

**CITY OF SAMMAMISH  
WASHINGTON**

**ORDINANCE NO. O2016-412**

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**AN ORDINANCE OF THE CITY OF SAMMAMISH, RELATING TO THE DEFERRAL OF IMPACT FEES; ADDING A NEW SAMMAMISH MUNICIPAL CODE CHAPTER 14A.25 ENTITLED IMPACT FEE DEFERRAL; AMENDING SECTIONS 14A.15.020 AND 14A.20.020 AND CHAPTER 21A.105 OF THE SAMMAMISH MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the City of Sammamish (“City”) is authorized by Chapter 82.02 RCW to require new growth and development within the City to pay a proportionate share of the cost of new facilities to serve such new growth and development through the assessment of impact fees; and

WHEREAS, pursuant to such authority and the police powers of the City, the City has enacted Chapters 14A.15, 14A.20 and 21A.105 of the Sammamish Municipal Code (“SMC”) establishing such impact fees; and

WHEREAS, the current impact fee provisions provide flexibility for developers by staggering some payments for various impact fees, which creates an administrative burden on City staff; and

WHEREAS, as the State recently amended RCW 82.02.050 requiring that all counties, cities, and towns provide a mechanism for which impact fees for single-family detached and single-family attached residential construction may be deferred to either final inspection, issuance of a certificate of occupancy or equivalent certification, or the closing of the first sale of the property; and

WHEREAS, the City desires to encourage new growth and development in the City, to ease the financial burden on individual homebuilders, and to promote economic recovery in the construction industry, and finds that adopting an impact fee deferral mechanism provides the needed flexibility on the timing of impact fee payments and is in the public interest, and eliminates the need for staggered payment as currently allowed under the City Code; and

WHEREAS, City staff has proposed the addition of a new Chapter 14A.25 SMC establishing an impact fee deferral mechanism and has also proposed amendments to Chapters 14A.15, 14A.20 and 21A.105 SMC to streamline the timing of both the assessment and collection of impact fees (“the Proposed Amendments”); and

WHEREAS, the ordinance amendments are procedural in nature, and are therefore categorically exempt from State Environmental Policy Act (SEPA) review pursuant to WAC 197-11-800(19);

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SAMMAMISH, WASHINGTON, DOES ORDAIN AS FOLLOWS:

**Section 1. Chapter 14A.25, Impact Fee Deferral, Added:** A new Sammamish Municipal Code Chapter 14A.25, entitled Impact Fee Deferral, is hereby adopted to read as set forth in the attached **Attachment A**, which is incorporated herein by this reference.

**Section 2. SMC 14A.15.020, Assessment of impact fees, Amended:** Sammamish Municipal Code Section 14A.15.020, Assessment of Impact Fees, is hereby amended as set forth in the attached **Attachment B**, which is incorporated herein by this reference.

**Section 3. SMC 14A.20.020, Assessment of impact fees, Amended:** Sammamish Municipal Code Section 14A.20.020, Assessment of Impact Fees, is hereby amended as set forth in the attached **Attachment C**, which is incorporated herein by this reference.

**Section 4. Chapter SMC 21A.105, School Impact Fees, Amended:** Sammamish Municipal Code Chapter 21A.105, School Impact Fees, is hereby amended as set forth in the attached **Attachment D**, which is incorporated herein by this reference.

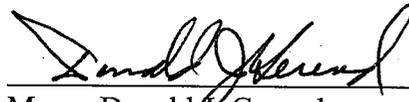
**Section 5. Interpretation:** The City Council authorizes the Community Development Director to administratively interpret these provisions as necessary to implement the intent of the Council.

**Section 6. Severability:** If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

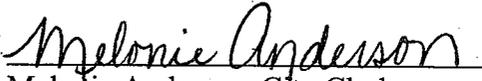
**Section 7. Effective Date:** This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force 5 days after the date of publication.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF SAMMAMISH AT A REGULAR MEETING THEREOF ON THE 19<sup>th</sup> DAY OF JULY, 2016.**

CITY OF SAMMAMISH

  
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Mayor Donald J. Gerend

ATTEST/AUTHENTICATED:

  
Melonie Anderson, City Clerk

Approved as to form:

  
Michael R. Kenyon, City Attorney

Filed with the City Clerk:	June 29, 2016
Public Hearing:	July 5, 2016
First Reading:	July 5, 2016
Passed by City Council:	July 19, 2016
Date of Publication:	July 22, 2016
Effective Date:	July 27, 2016

