commissioner Gilbert-Smith moved and Commissioner Dimmett seconded to excuse the absence of Chair Judd. Motion carried 6-0.

PUBLIC COMMENTS - None

COMMENTS AND COMMUNICATIONS FROM STAFF

Mr. Hart shared that we anticipate reviewing the Critical Areas Ordinance and continuing discussion on the Temporary Sign Code Regulations at the next Planning Commission meeting on June 16, 2016.

The proposed Marijuana Zoning Regulations will be discussed at the City Council meeting on June 14, 2016.

ADJOURN

The May 19, 2016 Planning Commission Meeting adjourned at 7:31 p.m.

Respectfully submitted,

_____________________________________________
Kelly Thompson, Planning Commission Secretary
Section 18.55.270 Temporary Signs.

(1) **Permits.** No permit is required for a temporary sign except as follows:
   (a) *Banner signs.* Banner signs listed in subsection (5) below require a temporary sign permit.
   (b) *Public parks, trails, and open space and public rights-of-way signs.* In accordance with Chapter 12.40 CMC, a special event permit is required to display temporary signs within a public park, trail, and open space, and on public rights-of-way.

(2) **Removal.** Temporary signs shall be removed if the sign is in need of repair, is worn, dilapidated, or creates a public nuisance.

(3) **Materials.** See CMC 18.55.100 and the definition of “temporary sign” in Chapter 18.20 CMC.

(4) **Residential use (single and multi-family).** Temporary signs on single and multi-family properties are allowed with the following requirements. All temporary signs shall display a non-commercial message only.
   (a) *Number.* There is no restriction on the number of signs allowed.
   (b) *Location.* Signs shall not be located on or within interior setback locations, the roof of the dwelling or any accessory structure, fences, or temporarily placed on vehicles.
   (c) *Building coverage.* Signs shall not cover more than 10 percent of the dwelling that faces a public street.
   (d) *Height and size.* The height and size limits of temporary signs shall be as follows:
      (i) Signs shall not be greater than six (6) feet in height and 12 square feet in size, with no sign face exceeding six (6) square feet; and
      (ii) The height and size requirements shall not apply to a flag(s) placed on a permanent flagpole, and
      (iii) Building mounted signs attached flush to the face of the building shall not have a maximum height.
   (e) *Sign types.*
      (i) Signs on stakes that can be manually pushed or hammered into the ground; and
      (ii) Portable signs in accordance with Section 18.55.220 CMC. No permit is required for portable signs displaying a non-commercial message; and
      (iii) Inflatables; and
      (iv) Banners; and
      (v) String lights.
   (f) *Lighted signs.* Signs that have either internal or external illumination shall not be displayed from the hours of 11 p.m. to 8 a.m. Signs with illumination shall not emit more than ___ nits.
(g) Audio. Sound generated by any sign shall not be audible past any property line.

(h) Duration of display. A temporary sign shall not be displayed longer than 180 days in a calendar year.

(2) Commercial uses (does not include school facilities, religious facilities, government facilities, public parks, trails and open space, and public rights-of-way). Temporary signs on commercial use properties are allowed with the following requirements. All temporary signs shall display a non-commercial message, except as allowed under subsection (a)(ii) below. Portable signs displaying a commercial message are considered permanent and need to abide by the regulations provided in Chapter 18.55.220 CMC.

(a) Number.
   (i) There is no restriction on the number of temporary signs displaying a non-commercial message.
   (ii) One temporary sign per business or use displaying a commercial message is allowed subject to the following requirements:
        (A) The sign shall be a banner only; and
        (B) The maximum size shall be 32 square feet; and
        (C) The banner shall be attached to the face of the building only, with no height limitation; and
        (D) The banner shall be displayed a total of 120 days in a calendar year; and
        (E) A temporary sign permit is required.

(b) Location. Signs shall not be located in interior setback locations, the roof of any structure, fences, or temporarily placed on vehicles.

(c) Building coverage. Signs shall not cover more than 10 percent of the structure that faces a public street.

(d) Height and size. The height and size limits of signs shall be as follows:
   (i) One freestanding sign per property shall not be greater than six (6) feet in height and shall not be larger than 24 square feet in size, with no sign face larger than 12 square feet.
   (ii) All other temporary signs displayed on a property shall not be greater than three (3) feet in height and shall not be greater than six (6) square feet in size, with no sign face exceeding three (3) square feet.
   (iii) The height and size requirements shall not apply to a flag(s) placed on a permanent flagpole.

