CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

APPROVAL OF CONSENT AGENDA

C1. Minutes from July 6, 2017

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 your comments taking longer than the allotted time, you are encouraged to contact the Planning Department ten days in advance of the meeting so your item may be placed on the next available agenda.

UNFINISHED BUSINESS – No action Required

1. Discussion of Sign Code with Exhibits A, B, & C from Sam Pace, Realtors Association

PUBLIC HEARING – None

NEW BUSINESS – No Action Required

2. Discussion of Park Impact Fees

ATTENDANCE VOTE

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

COMMENTS AND COMMUNICATIONS OF STAFF AND COMMISSIONERS

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
CITY OF COVINGTON
Planning Commission Minutes

July 6, 2017
City Hall Council Chambers

CALL TO ORDER
The regular meeting of the Planning Commission was called to order at 6:50
p.m. by Vice Chair Dimmett.

MEMBERS PRESENT
Chele Dimmett, Jennifer Gilbert-Smith, Jonathan Ingram, and Paul Max

MEMBERS ABSENT
Bill Judd, Jim Langehough, and Alex White

STAFF PRESENT
Richard Hart, Community Development Director
Salina Lyons, Principal Planner
Larry Rabel, Division Chief, Assessment and Planning, Puget Sound Regional Fire
Authority
Kelly Thompson, Planning Commission Secretary

APPROVAL OF MINUTES AND AGENDA
➢ C1. Commissioner Max moved and Commissioner Gilbert-Smith
seconded to approve the June 15, 2017 minutes and meeting
agenda for July 6, 2017. Motion carried 4-0.

CITIZEN COMMENTS
Sam Pace, Seattle-King County Realtors – provided some material for
consideration related to the proposed sign code changes. His material will be
added to the agenda for the regularly scheduled Planning Commission meeting

UNFINISHED BUSINESS – Postponed until next meeting.
  1. Discussion of Sign Code

PUBLIC HEARING
  2. Fire Impact Fee Ordinance Amendments
Principal Planner, Salina Lyons introduced the Division Chief of Assessment and
Planning for Puget Sound Regional Fire Authority (PSRFA), Larry Rabel.
Division Chief Rabel provided a brief overview of the role of PSRFA. They provide
fire and emergency services to the City of Covington. The types of calls and the
demand for service continue to grow. Response times have increased, in part,
due to road congestion. Division Chief Rabel reviewed some of the studies and
statistics critical to response time. There is no capacity for growth in the current system. He reviewed PSRFA’s needs for additional resources as outlined in their Capital Improvement Update.

Commissioner Ingram asked about the maintenance and replacement of equipment. The collection of impact fees can only be used for infrastructure. Taxpayers help fund equipment maintenance and replacement.

Vice Chair Dimmett opened the Public Hearing.

Sam Pace, Seattle-King County Realtors - Impact fees are collected for off-site impacts related to development. Impact fees can be used to keep the service from degrading further. The PSRFA receives property tax, but they have not been taxing the maximum amount allowed. Mr. Pace thanked the Planning Commission for their service.

Commissioner Gilbert-Smith asked for the fee breakdown for single family and multi-family dwelling units. Ms. Lyons shared the fee breakdown from the staff memo.

Vice Chair Dimmett closed the Public Hearing.

- Commissioner Max moved and Commissioner Ingram seconded to recommend the City Council adopt the Puget Sound Regional Fire Authority’s 6-year Capital Improvement Update (2016-2021), as amended and referenced in the City’s Comprehensive Plan and a new section, Chapter 19.50 Fire Impact Fees and other associated amendments to Titles 18 and 19 related to the implementation of a fire impact fee collection program. Motion carried 4-0.

Commissioner Ingram asked about the requirement for fire sprinklers in new commercial buildings. Division Chief Rabel responded that fire sprinklers have been required to offset the deficiencies in the level of service.

NEW BUSINESS – Postponed until next meeting.

3. Discussion of Park Impact Fees

ATTENDANCE VOTE

- Commissioner Gilbert-Smith moved and Commissioner Max seconded to approve the absence of Chair Judd, Commissioner Langehough, and Commissioner White. The motion carried 4-0.
PUBLIC COMMENTS - None

COMMENTS AND COMMUNICATIONS FROM STAFF AND COMMISSIONERS
Ms. Lyons thanked the Planning Commission for their efforts.

ADJOURN
The July 6, 2017, Planning Commission Meeting adjourned at 7:26 p.m.

Respectfully submitted,

_____________________________________________
Kelly Thompson, Planning Commission Secretary
To: Planning Commission

From: Richard Hart, Community Development Director  
Brian Bykonen, Associate Planner

CC: Salina Lyons, Principal Planner  
Kathy Hardy, City Attorney

Date: July 20, 2017

Re: Discussion of Sign Code Strategies

This item was originally on the July 6, 2017 planning commission agenda but was postponed to the July 20, 2017 meeting because of time constraints. Previously, at the June 15, 2017 planning commission meeting and open house, the planning commission had a robust discussion of issues relating to how the interim sign code addresses temporary commercial message signs in the public right-of-way. Specifically, the major issue raised was how the code regulates signs for residential properties actively for sale or lease.

The interim sign code, adopted by the council in November 2016, prohibits all commercial message signs from being in the public right-of-way, except one commercial sign is allowed in the planter strip/public ROW directly adjacent to a residential property listed for sale or lease. This provision includes real estate signs, signs advertising a restaurant, retail, or professional services such as attorneys, accountants, or hair salons.

On the other hand, the interim code allows all noncommercial message signs, such as signs by political candidates and organizations, religious institutions, philosophical viewpoints, public events, or non-profit agencies to be placed in the public right-of-way, subject to limited sign requirements and safety standards.

The interim sign code was written with the intention to be highly defensible based on the US Supreme Court’s ruling in Reed v. Gilbert and provides the greatest assurance that it would not be subject to a valid legal challenge. The more content neutral the sign code is, the less risk the city has of being challenged.

Further, the interim code is based upon the council’s policy direction discussed in detail during various city council meetings in 2015 and 2016. The council had a unified desire to reduce sign clutter by removing commercial signs from public right-of-way.
At the June 15, 2017 planning commission meeting, the staff indicated they would provide information on what cities have adopted a new sign code post Reed v. Gilbert, and how those cities address commercial signs in the right of way. The Commission indicated that would be very helpful. Staff obtained information from Municipal Research Service Center (MRSC) and other cities that have adopted new sign regulations as follows.

Five cities have adopted new sign regulations in response to Reed v. Gilbert. They are Bremerton, Edmonds, Kirkland, Rainier, and Sammamish. Three of the five have developed code language to allow off-premise commercial message signs in the right-of-way. These cities specifically mention real estate open house signs as permitted for a property actively for sale or lease. Two cities prohibit any signs within the public right-of-way including commercial real estate signs. One allows them off premise but on private property. One city also exempts other portable temporary signs posted under seven (7) days from any regulation. Most cities place qualifying restrictions relating to time, place, and manner when allowing such commercial message signs in the right-of-way. These types of code provisions may make a sign code less defensible, and potentially more likely to receive a legal challenge. However, the risk is only assumed until challenged, but often a city can be held liable for monetary damages.

As the planning commission continues discussing a permanent sign code, they certainly have the ability to request staff to make changes in the proposed final sign code that allows, in some fashion, commercial message signs in the public right-of-way and off premise, which would include signs for properties actively listed for sale or lease. This could be achieved in a variety of ways, with or without certain restrictions on the number, size, and duration of placement of the sign. One example of an approach might be to allow such commercial message signs to be placed one or two hours before the event and removed one or two hours after the event. Further, there might be a limit of three such signs, one placed on the property for sale or lease and two placed off the premises but within ½ mile of the property for sale.

At the July 6, 2017 planning commission meeting Sam Pace, Housing Specialist and Attorney with the Seattle, King County Realtors, appeared under the citizen comments section and provided the commission with three documents relating to regulation of real estate signs by local governments. Staff has included those three items in the packet for your review.

Staff would appreciate further guidance on this issue so we can make changes in the draft permanent sign code and prepare for a public hearing currently scheduled for August 17, 2017.
TO: Covington Planning Commission
FROM: Sam Pace, Housing Specialist
RE: Covington Sign Code
Date: July 6, 2017

Dear Chair Judd, Vice Chair Dimmett and Commissioners,

My name is Sam Pace and I represent the 6,300+ members of the Seattle King County Association of REALTORS®, and the 2,200 member offices and 26,000+ real estate professionals in the Northwest Multiple Listing Service (NWMLS).

I have been advised the Commission will only have a quorum available at tonight's meeting for approximately 30 minutes, and that the Commission needs to address an agenda item involving impact fees while a quorum is present.

So, I will wait until the meeting on July 20th to provide substantive verbal testimony on the subject of potential sign code amendments. I expect additional members of the real estate brokerage community will also desire to provide verbal testimony at that time.

In the meantime, I am writing to provide you with written materials that we submitted to the City some time ago regarding the continuing Constitutional protections for real estate signs, notwithstanding the decision two years ago (in 2015) in the case of Reed v. Town of Gilbert.

If these materials have already been provided to the current members of the commission, I apologize for that duplication of materials.

If not, I want to provide these materials to you, both to ensure that they are included in the City's record, to make sure you understand the basis for our deepest concerns about suggestions for potential sign code amendments that could have the effect of prohibiting safely-placed Open House Signs in the right-of-way, and to highlight the solution we recommend at the bottom of this letter.

Before proceeding further, it might be helpful if I gave you just a small handful of some of the many considerations it will be critically important to keep in mind as you consider proposals that could affect real estate signs (these are addressed in greater detail both below and in the attached materials):

- Real Estate Open House Signs are commercial signs. The Reed case did not deal with commercial signs (it dealt with religious signs). In fact, subsequent to the decision in Reed multiple federal courts across the country have held that the Reed case does not apply to commercial signage.

- The United States Supreme Court has acknowledged that real estate signs are special because they involve one of life's critically important decisions about where a family will live.

- Moreover, both the Federal Trade Commission and the United States Supreme Court have acknowledged that real estate signs play a critically important role in preventing unlawful discrimination in housing. Why? Because any person who sees the sign can know the house is available, regardless of their "protected class" status. This is important for the City because Covington is subject to the 1988 "Federal Fair Housing" Amendments to the Federal "Civil Rights Act."

- Nothing in the Reed case overturned (or even addressed) the prior holdings by the United States Supreme Court that:
  - The alternatives to real estate signs are "Far from satisfactory"
  - The right-of-way is a "Quintessential" public forum
1. **Commercial speech:** The sign code invalidated in *Reed* covered “noncommercial” speech regarding a “Temporary Directional Sign” for church services. The majority opinion in *Reed* did not discuss its holding’s applicability to “commercial” speech, which is subject to a less strict standard of review under the U.S. Supreme Court’s decision in *Central Hudson Gas & Elec. Corp. v. Public Service Comm’n of N.Y.*, 447 U.S. 557 (1980).

The majority opinion in *Reed* never mentioned *Central Hudson* and therefore did not overrule it because of the doctrine that prior Supreme Court decisions should not be overruled by implication.

As of May 3, 2016, four federal cases had already held that *Reed* applies only to “non-commercial” speech, and does not apply to “commercial” sign regulations.

2. **Substantial (or Compelling) Government Interest:**

Under the Supreme Court’s decision in *Central Hudson*, a city’s content-based regulation of commercial speech is constitutional if it satisfies a four-part test:

1. The speech (a) must concern lawful activity, and (b) must not be false or misleading.

   *Note:* Selling a home, and advertising the home is for sale or rent, is a legal activity. Signs that correctly reflect the market status of the home are neither false nor misleading. Moreover, multiple listing rules typically prohibit false or misleading advertisements, as do state consumer protection laws, and state real estate broker licensing laws. In fact, in *Linmark Associates Inc. v. Township of Willingboro*, 431 U.S. 85, 96 n.10, the U.S. Supreme Court acknowledged real estate signs convey accurate information regarding matter of great importance to families and the greater community.

2. The regulation must serve a **substantial** governmental interest.

   *Notes:*
   - In *Collier v. City of Tacoma*, 121 Wash. 2d 737, 753-756, the Washington State Supreme Court held that rather than showing that a sign regulation advanced a **significant** government interest as under the federal constitution, Washington courts require that the restriction advance a **compelling** government interest. The interest must be more compelling than simply aesthetics and safety. Our State Supreme Court said:

   “We hold that time, place, and manner restrictions on speech that are viewpoint-neutral, but subject-matter based, are valid so long as they are narrowly tailored to serve a compelling state interest and leave open ample alternative channels of communication. This formulation of the standard of review comports with free speech jurisprudence under both article 1, section 5, of the Washington Constitution and the First Amendment.”

*Collier’s* holding seems consistent with *Reed*. Thus, any sign code regulation related to noncommercial speech that distinguishes by subject matter will face the same strict test under both the federal and state constitutions.

Even so, local governments can make a very strong case for retaining narrowly tailored content-based regulations for commercial real estate signs because (as detailed below, and in the attached legal analysis and accompanying information) real estate “open house” and “for sale/rent” signs effectively advance both a “significant” and “compelling” government interest.
• Non-discriminatory access to Housing is both a substantial and compelling government interest at the Federal level, as reflected in the Federal Fair Housing Act (amending the Federal Civil Rights Act of 1968), and as reflected in the existence of HUD, FHA, VA, FHFA, Fannie Mae, Freddie Mac, Federal Home Loan Bank, CFPB, USDA housing loan programs, Title II of the ADA, etc.

• Non-discriminatory access to Housing is both a substantial and compelling government interest at the State level in Washington, as reflected in the State’s Growth Management Act (RCW 36.70A) Goal 4 regarding the availability of housing affordable to all economic segments of the population of the state, the requirement for a “Housing Element” to be included in the Countywide Planning Policies and in the Comprehensive Plan for every jurisdiction engaged in land use planning under the GMA, the Housing Trust Fund, the WSHFC, the AHAB, licensing of real estate brokers, licensing of mortgage lenders, licensing of home inspectors, RCW 64.34 (Condominium Act), RCW 54.38 (Homeowners’ Association Act), RCW 64.32 (Horizontal Property Regimes Act), etc.

• Non-discriminatory access to Housing is both a substantial and compelling government interest at Local level as reflected in:
  
  ▪ Local government land use planning under the State’s Growth Management Act (RCW 36.70A) to accommodate the availability of housing affordable to all economic segments of the population; the inclusion of a “Housing Element” in local comprehensive plans; the establishment of formal housing targets in “Buildable Lands Program” counties (under RCW 36.70A.215), in PSRC counties, and in some other counties of the state;

  ▪ The establishment of local Housing Authorities

  ▪ Local government use of federal CDBG funds for housing-related purposes (which must be non-discriminatory under Section 109 of Title I of the Housing and Community Development Act of 1974)

  ▪ The adoption of local property tax-credit ordinances for affordable housing construction/preservation

  ▪ Local government programs and partnerships to address homelessness

  ▪ The importance of “open house” and “for sale” signs in facilitating an efficient real estate market in order to generate Real Estate Excise Tax (or REET) collections for local governments from the sale of privately-owned real property. The REET is equal to 0.5% of the entire sale price of the property in many areas of the state, and is a significant source of income to local government. It’s an especially important source of funding for the construction of basic infrastructure necessary to preserve and enhance the government’s tax base.

(3) The regulation must directly advance the asserted governmental interest;

Notes:
The U.S. Supreme Court in the Linmark case (at page 94) - and before that the Federal Trade Commission in a study entitled The Residential Real Estate Brokerage Industry - observed that the alternatives to real estate signs are “far from satisfactory.”
The significant and compelling government interests at the federal, state and local levels in ensuring non-discriminatory access to housing, and in promoting compliance with the Federal Fair Housing Act, are advanced in a vitally important and unique way because real estate signs make it substantially impossible to discriminate in marketing of homes: Any person looking for a home to purchase or rent can know that the property is for sale or rent, regardless of their race, religion, sex, sexual preference, marital status, family status or national origin.

(4) And, the regulation must be no more extensive than necessary to serve that interest.

Note: Municipal real estate sign code regulations for “open house” signs are typically narrowly drawn, and focus on time, place and manner restrictions such as allowing the signs only between the published hours of sunrise and sunset while the owner (or owner’s representative) is physically present at the property, limiting the size of the signs, and requiring safe placement of the signs so as not to impede vehicular or pedestrian travel, not block driveways, and prohibiting attachment of the signs to light poles, trees or other signs.