**ATTACHMENT A:  
New Chapter 14A.25 SMC**

**CHAPTER 14A.25  
IMPACT FEE DEFERRAL**

Sections:

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14A.25.010	Purpose
14A.25.020	Applicability
14A.25.030	Impact Fee Deferral
14A.25.040	Deferral Term
14A.25.050	Deferred Impact Fee Lien
14A.25.060	Limitation on Deferrals

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**14A.25.010 Purpose**

The purpose of this chapter is to comply with the requirements of RCW 82.02.050, as amended by ESB 5923, Chapter 241, Laws of 2015, to provide an impact fee deferral process for single-family residential construction, in order to promote economic recovery in the construction industry.

**14A.25.020 Applicability**

(1) The provisions of this chapter shall apply to all impact fees established and adopted by the City pursuant to Chapter 82.02 RCW, including street impact fees assessed under Chapter 14A.15 SMC, impact fees for parks and recreational facilities assessed under Chapter 14A.20 SMC, and school impact fees assessed under Chapter 21A.105 SMC.

(2) Subject to the limitations imposed in SMC 14A.25.060, the provisions of this chapter shall apply to all building permit applications for single-family detached and single-family attached residential construction. For the purposes of this chapter, an "applicant" includes an entity that controls the named applicant, is controlled by the named applicant, or is under common control with the named applicant.

**14A.25.030 Impact Fee Deferral**

(1) Deferral Request Authorized. Applicants for single-family attached or single-family detached residential building permits may request to defer payment of required impact fees until the sooner of:

a) final inspection; or

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b) the closing of the first sale of the property occurring after the issuance of the applicable building permit;

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which request shall be granted so long as the requirements of this chapter are satisfied.

(2) Method of Request. A request for impact fee deferral shall be declared at the time of preliminary plat application (for platted development) or building permit application (for non-platted development) in writing on a form or forms provided by the City. Any request for impact fee deferral must be accompanied by an administrative fee in an amount equal to one hour at the City's hourly rate for planning as stated in the City's current Fee Schedule.

(3) Calculation of Impact Fees. The amount of impact fees to be deferred under this chapter shall be determined as of the date the request for deferral is submitted.

#### **14A.25.040 Deferral Term**

The term of an impact fee deferral granted under this chapter may not exceed eighteen (18) months from the date the building permit is issued ("Deferral Term"). If the condition triggering payment of the deferred impact fees does not occur prior to the expiration of the Deferral Term, then full payment of the impact fees shall be due on the last date of the Deferral Term.

#### **14A.25.050 Deferred Impact Fee Lien**

(1) Applicant's Duty to Record Lien. An applicant requesting a deferral under this chapter must grant and record a deferred impact fee lien, in an amount equal to the deferred impact fees as determined under SMC 14A.25.030(C), against the property in favor of the City in accordance with the requirements of RCW 82.02.050(3)(c).

(2) Satisfaction of Lien. Upon receipt of final payment of all deferred impact fees for the property, the City shall execute a release of deferred impact fee lien for the property. The property owner at the time of the release is responsible, at his or her own expense, for recording the lien release.

#### **14A.25.060 Limitation on Deferrals**

The deferral entitlements allowed under this chapter shall be limited to the first twenty (20) single-family residential construction building permits per applicant, as identified by contractor registration number or other unique identification number, per year.

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**ATTACHMENT B:  
Amended SMC 14A.15.020**

**14A.15.020 Assessment of impact fees.**

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(1) The City shall collect impact fees, based on the rates in SMC 14A.15.110, from any applicant seeking development approval from the City for any development within the City, where such development requires the issuance of a building permit. This shall include, but is not limited to, the development of residential, commercial, retail, and office uses, and includes the expansion of existing uses that creates a demand for additional public facilities, as well as a change in existing use that creates a demand for additional public facilities.