(e) Sign type.
   (i) Signs on stakes or posts that are not permanently attached to the ground; and
   (ii) Portable signs in accordance with Chapter 18.55.220 CMC. No permit is required for portable signs displaying a non-commercial message; and
   (iii) Banners; and
(iv) String lights.

(f) Lighted signs. No restrictions.

(g) Audio. Sounds generated by any sign shall not be audible past any property line.

(h) Duration of display. A temporary sign shall not be displayed longer than 180 days in a calendar year.

(6) School facility, religious facility, and government facility uses. Temporary signs on school facility, religious facility, and government facility properties are allowed with the following requirements. All temporary signs shall display a non-commercial message.

(a) Number.
   (i) There is no restriction on the number of temporary signs displaying a non-commercial message except for banner signs under section (a)(ii) below.
   (ii) One banner sign per 500 feet of street frontage, not to exceed four (4) per property, and as long as the banner(s) conforms to the regulations of subsection (d)(i) below.

(b) Location. Temporary signs shall not be located in interior setback locations, the roof of any structure, or temporarily placed on vehicles.

(c) Building coverage. Temporary signs shall not cover more than 10 percent of the structure that faces a public street.

(d) Height and size. The height and size limits of temporary signs shall be as follows:
   (i) Banners shall not be greater than five (5) feet in height, unless attached to the face of the primary structure on the property. A banner shall not be larger than a total of 32 square feet in size.
   (ii) All other temporary signs displayed on a property shall not be greater than three (3) feet in height and shall not be greater than six (6) square feet in size, with no sign face exceeding three (3) square feet.
   (iii) The height and size requirements shall not apply to a flag(s) placed on a permanent flagpole.

(e) Sign type.
   (v) Signs on stakes that can be manually pushed or hammered into the ground; and
   (vi) Portable signs in accordance with Section 18.55.220 CMC. No permit is required for portable signs displaying a non-commercial message; and
   (vii) Banners; and
   (viii) String lights.

(f) Lighted signs. Signs that have either internal or external illumination shall not be displayed from the hours of 11 p.m. to 8 a.m.
(g) *Audio.* Sounds generated by any sign shall not be audible past any property line.

(h) *Duration of display.* A temporary sign shall not be displayed longer than 180 days in a calendar year.

(7) *Use of public parks, trails, and open space.* Temporary signs displayed within a public park, trail, and open space are allowed with the following requirements. All temporary signs shall display a non-commercial message only.

(a) *Number.*
   (i) Five (5) signs per special event permit.
   (ii) Of the five (5) signs in section (b)(i) above, one (1) banner sign per 500 feet of street frontage is allowed, not to exceed two (2) per property per special event permit.

(b) *Location.*
   (i) Signs shall not be located on the roof of any structure or temporarily placed on vehicles.
   (ii) Signs displayed within a public park, trail, or open space shall only be for special events held within the public park, trail, or open space.

(c) *Building coverage.* Temporary signs shall not cover more than 10 percent of the structure that faces a public street.

(d) *Height and size.* The height and size limits of temporary signs shall be as follows:
   (i) Banners shall not be greater than five (5) feet in height, unless attached to the face of the primary structure on the property. A banner shall not be larger than 32 square feet in size.
   (ii) All other temporary signs displayed on a public park, trail, or open space property shall not be greater than three (3) feet in height and shall not be greater than six (6) square feet in size, with no sign face exceeding three (3) square feet.
   (iii) The height and size requirements shall not apply to a flag(s) placed on a permanent flagpole.

(e) *Sign type.*
   (ix) Signs on stakes that can be manually pushed or hammered into the ground; and
   (x) Portable signs in accordance with Section 18.55.220 CMC. No permit is required for portable signs allowed under a special event permit; and
   (xi) Banners; and
   (xii) String lights.

(f) *Lighted signs.* Signs that have either internal or external illumination shall not be displayed from the hours of 11 p.m. to 8 a.m.

(g) *Audio.* Sounds generated by any sign shall not be audible past any property line.
(h) *Duration of Display.* Signs displayed within a public park, trail, or open space property shall not be displayed more than 30 days prior to an event and must be removed five (5) days after the event.