The Supreme Court’s 2015 decision in Reed v. Town of Gilbert did not overturn the Supreme Court’s prior decision in the Linmark case, where the Court also said (at page 97):

“The information on the real estate signs regarding properties offered for sale “pertains to sales activity in Willingboro, is of vital interest to Willingboro residents, since it may bear on one of the most important decisions they have a right to make: where to live and raise their families.” (Emphasis added)

Accordingly, we believe that by the Planning Commission and City Council incorporating...

(1) this cover letter, and
(2) the attached Sign Code White Paper, and
(3) the accompanying materials from Hebert Research

... into the City’s record with approval (especially as regards the substantial AND compelling city interests that are advanced by the City’s current – pre-Reed – real estate sign code provisions) the City will have both a strong legal basis, and a sufficient legal record, to support retention of the City’s existing sign code provisions regarding real estate signs, and that those provisions will not require modification as a result of the decision in Reed v. Town of Gilbert.

If you have any questions, please do not hesitate to let me know.

Sincerely,

Sam Pace

Sam Pace, JD, MBA, GRI, GCREP
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King County REALTOR® OF THE YEAR (1998)
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WHITE PAPER

The Impact of Reed v. City of Gilbert on Municipal Codes Impacting Real Estate Signs

Judith A. Endejan
Garvey Schubert Barer
June 2016
INTRODUCTION / EXECUTIVE SUMMARY

Municipalities generally impose sign regulations for two purposes. The first relates to time, place and manner restrictions which arise from non-communicative concerns, such as protecting public safety by controlling the use of public streets. These are generally allowed under the First Amendment as long as they meet certain criteria. The second common type of sign regulation arises out of communicative concerns because they differentiate based upon the type of message conveyed. These regulations divide regulations into categories or types for practical reasons (i.e., political, real estate, temporary). They were acceptable under the First Amendment as long as they were not based upon government disagreement with the viewpoint of the message, or some other impermissible government motive. Then, in 2015, the United States Supreme Court changed the rules of the game for municipal sign regulation and First Amendment jurisprudence in Reed v. Town of Gilbert. The Court found that sign regulations based on the message, or subject matter, are content-based under the First Amendment. A regulation is content-based if it “applies to particular speech because of the topic discussed or the idea or message expressed.” In plain English this means that a sign regulation is “content-based” if you have to read its message to determine which regulation applies. If that regulation is challenged under the First Amendment it must pass “strict scrutiny” the toughest legal standard, which few regulations can meet.

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1 The First Amendment prohibits the enactment of laws “abridging the freedom of speech.” U.S. Const., Amdt. 1. It is applicable to state action through the Fourteenth Amendment. They mean that no state authorized entity “has the power to restrict expression because of its message, its ideas, its subject matter, or its content.” Police Dept. of Chicago v. Mosley, 408 U.S. 92, 95 (1972).

2 “The government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open alternative channels for communication of the information.” Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989).


4 135 S.Ct. at 2227.

5 Judicial evaluations of First Amendment claims depend upon the standard of review for each type of speech. The Supreme Court has developed an array of tests applicable to different circumstances, with “strict scrutiny” as the most stringent test. As discussed in throughout this paper, commercial speech gets less protection so rules regulating it get less stringent review.
Prior to Reed, courts had looked for impermissible viewpoint disagreement to find content discrimination in a sign ordinance. Now content discrimination is possible simply because a sign code distinguishes based upon subject matter of the message or speech, irrespective of government motive.

Many municipalities’ sign ordinance do distinguish, or categorize, based upon the subject matter of the signs. For instance, many municipalities have specific ordinances for real estate signs including temporary A-Boards announcing “open houses” and “for sale” signs on property listed for sale. Theoretically, under Reed, such ordinances might be unconstitutional content-based regulation. Municipalities are exploring necessary sign ordinance revisions to satisfy Reed, which could have serious implications for the sign tools so vital for realtors, sellers and Federal Fair Housing in Washington.

Washington REALTORS® requested the law firm of Garvey Schubert Barer to prepare a white paper with multiple purposes:

1. Provide an analysis of Reed v. Gilbert and subsequent case law developments and pertinent Washington state law;
2. Identify issues impacting real estate signs flowing from Reed v. Gilbert;
3. Identify solutions to identified real estate sign issues.
   a. Analyze post-Reed options for municipal ordinances to retain content-based regulations for temporary real estate “open house” and “for sale” signs.
   b. Identify industry data and talking points that (together with the analysis of Reed v. Gilbert and subsequent case law developments and pertinent Washington state law) cities might reference with approval to assist in supporting the retention of content-based regulations for temporary real estate “open house” and “for sale” signs.

The goal of this paper is to provide local governments with a working knowledge of sign law in light of Reed v. Gilbert, and to understand the unique nature of real estate signage and the importance of signage to real estate transactions and homeowners that warrant special considerations when sign ordinance revisions are considered.

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LEGAL BACKGROUND

I. REED v. GILBERT: SIGN RULES BASED ON SIGN CONTENT ARE SUBJECT TO STRICT SCRUTINY AND PROBABLY UNCONSTITUTIONAL

Pastor Reed sued the Town of Gilbert, Arizona, for repeated citations for violation of Gilbert’s sign code, which required permits for outdoor signs with 23 exceptions. The exceptions categorized signs by type. The three at issue in Reed were “Ideological Signs,” “Political Signs,” and “Temporary Directional Signs,” with less favorable treatment for each category in descending order.7

Reed posted “temporary directional signs” each Saturday to tell the public about the time and location for his church’s Sunday services, because his church had no permanent location. “Temporary directional signs” could be displayed for no more than twelve hours before the “qualifying event” – the church service – and up to one hour afterwards.

The other two categories of exempt regulations faced far fewer restrictions as to size, location, and duration.

When Gilbert cited Reed for sign code violations for his “temporary directional signs” because they remained displayed beyond the allowable time period, he sued for violating his First and Fourteenth Amendment rights.

Justice Clarence Thomas wrote the majority opinion invalidating the Gilbert sign code. He wrote that Gilbert’s sign code was content-based on its face because each category contains a different message with different restrictions. Justice Thomas emphasized that the first step of the content neutrality analysis is to test the regulation for facial content neutrality—the government’s justification or purpose in enacting a sign regulation is irrelevant. If a regulation does not expressly draw distinctions based on a sign’s communicative content then courts go to Step Two.

This analyzes whether the regulation “cannot be ‘justified without reference to the content of the

7 A “Temporary Directional Sign” was a sign that directs the public to a “qualifying event.” “Political Signs” were temporary signs “designed to influence the outcome of an election called by a public body.” “Ideological Signs” communicate “a message or ideas for noncommercial purposes that is not a Construction Sign, Directional Sign, Temporary Directional Sign Relating to a Qualifying Event, Political Sign, Garage Sale Sign, or a sign owned or required by a governmental agency.” 135 S. Ct. at 2221.
regulated speech,” or … [was] adopted by the government ‘because of disagreement with the message [the speech] conveys.’” Thus, the sign ordinance must be facially content neutral and content neutral in purpose to avoid strict scrutiny. If it fails either criteria the ordinance is subject to strict scrutiny under the First Amendment. This means that the government must justify the regulation by proving that it “further[ed] a compelling interest and [wa]s narrowly tailored to achieve that interest.” The Gilbert ordinance failed this test because it was not sufficiently tailored to the town’s regulatory interests of traffic safety and aesthetics because the code placed different limits on sign types capable of having the same effect on traffic safety and community aesthetics.

Three concurring opinions were filed. Justice Alito (and Kennedy and Sotomayor) agreed with the majority. However, in an attempt to assure municipalities that they were not powerless to regulate signs, Justice Alito listed examples of content – neutral regulations that could pass constitutional muster, in his view:

- Rules regulating the size of signs. These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.
- Rules regulating the locations in which signs may be placed. These rules may distinguish between free-standing signs and those attached to buildings.
- Rules distinguishing between lighted and unlighted signs.
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
- Rules that distinguish between the placement of signs on private and public property.
- Rules distinguishing between the placement of signs on commercial and residential property.
- Rules distinguishing between on-premises and off-premises signs.\(^9\)

\(^8\) 135 S.Ct. at 2227 (quoting Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989)).
\(^9\) 135 S.Ct. at 2231.
\(^10\) While Justice Alito views on-premise and off-premise rules to be content-neutral because they are based on location, one federal judge disagreed in Thomas v. Schroer, __ F.Supp.3d __, 2015 WL 5231911 (W.D. Tenn. 2015). In this post-Reed case the court rejected Justice Alito’s views because an on-premise/off-premise distinction
• Rules restricting the total number of signs allowed per mile of roadway.

• Rules imposing time restrictions on signs advertising a one-time event.\textsuperscript{11} Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed.

Justice Kagan in her concurrence (joined by Breyer and Ginsberg) noted, however, that rules distinguishing between on-premise and off-premise signs or those that advertise a one-time event are facially content-based and would face strict scrutiny under the majority’s strict analysis. Justice Breyer’s separate concurrence shared Justice Kagan’s view—that strict scrutiny may not always be appropriate for all content-based regulations. Justice Kagan said there was really no need to apply strict scrutiny to the Gilbert ordinances because they couldn’t pass “immediate scrutiny, or even the laugh test.”\textsuperscript{12} Both Justices Kagan and Breyer said the proper focus of analysis for content-based regulation should be its impact on well-defined First Amendment interests. Only in the case of a substantial impact should strict scrutiny apply.

In sum, in Reed six justices would not have gone as far as Justice Thomas in the majority opinion in requiring strict scrutiny for every content-based sign regulation, even though all agreed that the Gilbert ordinances violated the First Amendment. Justice Thomas posited that his mechanical two-step content discrimination analysis need not prevent local sign regulation because “Not ‘all distinctions’ are subject to strict scrutiny, only content-based ones are.”\textsuperscript{13} He noted that governments may even entirely forbid the posting of signs “so long as it does so in an evenhanded, content-neutral manner.”\textsuperscript{14} He concluded by speculating that even content-based regulations that are narrowly tailored to a government need might well survive strict scrutiny, such as traffic warning signs. Nonetheless, the majority opinion provides cold comfort for municipalities who reasonably, and legitimately, have regulated by type of sign in the past.

\textsuperscript{11} The majority opinion in footnote 4 rejects Justice Alito’s inclusion of a one-time event as an example of a content-neutral regulation. According to Justice Thomas, it is not, and one-time event sign rules are subject to “strict scrutiny.”

\textsuperscript{12} Id. at 2239.

\textsuperscript{13} Id. at 2232.

\textsuperscript{14} Id. Reed did not overrule Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789 (1984) (upholding content-neutral ban against posting signs on public property).
Reed's bright line test for content discrimination may not remain the controlling law forever, given the opinions of six justices who might limit Reed in future sign cases if the sign ordinances have the right attributes, such as a negligible impact on core First Amendment values. These include protection of a free and open marketplace of ideas and protecting against official suppression of ideas.15

Reed also left many questions unanswered, which impact municipal sign regulations. Of most concern to realtors is Reed's impact on ordinances that govern placement of temporary real estate signs. Municipal ordinances also could be challenged under the Washington State Constitution. The Washington State Constitution, Article 1 § 5, provides that "[e]very person may freely speak, write and publish on all subjects, being responsible for the abuse of that right." The Washington State Supreme Court has held that strict scrutiny applies to all time, manner and place restrictions on speech under the Washington Constitution. Collier v. City of Tacoma, 121 Wash.2d 737, 747, 854 P.2d 1046. Rather than showing that a restriction advanced a significant government interest as under the federal constitution, Washington courts require that the restriction advance a compelling government interest. The government interest in aesthetics and safety does not rise to a compelling state interest. Id. at 754-56, 854 P.2d 1046.

In Collier, the plaintiff challenged a Tacoma ordinance that barred political signs from placement in yards and parking strips more than 60 days prior to an election. The Washington Supreme Court held that this ordinance, while viewpoint neutral, was based upon subject matter.

We hold that time, place, and manner restrictions on speech that are viewpoint-neutral, but subject-matter based, are valid so long as they are narrowly tailored to serve a compelling state interest and leave open ample alternative channels of communication. This formulation of the standard of review comports with free speech jurisprudence under both article 1, section 5, of the Washington Constitution and the First Amendment.

Id. at 753. Collier’s holding seems consistent with Reed. Thus, any sign code related to noncommercial speech that distinguishes by subject matter will face the same strict test under both the federal and state constitutions.

II. POST-REED ISSUES AND POST-REED CASE ANALYSIS

A. Outstanding Issues Realtors and Property Owners Care About.

REALTORS® and property owners care about being able to post “open house” signs along streets and in public rights-of-way. REALTORS® and their clients care about being able to post “For Sale” or “For Lease” signs on the properties to be sold or leased. After Reed, municipalities could revise or even repeal sign codes that apply to real estate signs because Reed leaves open the following questions:

- Does Reed apply to commercial sign regulation, including real estate signs?
- Can municipalities distinguish between on-premises and off-premises signage without facing strict scrutiny?
- Can municipalities ban all signage, including real estate signage?
- Can temporary sign codes that cover real estate signage be enacted that could survive strict scrutiny?
- Would separate ordinances for real estate signage need to pass a strict scrutiny review?

Clearly, the bottom line is to provide a path for municipalities to allow real estate signage, even if they impose different regulations for other categories of signage.

The following analyzes these issues, but there is no question that absolute answers may only be determined by subsequent case law and, ultimately, the Supreme Court.

B. Does Reed v. Gilbert Apply to Commercial Sign Regulation?

The sign code invalidated in Reed covered noncommercial speech regarding a “Temporary Directional Sign” for church services. The majority opinion did not discuss its holding’s applicability to commercial speech, which is subject to a less strict standard of review under Central Hudson Gas & Elec. Corp. v. Public Service Comm’n of N.Y.16 Real estate signs

by their very nature reflect commercial activity, so whether Reed applies to commercial speech may govern the type of regulations municipalities may adopt. Commercial speech is afforded “somewhat less extensive” protection than is afforded noncommercial speech and municipalities have an easier time justifying commercial regulations.\textsuperscript{17}

As of this writing, four federal cases\textsuperscript{18} have held that Reed applies only to noncommercial speech and does not apply to commercial sign regulations. To be constitutional, any government restriction on commercial speech must satisfy the four-part test announced in Central Hudson: To be protected, (1) the speech (a) must concern lawful activity and (b) must not be false or misleading. If the speech is protected, then the regulation must: (2) serve a substantial governmental interest; (3) directly advance the asserted governmental interest; and (4) be no more extensive than necessary to serve that interest.\textsuperscript{19} The governmental interest need only be “substantial” – not “compelling” – as required by the “strict scrutiny” test. Several post-Reed cases have upheld regulations on the basis that they served a substantial governmental interest.

In Citizens for Free Speech v. County of Alameda,\textsuperscript{20} the court upheld an ordinance banning all offsite commercial billboards. The purpose of the ban is to “advance the County’s interests in community aesthetics by the control of visual clutter, pedestrian and driver safety, and the protection of property values.”\textsuperscript{21} The court found that the ordinance advanced those interests and goes no further than necessary to do so. The court explained “[w]hat is required is a reasonable fit between the ends and the means, a fit that employs not necessarily the least restrictive means, but … a means narrowly\textsuperscript{22} tailored to achieve the desired objective.”

\begin{footnotes}
\item[19] Id., 447 U.S. at 566.
\item[20] 114 F.Supp.3d 952 (N.D. Cal. 2015).
\item[21] Id. at 969.
\item[22] Id. at 971. (citations omitted)
\end{footnotes}
In *Timilsina v. West Valley City*, the court applied the *Central Hudson* intermediate scrutiny test to uphold an ordinance prohibiting temporary commercial A-frame signs in certain areas. The ordinance advanced the government's goals of traffic safety and aesthetics. It prohibited no more speech than necessary to advance those purposes because the ordinance banned only a specific type of advertising – A-frame – when other means of advertising exist.

Note, however, that the United States Court of Appeals for the Ninth Circuit struck down a somewhat similar ordinance banning a commercial sandwich board sign in *Ballen v. City of Redmond*. Because the ordinance allowed other portable signs, including real estate signs, which posed the same threats to “vehicular and pedestrian safety and community aesthetics,” the ordinance failed the third and fourth elements of the *Central Hudson* test. The ordinance could have used more consistent, less restrictive means to advance its goals. The key reason for invalidation appeared to be the inconsistent application of a ban for one type of sign, while allowing another type that could be equally as disruptive to the City’s goals.