(2) An impact fee shall not be assessed for the following types of development activity because the activity either does not create additional demand as provided in RCW 82.02.050 and/or is a project improvement (as opposed to a system improvement) under RCW 82.02.090:

(a) Miscellaneous nontraffic generating improvements, including, but not limited to, fences, walls, swimming pools, sheds, and signs;

(b) Demolition or moving of a structure;

(c) Expansion of an existing nonresidential structure that results in the addition of 100 square feet or less of gross floor area;

(d) Expansion of a residential structure provided the expansion does not result in the creation of any additional dwelling units as defined in SMC 21A.15.345 through 21A.15.370;

(e) Replacement of a residential structure with a new residential structure at the same site or lot when such replacement occurs within 12 months of the demolition or destruction of the prior structure. For the terms of this requirement, "replacement" is satisfied by submitting a complete building permit application;

(f) Replacement of a nonresidential structure with a new nonresidential structure of the same size and use at the same site or lot when such replacement occurs within 12 months of the demolition or destruction of the prior structure. Replacement of a nonresidential structure with a new nonresidential structure of the same size shall be interpreted to include any structure for which the gross square footage of the building will not be increased by more than 100 square feet. For

the terms of this requirement, "replacement" is satisfied by submitting a complete building permit application.

(3) For a change in use of an existing building or dwelling unit, including any alteration, expansion, replacement or new accessory building, the impact fee for the new use shall be reduced by an amount equal to the current impact fee rate for the prior use; provided, that the applicant has previously paid the required impact fee for the original use.

(4) For mixed use developments, impact fees shall be imposed for the proportionate share of each land use based on the applicable measurement in the impact fee rates set forth in SMC 14A.15.110.

(5) Applicants seeking a building permit for a change in use shall be required to pay an impact fee if the change in use increases the existing trip generation by the lesser of five percent or 10 peak hour trips.

(6) Except as provided in SMC 14A.25.030, impact fees shall be assessed and collected, at the option of the applicant, either:

(a) at the time of final plat (for platted development) or building permit application (for non-platted development); or

(b) at the time of building permit issuance;

which option shall be declared at the time of final plat (for platted development) or building permit application (for non-platted development) in writing on a form or forms provided by the City.

(7) Applicants that have been awarded credits prior to the submittal of the complete building permit application pursuant to SMC14A.15.040 shall submit, along with the complete building permit application, a copy of the letter or certificate prepared by the director pursuant to SMC 14A.15.040 setting forth the dollar amount of the credit awarded. Impact fees, as determined after the application of appropriate credits, shall be collected from the feepayer at the time the building permit is issued by the City for each unit in the development.

(8) Where the impact fees imposed are determined by the square footage of the development, a deposit shall be due from the feepayer pursuant to subsection (6) of this section. Deposit and installment percentages shall be based on an estimate, submitted by the feepayer, of the size and type of structure proposed to be constructed on the property. In the absence of an estimate provided by the feepayer, the department shall calculate percentages based on the maximum allowable density/intensity permissible

on the property. If the final square footage of the development is in excess of the initial estimate, any difference in the amount of the impact fee will be due prior to the issuance of a building permit, using the same impact fee rate previously assessed. The feepayer shall pay any such difference plus interest, calculated at the statutory rate. If the final square footage is less than the initial estimate, the department shall give a credit for the difference, plus interest at the statutory rate.

(9) The department shall not issue the required building permit unless and until the impact fees required by this chapter, less any permitted exemptions or credits provided pursuant to SMC 14A.15.030 or 14A.15.040, have been paid, unless a deferral has been granted pursuant to Chapter 14A.25 SMC.

(10) The service area for impact fees shall be a single City-wide service area.

(11) In accordance with RCW 82.02.050, the City shall collect and spend impact fees only for the public facilities defined in this title and RCW 82.02.090 which are addressed by the capital facilities plan element of the City's Comprehensive Plan. The City shall base continued authorization to collect and expend impact fees on revising its Comprehensive Plan in compliance with RCW36.70A.070, and on the capital facilities plan identifying: (a) deficiencies in public facilities serving existing development and the means by which 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.

(12) In accordance with RCW 82.02.050, if the City's capital facilities plan is complete other than for the inclusion of those elements which are the responsibility of a special district, the City may impose impact fees to address those public facility needs for which the City is responsible.

(13) Applicants for single-family attached or single-family detached residential construction may request deferral of all impact fees due under this chapter in accordance with the provisions of Chapter 14A.25 SMC.

**ATTACHMENT C:  
Amended SMC 14A.20.020**

**14A.20.020 Assessment of impact fees.**

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(1) The City shall collect impact fees, based on the rates in SMC 14A.20.110, from any applicant seeking development approval from the City for any residential development within the City, where such development requires the issuance of a building permit. This shall include, but is not limited to, the expansion or change of use of existing uses that creates a demand for additional public facilities.