(8) **Use of public rights-of-way.** Temporary signs on public rights-of-way are allowed with the following requirements. All temporary signs shall display a non-commercial message only.

(a) *Number.* There is no restriction on the number of temporary signs allowed within public rights-of-way.

(b) *Location.*

(i) Signs can be placed within planter strips and undeveloped portions of public rights-of-way; and

(ii) Signs to be located on a street tree, within a roundabout, or across SE 272nd Street shall be placed by city staff only. An additional fee for staff time and equipment will be required based on the city Fee Resolution in effect at the time; and

(iii) Signs shall not be placed in a manner that obstructs sight distance of vehicle and pedestrian traffic, or to cause any other safety issues; and

(iv) Signs shall not be located on or within medians, sidewalks, utility poles, lampposts, traffic signs and signals, or other public structures.

(c) *Building coverage.* There are no restrictions.

(d) *Height and size.* Signs shall not be greater than three (3) feet in height and six (6) square feet in size, with no sign face exceeding three (3) square feet. The size requirements shall not be applicable for string lights within street trees, and banners and flags located on permanent poles designed for flags and banners.

(e) *Sign type.*

(xiii) Signs on stakes that can be manually pushed or hammered into the ground; and

(xiv) Portable signs in accordance with Section 18.55.220 CMC. No permit is required for portable signs allowed under a special event permit; and

(xv) Banners; and

(xvi) String lights on street trees.

(f) *Lighted signs.* There are no restrictions.

(g) *Audio.* Sounds generated by any sign shall not be audible past any property line.

(h) *Duration of display.* A temporary sign shall not be displayed longer than 180 days in a calendar year.

CMC 18.20.XXX “Temporary sign (which may include special event sign)” means any sign that is used temporarily and is not permanently mounted, painted or otherwise affixed, excluding portable signs as defined by this Chapter, including any poster, banner, placard, stake sign or
sign not placed in the ground with concrete or other means to provide permanent support, stability and rot prevention. Temporary signs may be made of non-durable materials including, but not limited to, paper, corrugated board, flexible, bendable or foldable plastics, foamcore board, vinyl canvas or vinyl mesh, vinyl canvas and vinyl mesh products without polymeric plasticizers and signs painted or drawn with water soluble paints or chalks.

Section 18.55.040 Prohibited Signs. No person shall erect, alter, maintain, or relocate any of the following signs in the city.

(1) Animated signs. A rotating or revolving sign or signs where all or a portion of the sign moves in some manner. This includes any sign animated by any means, including fixed aerial displays, balloons, pennants, spinners, propellers, whirling, or similar devices designed to flutter, rotate or display other movement under the influence of the wind, including flag canopies not otherwise allowed in CMC 18.55.160, streamers, tubes, or other devices affected by the movement of air or other atmospheric or mechanical means.

(2) Rotating signs. Any sign in which the sign body or any portion rotates, moves up and down, or any other type of action involving a change in position of the sign body or any portion of the sign, whether by mechanical or any other means.

(3) Nuisance signs. Any signs which emit smoke, visible particles, odors and sound, except that speakers in drive-through facilities shall be permitted.

(4) Bench signs greater than one (1) square foot in area.

(5) Flashing signs or lights. A sign unless allowed under the provisions of CMC 18.55.270 that contains an intermittent or flashing light source, or a sign that includes the illusion of intermittent or flashing light by means of animation, or an externally mounted intermittent light source. Flashing light sources are prohibited. Signs with an exposed light source, including clear light bulbs which do not flash on a theater marquee except for neon incorporated into the design of the sign are also prohibited. Electronic message center signs and digital signs are allowed under the provisions of Section 18.55.200 (Electronic Message Center Signs).

(6) Hazardous signs. Any sign that is dangerous or confusing to motorists and pedestrians on the public right-of-way, including any sign which by its color, wording, design, location or illumination resembles or conflicts with any official traffic control device or which otherwise impedes the safe and efficient flow of traffic is prohibited.

(7) No sign may impede free ingress and egress from any door, window, or exit way required by building and fire regulations.

(8) Permanent signs on vacant lots, parcels, or easements. No permanent sign shall be located on a vacant lot, parcel or easement. No permanent sign shall be located on a lot, parcel, or easement as the principal use of that lot, parcel, or easement. Signs may only be established as an accessory use to a principally permitted use.

(9) Portable signs on wheels (trailer signs).

(10) Abandoned signs.