Because *Reed* has not yet been applied in a commercial speech case commercial ordinances should still be reviewed under the intermediate *Central Hudson* test. The majority opinion in *Reed* never mentioned *Central Hudson* and therefore did not overrule it because of the doctrine that prior Supreme Court decisions should not be overruled by implication. One federal court in a post-*Reed* decision, *Peterson v. Village of Downers Grove*, noted:

> But the majority never specifically addressed commercial speech in *Reed*, which is not surprising, because the Supreme Court did not need to address that issue: all of the restrictions at issue in *Reed* applied only to non-commercial speech. What is important for this case is that, absent an express overruling of *Central Hudson*, which most certainly did not happen in *Reed*, lower courts must consider *Central Hudson* and its progeny—which are

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23 121 F.Supp.3d 1205 (D. Utah 2015).
24 466 F.3d 736 (9th Cir. 2006). This case is known as the “Blazing Bagels” case because the plaintiff Ballen owned a bagel store – Blazing Bagels and he hired an employee to wear a sandwich board sign that read “Fresh Bagels – Now Open.”
directly applicable to the commercial-based distinctions at issue in this case-binding.

Applying the *Central Hudson* test in *Peterson* the court upheld an ordinance that restricted painted wall signs, signs that do not face a roadway or drivable right-of-way, the total sign area and number of wall signs permitted. The ordinance’s limitations were narrowly tailored to enhance the town’s aesthetics, the court found.

In *Peterson*, the court upheld the town’s complete ban on all painted wall signs. Because it banned all such signs the court found the restriction to be content-neutral and a reasonable time, place and manner restriction. These restrictions are permitted under the First Amendment if they are (1) content neutral; (2) narrowly tailored to serve a significant government interest; and (3) leave open ample alternative channels of communication.

The complete ban furthered the significant governmental interest in promoting aesthetics and left open alternative methods of communication. The ordinance only banned painted wall signs. Other types of wall signs were permissible.

C. *Post-Reed* Rulings on Rules Restricting Noncommercial Speech.

Since *Reed*, not even a year old, lower courts reviewing commercial sign ordinances have sustained them under *Central Hudson*. However, with respect to ordinances involving noncommercial speech, *Reed* has been strictly applied. In *Central Radio Co. Inc. v. City of Norfolk* the court held a former sign code violated the First Amendment under *Reed*. The code

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28 These banned both commercial and noncommercial wall signs.
30 In another post-*Reed* case, *Vosse v. City of New York*, __ F.Supp.3d __, 2015 WL 7280226 (S.D.N.Y. 2015), the court ruled that an ordinance’s prohibition on illuminated signs extending more than 40 feet above curb level was a reasonable time, place and manner restriction. The plaintiff had affixed an illuminated peace symbol in the window of her 17th floor condominium. The court had ruled previously that she lacked standing to bring a content-based discrimination challenge so she claimed it was not a reasonable time, place or manner restriction.
31 811 F.3d 625 (4th Cir. 2016).
exempted governmental or religious flags or emblems from restrictions but applied then to private secular flags.

In *Marin v. Town of Southeast*, the court invalidated a local law that restricted “temporary signs” without reference to subject matter. The plaintiff posted temporary signs on her property in support of political candidates. She claimed the law violated the First Amendment. The court agreed, applying *Reed*, because the law exempted certain types of signs from the restrictions even though the statute, in isolation, could be considered “content neutral.” These exemptions were the basis for finding the restriction to be content-based and it did not survive strict scrutiny. The justification for the law – aesthetics, public health, safety, welfare and property values – are not compelling governmental interests, to justify the restrictions, the court found.

In *Thomas v. Schroer*, the court found the Tennessee Billboard Act could violate the First Amendment when used as a basis to remove some of Thomas’ billboards and signs displaying noncommercial content. The court issued a preliminary injunction against the removal. This case addresses the unresolved issue of whether rules that distinguish between on-premises and off-premises are content neutral. The difference between the two can only be determined by considering “the content of the sign and determin[ing] whether that content is sufficiently related to the ‘activities conducted on the property on which they are located.’” The court rejected arguments that the distinction is content neutral because it is based on location or placement of the sign. He disagreed with Justice Alito’s concurrence and said that *Reed* required him to find the law to be content-based, unlikely to withstand strict scrutiny.

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34 *Id.*
The court in *Contact Promotions, LLC v. City and County in San Francisco*,\(^{35}\) reached a different result because the on-site/off-site regulations applied to commercial signs. The court said *Reed* had no bearing on the case and that “laws which distinguish between on-site and off-site commercial speech survive intermediate scrutiny.”\(^{36}\)

Indeed, in *Metromedia Inc. v. City of San Diego*\(^{37}\) the Supreme Court conclusively determined that on-and-off-site sign distinctions were permissible under *Central Hudson* but the ordinance was found to be unconstitutional because it favored commercial speech over noncommercial speech. Onsite commercial advertisements were allowed but not advertisements carrying noncommercial messages. *Reed* did not address *Metromedia*, which must not be presumed to be overruled by implication. However, whether an on-site/off-site distinction discriminates on the basis of content, or is a content-neutral regulation of a sign’s location appears to remain an open question.

D.  **Post-Reed Options for Sign Codes.**

*Reed* will take a while to shake out. Subsequent cases have not followed it if the regulation involves commercial signage. Theoretically, a distinction drawn on the basis of the commercial versus noncommercial message in a sign could make a sign code content-based under *Reed*. However, courts do not appear willing to jettison *Central Hudson* and its progeny without clarity from the Supreme Court. All that we can be certain of is that sign codes cannot treat noncommercial messages less favorably than commercial messages.

*Reed* creates a circular dilemma for municipalities. They need less compelling justifications to regulate commercial speech, but if regulators need to read the message of a sign to determine which type of regulation to apply, the content-based analysis of *Reed* would seem to control and they might need more substantial justifications than traffic safety and aesthetics.

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\(^{35}\) 2015 WL 4571564.

\(^{36}\) Id. at *4.  

Municipalities will need to determine the level of risk that is acceptable to them and balance that risk against the community needs for sign control. Several options seem possible:

- Ban all signs completely (or conversely allow all signs without any regulation);
- Adopt a content-neutral sign code structure with separate codes for temporary and permanent sign structures based upon reasonable non-content-based criteria;
- Minimize content-based exceptions to a defensible content-neutral code structure. Those exceptions would require a compelling or substantial government justification. Create a real estate signage exception.

The ban in the first option would violate the First Amendment. Allowing all signs with no sign regulation would create immense practical problems for municipalities (i.e., allow billboards in residential areas?) Because that is such a remote possibility, this option will not be addressed here. The second option may prove to be un-workable because drawing a distinction on the basis of permanent versus temporary may result in too much signage that cannot be controlled by a municipality. The third option may be the best compromise for realtors and municipalities. A code could be based upon the commercial versus non-commercial distinction. This would allow municipalities to control commercial signage, which requires less of a justification for restrictions but it would allow for real estate signs, which can be justified as serving unique, substantial or compelling governmental interests. Reed sidesteps the issue of commercial signage and the many the Supreme Court cases discussed herein that must be assumed to remain the law. This makes developing a bullet-proof constitutional sign code a complex and difficult task, with no silver bullet solution.

1. Could a Municipality Completely Ban All Signs?

   a. Private versus public property distinctions

   Some municipalities might think, simplistically, that a complete ban on all signs would avoid constitutional problems because such a ban would be content-neutral under Reed. Not

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38 A complete ban would raise numerous non-constitutional issues beyond the scope of this paper, such as impact on economic development and general community reaction.
so. Such a regulation would still have to satisfy the time, place and manner restriction test of
Ward v. Rock Against Racism. Even if a total restriction is content neutral it must still be
narrowly tailored to serve a significant government interest and leave open ample alternative
channels of communication.

The usual “government interest” justifications for banning signs are promotion of
aesthetics and traffic safety. If a community allowed certain types of signs before imposing a
ban it would have a hard time justifying a ban now on aesthetic and traffic safety grounds. What
has changed is Reed, which may make governments want to take the path of least resistance to
avoid litigation because a complete ban is “content neutral.” However, “avoidance of litigation”
seems a very speculative interest and probably does not create a new and independent
“significant,” or “compelling,” interest. A complete ban would deprive citizens of a critical
medium of speech, with no ample alternative channels of communication. A complete ban on
signs conveying non-commercial speech would violate the First Amendment because it would
suppress political speech which is “at the core of what the First Amendment is designed to
protect.” Morse v. Frederick.

In City of Ladue v. Gilleo the Supreme Court struck down an ordinance that banned
most types of signs on residential property. The plaintiff posted a sign on her property protesting
an imminent government decision to go to war, in violation of the ordinance. The Court said this
ban violated the First Amendment. “By eliminating a common means of speaking, such
measures can suppress too much speech.” The ban foreclosed signs which provide a “venerable
means of communicating that is both unique and important.” A complete ban on all signs that
includes noncommercial signs could not be justified as serving a significant public interest
because it would not leave open an ample channel of communications and would violate the First
Amendment.

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40 551 U.S. 393, 403 (2007).
42 Id. at 55.
A complete ban of all commercial signs on private property could face similar problems but should be tested under the *Central Hudson* criteria. Real estate sign bans on private property have already been stricken by the Supreme Court. In the landmark case of *Linmark Associates, Inc. v. Township of Willingboro*\(^{43}\) the Supreme Court struck down a ban on the posting of commercial “For Sale” or “Sold” signs on residential property under a *Central Hudson* commercial speech analysis. The Court held that a municipality cannot prohibit the posting of “For Sale” or “Sold” signs under the First Amendment. The municipality justified the ban by claiming that it was necessary to prevent “white flight” from a racially integrated community. The court acknowledged the importance of that objective but said the ban prevented residents from obtaining information of vital interest to them “since it may bear on one of the most important decisions they have a right to make: where to live and raise their families.”\(^{44}\)

Some municipalities might try to impose signage bans on public property but allow them on private property. Such a ban would most likely fail the time, place and manner restriction test of *Ward v. Rock Against Racism*\(^{45}\) even though bans of signs on public property may face less scrutiny than bans on private property in some circumstances.\(^{46}\) In *Members of City Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent*,\(^{47}\) the Supreme Court upheld a ban forbidding the posting of signs, including political signs on public utility poles. But it noted that such a ban probably would not pass constitutional muster if it applied to private property. “The private citizen’s interest in the use of his own property justifies the disparate treatment.”\(^{48}\) *Vincent* turned on the character of the property at issue – public utility poles – not typically considered a public forum. The ban passed the “time, place and manner” test because there were alternate forums for the posting of political signs. Despite *Vincent*, a complete ban on

\(^{44}\) Id. at 96.
\(^{45}\) 491 U.S. 781, 791 (1989). See also Pt. 2.
\(^{46}\) *Resident Action Council v. Seattle Housing Authority*, 162 Wn.2d 773, 174 P.3d 84 (2008) (ban on signs on doors of tenants by housing authority violated the First Amendment); *Marin v. Town of Southeast*, 2015 WL 5732061 (S.D.N.Y. 2015) (exactng scrutiny applies to political speech on private, residential property and ban does not pass such scrutiny).
\(^{48}\) Id. at 811.
signs on public property that has historically been considered a “public forum” would be very ill-advised.\textsuperscript{49} Such a ban does not seem narrowly tailored to promote the governmental interests of aesthetics and traffic safety, particularly if noncommercial signs (i.e. political) would have to be allowed because a ban on signs on public property would not leave open ample alternative means of communication, as the Washington Supreme Court found in \textit{Collier}.

The bottom line is that municipalities probably cannot totally ban signs from private property or traditional public forums, and they should not do so for real estate signs as discussed in the next sub-section.

\textit{Ladue} and \textit{Linmark} (not overruled by \textit{Reed}) mean that bans of signs posted on private or residential property (whether commercial or noncommercial) would face significant constitutional challenges, but under different tests (\textit{Central Hudson} or strict scrutiny).

\textit{b. Commercial versus non-commercial distinctions}

Bans of certain types of commercial signs have been upheld.\textsuperscript{50} Total bans on off-premises commercial billboards have been upheld in \textit{Metromedia, Inc. v. City of San Diego}\textsuperscript{51} and \textit{Citizens for Free Speech v. County of Alameda}\textsuperscript{52} which followed \textit{Metromedia}. These cases were analyzed under \textit{Central Hudson} and found justified as furthering substantial government interests in traffic safety and visual aesthetics. Because the bans allowed for signage at other locations the advertisers had alternate means of communication so they satisfied the time, place and manner criteria.

\textsuperscript{49} See \textit{Collier v. City of Tacoma}, 121 Wn.2d 737 (1993) (parking strips between the "streets and sidewalks" are part of the "traditional public forum," occupy a special position in terms of First Amendment protection and the government's ability to restrict expressive activity is very limited, citing \textit{Boos v. Barry}, 485 U.S. 312, 318 (1988); \textit{Hague v. C.I.O.}, 307 U.S. 496, 517 (1939) (right to communicate views to others on a street in an orderly and peaceable manner); \textit{U.S. v. Grace}, 461 U.S. 171, 177 (1982) ("public places" such as streets, sidewalks and parks, are considered, without more, to be "public forums"); \textit{Perry Educ. Ass'n v. Perry Local Educators' Ass'n}, 460 U.S. 37, 45 (1982) (streets are "...quintessential public forums, the government may not prohibit all communicative activity.")) See also: \textit{Burson v. Freeman}, 504 U.S. 191 (1992).

\textsuperscript{50} \textit{Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent}, 466 U.S. 789 (1984).


\textsuperscript{52} 114 F.Supp.3d 952 (N.D. Cal. 2015).
Even if commercial billboards or other types of commercial signs might be banned, a
municipality should not consider banning real estate signs. Under Linmark a municipality cannot
ban real estate signs on private property, and for the reasons stated in that case, as well as others,
should not ban them on public property (i.e. rights of way or parking strips) because real estate
signs serve different interests than other types of commercial signs that promote only the sale of
commercial products (i.e. bananas or Budweiser). Under Central Hudson a ban of real estate
signs in public forums would seem more extensive than necessary to serve the governmental
interests of promoting aesthetics and public safety because these interests could be impacted to
the same degree by noncommercial signs that cannot be banned from public forums without a
compelling state interest. A ban would thwart the societal interest in the “free flow of
commercial information,” Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council.\(^{53}\)

Further, leaving aside the practical business implications of a ban on real estate signs,
such a ban would leave few, if any effective alternatives for realtors and their clients to
communicate to the public because of the unique nature of real estate signs. They need to be
placed in locations near the property at issue where interested buyers will most likely notice
them, such as in rights of way or parking strips. For reasons discussed below, typical real estate
“A-board” signs serve substantial and compelling governmental interests that are not served by
other temporary commercial signs. However, local government should develop a strong record
reflecting the unique nature of real estate signage and the governmental interests in real estate
transactions to support justifying different treatment for different types of temporary commercial
signs. While difficult to do under the Ninth Circuit’s “Blazing Bagels” case,\(^{54}\) a thoughtful local
process can support such a result. This legal analysis, as well other information provided by
REALTORS® associations that reflect local conditions can be included in the jurisdiction’s
record to support the importance of real estate-related signage.

\(^{54}\) See fn. 24.
2. **Can a Municipality Justify Special Regulations for Real Estate Signs?**

If a municipality adopted regulations that allowed temporary real estate signs but banned other commercial signs, what reasons would support allowing temporary real estate signs but prohibiting other types of temporary commercial signs?

Such a regulation would be tested under *Central Hudson*. As discussed, regulations for commercial speech must: (1) serve a substantial governmental interest; (2) directly advance the asserted governmental interest; and (3) be no more extensive than necessary to serve that interest. The governmental interest need only be “substantial” – not “compelling,” as required by the “strict scrutiny” test. Allowing real estate signage, while prohibiting other temporary commercial signage, could meet that test because temporary real estate signs describe a unique service or product – the sale of a home. A municipality could justify different treatment for real estate signs under the less stringent *Central Hudson* test, which does not require a perfect fit between the governmental interest and the means of satisfying it.55

The government has a “substantial” if not “compelling” interest in allowing temporary A-Board real estate signs to provide information to buyers about one of the most important purchases of their life, and to eliminate housing discrimination. In contrast, other types of temporary commercial signage often relates to the purchase of ordinary consumer goods.

- Under *Linmark*, real estate signs, including A-frame Open House signs, provide a “flow of truthful and legitimate commercial information” to consumers to enable them to make “one of the most important decisions they have a right to make: where to live and how to raise their families.”56

- Real estate signs further the critical public goal of guaranteeing equal access to housing. The government has a compelling interest in eradicating housing discrimination.57 The U.S. Department of Housing and Urban Development has issued regulations that explain:

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55 Only a “reasonable fit between the ends and the means” is required. *Citizens for Free Speech v. County of Alameda*, 114 F.Supp.3d 952, 969 (N.D. Cal. 2015).
56 431 U.S. at 96, 98.
It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. The provisions of the Fair Housing Act (42 U.S.C. 3600, et seq.) make it unlawful to discriminate in the sale, rental, and financing of housing, and in the provision of brokerage and appraisal services, because of race, color, religion, sex, handicap, familial status, or national origin.\(^58\)

These regulations recognize the important role that advertising plays in promoting fair housing opportunities. Placement of temporary real estate signs promotes the elimination of housing discrimination. Any person can come to any Open House regardless of race, creed, color, sex or national origin. Open House signs invite inclusion and openness in communities. While other sources of Open House information exist (i.e., the internet) real estate signs are the most immediate means of providing information to potential buyers, some of whom may lack the means to access the Internet.