(2) An impact fee shall not be assessed for the following types of development activity because the activity either does not create additional demand as provided in RCW 82.02.050 and/or is a project improvement (as opposed to a system improvement) under RCW 82.02.090:

(a) Miscellaneous improvements to residential dwelling units that will not create additional park use demand, including, but not limited to, fences, signs, walls, swimming pools, sheds, and residential accessory uses as defined in SMC 21A.15.020;

(b) Demolition or moving of a residential structure;

(c) Expansion or alteration of a residential structure provided the expansion or alteration does not result in the creation of any additional dwelling units as defined in SMC 21A.15.345 through 21A.15.370;

(d) Replacement of a residential structure with a new residential structure at the same site or lot when such replacement occurs within 12 months of the demolition or destruction of the prior structure.

(3) For a change in use of an existing structure or dwelling unit, including any alteration, expansion, replacement or new accessory building, the impact fee for the new use shall be reduced by an amount equal to the current impact fee rate for the prior use; provided, that the applicant has previously paid the required impact fee for the original use.

(4) For mixed use developments, impact fees shall be imposed for the proportionate share of each residential land use based on the applicable measurement in the impact fee rates set forth in SMC 14A.20.110.

(5) Applicants seeking development approval for a change in use shall be required to pay an impact fee if the change in use increases the number of dwelling units.

(6) Except as provided in SMC 14A.25.030, impact fees shall be assessed and collected, at the option of the applicant, either:

(a) at the time of final plat (for platted development) or building permit application (for non-platted development); or

(b) at the time of building permit issuance;

which option shall be declared at the time of final plat (for platted development) or building permit application (for non-platted development) in writing on a form or forms provided by the City.

(7) Applicants that have been awarded credits prior to the submittal of the complete building permit application pursuant to SMC 14A.20.040 shall submit, along with the complete building permit application, a copy of the letter or certificate prepared by the director pursuant to SMC 14A.20.040 setting forth the dollar amount of the credit awarded. Impact fees, as determined after the application of appropriate credits, shall be collected from the feepayer at the time the building permit is issued by the City for each residential dwelling unit in the development.

(8) The department shall not issue the required building permit unless and until the impact fees required by this chapter, less any permitted exemptions or credits provided pursuant to SMC 14A.20.030 or 14A.20.040, have been paid, unless a deferral has been granted pursuant to Chapter 14A.25 SMC.

(9) The service area for impact fees shall be a single City-wide service area.

(10) In accordance with RCW 82.02.050, the City shall collect and spend impact fees only for the public facilities defined in this title and RCW 82.02.090 which are addressed by the capital facilities plan element of the City's Comprehensive Plan. The City shall base continued authorization to collect and expend impact fees on revising its Comprehensive Plan in compliance with RCW36.70A.070, and on the capital facilities plan identifying: (a) deficiencies in public facilities serving existing development and the means by which 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.

(11) In accordance with RCW 82.02.050, if the City's capital facilities plan is complete other than for the inclusion of those elements which are the responsibility of a special district, the City may impose impact fees to address those public facility needs for which the City is responsible.

(12) Applicants for single-family attached or single-family detached residential construction may request deferral of all impact fees due under this chapter in accordance with the provisions of Chapter 14A.25 SMC.

(13) If, prior to February 12, 2016, an applicant submits a copy of a fully executed purchase and sale agreement with an affidavit from the applicant attesting that the agreement was fully executed prior to November 11, 2015, the residential dwelling unit that is the subject of that agreement will be subject to the parks and recreational facilities impact fee in effect on the date of execution of that agreement, as provided in SMC 14A.20.110.

**ATTACHMENT D:  
Amended Chapter 21A.105 SMC**

**Chapter 21A.105  
SCHOOL IMPACT FEES**

Sections:

- 21A.105.010 Authority.
- 21A.105.020 Purpose.
- 21A.105.030 Impact fee program elements.
- 21A.105.040 Fee calculations.
- 21A.105.050 Fee collection.
- 21A.105.060 Assessment of impact fees.
- 21A.105.070 Adjustments, exceptions, and appeals.
- 21A.105.080 Exemption or reduction for low or moderate income housing.
- 21A.105.090 Impact fee accounts and refunds.
- 21A.105.100 Formula for determining school impact fees.

**21A.105.010 Authority.**

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The provisions of this chapter for the assessment and collection of impact fees are adopted pursuant to Chapter 82.02 RCW.