(11) Signs on or within medians, roundabouts, utility poles, lampposts, traffic poles and signals, or public structures, unless allowed by a Special Event permit issued by the city.
Section 18.55.100.  Sign Materials.

(1)  Temporary signs.  The construction of temporary signs is described in the definition of “temporary sign,” (Section 18.20.XXXX, Definitions). However, temporary signs may be made of any material, provided that the temporary sign otherwise conforms to the requirements of this Chapter, including, but not limited to CMC 18.55.270.

(2)  Permanent signs.  Permanent signs must be manufactured of durable materials that withstand the effects of water and wind. The following additional requirements apply to any permanent signs larger than 30 square feet, except for window signs located inside glass:

   (a) Paper-faced signs, including vinyl-coated paper and those applied with adhesives, are not allowed. Canvas or vinyl signs must be made of minimum 20 oz. materials with polymeric plasticizers for durability.

   (b) Sign faces made of canvas, fabric, vinyl, or similar pliable materials that are attached to permanent sign structures must be mounted behind a perimeter frame or trim cap so that the edges of the sign face are not exposed, except that flags made of 100% spun polyester are exempt from this requirement.

Section 18.55.220.  Portable Signs.  No permit shall issue for a portable sign (includes sandwich board and pole mounted signs, Figure 19) displaying a commercial message which does not comply with the following standards:

(1)  Zone:  Allowed in all zones.

(2)  Design and Materials:  Must be designed with durable materials, otherwise they will be regulated as temporary signs under Section 18.55.270.  Portable signs must be designed to withstand wind and include a heavy weighted base for pole-mounted signs, and a heavy weight suspended between the opposing faces of a sandwich board sign.

Figure 19

Portable Signs
(3) **Size and Height.** Sandwich board signs: Maximum of four (4) feet in height, maximum of three (3) feet in width. (Note: sandwich board sign height is measured in the flat standing position, rather than in open standing position.) Pole-mounted signs: Maximum of three (3) square feet per side, four (4) feet high.

(4) **Number:** Not more than one (1) portable sign may be displayed per business with an approved city business license.

(5) **Location:** On private property only. No portable sign may be located on the city right-of-way (which includes the sidewalk), without a Special Event permit.

(6) **Display Hours:** Portable signs may be displayed during business or operating hours only.

**Chapter 12.40**

**SPECIAL EVENTS ON CITY PROPERTY**

Sections:

- **12.40.010 Definitions.**
- **12.40.020 Permit requirement.**
- **12.40.030 Repealed.**
- **12.40.040 Permit issuance.**
- **12.40.050 Liability.**
- **12.40.060 Additional requirements.**
- **12.40.070 Fee.**
12.40.080 Interpretation.

12.40.090 Enforcement.

12.40.010 Definitions.

(1) “City property” herein means all City real property, including but not limited to recreational trails, City road rights-of-way and dedicated open space.

(2) “Special event permit” means a permit for the use of City property issued pursuant to this chapter.

(3) “Custodial Departments” means those City Departments whose function it is to manage and control City use of said rights-of-way or other City property. (Ord. 20-07 § 11; Ord. 38-02 § 2 (12.08.010))

12.40.020 Permit requirement.

(1) Special event permits shall be required for any use of City property except uses relating to utility permits or relating to City rights-of-way use or construction permits.

(2) Upon receipt of an application for a special event permit upon City property, the Community Development Department shall determine whether the proposed use is upon City-owned property.

(3) The Community Development Department shall forward the application to all City Departments for review.

(4) The City Departments shall review the application and forward their recommendation whether the permit shall be issued. If a Department recommends denial, the Community Development Department shall deny the permit.

(5) If there is no Department with jurisdiction over the City property, the Community Development Department shall evaluate the feasibility of the proposed use, its impact on other uses of the City property and its impact on public health and safety. Based on this evaluation, the Community Development Department shall determine whether the permit should be issued.

(6) In all cases, the Community Development Department shall develop recommendations on sensitive area issues and the Department shall be responsible for assuring that any application meets the requirements of the sensitive areas code set out in Covington Municipal Code and the administrative rules promulgated thereunder before the permit is issued. (Amended at request of department 2/08; Ord. 20-07 § 12; Ord. 38-02 § 2 (12.08.020))

12.40.030 Inspection fee.

Repealed by Ord. 20-07. (Ord. 38-02 § 2 (12.08.025))

12.40.040 Permit issuance.
(1) Upon filing of a complete application, necessary approval of said application and the payment of the administrative fee and posting of any required bond, the Community Development Department may issue a permit authorizing the special event use of City property by the permittee.