- Real estate signs are vital in many communities facing housing shortages. They provide on-the-street valuable information to potential home owners and renters to quickly learn of possible housing in areas with housing shortages. A seeker does not need access to a computer and the Internet to find housing possibilities.

- Real estate signage helps promote real estate sales, enabling sellers to more quickly sell and move to another residence, which in turn increases further economic activity. The state and communities derive revenues from these sales and an expanded tax base.

Clearly, temporary real estate signs serve substantial governmental interests other than traffic safety and aesthetics, which are the usual justifications for sign codes. Because of this, different treatment between temporary real estate signs and other temporary commercial signs may be justified. A “city may distinguish between the relative value of different categories of commercial speech.” *Metromedia, Inc. v. City of San Diego.*\(^59\)

The interests served by a temporary real estate sign code should pass the “substantial government” interest test of *Central Hudson*. Such a code would be narrowly tailored to serve

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\(^{58}\) 24 C.F.R. § 109.5.

\(^{59}\) 453 U.S. at 514.
the different interests promoted by real estate signs that other commercial signs do not serve. Whether parties wanting to display other commercial signs have effective alternatives can only be determined on a fact-specific basis.

Many of the existing temporary real estate sign ordinances on the Realtors Tri-County Sign Code matrix could satisfy a Central Hudson analysis, as long as real estate signs are not given any preference over noncommercial signs regulated by other sections of a municipal code. Therefore, no “model” real estate ordinance for the post-Reed world is included herein because it might not be needed and existing ordinances in any given community should be examined first.

3. Content-Neutral Allowance For All Temporary Signs.

Municipalities may choose to allow, but regulate, all temporary signs, including real estate signs. This approach may protect the important public interests in housing and real estate, as well as the interests of property owners, as long as the non-content based rules are fair, not too burdensome and facilitate a truly efficient and non-discriminatory real estate market place. However, because of the difficulty in implementing such an approach, it may be more productive to use available materials and industry data to document in the city’s record the substantial and compelling government interests in having a content-based regulation for real estate “open house,” “for sale” and “for rent” signs.

As a general rule, under Reed, certain non-communicative aspects of signs are usually considered non-content based time, place or manner restrictions and would not face rigid strict scrutiny. These include the following for real estate “open house” signs, which REALTORS® generally support:

- They may not be placed on (or attached to) trees
- They may not be placed on (or attached to) foliage
- They may not be placed on (or attached to) utility poles
- They may not be placed on (or attached to) regulatory signs
- They may not be placed on (or attached to) directional signs
- They may not be placed on (or attached to) informational signs
- They may not interfere with vehicular, bicycle, wheelchair or pedestrian travel
- They must be outside of vehicular lanes
• They must be outside of bicycle lanes
• They may not block driveways
• They may not block curb cuts
• They may only be in place between the published times for dawn and dusk, and must be picked up at the end of each day
• They may not exceed six square feet per side in area, and 36 inches in height
• They may not be used unless the property owner (or owner’s agent) is physically present at the property that is for sale or rent.

The non-content characteristics of a temporary sign may differ significantly from those of a permanent sign in the following ways. The following are example of criteria REALTORS® generally support:

• material used (sturdy and weatherproof)
• size (4 sq. ft. per side, plus “status” rider strips once the property is under contract)
• duration (while the property is for sale)
• locations allowed (one per street frontage)
• removal obligations (within 7 days following closing of the purchase and sale transaction)
• time allowed (24/7)

As long as a sign code does not favor commercial speech over noncommercial speech, content-neutral sign code restrictions governing the medium of the communication should be constitutional.60

CONCLUSION

Reed precludes municipalities from regulating a sign based on its message, at least a non-commercial message, unless the regulation is narrowly tailored to meet a compelling government interest. While Reed suggests total sign bans may be possible, total bans on a form of speech

60 In Metromedia, supra, the court found that a sign code banning all offsite advertising in San Diego could be constitutional. However, because the code allowed for onsite commercial advertising but not onsite noncommercial advertising the ordinance was unconstitutional.
usually violate the First Amendment, according to other Supreme Court decisions that were not overruled by *Reed*.

The prevailing view in post-*Reed* cases is that *Reed* does not apply to the regulation of commercial messages/signs like real estate signs. Thus, regulations aimed at commercial speech would only have to pass the *Central Hudson* test.

Municipalities cannot bar placement of real estate signs on residential property under *Linmark*. They should not do so for public property that is a traditional public forum (i.e. rights of way; parking strips).

However, municipalities can impose reasonable time, place, and manner restrictions on signs. A slightly different test is used by courts to evaluate time, place and manner restrictions. However, for the purposes of commercial real estate signs, municipalities could craft reasonable time, place, or manner restrictions that allow real estate signs but may prohibit other types of commercial signs because of the different governmental interests served by real estate signs.

Many existing temporary sign ordinances could be amended easily to produce a result consistent with *Reed*, and which would allow real estate professionals to continue to use critical “For Sale” and “Open House” signs.
ATTACHMENT TO SIGN CODE MATERIALS & TESTIMONY

PROPRIETARY RESEARCH
Prepared for
JOHN L SCOTT REAL ESTATE
By Hebert Research
Objectives

Research Objectives:
The primary purpose in conducting this research was to understand how buyers and sellers in the Seattle and Portland markets gather and use information and real estate agents in their home buying or selling process.

The following objectives were addressed in conducting research for John L. Scott:

2. Measure ways of finding the buying and/or listing agent, including the Internet, and usage of the agent, including levels of satisfaction and relationship with agent.

3. Determine behavior prior to and after contacting an agent for each of the following activities:
   - Finding a home of interest
   - Driving around neighborhoods
   - Attending open houses
   - Use of property flyers
   - Use of Internet
   - Newspaper Ads
   - Homes Magazine

4. Gather additional information on each of those processes, including:
   - Where information on each process was found
   - How information was utilized – actions that resulted from it
   - Internet usage for different activities and reactions to web site features

6. Measure effectiveness of various types of advertising to selling a home.
Methodology

A total of 400 surveys were completed for John L. Scott. Respondents were selected from a list of people who have bought or sold a home within the last 6 months. It was verified at the beginning that they had bought or sold a home. The response rate, which represents the proportion of the population who agreed to participate in the research, was 51.5%. The overall incidence rate, which represents the proportion of the population qualified to participate in the full survey, was 28.7%. The maximum margin of error at 400 respondents is +/-4.9%. Respondents were split between the Seattle and Portland markets, with 243 respondents from the Seattle area, and 157 from the Portland area.

In order to ensure that the data collected represented the real estate universe, the data was weighted according to the actual market share of each real estate company within their market. So if a real estate firm had 18 percent of respondents, but 15 percent actual market share, a weight was applied to each respondent who used that company in order to bring their answers into the proportion of market share that company has.

The data were analyzed using generally accepted univariate measures of central tendency and dispersion. In questions where multiple responses were indicated, the totals in the graphs or charts may be greater than 100%, and only the most frequently stated responses may be reported. A complete list of responses can be found in the technical documentation. Questions for which multiple responses were accepted will be identified throughout the summary.

Hebert Research has made every effort to produce the highest quality research product within the agreed specifications, budget and schedule. The customer understands that Hebert Research uses those statistical techniques, which, in its opinion, are the most accurate possible. However, inherent in any statistical process is a possibility of error, which must be taken into account in evaluating the results. Statistical research can predict consumer reaction and market conditions only as of the time of the sampling, within the parameters of the project, and within the margin of error inherent in the techniques used.

Evaluations and interpretations of statistical research findings and decisions based on them are solely the responsibility of the customer and not Hebert Research. The conclusions, summaries and interpretations provided by Hebert Research are based strictly on the analysis of the data gathered, and are not to be construed as recommendations; therefore, Hebert Research neither warrants their viability nor assumes responsibility for the success or failure of any customer actions subsequently taken.
**How Buying Agent was Found**

**Analysis**
The most common way to find a buying agent was through the referrals of friends and family (38%). This was followed by already knowing the agent themselves (22%), and calling the agent listed on a for sale sign (9%). The agent being a relative accounted for 8 percent.

---

*Multiple Response Question*
**How Selling Agent was Found**

**Analysis**
In finding the selling agent, already knowing the agent accounted for 28 percent of answers, followed by 21 percent who said the agent was referred by a friend or relative. Calling the agent on the for sale sign was done by 10 percent, while having worked with the agent on a previous transaction was true for 8 percent.
Where Buyer First Saw Home

Analysis
When the buyer was first to see the home (n=176), it was most commonly on the Internet (41%), followed by driving around the neighborhood (39%). Respondents in Seattle were more likely to use the Internet (46% to 35% of Portland respondents).

Other answers:
- Agent pulled listings off real estate site. (5)
- Agent.
- Someone else had the home and sold it to me.
- Bought from a friend. (2)
- Friend told me.
- Next door to the property.
- Just walking by.
- Grew up in it.
- On the Windermere website.
- On JLS website.
Objective 3: Determine behavior prior to and after contacting an agent

Activities Prior to Finding Agent

Analysis
Prior to meeting their agent, the most common activity was to drive around the neighborhood (76%), followed by searching the Internet (68%). Over half also picked up flyers from flyer boxes (59%) or looked through newspaper ads (56%). Forty-five percent each picked up Homes magazine or talked to friends or relatives. Respondents from Portland were more likely to do each of these activities than respondents from Seattle with the exception of driving around the neighborhood (equal), and searching the Internet (70% Seattle, 65% Portland).

Other answers:
- Went through mortgage company.
- Agent found it for you.
- Searched on NW multiple listing service.
- Did not do anything.
- The agent did it all.
- Co-workers.
- Kept a lookout for homes.
- Called her and said I wanted a house.
**Activities After Finding Agent**

**Analysis**
After meeting an agent, driving around the neighborhood remained number one, at an identical 75 percent in Seattle and 78 percent in Portland. Searching the Internet was also still second, at 67 percent. Looking at flyers from flyer boxes (60%) and looking through the classifieds (46%) were next, followed by open houses (39%) and talking to friends or relatives (40%).

**Activities Done On Own AFTER Meeting An Agent**

<table>
<thead>
<tr>
<th>Percentage of Respondents</th>
<th>Seattle</th>
<th>Portland</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drive around neighborhood</td>
<td>75%</td>
<td>76%</td>
<td>76%</td>
</tr>
<tr>
<td>Search Internet</td>
<td>69%</td>
<td>61%</td>
<td>65%</td>
</tr>
<tr>
<td>Look through newspaper ads</td>
<td>40%</td>
<td>34%</td>
<td>37%</td>
</tr>
<tr>
<td>Open house</td>
<td>31%</td>
<td>34%</td>
<td>33%</td>
</tr>
<tr>
<td>Talked to friends or relatives</td>
<td>26%</td>
<td>30%</td>
<td>29%</td>
</tr>
<tr>
<td>Read newspaper</td>
<td>19%</td>
<td>29%</td>
<td>24%</td>
</tr>
<tr>
<td>Other</td>
<td>4%</td>
<td>3%</td>
<td>3%</td>
</tr>
<tr>
<td>None</td>
<td>14%</td>
<td>15%</td>
<td>14%</td>
</tr>
<tr>
<td>Refused/Don't know</td>
<td>0%</td>
<td>1%</td>
<td>1%</td>
</tr>
</tbody>
</table>

**Other answers:**
- Went to houses that the realtor suggested.
- Everything.
- We just stayed with our agent.
- We relied mostly on our agent to find our home.
- Agent found it.
- Went through his marketing system.
- I told my agent what I wanted and he took care of it.
- Looked at houses within price range.
- Continued to look.
- She did it to the beginning to the end. (2)
- Agent had listings. (4)
- Co-workers.
Objective 4: Additional Information on Behavior

Open Houses

Sources of Information for Open Houses

Analysis
Each activity section had additional questions that went with it. The first question asked of respondents who had attended open houses (n=117) was where they found the information about the open houses they attended. Over half (58%) found it while driving around the neighborhood. Nearly a third (30%) found it while looking through newspaper ads. The Internet accounted for 16 percent. “Other” answers primarily were getting information from their agent.

Where found information on Open Houses

*Multiple Response Question

Other answers:
- Brochures.
- Real estate agent. (11)
- Friend.
- Walking around neighborhood. (2)
- House signs on the road. (2)
Objective 6: Measure Effectiveness of Various Types of Advertising

Types of Advertising

Analysis

The multiple listing service was considered by respondents to be the most effective form of advertising for your house (8.03), followed closely by having a sign in front of your house (7.78). The flyer box also had a fairly high interest rating at 7.58 overall. The Internet had the next highest average at 7.00. Open houses managed a moderate rating of 6.14, while all other possibilities – newspaper ads, word-of-mouth, Homes magazine, and a personal web address – had averages below 5.30.

Having a sign in front of your house was considered a “10” for effectiveness by 46 percent of respondent who make less than $60,000 a year, compared to only 25 percent of respondents with incomes in excess of $60,000. [Cramer’s $V=0.398$]

<table>
<thead>
<tr>
<th>Sign in Front of House</th>
<th>Seattle</th>
<th>Portland</th>
<th>Overall</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>6%</td>
<td>12%</td>
<td>9%</td>
</tr>
<tr>
<td>Moderate</td>
<td>16%</td>
<td>26%</td>
<td>21%</td>
</tr>
<tr>
<td>High</td>
<td>78%</td>
<td>62%</td>
<td>70%</td>
</tr>
<tr>
<td>Average</td>
<td>8.04</td>
<td>7.50</td>
<td>7.78</td>
</tr>
<tr>
<td>Internet</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>15%</td>
<td>12%</td>
<td>13%</td>
</tr>
<tr>
<td>Moderate</td>
<td>25%</td>
<td>38%</td>
<td>31%</td>
</tr>
<tr>
<td>High</td>
<td>60%</td>
<td>50%</td>
<td>56%</td>
</tr>
<tr>
<td>Average</td>
<td>7.17</td>
<td>6.80</td>
<td>7.00</td>
</tr>
<tr>
<td>Newspaper Ad</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>30%</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>Moderate</td>
<td>53%</td>
<td>62%</td>
<td>58%</td>
</tr>
<tr>
<td>High</td>
<td>17%</td>
<td>18%</td>
<td>17%</td>
</tr>
<tr>
<td>Average</td>
<td>4.92</td>
<td>5.54</td>
<td>5.22</td>
</tr>
<tr>
<td>Multiple Listing Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>11%</td>
<td>2%</td>
<td>7%</td>
</tr>
<tr>
<td>Moderate</td>
<td>27%</td>
<td>17%</td>
<td>22%</td>
</tr>
<tr>
<td>High</td>
<td>62%</td>
<td>80%</td>
<td>72%</td>
</tr>
<tr>
<td>Average</td>
<td>7.60</td>
<td>8.45</td>
<td>8.03</td>
</tr>
<tr>
<td>Open House</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>15%</td>
<td>24%</td>
<td>19%</td>
</tr>
<tr>
<td>Moderate</td>
<td>42%</td>
<td>34%</td>
<td>38%</td>
</tr>
<tr>
<td>High</td>
<td>44%</td>
<td>43%</td>
<td>43%</td>
</tr>
<tr>
<td>Average</td>
<td>8.50</td>
<td>5.76</td>
<td>6.14</td>
</tr>
<tr>
<td>Flyer Box</td>
<td>Seattle</td>
<td>Portland</td>
<td>Overall</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------</td>
<td>----------</td>
<td>---------</td>
</tr>
<tr>
<td>Low</td>
<td>6%</td>
<td>4%</td>
<td>5%</td>
</tr>
<tr>
<td>Moderate</td>
<td>29%</td>
<td>31%</td>
<td>30%</td>
</tr>
<tr>
<td>High</td>
<td>65%</td>
<td>65%</td>
<td>65%</td>
</tr>
<tr>
<td>Average</td>
<td>7.43</td>
<td>7.72</td>
<td>7.58</td>
</tr>
<tr>
<td>Word-of-Mouth</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>28%</td>
<td>23%</td>
<td>26%</td>
</tr>
<tr>
<td>Moderate</td>
<td>41%</td>
<td>51%</td>
<td>46%</td>
</tr>
<tr>
<td>High</td>
<td>31%</td>
<td>26%</td>
<td>28%</td>
</tr>
<tr>
<td>Average</td>
<td>5.30</td>
<td>5.26</td>
<td>5.28</td>
</tr>
<tr>
<td>Homes Magazine</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>34%</td>
<td>41%</td>
<td>38%</td>
</tr>
<tr>
<td>Moderate</td>
<td>48%</td>
<td>45%</td>
<td>47%</td>
</tr>
<tr>
<td>High</td>
<td>18%</td>
<td>14%</td>
<td>16%</td>
</tr>
<tr>
<td>Average</td>
<td>4.66</td>
<td>4.26</td>
<td>4.46</td>
</tr>
<tr>
<td>Your Own Home Web Address</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>25%</td>
<td>31%</td>
<td>28%</td>
</tr>
<tr>
<td>Moderate</td>
<td>44%</td>
<td>46%</td>
<td>45%</td>
</tr>
<tr>
<td>High</td>
<td>31%</td>
<td>23%</td>
<td>27%</td>
</tr>
<tr>
<td>Average</td>
<td>5.36</td>
<td>4.77</td>
<td>5.06</td>
</tr>
</tbody>
</table>
In 2016 the City Council directed Community Development to adopt a Park Impact Fee program to replace the current fee-in-lieu sections in CMC 18.35 and to repeal the outdated Park Impact Fee in Chapter 18.122.