**21A.105.020 Purpose.**

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The purpose of this chapter is to implement the capital facilities element of the interim comprehensive plan and the Growth Management Act by:

- (1) Ensuring that adequate public school facilities and improvements are available to serve new development;
- (2) Establishing standards whereby new development pays a proportionate share of the cost for public school facilities needed to serve such new development;
- (3) Ensuring that school impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact; and

(4) Providing needed funding for growth-related school improvements to meet the future growth needs of the City of Sammamish.

**21A.105.030 Impact fee program elements.**

(1) Impact fees will be assessed on every new dwelling unit in the district for which a fee schedule has been established.

(2) Impact fees will be imposed on a district-by-district basis, on behalf of any school district that provides to the City a capital facilities plan, the district's standards of service for the various grade spans, estimates of the cost of providing needed facilities and other capital improvements, and the data from the district called for by the formula in SMC 21A.105.040. The actual fee schedule for the district will be adopted by ordinance based on this information and the fee calculation set out for SMC 21A.105.040. Any impact fee imposed shall be reasonably related to the impact caused by the development and shall not exceed a proportionate share of the cost of system improvements that are reasonably related to the development. The impact fee formula shall account in the fee calculation for future revenues the district will receive from the development. The ordinance adopting the fee schedule shall specify under what circumstances the fee may be adjusted in the interests of fairness.

(3) The impact fee shall be based on a capital facilities plan developed by the district and approved by the school board, and adopted by reference by the City of Sammamish as part of the capital facilities element of the interim comprehensive plan for the purpose of establishing the fee program.

**21A.105.040 Fee calculations.**

(1) The fee for each district shall be calculated based on the formula set out in SMC 21A.105.100.

(2) Separate fees shall be calculated for single-family and multifamily residential units and separate student generation rates must be determined by the district for each type of residential unit. For purposes of this chapter single-family units shall mean single detached dwelling units, and multifamily units shall mean townhouses and apartments.

(3) The fee shall be calculated on a district-by-district basis using the appropriate factors and data to be supplied by the district, as indicated in SMC 21A.105.100. The fee calculations shall be made on a district-wide basis to assure maximum utilization of all school facilities in the district used currently or within the last two years for instructional purposes.

(4) The formula in SMC 21A.105.100 also provides a credit for the anticipated tax contributions that would be made by the development based on historical levels of voter support for bond issues in the school district.

(5) The formula in SMC 21A.105.100 also provides for a credit for school facilities or sites actually provided by a developer that the school district finds to be acceptable.

**21A.105.050 Fee collection.**

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Fees shall be collected by the department of community development and maintained in a separate account for each school district, pursuant to SMC 21A.105.070. Fees shall be paid to the district pursuant to administrative rules of an interlocal agreement between the City and the district.

**21A.105.060 Assessment of impact fees.**

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(1) In school districts where impact fees have been adopted by City ordinance and except as provided in SMC 21A.105.060, the City shall collect impact fees, based on the schedules set forth in each ordinance establishing the fee to be collected for the district, from any applicant seeking development approval from the City where such development activity requires final plat or PUD approval or the issuance of a residential building permit or a mobile home permit and the fee for the lot or unit has not been previously paid. No approval shall be granted and no permit shall be issued until the required school impact fees set forth in the district's impact fee schedule have been paid, unless a deferral has been granted pursuant to Chapter 14A.25 SMC.

(2) Except as provided in SMC 14A.25.030, impact fees shall be assessed and collected, at the option of the applicant, either:

(a) at the time of final plat (for platted development) or building permit application (for non-platted development); or

(b) at the time of building permit issuance;

which option shall be declared at the time of final plat (for platted development) or building permit application (for non-platted development) in writing on a form or forms provided by the City.

(4) For existing lots or lots not covered by subsection (2) of this section, application for single-family and multifamily residential building permits, mobile home permits, and site plan approval for mobile home

parks, the total amount of the impact fees shall be assessed and collected from the applicant when the building permit is issued, using the impact fee schedules in effect at the time of permit application.

(3) Any application for preliminary plat or PUD approval or multifamily zoning that has been approved subject to conditions requiring the payment of impact fees established pursuant to this chapter shall be required to pay the fee in accordance with the condition of approval.

(4) Applicants for single-family attached or single-family detached residential construction may request deferral of all impact fees due under this chapter in accordance with the provisions of Chapter 14A.25 SMC.