(2) The permit may require restoration of the City property to standards prescribed by the City in view of the nature and duration of the special event. In addition, conditions may be set by the Community Development Department to assure compliance of the permit with City policies, ordinances and other applicable laws and regulations.

(3) The permit applicant may be required to post a performance bond, consistent with the provisions of CMC Title 14, in an amount which will:

(a) Guarantee the special event will be in compliance with standards and conditions prescribed by the Public Works and Community Development Departments;

(b) Guarantee restoration of the City property to a condition consistent with the special event permit and the City’s own use of its property. (Amended at request of department 2/08; Ord. 20-07 § 14; Ord. 38-02 § 2 (12.08.030))

12.40.050 Liability.

The permit applicant shall be solely responsible for the adequate operation and maintenance of any improvements constructed by the permittee to the City property and shall assume liability for all injuries to persons or property as the result of activities pursuant to a special event permit. (Ord. 20-07 § 15; Ord. 38-02 § 2 (12.08.040))

12.40.060 Additional requirements.

(1) Survey. When considered necessary by the Community Development Department to adequately determine the limits of the City property, the permit applicant shall cause the City property to be surveyed by a licensed land surveyor. Such survey shall be recorded in accordance with the Survey Recording Act. The cost of such survey shall be paid by the permit applicant.

(2) Dedication. A permit applicant may be required to deed additional right-of-way across property under his authority when necessary to fulfill any City policy, ordinance or laws. (Amended at request of department 2/08; Ord. 38-02 § 2 (12.08.050))

12.40.070 Fee.

(1) An applicant shall pay a nonrefundable application fee, as set forth in the current fee resolution, to recover the cost of processing the application. The Community Development Director shall have the authority to waive a permit fee when the waiver is in the best interest of the public health, safety, and welfare.

(2) The Community Development Department shall have the authority to charge an annual fee for uses of City property when determined by the Director to be appropriate considering the duration of the special event.
(3) The Community Development Department shall have the authority to require applicants to reimburse the City of Covington for all expenses to be incurred by the City of Covington as a result of issuance of a special event permit. Payment for such expenses shall be made at the time of permit issuance. (Amended at request of department 2/08; Ord. 20-07 § 16; Ord. 38-02 § 2 (12.08.060))

**12.40.080 Interpretation.**

Permits issued pursuant to this chapter shall not be construed to convey any vested right of ownership interest in any City property. (Ord. 38-02 § 2 (12.08.070))

**12.40.090 Enforcement.**

The Director of Community Development is authorized to enforce the provisions of this chapter. (Amended at request of department 2/08; Ord. 38-02 § 2 (12.08.080))
SUBJECT: RECEIVE TESTIMONY FROM THE PUBLIC AND CONSIDER AN ORDINANCE ESTABLISHING A NEW TITLE 19 CMC—IMPACT FEES, INCLUDING THE ADDITION OF AN IMPACT FEE DEFERRAL PROGRAM, AND CONSIDER AN AMENDMENT TO THE CITY’S FEE RESOLUTION TO INCLUDE THE COLLECTION OF AN ADMINISTRATIVE FEE FOR THE SAME

RECOMMENDED BY: Richard Hart, Director of Community Development

ATTACHMENT(S):
1. Blue Sheet for July 26, 2016, agenda item on impact fee deferral program
2. Proposed Ordinance establishing a new Title 19 CMC—Impact Fees
3. Proposed Resolution establishing an administrative fee for Impact Fee Deferral Program

PREPARED BY: Salina Lyons, Principal Planner
Kelly Thompson, Senior Permit Center Coordinator

EXPLANATION:

A. Impact Fee Deferral Program
At the July 26, 2016, regular council meeting, community development staff provided the council an overview of the new impact fee deferral program that the city is required by state law to adopt by September 1, 2016 (ESB 5923). (Attachment 1) In brief, the new state law requires the city to adopt an impact fee deferral system for the collection of impact fees for new single-family (detached and attached) residential construction. At the same regular council meeting, the council directed staff to draft the impact fee deferral ordinance to allow impact fee payment deferrals until the time of final inspection/issuance of the certificate of occupancy and to cap the amount of impact fee payment deferrals to the state minimum of twenty (20) annual deferrals per applicant.