**Parks and Recreation Department**

Parks and Recreation Department adopted the Parks, Recreation and Open Space (PROS) plan through Resolution No. 2016-03 on March 8, 2016. Elements in this document were then integrated into the City of Covington’s current Comprehensive Plan by reference. The PROS Plan is a six-year guide and strategic plan for managing and enhancing park, trail and recreation services in Covington. It establishes a path forward for providing high quality, community-driven parks, trails, greenspaces and recreational opportunities. This Plan provides a vision for the city’s park and recreation system, proposes updates to city service standards for park and facility classifications and addresses departmental goals, objectives and other management considerations toward the continuation of high-quality recreation opportunities to benefit residents of Covington.

This Plan was guided with input and direction of city residents and the Parks and Recreation Commission. The Plan inventories and evaluates existing park and recreation areas, assesses the needs for acquisition, site development and operations and offers policies and recommendations to achieve the community’s goals. A copy of the PROS plan is available on the city’s Parks and Recreation Department’s website.

The City of Covington currently provides over 166 acres of public parkland and recreation facilities distributed among 25 parks, special facilities and natural areas. This system of parks supports a range of active and passive recreation experiences and is supplemented by over 12 acres of private parks and open spaces managed by several homeowner’s associations. In addition, the city provides a skate park and access to approximately 7 miles of trails within its
parks and greenways. Recreation services are available to Covington residents through a wide range of public and private recreation, health and fitness providers and facilities. The Covington Aquatic Center is the backbone of the city’s recreation programming, and it provides a venue for specialized aquatics programming, activities and events.

Covington is a maturing young city with many families with children. New investments in parks and recreation will be necessary to meet the needs of the community, support youth development, provide options for residents to lead healthy, active lives and foster greater social and community connections.

Impact Fees Overview - State Law Requirements
State law requires that cities plan for projected growth and have infrastructure in place (within 6 years) to support the growth (RCW 36.70A.070(3)). This requires a long range financial plan that shows how the city will pay for the needed public infrastructure.

Impact fees are one-time charges assessed by local governments against a new development project to help pay for new or expanded public facilities that will directly address the increased demand created by that development. Impact fees may only be imposed for “system improvements.” Public capital facilities in a local government’s capital facilities plan are designed to provide service to the community at large (not private facilities), are reasonably related to the new development, and will benefit the new development. These fees are calculated to pay for new capacity which is solely attributable to new development, and cannot be used to ‘fix’ existing problems.

Further State law does not allow cities to charge 100% of the total cost of the capital as an impact fee. It is important to remember that each one of us has added to the growth of our community and contributes to the need for streets, parks, open space schools and fire protection. There is a public share of the costs for infrastructure and facilities and that everyone will benefit from them, not just the new residents.

The city currently collects the following impact fees:

<table>
<thead>
<tr>
<th>Impact Fee Type</th>
<th>Single Family Rate</th>
<th>Multifamily Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation</td>
<td>$4,461 per unit</td>
<td>Range $2,676 - $3,479</td>
</tr>
<tr>
<td>School</td>
<td>$5,100 per unit</td>
<td>$2,210 per unit</td>
</tr>
</tbody>
</table>

Park Impact Fees - Fee Study & Code Amendments
The PROS plan identified a capital facilities plan and asset inventory which was the foundational data used to develop the Park Impact Fee Study completed October 29, 2015. (Attachment 1). The costs associated with implementing the capital facilities are used to determine the impact fee.
Park Impact Fees would be based on the cost of new land and related costs required to meet the adopted Level of Service (LOS) as Covington continues to grow. The adopted LOS is contained in the PROS plan, incorporated in the Rate Study for Park Land Impact Fee, and adopted by reference in the city's Comprehensive Plan.

Based on the PROS 2015-2020 Capital Facilities Plan in the Rate Study for Park Land Impact Fee, the Park Impact Fee per Dwelling Unit fee is as follows:

### Table 7 – Impact Fee per Dwelling Unit

<table>
<thead>
<tr>
<th>Type</th>
<th>Net Cost per Person</th>
<th>Average Persons per Dwelling Unit</th>
<th>Impact Fee per Dwelling Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Dwelling Units</td>
<td>$1,453</td>
<td>2.7</td>
<td>$3,922</td>
</tr>
<tr>
<td>Multi-Family Dwelling Units</td>
<td>1,453</td>
<td>1.9</td>
<td>2,760</td>
</tr>
</tbody>
</table>

As part of the adoption of the Park Impact Fee process the city will be develop an Ordinance to:

- **Repeal CMC 18.122** – CMC 18.122, Recreation Facilities and Open Space Impact Fee provision (“Park Impact Fee”), was intended to collect impact fees from all development and expended on identified park capital facilities that are generally not located within the site of the specific development project, but which are necessitated by the development project.

Although CMC 18.122 has included the provision for collecting an impact fee since 2006, the impact fee was not collected at the time based on our then-city attorney’s opinion that we need to conduct a rate study to justify such impact fees. The Parks and Recreation department completed the required fee study in October 2015.

- **Repeal & Replace CMC 18.35** *(Attachment 2)* – CMC 18.35.140-190 & CMC 18.35.230-250. adopts the city’s the current standard for developments to provide park and recreation space and trails within a development and the method by which the applicant could obtain a credit for the park space against the assessed recreation fee-in-lieu. The program outlined in this section was adopted from the King County code upon incorporation.

It has been staff experience, through the development process, that providing the required onsite recreation space is generally the last thought by developers, is squeezed into the minimum size required, and the developer is not typically interested in maintaining the
infrastructure. If the park or recreation space is maintained by the HOA, then they want to make the park private and available only to their neighborhood residents.

As part of the Park Impact Fee Rate Study, the Parks and Recreation Department focused on the need to obtain land to provide more public neighborhood parks. The current regulations have been repealed and replace with regulations are intended to:
  o Require all new development to pay a park impact fee.
  o If a development provides a private park they are not subject to impact fees credits unless the park meets minimum standards for land dedication as outlined in the proposed code.
  o Any private park or trail shall meet minimum design standards
  o Multifamily project shall provide on-site recreation facilities with their project, to meet the needs of their tenants and pay the multifamily park impact fee.
  o If a site is identified to have a park or trail per the Comprehensive Plan, then the developer is required to provide at a minimum land dedication as determined by the Parks and Recreation Director. Any dedication of real land or facility improvements would be subject to an impact fee credit per Title 19- Impact Fees.

• Amend Sections of CMC 18.20 (Attachment 2) - Update definitions to support the implementation of a Park Impact Fee Program

• Adopt New Chapter CMC 19.60 & Park Impact Fee Rate Study (Attachment 3)

And a Resolution (City Council Authority) to:
• Adopt Park Impact Fees as shown in Table 7 of the Park Impact Fee Rate Study.

All documents will be reviewed and approved by the City Council. Documents will be provided during Council review of this topic.

Next Steps
The Planning Commission is scheduled to hold a Public Hearing for a recommendation regarding the adoption of a Park Impact Fee program to the City Council on August 3, 2017.

Action
Planning Commission – Discussion Only

Attachments:
  1. Rate Study for Park Land Impact Fee
  2. Draft Impact Fee Code- Title 18 Amendments
  3. Draft Impact Fee Code- Title 19 Amendments
TABLE OF CONTENTS

EXECUTIVE SUMMARY ................................................................................................................................. 1

1. STATUTORY REQUIREMENTS AND THIS STUDY .................................................................................. 4

2. CALCULATION OF PARK LAND IMPACT FEE ................................................................................... 14

APPENDIX A: INVENTORY OF EXISTING PARKS .................................................................................... 22

APPENDIX B: ANALYSIS OF THE NEED FOR PARK LAND ................................................................. 24

APPENDIX C: CAPITAL FACILITIES PLAN - 2015-2020 ...................................................................... 26

LIST OF TABLES

Table 1  Population ........................................................................................................................................... 14
Table 2  Inventory and Level of Service Ratio ............................................................................................. 16
Table 3  Park Land Needs for Growth ........................................................................................................... 17
Table 4  Park Land Cost per Acre .................................................................................................................. 18
Table 5  Park Land Cost per Person ............................................................................................................... 19
Table 6  Net Cost per Person ........................................................................................................................ 20
Table 7  Impact Fee per Dwelling Unit .......................................................................................................... 21
Table A  Covington Parks and Trails (2014) ................................................................................................. 22
Table B  Analysis of Need for Park Land ...................................................................................................... 25
Table C  Capital Facilities Plan for Parks: 2015 – 2020 ............................................................................... 26
EXECUTIVE SUMMARY

The purpose of this study is to establish the rates for impact fees for park land in the City of Covington, Washington as authorized by RCW\(^1\) 82.02.050 – 100. This study describes the methodology that is used to develop the fees, presents the formulas, variables and data that are the basis for the fees, and documents the calculation of the park land impact fee.

Impact Fee Rates

The rate for park land impact fees are $3,922 per single family dwelling unit, and $2,760 per multi-family dwelling unit.

Definition and Rationale of Impact Fees

Impact fees are charges paid by new development to reimburse local governments for the capital cost of public facilities that are needed to serve new development and the people who occupy the new development\(^2\). New development is synonymous with “growth.”

Local governments charge impact fees on either of two bases. First, as a matter of policy and legislative discretion, they may want new development to pay the cost of its share of new public facilities because that portion of the facilities would not be needed except to serve the new development. In this case, the new development is required to pay for the cost of its share of new public facilities\(^3\).

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\(^1\) Revised Code of Washington (RCW) is the state law of the State of Washington.

\(^2\) Throughout this study the term “developer” is used as a shorthand expression to describe anyone who is obligated to pay impact fees, including builders, owners or developers.

\(^3\) RCW 82.02.050(2) prohibits impact fees that charge 100% of the cost, but does not specify how much less than 100%, leaving that determination to local governments.
On the other hand, local governments may use other sources of revenue to pay for the new public facilities that are needed to serve new development. If, however, such revenues are not sufficient to cover the entire costs of new facilities necessitated by new development, the new development may be required to pay an impact fee in an amount equal to the difference between the total cost and the other sources of revenue.

There are many kinds of "public facilities" that are needed by new development, including parks, recreation and open space; streets and roads; fire protection facilities; schools; and water and sewer facilities. This study is for park land in the City of Covington, Washington.

**Impact Fees are Different Than Other Types of Developer Contributions**

The impact fees that are described in this study do not include any other forms of developer contributions or exactions, such as mitigation or voluntary payments authorized by SEPA (the State Environmental Policy Act, RCW 43.21C); system development charges for water and sewer authorized for utilities (RCW 35.92 for municipalities, 56.16 for sewer districts, and 57.08 for water districts); local improvement districts or other special assessment districts; linkage fees; or land donations or fees in lieu of land.

There are several important differences between impact fees and SEPA mitigations. Three aspects of impact fees that are particularly noteworthy are: 1) the ability to charge for the cost of public facilities that are "system improvements" (i.e., that provide service to the community at large) as opposed to "project improvements" (which are "on-site" and provide service for a particular development); 2) the ability to charge small-scale development their proportionate share, whereas SEPA exempts small developments;
and 3) the predictability and simplicity of impact fee rate schedules compared to the cost, time and uncertain outcome of SEPA reviews conducted on a case-by-case basis.

**ORGANIZATION OF THE STUDY**

This study contains two chapters and three appendices:

Chapter 1 summarizes the statutory requirements for developing impact fees, and describes how the study of Covington’s park land impact fee complies with the law.

Chapter 2 documents calculation of the park land impact fee, including descriptions of seven formulas, each variable used in the formulas, and the data used in each formula.

Appendix A presents the inventory of Covington’s existing park land and trails.

Appendix B contains the analysis of the need for park land.

Appendix C is a copy of the Capital Facilities Plan for future park acquisition and development.
1. STATUTORY REQUIREMENTS AND THIS STUDY

This chapter summarizes the significant statutory requirements pertaining to the calculation of impact fees in the State of Washington, and describes how this study of Covington’s park land impact fees complies with the statutory requirements. Each synopsis of a statutory requirement includes citations to the Revised Code of Washington as an aid to readers who wish to review the exact language of the statutes.

TYPES OF PUBLIC FACILITIES

RCW 82.02.050(2) and (4), and RCW 82.02.090(7)

Four types of public facilities can be the subject of impact fees: 1) public streets and roads; 2) publicly owned parks, open space and recreation facilities; 3) school facilities; and 4) fire protection facilities.

This Study

This study contains impact fees for land for parks and trails. In general, local governments that are authorized to charge impact fees are responsible for specific public facilities for which they may charge such fees. The City of Covington is legally and financially responsible for the park land it owns within its jurisdiction.

TYPES OF IMPROVEMENTS

RCW 82.02.050(3)(a) and RCW 82.02.090(5) and (9)

Impact fees can be spent on "system improvements" (which are typically outside the development and "designed to provide service to service areas within the community at large"). Impact fees cannot be used for "project improvements" (which are typically provided by the developer on-site within the development or adjacent to the
development, and "designed to provide service for a development project, and that are necessary for the use and convenience of the occupants or users of the project").

**This Study**

The park land impact fees in this study are calculated for system improvements that are listed in the Capital Facilities Plan (CFP) (see Appendix C). No project improvements are included in this study.

**BENEFIT TO DEVELOPMENT**

*RCW 82.02.050(3)(a) and (c)*

Impact fees must be limited to system improvements that are reasonably related to, and which will benefit new development.

**This Study**

There are many ways to fulfill the requirement that impact fees be "reasonably related" to the development's need for public facilities, including personal use and use by others in the family or business enterprise (direct benefit), use by persons or organizations who provide goods or services to the fee-paying property (indirect benefit), and geographical proximity (presumed benefit).

Impact fees for parks are charged to properties which need (i.e., benefit from) new parks. Parks are provided by the City of Covington to all kinds of property throughout the City regardless of the type of use of the property. Impact fees for park land, however, are only charged to residential development in the City because the dominant stream of benefits redounds to the occupants and owners of dwelling units. As a matter of policy, the City of Covington has decided not to charge park impact fees to non-residential properties. Impact fees for park land are calculated for all new residential development within the City of Covington.
The need for additional park land for new development is determined by using standards for levels of service for each type of park to calculate the quantity of land that is required. The required quantity is then compared to the existing inventory to determine the need for additional land. The analysis of needed park land must comply with the statutory requirements of identifying existing deficiencies, reserve capacity and new capacity requirements for facilities. An analysis of the need for additional park land is presented in Appendix B and summarized in Chapter 2.

In addition, a provision of Covington’s city code further ensures compliance with the requirement that expenditures be "reasonably related" to and benefit the development that paid the impact fee. All park land impact fee revenue is deposited to a separate account that can be used only for the specific projects in the Capital Facilities Plan that are the basis of this park land impact fee because their benefit has been demonstrated in determining the need for the projects and the portion of the cost of needed projects that are eligible for impact fees as described in this study (see Chapter 2, and Appendices B and C).

**PROPORTIONATE SHARE**

*RCW 82.02.050(3)(b) RCW 82.02.060(1) and RCW 82.02.090(6)*

Impact fees cannot exceed the development's proportionate share of system improvements that are reasonably related to the new development. The impact fee amount shall be based on a formula (or other method of calculating the fee) that determines the proportionate share.
This Study
There are four ways that this study complies with the proportionate share requirement.