#### **21A.105.070 Adjustments, exceptions, and appeals.**

(1) The following are excluded from the application of the impact fees:

(a) Any form of housing exclusively for the senior citizen, including nursing homes and retirement centers, so long as these uses are maintained;

(b) Reconstruction, remodeling, or replacement of existing dwelling units that does not result in additional new dwelling units. In the case of replacement of a dwelling, a complete application for a building permit must be submitted within three years after it has been removed or destroyed;

(c) Shelters for temporary placement, relocation facilities, transitional housing facilities, and community residential facilities as defined in SMC 21A.15.220;

(d) Any development activity that is exempt from the payment of an impact fee pursuant to RCW 82.02.100, due to mitigation of the same system improvement under the State Environmental Policy Act;

(e) Any development activity for which school impacts have been mitigated pursuant to a condition of plat or PUD approval to pay fees, dedicate land or construct or improve school facilities, unless the condition of the plat or PUD approval provides otherwise; provided, that the condition of the plat or PUD approval predates the effective date of a school district's fee implementing ordinance;

(f) Any development activity for which school impacts have been mitigated pursuant to a voluntary agreement entered into with a school district to pay fees, dedicate land or construct or improve

school facilities, unless the terms of the voluntary agreement provide otherwise; provided, that the agreement predates the effective date of a school district's fee implementing ordinance;

(g) Housing units that fully qualify as housing for persons age 55 and over meeting the requirements of the Federal Housing Amendments Act of 1988, 42 U.S.C. 3607(b)(2)(c) and (b)(3), as subsequently amended, and that have recorded covenants or other legal arrangements precluding school-aged children as residents in those units;

(h) Mobile homes permitted as temporary dwellings pursuant to SMC 21A.70.170; and

(i) Accessory dwelling units as defined in SMC 21A.15.350 and 21A.20.030(B)(6)(a).

(2) Arrangement may be made for later payment with the approval of the school district only if the district determines that it will be unable to use or will not need the payment until a later time; provided, that sufficient security, as defined by the district, is provided to assure payment. Security shall be made to and held by the school district, which will be responsible for tracking and documenting the security interest.

(3) The fee amount established in the schedule shall be reduced by the amount of any payment previously made for the lot or development activity in question, either as a condition of approval or pursuant to a voluntary agreement with a school district entered into after the effective date of a school district's fee implementing ordinance.

(4) After the effective date of a school district's fee implementing ordinance, whenever a development is granted approval subject to a condition that the developer actually provide school sites, school facilities, or improvements to school facilities acceptable to the district, or whenever the developer has agreed, pursuant to the terms of a voluntary agreement with the school district, to provide land, provide school facilities, or make improvements to existing facilities, the developer shall be entitled to a credit for the value of the land or actual cost of construction against the fee that would be chargeable under the formula provided by this chapter. The land value or cost of construction shall be estimated at the time of approval, but must be documented. If construction costs are estimated, the documentation shall be confirmed after the construction is completed to assure that an accurate credit amount is provided. If the land value or construction costs are less than the calculated fee amount, the difference remaining shall be chargeable as a school impact fee.

(5) Impact fees may be adjusted by the City, at the City's discretion, if one of the following circumstances exist; provided, that the discount set forth in the fee formula fails to adjust for the error in the calculation or fails to ameliorate for the unfairness of the fee:

(a) The developer demonstrates that an impact fee assessment was incorrectly calculated; or

(b) Unusual circumstances identified by the developer demonstrate that if the standard impact fee amount was applied to the development, it would be unfair or unjust.

(6) A developer may provide studies and data to demonstrate that any particular factor used by the district may not be appropriately applied to the development proposal, but the district's data shall be presumed valid unless clearly demonstrated to be otherwise by the proponent.

(7) Any appeal of the decision of the director or the hearing examiner with regard to imposition of an impact for or fee amounts shall follow the appeal process for the underlying permit and not be subject to a separate appeal process. Where no other administrative appeal process is available, an appeal may be taken to the hearing examiner using the appeal procedures for variances. Any errors in the formula identified as a result of an appeal should be referred to the City council for possible modification.

(8) Impact fees may be paid under protest in order to obtain a building permit or other approval of development activity, when an appeal is filed.