B. New Title 19—Impact Fees
Also as previously presented by city staff, as part of the process of drafting new code provisions for the above required impact fee deferral program, city staff took the opportunity to reorganize all existing impact fee code provisions into a new Title 19—Impact Fees. (Currently, transportation impact fees are included in chapter 12.105 CMC and school impact fees are included in chapter 18.120 CMC.)

The attached proposed ordinance (Attachment 2), creates the new Title 19—Impact Fees. As noted, Title 19 represents a restructuring and reorganization of the city’s existing impact fee provisions, and includes the following code changes and updates (generally):
• New impact fee deferral program.

• Caps waivers of impact fees for low-income housing to eighty percent (80%) of the impact fees assessed for that project.
  o State statutes allow for up to an 80% waiver of impact fees for low-income housing developments without requiring the waived impact fees to be matched by the city from funds other than the impact fee funds. Any waiver amount above 80% would require the city to pay the additional amount waived above 80%.

• Clarifies that impact fees are assessed for a change of use if that change of use impacts public facilities.

• Inclusion of additional building permit types as exceptions to the collection of impact fees (i.e. building permits that do not affect or have an impact on public facilities, such as fences, decks, etc.).

• Numerous housekeeping edits to update the existing code language for clarity and accuracy.

ALTERNATIVES:
1. Recommend amendments to the proposed ordinance.
2. Return the issue to city staff for further study and analysis.

State law requires the city to adopt an impact fee deferral program by September 1, 2016. As the second council meeting in August is cancelled, council must, at a minimum, take action on adopting the impact fee deferral program. As noted, the council may alter the select policy decisions local governments may exercise regarding the new impact fee deferral program (i.e. the timing of collection of payment and the number of allowed deferrals per applicant per year); however, state law closely prescribes the remaining impact fee code provisions.

FISCAL IMPACT:
The implementation of the impact fee deferral program will cause a delay in the city’s collection of transportation and school impact fees. Accordingly, staff anticipates a corresponding delay in the availability of those same funds for application towards the city’s capital facilities projects.

The city may collect reasonable administrative fees to cover the costs of implementing the impact fee deferral program. Staff is proposing that the council adopt a non-refundable administrative fee of $143 for each Impact Fee Deferral Request. ($143 is the current billable rate for 1 hour of community development staff time.) Staff will include this new administrative fee into the next fee resolution update, and it will be subject to future increases as set forth by the council. The applicant will responsible for all recording costs associated with the liens and the release of lien forms required by the impact fee deferral program.
The deferral of impact fees does not preclude the developer from paying administrative fees for the collection and processing of payment of impact fees, generally, as currently set forth in the fee resolution. The current administrative fee is $70 per impact fee assessed.

CITY COUNCIL ACTION:  X Ordinance ___ Resolution  X Motion ___ Other

Council member ____________ moves, Council member _________________ seconds, to pass an Ordinance, in substantial form as presented, to repeal Chapter 12.110 CMC and Chapter 18.120 CMC and replace with a new Title 19 CMC—Impact Fees, which includes adoption of a new impact fee deferral program as required pursuant to ESB 5923.

Council member ____________ moves, Council member _________________ seconds, to adopt an amendment to Resolution No. 15-12, in substantial form as that presented, to include a non-refundable administrative fee of $143.00 to be collected for each Impact Fee Deferral Request.

REVIEWED BY:  City Manager; Community Development Director, Finance Director; City Attorney.
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, 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. 38-02 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 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:
(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.

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SIGNTURES TO APPEAR ON THE NEXT PAGE]
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:  
EFFECTIVE:

ATTESTED:

_________________________
Sharon Scott
City Clerk

APPROVED AS TO FORM ONLY:

_________________________
Sara Springer
City Attorney
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.
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) “Feepayer” is a person, corporation, partnership, an incorporated association, or any other similar
entity, or department or bureau of any governmental entity or municipal corporation
commencing a development activity which creates the demand for additional system
improvements and which requires the issuance of a permit for a given development activity.
“Feepayer” 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.
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.
19.20.040  Imposition of impact fees.
(1) The City shall collect applicable impact fees adopted under this title from any feepayer 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.XXX 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.XXX 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 feepayer in accordance with this section.