First, the "proportionate share" requirement means that impact fees can be charged only for the portion of the cost of public facilities that is "reasonably related" to new development (as described above). As a result, impact fees cannot be charged to pay for the cost of reducing or eliminating deficiencies in existing facilities. Some impact fee studies use standards for park land that may result in existing deficiencies between the standards and the existing parks. This study for park land impact fees for Covington ensures that impact fees are not for existing deficiencies by using the ratio of existing park land to the current population as the basis for determining the need for park land and the amount of the impact fee. Ratios of existing land to current populations have no deficiencies, nor do they have any excess capacity.

Second, using the ratio of existing land to current population ensures that new development’s share is proportionate. The ratio “is what it is” for all of the current population, and new development is required to match it with the same proportionate share in order to maintain the same ratio as exists before the new development.

The third way in which Covington’s park land impact fee complies with the proportionate share requirement is by providing adjustments and credits to impact fees, as explained in the next section. These actions ensure that the amount of the impact fee does not exceed the proportionate share.
Fourth, this study uses seven formulas to calculate the proportionate share impact fee for park land in Covington.

**ADJUSTMENTS AND/OR CREDITS REDUCING IMPACT FEE AMOUNTS**

*RCW 82.02.050(1)(c) and (2), RCW 82.02.060(1)(b), and RCW 82.02.060(4)*

Impact fees rates must be adjusted to account for other revenues that the development pays (if such payments are earmarked for or proratable to particular system improvements). Impact fees may be credited for the value of dedicated land, improvements or construction provided by the developer (if such facilities are in the adopted CFP and are required as a condition of development approval).

**This Study**

The "adjustments" requirement reduces the impact fee to account for past and future payments of other revenues (if such payments are earmarked for, or proratable to, the system improvements that are needed to serve new growth). The impact fees calculated in this study include an adjustment that accounts for other revenue that is used by the City to pay for a portion of growth’s proportionate share of costs. Chapter 4 includes an analysis of the other sources of revenue the City has to pay needed costs.

The "credit" requirement reduces impact fees of specific developers by the value of dedicated land, improvements or construction provided by the developer (if such facilities are in the adopted CFP and are required as a condition of development approval). This credit is in addition to the adjustment for other revenues described in the preceding paragraph.

The law does not prohibit a local government from establishing reasonable constraints on determining credits. For example, the location of dedicated land
and the quality and design of a donated public facility can be required to be acceptable to the local government, and meets local standards.

“Adjustments” are included in the calculation of the impact fee because the City can estimate the amount of other revenue it may receive for the same park projects that will be funded in part by impact fees. “Credits” are not included in the calculation of the impact fee rate in this study because it is not possible to predict which applicants will propose to contribute land. “Credits” are determined on a case-by-case basis when an applicant proposes to make such a contribution.

CAPITAL FACILITIES PLAN

RCW 82.02.050(4), RCW 82.02.060(8), and RCW 82.02.070(2)

Impact fees must be expended on public facilities in a capital facilities plan element (or used to reimburse the government for the unused capacity of existing facilities). The CFP must conform with the Growth Management Act of 1990, and must also identify existing deficiencies in facility capacity for current development, capacity of existing facilities available for new development, and additional facility capacity needed for new development, as required by RCW 82.02.050(4).

This Study

This study includes excerpts from the CFP for parks in Appendix C, and uses specific CFP projects to calculate the cost per acre (or mile of trail) that is one of the variables in the impact fee calculation.

Appendix B provides the required analysis that identifies existing deficiencies, capacity available for new development, and additional public facility capacity needed for new development. The analysis is based on levels of service ratios.
for each type of public facility. The results of Appendix B are summarized in Chapter 3.

NEW VS. EXISTING FACILITIES

(RCW 82.02.060(1)(a)) and (RCW 82.02.060(8))

Impact fees can be charged for new public facilities and/or to reimburse the government for the unused capacity of existing public facilities (subject to the proportionate share limitation described above).

This Study

This study bases the park land impact fee on new park land acquisitions in the CFP. As noted earlier, using the ratio of existing land to current population as the basis for the impact fee ensures that there is no existing deficiency, nor any surplus capacity. Therefore the park land that will serve new development will be provided by future acquisitions.

SERVICE AREAS

RCW 82.02.060(7)

Local governments must establish reasonable service areas (one area, or more than one, as determined to be reasonable by the local government).

This Study

Impact fees in some jurisdictions are collected and expended within service areas that are smaller than the jurisdiction that is collecting the fees. Impact fees are not required to use multiple service areas unless such “zones” are necessary to establish the relationship between the fee and the development. Park land impact fees are collected and expended in a single service area throughout the
boundaries of the City of Covington because of the compact configuration of the City and the accessibility of its park system to all residences.

OTHER STATUTORY REQUIREMENTS FOR ADMINISTERING IMPACT FEES

There are other statutory requirements that pertain to the administration of impact fees. Those requirements do not affect the calculation of the impact fee rate. The requirements are fulfilled in the City’s code, or administratively, as described below.

EXEMPTIONS FROM IMPACT FEES

RCW 82.02.060(2) and (3)

Local governments have the discretion to provide exemptions from impact fees for low-income housing and other "broad public purpose" development, but all such exemptions must be paid from public funds (other than impact fee accounts).

This Study

The City’s impact fee ordinance addresses the subject of exemptions. Exemptions do not affect the impact fee rates calculated in this study because of the statutory requirement that any exempted impact fee must be paid from other public funds. As a result, there is no increase in impact fee rates to make up for the exemption because there is no net loss to the impact fee account as a result of the exemption.

DEVELOPER OPTIONS

RCW 82.02.060(6), RCW 82.02.070(4) and (5), and RCW 82.02.080

Developers who are liable for impact fees can submit data and/or analysis to demonstrate that the impacts of the proposed development are less than the impacts
calculated in this rate study. Developers can pay impact fees under protest and appeal impact fee calculations. The developer can obtain a refund of the impact fees if the local government fails to expend the impact fee payments within 10 years, or terminates the impact fee requirement, or the developer does not proceed with the development (and creates no impacts).

This Study
All of these provisions are addressed in the City’s impact fee code, and none of them affect the calculation of impact fee rates in this study.

ACCOUNTING REQUIREMENTS

RCW 82.02.070(1)-(3)
The local government must separate the impact fees from other monies, expend the money on CFP projects within 10 years, and prepare annual reports of collections and expenditures.

This Study
These requirements are addressed by Covington’s impact fee code, and are not factors in the impact fee calculations in this study.

DATA SOURCES AND CALCULATION

Data Sources
The data in this study of impact fees for park land in the City of Covington, Washington was provided by the City of Covington unless a different source is specifically cited.
Data Rounding

The data in this study was prepared using computer spreadsheet software. In some tables in this study, there will be very small variations from the results that would be obtained using a calculator to compute the same data. The reason for these insignificant differences is that the spreadsheet software was allowed to calculate results to more places after the decimal than is reported in the tables of these reports. The calculation to extra places after the decimal increases the accuracy of the end results, but causes occasional differences due to rounding of data that appears in this study.
2. CALCULATION OF PARK LAND IMPACT FEE

This chapter documents the calculation of the park land impact fee for the City of Covington. The calculations are produced using seven formulas. Each formula is described, each variable used in each formula is explained, and the data and calculations are presented in a separate table for each formula.

1. Population

Impact fees are meant to have “growth pay for growth” so the first step in developing an impact fee is to quantify future growth in the City of Covington. The future population is calculated by adding the current population to the population growth for the next 6 years.

\[
\]

There are two variables that require explanation: 1-a, current population and 1-b, population growth from 2015 through 2020.

**Variable 1-a: Current Population**

The current population is the number of people who reside in Covington in 2014. The source for this is the State of Washington’s Office of Financial Management.

**Variable 1-b: Population Growth 2015-2020**

The estimate of additional population from 2015 through 2020 is a linear projection based on the average annual population growth during the last ten years (2004 – 2014).

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014 Current Population</td>
<td>18,480</td>
</tr>
<tr>
<td>Additional Growth (2015-2020)</td>
<td>1,209</td>
</tr>
<tr>
<td>Total as of 2020</td>
<td>19,689</td>
</tr>
</tbody>
</table>
2. Level of Service Ratio

Level of service ratios measure the average quantity of park land per 1,000 population. This is a common metric used in park planning and park impact fees. One of its uses is to estimate the quantity of park land that will be needed for future growth (which will be presented in formula 3, below).

The level of service ratio is calculated by dividing the existing acreage\(^4\) of each type of park by the current population.

\[
\text{Current Level of Service Ratio} = \frac{\text{Existing Acres of Parks}}{\text{Current Population}}
\]

There is one new variable that requires explanation: 2-a, existing acres of parks.

**Variable 2-a: Existing Acres of Parks**

The acreage of each of Covington’s parks is listed in Appendix A – Inventory of Existing Parks. There are three categories of parks: community parks, neighborhood parks, and trails. Appendix A includes a total of the acreage for each category.

**Calculation of Level of Service Ratios**

The levels of service for park land for Covington’s impact fee are the ratios of existing park land per 1,000 current population for the year 2014. Table 2 lists each of the three types of parks, the existing acres from Appendix A, and the current population from Table 1.

The ratios are calculated in the final column of Table 2 by dividing the 2014 existing inventory by the 2014 current population, then multiplying the result times 1,000. The result is the current level of service ratio of each type of park for every 1,000 people in the Covington’s current population.

---

\(^4\) Covington’s park land acquisitions for community and neighborhood parks will be measured in acres. However, acquisitions for trails will be measured in lineal miles. For simplicity in this study, the term “acres” includes “miles” when referring to trails.
Table 2 – Inventory and Level of Service Ratio

<table>
<thead>
<tr>
<th>Type</th>
<th>Measurement</th>
<th>Existing Acres</th>
<th>Current Population</th>
<th>Level of Service Ratio per 1,000 Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Parks</td>
<td>acres</td>
<td>50.20</td>
<td>18,480</td>
<td>2.72</td>
</tr>
<tr>
<td>Neighborhood Parks</td>
<td>acres</td>
<td>92.52</td>
<td>18,480</td>
<td>5.01</td>
</tr>
<tr>
<td>Trails</td>
<td>lineal miles</td>
<td>3.84</td>
<td>18,480</td>
<td>0.21</td>
</tr>
</tbody>
</table>

3. Park Land Needs for Growth

The park land needed for growth is calculated in order to ensure that Covington plans to acquire enough land to provide new growth with the same level of service ratio that benefits the current population. The acres of park land needed for growth are calculated by multiplying the level of service ratio times the population growth from 2015 through 2020 (divided by 1,000).

\[
\text{Current Level of Service Ratio} \times \frac{\text{Population Growth 2015 – 2020}}{} = \text{Park Acres Needed for Growth}
\]

There are no new variables in formula 3.

**Calculation of Land Needs for Growth**

Table 3 shows the calculation of land needed for growth\(^5\). The current level of service ratios are from Table 2, and the population growth is from Table 1. The last two columns show the number of additional acres needed for growth, and the number of acres in Covington’s plans for future parks (the 2015-2020 Capital Facilities Plan).

The number of acres in the CFP must equal or exceed the number of acres needed for growth in order to provide at least the amount for which growth is paying impact fees. If

\(^5\) A different version of part of Table 3 is presented in Appendix B – Analysis of the Need for Park Land.
the CFP amounts are greater than the amount needed for growth, the City pays for the additional amounts, and growth pays only for the amount that it needs.

Table 3 – Park Land Needs for Growth

<table>
<thead>
<tr>
<th>Type</th>
<th>Measurement</th>
<th>Level of Service Ratio per 1,000 Population</th>
<th>Additional Growth 2015-2020</th>
<th>Additional Acres Needed for Growth 2015-2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Parks</td>
<td>acres</td>
<td>2.72</td>
<td>1,209</td>
<td>3.3</td>
</tr>
<tr>
<td>Neighborhood Parks</td>
<td>acres</td>
<td>5.01</td>
<td>1,209</td>
<td>6.1</td>
</tr>
<tr>
<td>Trails</td>
<td>lineal miles</td>
<td>0.21</td>
<td>1,209</td>
<td>0.3</td>
</tr>
</tbody>
</table>

4. Park Land Cost per Acre

The cost per acre of park land is the cost basis for the impact fee (in formula 5, below). The cost per acre of park land is calculated by dividing the cost of proposed park acquisitions by the number of acres to be acquired.

\[
\text{Cost of Park Land Acquisitions} \div \text{Acres to be Acquired} = \text{Park Land Cost per Acre}
\]

There are two variables that require explanation: 4-a, cost of land acquisitions and 4-b, acres to be acquired.

**Variable 4-a: Cost of Park Land Acquisitions**

The park land impact fees are based on three different park types and each type has a different cost per acre. The costs are from the City’s plans for future parks listed in Appendix C. If more than one acquisition is planned for a type of park the total cost of all acquisitions is used in order to calculate the weighted average cost per acre.

**Variable 4-b: Acres to be Acquired**

The acres to be acquired are from the same projects listed in Appendix C. If more than one acquisition is planned for a type of park the total acres of all acquisitions is used in order to calculate the weighted average cost per acre.
Calculation of Park Land Cost per Acre

Calculations of park land costs per acre are presented in Table 4. The acquisition costs and acreage for each type of park are from Appendix C. The average cost per acre in the last column is the result of dividing the acquisition cost by the number of acres to be acquired. The variation among the costs per acre are consistent with real estate markets. Community parks are typically larger than neighborhood parks, and large parcels typically have lower costs per acre than smaller parcels. Trail costs are per mile, and cannot be compared to park costs per acre.

<table>
<thead>
<tr>
<th>Type</th>
<th>Measurement</th>
<th>Acquisition Cost</th>
<th>Acres to be Acquired</th>
<th>Average Cost per Acre</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Parks</td>
<td>acres</td>
<td>$2,010,000</td>
<td>20.00</td>
<td>$100,500</td>
</tr>
<tr>
<td>Neighborhood Parks</td>
<td>acres</td>
<td>2,330,000</td>
<td>7.65</td>
<td>304,575</td>
</tr>
<tr>
<td>Trails</td>
<td>lineal miles</td>
<td>65,300</td>
<td>2.00</td>
<td>32,650</td>
</tr>
</tbody>
</table>

5. Park Land Cost per Person

The cost of park land per person is needed for calculating the impact fee rate in formulas 6 and 7. The cost per person of future park land acquisition is calculated by multiplying the park land cost per acre times the level of service standard.

\[
\text{Park Land Cost per Acre} \times \text{Current Level of Service Ratio} = \text{Park Land Cost per Person}
\]

There are no new variables in formula 5.

Calculation of Park Land Cost per Person

Table 5 contains the calculations: each cost per acre (from Table 4) is multiplied by the corresponding level of service ratio from Table 2, with the result being the cost for 1,000 persons. That result is divided in the final column by 1,000 to establish the cost per person. The costs per person for the three types of park are then combined into a total
dollar cost per person for all three types of parks in order to develop a total cost per person as the basis of the impact fee.

Table 5 – Park Land Cost per Person

<table>
<thead>
<tr>
<th>Type</th>
<th>Measurement Units</th>
<th>Total Cost per Acre or Mile</th>
<th>Level of Service Ratio per 1,000 Population</th>
<th>Cost per 1,000 Population</th>
<th>Cost per Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Parks</td>
<td>acres</td>
<td>$100,500</td>
<td>2.72</td>
<td>$273,360</td>
<td>$273</td>
</tr>
<tr>
<td>Neighborhood Parks</td>
<td>acres</td>
<td>304,575</td>
<td>5.01</td>
<td>1,525,922</td>
<td>1,526</td>
</tr>
<tr>
<td>Trails</td>
<td>lineal miles</td>
<td>32,650</td>
<td>0.21</td>
<td>6,857</td>
<td>7</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$1,806</td>
</tr>
</tbody>
</table>

6. Net Cost Per Person

The net cost per person is calculated by adjusting the park land cost per person to subtract the adjustment for other revenue.

\[
\text{Net Cost per Person} = \frac{\text{Park Land Cost per Person}}{\text{Adjustment for Other Revenue}}
\]

There is one new variable that requires explanation: 6-a, adjustment for other revenue.

**Variable 6-a: Adjustment for Other Revenue**

The revenue adjustment is a reduction of the cost per person to account for other revenues used by the City for park projects. The City’s CFP for all projects lists grant revenues totaling $7.2 million. These are estimates of future grants for all park projects, so there may be some variation between these estimates and the amounts and specific projects for which the City will receive grants. The most conservative approach is to assume that the total amount of all the grants ($7.2 million) may be available in the same proportion for land acquisition as for all other park projects. Therefore, dividing $7.2 million of potential grants by the total $36.8 million cost of all projects indicates that 19.57% of all projects may be funded by grants.
**Calculation of Net Cost per Person**

Table 6 begins with the cost per person from Table 5, then calculates 19.57% of the total cost as the amount of the adjustment for other revenue for park projects. Subtracting the $353 adjustment from the total $1,806 leaves a net cost of $1,453 per person.