#### **21A.105.080 Exemption or reduction for low or moderate income housing.**

(1) Low- or moderate-income housing projects being developed by public housing agencies or private nonprofit housing developers shall be exempt from the payment of school impact fees. The amount of the school impact fees not collected from low- or moderate-income household development shall be paid from public funds other than impact fee accounts. The impact fees for these units shall be considered paid for by the district through its other funding sources, without the district actually transferring funds from its other funding sources into the impact fee account. The department of community development shall review proposed developments of low- or moderate-income housing by such public or nonprofit developers pursuant to criteria and procedures adopted by administrative rule, and shall determine whether the project qualifies for the exemption.

(2) Private developers who dedicate residential units for occupancy by low- or moderate-income households may apply to the department for reductions in school impact fees pursuant to the criteria established for public housing agencies and private nonprofit housing developers pursuant to subsection

(1) of this section, and subject to the provisions of subsection (1) of this section. The department shall review proposed developments of low- or moderate-income housing by such private developers pursuant to criteria and procedures adopted by administrative rule, and shall determine whether the project qualifies for the exemption. If the department recommends the exemption, it shall reduce the calculated school impact fee for the development by an amount that is proportionate to the number of units in the development that satisfy the adopted criteria.

(3) Individual low- or moderate-income home purchasers (as defined pursuant to the King County Comprehensive Housing Affordability Strategy (CHAS)) who are purchasing homes at prices within their eligibility limits based on standard lending criteria and meet other means tests established by rule are exempted from payment of the impact fee; provided, that at such time as the property in question is transferred to another owner who does not qualify for the exemption, at which time the fee shall be due and payable.

(4) The department is hereby instructed and authorized to adopt, pursuant to Chapter 2.55 SMC, administrative rules to implement this section.

(5) As a condition of receiving an exemption under subsections (2) or (3) of this section, the owner must execute and record a City-drafted lien, covenant, and/or other contractual provision against the property for a period of 10 years for individual owners, and 15 years for private developers, guaranteeing that the proposed development will continue to be used for low- or moderate-income housing. In the event that the pattern of development or the use of the development is no longer for low- or moderate-income housing, then the owner shall pay the impact fee amount from which the owner or any prior owner was exempt. The lien, covenant, or other contractual provision shall run with the land and apply to subsequent owners. (Ord. O99-29 § 1)

#### **21A.105.090 Impact fee accounts and refunds.**

(1) Impact fee receipts shall be earmarked specifically and retained in a special interest-bearing account established by the City solely for the district's school impact fees. All interest shall be retained in the account and expended for the purpose or purposes identified in subsection (2) of this section. Annually, the City shall prepare a report on each impact fee account showing the source and amount of all monies collected, earned or received, and capital or system improvements that were financed in whole or in part by impact fees.

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

(3) In the event that bonds or similar debt instruments are issued for the advanced provision of capital facilities for which impact fees may be expended and where consistent with the provisions of the bond covenants, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this section.

(4) Impact fees shall be expended or encumbered (i.e., committed as part of the funding for a facility for which the publicly funded share has been assured, or building permits applied for, or construction contracts let) by the district for a permissible use within six years of receipt by the City, unless there exists an extraordinary and compelling reason for fees to be held longer than six years. Such extraordinary or compelling reasons shall be identified to the City by the district. The City must prepare written findings concurring with the district's reasons, and authorizing the later encumbrance or expenditure of the fees prior to the district so encumbering or expending the funds, or directing a refund of the fees.

(5) The current owner of property on which an impact fee has been paid may receive a refund of such fees if the impact fees have not been expended or encumbered within six years of receipt of the funds by the City. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. The City shall notify potential claimants by first class mail deposited with the United States Postal Service addressed to the owner of the property as shown in the county tax records.

(6) An owner's request for a refund must be submitted to the City council in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever date is later. Any impact fees that are not expended or encumbered within these time limitations, and for which no application for a refund has been made within this one-year period, shall be retained and expended consistent with the provisions of this section. Refunds of impact fees shall include any interest earned on the impact fees.

(7) Should the City seek to terminate any or all school impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded to the current owner of the property for which a school impact fee was paid. Upon the finding that any or all fee requirements are to be terminated, the City shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first class mail addressed to the owner of the property as shown in the county tax records. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the City, but must be expended for the district, consistent with the provisions of this section. The notice requirement set forth above shall not apply if there are no unexpended or unencumbered balances within the account or accounts being terminated.