19.20.050  Fee calculations; payment.
(5) 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.

(6) 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.

(7) 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.

(8) 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

(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.
applied, except for as provided in CMC 19.20.XXX.

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 shall be subject to the appeals procedures set forth in CMC 14.30.XXX.
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 pay to the City the fees necessary 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.

(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 feepayer intending to develop low-income housing projects developed or owned by public housing agencies, or private nonprofit housing feepayers, 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 feepayer 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 feepayer may request that a credit or credits for the value of system improvements, including dedications of land, improvements, and/or construction provided by the feepayer, 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 feepayer 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 the feepayer disagrees with the Director’s valuation of land, improvements, or construction provided under subsection (2) of this section, the feepayer may submit a valuation for the Director’s consideration.

(a) The appraiser (or review engineer) used by the feepayer 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 feepayer shall be subject to review by the Director and, at the Director’s discretion, an independent review appraiser/engineer selected by the Director. The feepayer 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 feepayer’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 feepayer will not be entitled to reimbursement of the difference.

(c) If credit is awarded, the Director shall provide the feepayer 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 feepayer 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 feepayer 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 feepayer 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 CMC 14.30.XXX.

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 feepayer may also request that assessed impact fees on the proposed development be calculated according to an independent fee calculation study submitted by the feepayer and approved by the Department as provided in this section. A feepayer 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 feepayer 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, or billed by the hour at the current hourly rate for Department staff time if no corresponding fee is included in the 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 feepayer, 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 feepayer 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 feepayer in writing.

(5) Determinations made by the Director pursuant to this section shall be subject to the appeals procedures set forth in CMC 14.30.XXX.

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 feepayer demonstrates that the impact fee assessment was incorrectly calculated; or

(b) Unusual circumstances identified by the feepayer demonstrate that if the standard impact fee were applied it would unfair or unjust.

(2) Request for adjustment.

(a) Any request by a feepayer for an adjustment pursuant to this section shall be provided to the Department in writing. The feepayer shall pay an administrative fee as set forth in the City’s current fee schedule for an individually determined impact fee.

(b) A feepayer 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 feepayer.

(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 feepayer, 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 feepayer 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 feepayer proposes a trip generation rate other than that set forth in the ITE Trip Generation User’s Guide, latest edition, the feepayer 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 CMC 14.30.XXX.

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 feepayer 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 CMC 14.30.XXX.

(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.
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.

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 feepayer, 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 feepayer 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.
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.

(a) Any change of use that does not increase the scope or nature of the residential use of the
(b) 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.

(c) 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.

(2) 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 CMC 14.30.XXX.

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 feepayer 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.
RESOLUTION NO. 15-2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, AMENDING RESOLUTION NO. 15-12 TO ADD AN ADMINISTRATIVE FEE OF $143.00 FOR IMPACT FEE DEFERRAL REQUESTS.

WHEREAS, certain sections of the Covington Municipal Code (CMC) authorize the City of Covington (the “City”) to charge an administrative fee for services; and

WHEREAS, the city council passed Ordinance No.16-2016 at their regular council meeting on August 9, 2016, establishing a new Title 19 CMC, Impact Fees, including a new impact fee deferral program required by state law; and

WHEREAS, Section 19.20.050 CMC authorizes the City to collect an administrative fee for impact fee deferral requests pursuant to the City’s current fee resolution; and

WHEREAS, the city council desires to amend the City’s current 2016 fee resolution to add a non-refundable administrative fee of $143.00 (the current equivalent of one hour of community development staff time) for impact fee deferral requests;

NOW THEREFORE, be it resolved by the City Council of the City of Covington as follows:

Section 1. Fee Resolution Amended; Adoption of Fee. Resolution No. 15-12, adopting the City’s 2016 fee schedule, is hereby amended to add a new, non-refundable administrative fee of $143.00 for impact fee deferral requests. All other provisions of Resolution 15-12 shall remain unchanged.

Section 2. Fee Waiver. The city manager shall have the right to waive all or part of a fee assessed by the City if deemed in the best interest of the City.

ADOPTED by the City Council of the City of Covington, Washington, in open and regular session this 9th day of August, 2016, and signed in authentication of its adoption.

____________________________________
Mayor, Jeff Wagner

ATTESTED:

Sharon Scott, City Clerk

APPROVED AS TO FORM ONLY:

Sara Springer, City Attorney