<table>
<thead>
<tr>
<th>Type</th>
<th>Cost per Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Cost per Person</td>
<td>$ 1,806</td>
</tr>
<tr>
<td>Percent From Other Funding Sources</td>
<td>19.57%</td>
</tr>
<tr>
<td>Cost per Person From Other Funding</td>
<td>353</td>
</tr>
<tr>
<td>Net Cost per Person</td>
<td>$ 1,453</td>
</tr>
</tbody>
</table>

**7. Impact Fee Per Dwelling Unit**

The impact fee per dwelling unit is calculated by multiplying the net cost per person times the number of persons per dwelling unit.

\[
\text{Net Cost per Person} \times \text{Persons per Dwelling Unit} = \text{Impact Fee per Dwelling Unit}
\]

There is one new variable that requires explanation: 7-a, persons per dwelling unit.

**Variable 7-a: Persons per Dwelling Unit.**

The number of persons per dwelling unit is the factor used to convert the cost of park land per person into the impact fee per dwelling unit. Covington determined the persons per dwelling unit using census and buildable lands data as well as school district data and provided that data for Table 7.
Calculation of Impact Fee per Dwelling Unit

In Table 7 (on the next page) the net cost per person (from formula 6) is multiplied by the average number of persons per dwelling unit to calculate the park land impact fee per dwelling unit.

<table>
<thead>
<tr>
<th>Type</th>
<th>Net Cost per Person</th>
<th>Average Persons per Dwelling Unit</th>
<th>Impact Fee per Dwelling Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Dwelling Units</td>
<td>$1,453</td>
<td>2.7</td>
<td>$3,922</td>
</tr>
<tr>
<td>Multi-Family Dwelling Units</td>
<td>1,453</td>
<td>1.9</td>
<td>2,760</td>
</tr>
</tbody>
</table>
APPENDIX A: INVENTORY OF EXISTING PARKS

The parks system in Covington presently consists of 50.20 acres of community parks, 107.64 acres of neighborhood parks, 110.48 acres of open space, and 3.84 miles of trails. The neighborhood parks inventory includes parks owned by Homeowners Associations (HOAs) because those parks serve the function of a neighborhood park for their association, therefore the City would not develop a City-owned neighborhood park in the same service area. Open space is not included in this park land impact fee because the City has a separate requirement for donation of critical areas that include natural areas. A complete inventory is listed in Table A.

Table A – Covington Parks and Trails (2014)

<table>
<thead>
<tr>
<th>Type and Name of Park</th>
<th>Total Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Community Parks</strong></td>
<td></td>
</tr>
<tr>
<td>Jenkins Creek Park</td>
<td>20.30</td>
</tr>
<tr>
<td>Covington Community Park</td>
<td>29.90</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50.20</strong></td>
</tr>
<tr>
<td><strong>Neighborhood Parks</strong></td>
<td></td>
</tr>
<tr>
<td><strong>City Owned and Maintained</strong></td>
<td></td>
</tr>
<tr>
<td>Evergreen Park</td>
<td>1.70</td>
</tr>
<tr>
<td>Crystal View Park</td>
<td>1.90</td>
</tr>
<tr>
<td>Friendship Park</td>
<td>0.60</td>
</tr>
<tr>
<td><strong>City Owned, Maintained by HOA</strong></td>
<td></td>
</tr>
<tr>
<td>Abotsford Estates Park</td>
<td>2.75</td>
</tr>
<tr>
<td>The Reserve</td>
<td>9.40</td>
</tr>
<tr>
<td>Tamarack</td>
<td>16.80</td>
</tr>
<tr>
<td>Channing</td>
<td>0.40</td>
</tr>
<tr>
<td><strong>HOA Owned and Maintained</strong></td>
<td></td>
</tr>
<tr>
<td>Coho Creek HOA</td>
<td>2.17</td>
</tr>
<tr>
<td>Crofton Heights HOA</td>
<td>4.61</td>
</tr>
<tr>
<td>Crofton Hills HOA</td>
<td>0.29</td>
</tr>
<tr>
<td>Pearl Jones HOA</td>
<td>1.07</td>
</tr>
<tr>
<td>Tamarack HOA</td>
<td>0.58</td>
</tr>
<tr>
<td>The Reserve HOA</td>
<td>9.43</td>
</tr>
<tr>
<td>Timber Hills HOA</td>
<td>1.85</td>
</tr>
<tr>
<td>Timberlane HOA</td>
<td>5.22</td>
</tr>
<tr>
<td>Winterwood Estates HOA</td>
<td>43.80</td>
</tr>
<tr>
<td>Aqua Vista at Pipe Lake HOA</td>
<td>0.75</td>
</tr>
</tbody>
</table>
### Type and Name of Park

<table>
<thead>
<tr>
<th>Type and Name of Park</th>
<th>Total Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Channing Park HOA</td>
<td>0.36</td>
</tr>
<tr>
<td>Cornerstone HOA</td>
<td>0.41</td>
</tr>
<tr>
<td>Glennwood HOA</td>
<td>0.31</td>
</tr>
<tr>
<td>Maple Creek HOA</td>
<td>0.13</td>
</tr>
<tr>
<td>Morgans Creek</td>
<td>0.07</td>
</tr>
<tr>
<td>N. Rainier Vista HOA</td>
<td>0.05</td>
</tr>
<tr>
<td>North Parke HOA</td>
<td>0.48</td>
</tr>
<tr>
<td>Parke Meadows HOA</td>
<td>0.45</td>
</tr>
<tr>
<td>Pearl Jones HOA</td>
<td>0.03</td>
</tr>
<tr>
<td>Pioneer Ridge (High Point) HOA</td>
<td>0.25</td>
</tr>
<tr>
<td>S. Rainier Vista HOA</td>
<td>1.08</td>
</tr>
<tr>
<td>Savana HOA</td>
<td>0.57</td>
</tr>
<tr>
<td>Wood Crest HOA</td>
<td>0.13</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>107.64</strong></td>
</tr>
</tbody>
</table>

### Trails

<table>
<thead>
<tr>
<th>Trails</th>
<th>Total Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covington Community Park</td>
<td>1.50</td>
</tr>
<tr>
<td>Evergreen Park</td>
<td>0.07</td>
</tr>
<tr>
<td>Friendship Park</td>
<td>0.06</td>
</tr>
<tr>
<td>Jenkins Creek Park</td>
<td>0.95</td>
</tr>
<tr>
<td>Jenkins Creek Trail</td>
<td>0.22</td>
</tr>
<tr>
<td>Rainier Vista Park</td>
<td>0.78</td>
</tr>
<tr>
<td>Wingfield (Coho) Open Space</td>
<td>0.26</td>
</tr>
<tr>
<td><strong>TOTAL MILES</strong></td>
<td><strong>3.84</strong></td>
</tr>
</tbody>
</table>
APPENDIX B: ANALYSIS OF THE NEED FOR PARK LAND

RCW 82.02 requires impact fees to be based on the City's Capital Facilities Plan, and requires it to identify existing deficiencies in facility capacity for current development, capacity of existing facilities available for new development, and additional facility capacity needed for new development. The purpose of this appendix is to summarize existing deficiencies and reserves, and needs for additional capacity for new development (based on data provided in the City's comprehensive plan).

The need for parks is determined by multiplying the level of service ratio for each type of park times the population to calculate the quantity that is required. The population is from Table 1, and the level of service ratio of existing parks to current population is from Table 2.

The quantity required is then compared to the existing inventory to determine existing deficiencies, reserve capacity, and needed new park land. The inventory of existing parks is from Table A.

Table B shows the analysis of park land needs for the current population and for population growth from 2015 through 2020.

The data illustrate that the existing inventory of park land serves the current population, therefore there is no existing deficiency, and no reserve capacity of existing parks to serve future growth.

The increase in population during the next 6 years from 2015 through 2020 requires the addition of park land to accommodate the persons from dwelling units created by new development. Specifically, in the next 6 years the City of Covington will need an additional 3.28 acres of community parks, 7.04 acres of neighborhood parks, and 0.25
mile of trails. All of these needs are for population growth from new development from 2015 through 2020.

Table B – Analysis of Need for Park Land

<table>
<thead>
<tr>
<th>Component</th>
<th>Level of Service Ratio</th>
<th>City Population</th>
<th>Quantity Required</th>
<th>Existing Inventory</th>
<th>Reserve or (Need)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Community Parks</strong></td>
<td>2.72</td>
<td>18,480</td>
<td>50.20</td>
<td>50.20</td>
<td>0.00</td>
</tr>
<tr>
<td>2014 Current</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Growth (2015-2020)</td>
<td></td>
<td>1,209</td>
<td>3.28</td>
<td>0.00</td>
<td>(3.28)</td>
</tr>
<tr>
<td>Total as of 2020</td>
<td></td>
<td>19,689</td>
<td>53.48</td>
<td>50.20</td>
<td>(3.28)</td>
</tr>
<tr>
<td><strong>Neighborhood Parks</strong></td>
<td>5.01</td>
<td>18,480</td>
<td>92.52</td>
<td>92.52</td>
<td>0.00</td>
</tr>
<tr>
<td>2014 Current</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Growth (2015-2020)</td>
<td></td>
<td>1,209</td>
<td>6.05</td>
<td>0.00</td>
<td>(6.05)</td>
</tr>
<tr>
<td>Total as of 2020</td>
<td></td>
<td>19,689</td>
<td>98.57</td>
<td>92.52</td>
<td>(6.05)</td>
</tr>
<tr>
<td><strong>Trails</strong></td>
<td>0.21</td>
<td>18,480</td>
<td>3.84</td>
<td>3.84</td>
<td>0.00</td>
</tr>
<tr>
<td>2014 Current</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Growth (2015-2020)</td>
<td></td>
<td>1,209</td>
<td>0.25</td>
<td>0.00</td>
<td>(0.25)</td>
</tr>
<tr>
<td>Total as of 2020</td>
<td></td>
<td>19,689</td>
<td>4.09</td>
<td>3.84</td>
<td>(0.25)</td>
</tr>
</tbody>
</table>

Sources:
Level of Service Ratio: Table 2
City Population: Table 1
Existing Inventory: Appendix A
APPENDIX C: CAPITAL FACILITIES PLAN - 2015-2020

RCW 82.02 requires impact fees to be based on the City’s Capital Facilities Plan (CFP). Table C is an excerpt from Covington’s CFP for parks for the years 2015 – 2020. It lists projects for community parks, neighborhood parks and trails that involve acquisition of additional land. The list includes each project’s total cost and the land acquisition portion of each project (because that is the basis for the park land impact fee).

Table C – Capital Facilities Plan for Parks: 2015-2020 (Excerpt)

<table>
<thead>
<tr>
<th>Project</th>
<th>CFP</th>
<th>CFP Budget</th>
<th>Land Acres</th>
<th>Land Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Community Park</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community Park #3</td>
<td>1178</td>
<td>4,510,000</td>
<td>20.00</td>
<td>2,010,000</td>
</tr>
<tr>
<td>Sub-total</td>
<td></td>
<td>4,510,000</td>
<td>20.00</td>
<td>2,010,000</td>
</tr>
<tr>
<td><strong>Neighborhood Park</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Covington (SoCo) Park</td>
<td>1019</td>
<td>5,523,599</td>
<td>5.65</td>
<td>1,830,000</td>
</tr>
<tr>
<td>Neighborhood Park #5</td>
<td>xxxx</td>
<td>500,000</td>
<td>2.00</td>
<td>500,000</td>
</tr>
<tr>
<td>Sub-total</td>
<td></td>
<td>6,023,599</td>
<td>7.65</td>
<td>2,330,000</td>
</tr>
<tr>
<td><strong>Trails</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pipeline Trail North</td>
<td>1101</td>
<td>477,507</td>
<td>1.00</td>
<td>5,300</td>
</tr>
<tr>
<td>Jenkins Creek Trail</td>
<td>1110</td>
<td>80,000</td>
<td>1.00</td>
<td>60,000</td>
</tr>
<tr>
<td>Sub-total</td>
<td></td>
<td>557,507</td>
<td>2.00</td>
<td>65,300</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td>11,091,106</td>
<td>4,405,300</td>
<td></td>
</tr>
</tbody>
</table>
Title 18
Additional code amendments associated with Park Impact Fees.

Chapter 18.20
TECHNICAL TERMS AND LAND USE DEFINITIONS

New definition: 18.20.1XX Capital facilities plan, parks and recreation.
“Capital facilities, parks” means the facilities or improvements included in the most recent capital facilities plan element of a comprehensive plan adopted pursuant to Chapter 36.70A RCW, and such plan as subsequently amended and adopted by the City Council. Park and recreation facilities include those identified in the following documents, as amended:
(1) The Capital Facilities Element of the City of Covington Comprehensive Plan;
(2) The Parks and Recreation Element of the City of Covington Comprehensive Plan; and
(3) The Rate Study for Park Land Impact Fees.

Amend definition: 18.20.621 Impact fee.
“Impact fee” means a payment of money authorized by State law and this code to be imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development. Impact fees include, but are not limited to, transportation impact fees, park mitigation payment fees (fee-in-lieu of), park impact fees, fire impact fees and school impact fees. “Impact fees” do not include fees imposed to cover the costs of processing applications, inspecting and reviewing plans or other information required to be submitted for purpose of evaluation of an application, or inspecting or monitoring development activity.

Amend definition: 18.20.819 Open space.
“Open space” means areas left predominately in a natural state to create urban separators and greenbelts, sustain native ecosystems, connect and increase protective buffers for environmentally sensitive areas, critical areas, provide a visual contrast to continuous development, reinforce community identity and aesthetics, or provide links between important environmental or recreational resources. Open space functions as protection of natural resources and biodiversity, recreations spaces, support for economic development opportunities, developing of neighborhood gathering spaces, promotion of public health benefits; and civic and cultural infrastructure.[A1]

Replace definition: 18.20.835 Park and recreation facilities.
“Park and recreation facilities” means a site designed or developed for recreational use by the public, including those dedicated parklands, developed parks and associated improvements so designated in the Parks and Recreation element of the City’s comprehensive plan. “Park” means a site designed or developed for recreational use by the public including, but not limited to:
(1) Indoor facilities, such as:
   (a) Gymnasiums;
   (b) Swimming pools; or
(c) Activity centers;
(2) Outdoor facilities, such as:
   (a) Playfields;
   (b) Fishing areas;
   (c) Picnic and related outdoor activity areas; or
   (d) Approved campgrounds;
(3) Areas and trails for:
   (a) Hikers;
   (b) Equestrians;
   (c) Bicyclists; or
   (d) Off-road recreational vehicle users;
(4) Recreation space areas required under CMC 18.35.150;
(5) Play areas required under CMC 18.35.170; and
(6) Facilities for on-site maintenance. (Ord. 42-02 § 2 (21A.06.835))

Amend definition: 18.20.840 Park service area.
“Park service area” means a geographic area in which a defined set of park facilities provide service to development within the area. The entire area within the city limits is the park service area established by the Department, within which the dedications of land and fees received from new residential developments for the benefit of residents within such service area. (Ord. 42-02 § 2 (21A.06.840))

New definition: 18.20.9XX 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.

New definition: 18.20.12XX 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.
Repeal and Replace Sections 18.35.150, 160, 170, 180, 190, 240 & 250

Chapter 18.35
DEVELOPMENT STANDARDS – DESIGN REQUIREMENTS

New Sections
18.35.150 Residential - On-site recreation requirements
18.35.160 Multifamily - On-site recreation facilities required
18.35.170 Dedication of parks and trails - Required by capital facilities plan
18.35.180 Private on-site recreation facilities - Minimum design standards
18.35.190 Request for impact fee credits - Private park and trail facilities

18.35.150 Residential - On-site recreation requirements.
(1) Residential development that includes single family attached and detached dwelling units within the city’s service area shall mitigate for impacts the park and recreation service levels through payment of a park impact fee in accordance with CMC Title 19.

(2) If the applicant chooses to provide a park and recreation facility as part of the residential development the park and recreation facility shall meet the following minimum requirements:

   (a) Park and recreation facilities should be provided at a rate of 200 square feet per lot.

   (b) Park and recreation facilities shall meet minimum design standards pursuant to CMC 18.35.180.

   (c) The applicant will not receive credit for any park and recreation facilities or dedication of land for a future park and recreation facility unless the space meets the criteria in CMC 18.35.190.

(3) Developments within the Lakepointe Urban Village Subarea as designated in the Future Land Use Map shall provide fully accessible recreation facility for leisure, play and sport activities as follows, or as otherwise determined by the director in accordance with the adopted subarea plan (Ordinance 02-2017) and planned action (Ordinance 04-2017):

   (a) Residential subdivision at a density of four units an acre or more: 450 square feet per unit;

   (b) Townhouses developed at a density of eight units or less per acre: 450 square feet per unit;

   (c) Manufactured home park: 260 feet per unit;
(d) Multifamily dwelling units and townhouses developed at a density of greater than eight units per acre: 100 square feet per unit;

(e) Senior housing or other age-restricted facilities: 200 square feet per unit or as required by the funding agency, whichever is greater.

18.35.160 Multifamily - On-site recreation facility required.

(1) Multifamily development and mixed-use development with residential units, including senior housing or other age-restricted facilities, shall be required to provide private recreation facilities on-site pursuant to subsection (2) and mitigate for impacts to the city’s park and recreation service levels through payment of a park impact fee in accordance with CMC Title 19.

(2) Multifamily development shall provide 100 square feet per unit of private recreation facility. The private recreation facility shall meet the minimum design standards pursuant to CMC 18.35.180.

(3) Indoor recreation areas or rooftop areas may be credited toward the total recreation space requirement, if the director determines that the areas are located, designed and improved in a manner that provides recreational opportunities functionally equivalent to recreational activities provided outdoors or provides areas for social activities, multi-purpose entertainment and education areas.

18.35.170 Dedication of parks and trails - Required by capital facilities plan.

(1) Dedication of park and recreation facility and trails shall be provided by any development when such developments are located within an area identified by the capital facilities plan as a park site or trail corridor.

(2) The area of the park and recreation facility and trail dedication shall be counted as part of the site for purposes of density and floor area calculations, unless otherwise exempt from density calculations in accordance with CMC 18.30.080.

(3) The residents of the development shall be provided, at a minimum pedestrian access to the park and recreation facility and trail.

(4) Residential and multifamily developments that propose to provide public park and trail facilities pursuant to this section shall be subject to an impact fee credit in accordance with CMC Title 19. An easement granted for future park and recreation and trail facilities shall not be subject to impact fee credits, unless the easement includes required facility improvements.

18.35.180 Private on-site recreation facilities - Minimum design standards.
(1) Private park and recreation facilities shall meet the minimum design standards:

   (a) Be on the site of the proposed development;

   (b) Be adjacent to and visible from main pedestrian path, sidewalk or near building entrances;

   (c) Be of a grade and surface suitable for recreation; 75% of the site cannot exceed 2% grade, unless the topography results in enhanced critical areas or environmental protection.

   (d) Be fully accessible and convenient to all residents within the development and in compliance with 2010 ADA Standards for Accessible Design and the 2004 Architectural Barriers Act, as amended.

   (e) Be designed with amenities that encourage residents to the facility such as benches, trash receptacles, and paths leading from the main pedestrian path and to an internal walking path.

   (f) Trails and paths shall be constructed per the City of Covington’s Design and Construction Standards adopted in Title 12. Trails located within critical area buffers shall be designed in accordance with Chapter 18.65 CMC. Any modified private trail or path design shall be approved by the parks and recreation director prior to any preliminary land use approval.

   (g) Private recreation facility, paths and trails shall be placed in a designated recreation facility tract. The tract shall be dedicated to the homeowner’s association or other organization. Maintenance of any recreation facility tract retained in private ownership should be audited regularly for safety and compliance with current standards. The homeowner’s association or other organization shall be responsible for all costs associated with the continued long-term maintenance of the recreation tract and facilities.

   (h) Provide play equipment that meets, at a minimum, the Consumer Product Safety Standards for equipment, soft surfacing and comply with all applicable ADA accessibility standards, and incorporate play pieces that address ages 2-5 and 5-12. Prior to final approval of the development, the applicant will be required to provide the city a letter from a certified parks installer that the equipment was installed to industry standards.

(3) The city may require a financial guarantee for construction and maintenance of private recreation facilities and trails consistent with CMC Title 14.

18.35.190 Request for impact fee credits - Private park and recreation and trail facilities.

(1) Residential and multifamily developments that propose to provide private park and recreation and trail facilities shall not receive a credit against the park impact fee, unless otherwise determined by the Parks and Recreation Director, in accordance with this section,
and CMC Title 19[A3]. Any request for a credit shall be submitted in accordance with CMC Title 19.

(2) The applicant may request a credit be applied to the park impact fee based on the installation of a private park and recreation facility, construction of a private trail, or the dedication of land for future park and recreation and trail facilities. The applicant shall be responsible for all cost associated with preparing data and analysis to determine if the private park and recreation or trail facilities provided on private land satisfies the applicant’s requirement to mitigate for park and recreation level of service deficiencies.

(3) The Parks and Recreation Director is responsible for making a final decision pertaining to a request for park impact fee credits. The applicant shall submit the following information, in addition the minimum requirements in Chapter 19.20 CMC, to be considered.

   (a) Supply and demand data that identifies proposed private park and recreation facility would better meet community needs for parks and recreation facilities than payment of park impact fees.

   (b) The location and design of the park and recreation facilities is consistent with comprehensive plan and any applicable park and recreation plans, as amended.

   (c) Site plan and supporting documents that shows the proposed private park and recreation facility meets the following minimum criteria:

       (i) The land and its development is an integral element of the comprehensive plan;

       (ii) The land is suitable for future active park and recreation facilities pursuant to the comprehensive plan;

       (iii) The land is a size and horizontal and vertical configuration necessary for the design of recreation facilities that meet the city’s park standards identified in the comprehensive plan;

       (iv) The land has public access via a public street;

       (v) The land is located near areas designated by the city for park, trail or recreation purposes;

       (vi) The land provides a link between city and/or other publicly owned recreation properties;
(d) The land shall be surveyed or adequately marked with survey monuments, or otherwise readily distinguishable from adjacent privately owned property;

(e) The land shall have no known physical problems associated with it, such as problems with drainage, erosion or flooding, or the presence of hazardous waste, which the director determines would cause inordinate demands on public resources for maintenance and operation;

(f) The land shall have no known on-site safety hazards. Substandard vehicular and pedestrian facilities shall be considered but shall not alone be used to disqualify a proposed site dedication;

(g) The director may require a developer to post financial guarantee consistent with Title 14 for the maintenance of any private park and recreation facility as a method of showing long term maintenance for a time as specified by the director.
Title 19 Amendments
Adopt new Chapter 19.60 – Park Impact Fees

Chapter 19.20
IMPOSITION OF IMPACT FEES

19.20.090 Credits.

New Section (5)(e) Renumber following sections:
(5)(e) Any impact fee credits, pursuant to this section shall be deducted from the calculated impact fee and a new impact fee shall be assessed for the development. If an impact fee is owed by the applicant the outstanding fee may be distributed evenly per building permit, unless otherwise determined by the city.
Chapter 19.60
PARK IMPACT FEE

Sections:
19.60.XXX Purpose.
19.60.XXX Application
19.60.XXX Administrative guidelines
19.60.XXX Exemptions.
19.60.XXX Assessment of fees.
19.60.XXX Use of funds.
19.60.XXX Credits.

19.60.XXX Purpose.

(1). The purposes of this chapter are to:
   (a) Establish the City of Covington as a service area for parks and recreation facilities;

   (b) Ensure that new growth and development pay a proportionate share of the cost of parks and recreation facilities needed to service and support new growth;

   (c) Implement the policies of the Parks and Recreations Element of the City of Covington Comprehensive Plan; and,

   (d) Provide funds, related to Parks and Recreation, as identified in the City of Covington Comprehensive Plan as necessary to meet additional growth.

19.60.XXX Application
Except as otherwise provided for under this title, development activity in the city's service area shall be charged a park impact fee pursuant to this chapter.

19.60.XXX Administrative guidelines
The director shall be authorized to adopt internal guidelines for the administration of impact fees under this chapter.

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

19.60.XXX Assessment of fees.
(1) Impact fees shall be assessed based on the city’s fee schedule, as updated by the city council, through resolution. The park impact fee shall be generated from the formula for calculating park impact fees as set forth in the Rate Study for Park Land Impact Fee Henderson, Young and Company, dated November 19, 2014, as amended (“Park Rate Study”) as may be
amended from time to time and incorporates the rate study into this chapter by this reference. The rate study utilizes a methodology for calculating impact fees that fulfills all 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 for public review.

(2) Park Impact Fee Schedule:
(a) Park impact fee schedule is generated from the formula for calculating impact fees set forth in the rate study adopted in subsection (1) of this section.
(b) The park impact fee schedule is adopted by the city council through the fee resolution.

(3) Development activities that have received vesting rights, prior to the adoption of the impact fee rate by resolution of the city council, shall be required to mitigate for park impacts through a park fee-in-lieu, as assessed through an approved preliminary plat or by providing park space at the rate of 450 square feet per lot for single family residential for densities of four units per acre or more; or 100 square feet per dwelling unit for multifamily at a density of eight or more dwelling units per acre. A deficiency in adequate park facilities associated with development activities with vested rights shall be subject to payment of the park impact fee in place at the time of building permit issuance.

19.60.XXX Use of funds.
(1) The City shall base continued authorization to collect and expend impact fees on revising its Comprehensive Plan in compliance with RCW 36.70A.070, and on the capital facilities plan identifying:
   (a) Deficiencies in public facilities serving existing development and how existing deficiencies will be eliminated within a reasonable period of time;
   (b) Additional demands placed on existing public facilities by new development; and
   (c) Additional public facility improvements required to serve new development.

(2) Park impact fees collected for system improvements shall be used only in conformance with the most recent capital facilities plan element of the comprehensive plan adopted by the City Council.

(3) Park impact fees shall not be used to eliminate or reduce deficiencies in existing facilities serving existing development.

(4) Park impact fees shall not be used for maintenance or operation expenses.

(5) Park impact fees may be spent for public improvements for planned facilities, including, but not limited to planning, land acquisition, right-of-way acquisition, easement or access
acquisition, construction, permitting, financing, engineering, architectural design, project management and any other expenses which are consistent with the most recent capital facilities plan element adopted by the City Council.

(6) Park impact fees may be used to recoup public improvement costs previously incurred by the City to the extent that new growth and development activity will be served by the previous acquisition; provided, such fee shall not be imposed to make up for any system improvement deficiencies.

19.60.XXX Credits.
Requests for park impact fee credits shall be in accordance with CMC 18.35 and 19.20.090.
Proposed Park Impact Fee

Planning Commission
July 6, 2017
Should we Delete slides 10 – 14?
Seems it would be confusing

Potential Subjects for Code Revisions Related to Park Impact Fee

- Adoption of new park impact fee rates
- Modification of land dedication requirements and fee-in-lieu alternative
- Development design requirements pertaining to parks and open space (both public and private)
- Impact fee credits for land dedication
- HOA park standards
- Treatment of older vested projects

Definition of an Impact Fee

One time payment...
... by new development ...
... for capital costs of facilities ...
... needed by new development.
Reasons Governments Charge Impact Fees

- Revenue: for public facilities
- Policy: growth pays a portion of costs
- Quality of life: public facilities keep up with growth

What Can Impact Fees Pay For?

- CAN pay for “system improvements” in adopted CIP
- NOT pay for repair, replacement, renovation

Rules for Impact Fees

1. “Fair Share”
   = growth yes, deficiency no
2. “Reasonably needed” & “proportional share”
   = fee proportional to impacts
3. “Credits”
   = no double charging
4. “Not rely solely on impact fees”
   = must include some other funding
Guiding Principles

- Parks and trails land, not improvements
- Open space via dedication, not impact fee
- Residential development, not commercial
- Current LOS ratios, not “standards”
- Neighborhood parks include HOA parks

Calculation of Park Impact Fees

1. Growth Forecast
2. Cost per Person (5 steps)
3. Impact Fee Rates

1. Growth Forecast

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014 Current</td>
<td>18,480</td>
</tr>
<tr>
<td>Growth 2015-2020</td>
<td>1,209</td>
</tr>
<tr>
<td>Total as of 2020</td>
<td>19,689</td>
</tr>
</tbody>
</table>
2. Cost per Person

Level of Service Ratios

Table 2, page 16

<table>
<thead>
<tr>
<th>Type</th>
<th>Units</th>
<th>Existing Acres</th>
<th>Current Population</th>
<th>LOS Ratio/1,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community</td>
<td>acres</td>
<td>50.20</td>
<td>18,480</td>
<td>2.72</td>
</tr>
<tr>
<td>Neighborhood</td>
<td>acres</td>
<td>92.52</td>
<td>18,480</td>
<td>5.01</td>
</tr>
<tr>
<td>Trails</td>
<td>miles</td>
<td>3.84</td>
<td>18,480</td>
<td>0.21</td>
</tr>
</tbody>
</table>

---

Deficiency vs. Growth

Park Levels of Service (Kirkland)

![Deficiency vs. Growth Diagram](image)

---

2. Cost per Person

Park Land Needs for Growth

Table 3, page 17

<table>
<thead>
<tr>
<th>Type</th>
<th>Units</th>
<th>LOS Ratio/1,000</th>
<th>Growth 2015-2020</th>
<th>Units for Growth</th>
<th>Units in CFP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community</td>
<td>acres</td>
<td>2.72</td>
<td>1,209</td>
<td>3.3</td>
<td>20.0</td>
</tr>
<tr>
<td>Neighborhood</td>
<td>acres</td>
<td>5.01</td>
<td>1,209</td>
<td>6.1</td>
<td>7.7</td>
</tr>
<tr>
<td>Trails</td>
<td>miles</td>
<td>0.21</td>
<td>1,209</td>
<td>0.3</td>
<td>2.0</td>
</tr>
</tbody>
</table>
## 2. Cost per Person

### Park Land Cost per Acre

<table>
<thead>
<tr>
<th>Type</th>
<th>Units</th>
<th>Cost per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community</td>
<td>acres</td>
<td>$2,010,000</td>
</tr>
<tr>
<td>Neighborhood</td>
<td>acres</td>
<td>$2,330,000</td>
</tr>
<tr>
<td>Trails</td>
<td>miles</td>
<td>$65,300</td>
</tr>
</tbody>
</table>

### Net Cost per Person

<table>
<thead>
<tr>
<th>Type</th>
<th>Units</th>
<th>Cost per Unit</th>
<th>LOS Ratio/1,000</th>
<th>Cost per 1,000</th>
<th>Cost per person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community</td>
<td>acres</td>
<td>$100,500</td>
<td>2.72</td>
<td>$273,360</td>
<td>$273</td>
</tr>
<tr>
<td>Neighborhood</td>
<td>acres</td>
<td>$304,575</td>
<td>5.01</td>
<td>1,525,922</td>
<td>1,526</td>
</tr>
<tr>
<td>Trails</td>
<td>miles</td>
<td>$32,650</td>
<td>0.21</td>
<td>6,857</td>
<td>7</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1,806</td>
</tr>
</tbody>
</table>

### Net Cost per Person

- Total Cost per Person: $1,806
- Percent from Other Funding Sources: 19.57%
- Cost per Person from Other Funding: $353
- Net Cost per Person: $1,453
3. Impact Fee Rates

Impact Fee per Dwelling Unit

<table>
<thead>
<tr>
<th>Type</th>
<th>Cost per Person</th>
<th>Persons per Dwelling</th>
<th>Impact Fee per Dwelling</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family</td>
<td>$ 1,453</td>
<td>2.7</td>
<td>$ 3,922</td>
</tr>
<tr>
<td>Multi Family</td>
<td>1,453</td>
<td>1.9</td>
<td>2,760</td>
</tr>
</tbody>
</table>

Potential revenue from park impact fees in Covington

- Population growth 2015-2020 = 1,209
- 1,209 people @ $1,453/person = $1,756,677
  - Park CFP = $38.9 million
  - Park Impact Fee = 1.8 million
  - Growth = 5%, City = 95%

Impact Fee Options:

- Impact fee rate study provides sound basis for park impact fees, but Covington has options:
  1. Increase City share, decrease growth’s share
  2. Phase in rates over 2 or more years
  3. Exempt low-income housing
  4. Do not adopt park impact fees
Next Steps

- Public outreach to stakeholders and community (Completed)
- Briefing of Park Commission – July 6
- Development of code revisions
- SEPA review
- Department of Commerce review
- Planning Commission review, public hearing, recommendation to Council
- City Council review and decision – August 22

END OF PRESENTATION

Questions?
Discussion
Policy Direction