(8) A developer may request and shall receive a refund, including interest earned on the impact fees, when:

(a) The developer does not proceed to finalize the development activity as required by statute or City code or the Uniform Building Code; and

(b) No impact on the district has resulted. "Impact" shall be deemed to include cases where the district has expended or encumbered the impact fees in good faith prior to the application for a refund. In the event that the district has expended or encumbered the fees in good faith, no refund shall be forthcoming. However, if within a period of three years, the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner shall be eligible for a credit. The owner must petition the City and provide receipts of impact fees paid by the owner for a development of the same or substantially similar nature on the same property or some portion thereof. The City shall determine whether to grant a credit, and such determinations may be appealed by following the procedures set forth in SMC 21A.105.070.

(9) Interest due upon the refund of impact fees required by this section shall be calculated according to the average rate received by the City or the district on invested funds throughout the period during which the fees were retained.

#### **21A.105.100 Formula for Determining School Impact Fees.**

IF:

A = Student factor for dwelling unit type and grade span X site cost per student for sites for facilities in that grade span = Full cost fee for site acquisition cost

B = Student factor for dwelling unit type and grade span X school construction cost per student for facilities in that grade span X ratio of district's square footage of permanent facilities to total square footage of facilities = Full cost fee for school construction

C = Student factor for dwelling unit type and grade span X relocatable facilities cost per student for facilities in that grade span X ratio of district's square footage of relocatable facilities to total square footage of facilities = Full cost fee for facilities construction

D = Student factor for dwelling unit type and grade span "Boeckh index" X SPI square footage per student factor X state match % = State Match Credit, and

A1, B1, C1, D1 = A, B, C, D for elementary grade spans

A2, B2, C2, D2 = A, B, C, D for middle/junior high grade spans

A3, B3, C3, D3 = A, B, C, D for high school grade spans

TC = Tax payment credit = the net present value of the average assessed value in district for unit type X current school district capital property tax levy rate, using a 10-year discount period and current interest rate (based on the Bond Buyer Twenty Bond General Obligation Bond Index)

FC = Facilities credit = the per-dwelling unit value of any site or facilities provided directly by the development

THEN: the unfunded need = UN = A1 + ... + C3 - (D1 - D2 - D2) - TC

AND the developer fee obligation = F = UN/2

AND the net fee obligation = NF = F - FC

Notes:

1. Student factors are to be provided by the school district based on district records of average actual student generation rates for new developments constructed over a period of not more than five years prior to the date of the fee calculation; if such information is not available in the district, data from adjacent

districts, districts with similar demographics, or countywide averages must be used. Student factors must be separately determined for single-family and multifamily dwelling units, and for grade spans.

2. The "Boeckh index" is a construction trade index of construction costs for various kinds of buildings; it is adjusted annually.

3. The district is to provide its own site and facilities standards and projected costs to be used in the formula, consistent with the requirements of this chapter.

The formula can be applied by using the following table:

<b>Table for Calculating School Impact Fee Obligations for Residential Dwelling Units (to be separately calculated for single-family and multifamily units)</b>	
Elementary school site cost per student X student factor	=
Middle/junior high school site cost per student X student factor	=
High school site cost per student X student factor	=
A1 + A2 + A3	=
Elementary school construction cost per student X student factor	=
Middle/junior high school construction cost per student X student factor	=
High school construction cost per student X student factor	=
square footage of permanent facilities (B1 + B2 + B3) X _____	=
total square footage of facilities	
Elementary school relocatable facility cost per student X student factor	=
Middle/junior high school relocatable facility cost per student X student factor	=
High school relocatable facility cost per student X student factor	=

square footage of permanent facilities (C1 + C2 + C3) X _____ total square footage of facilities	=
Boeckh index X SPI square footage per student for elementary school X state match % X student factor	=
Boeckh index X SPI square footage per student for middle/junior high school X state match % X student factor	=
Boeckh index X SPI square footage per student for high school X state match % X student factor	=
D1 + D2 + D3	=
$\frac{((1 + I)^{10}) - 1}{i(1 + i)^{10}}$ X average assessed value for the dwelling unit type in the school district	
X current school district capital property tax levy rate where I = the current interest rate as stated in the Bond Buyer Twenty Bond General Obligation Bond Index	

Value of site or facilities provided by the development

Number of dwelling units in development

1 Unfunded Need = A + B + C - D - TC =

\_\_\_\_\_ A

+ \_\_\_\_\_ B

+ \_\_\_\_\_ C

Subtotal

- \_\_\_\_\_ D

- \_\_\_\_\_ TC

L UNFUNDED NEED UN = \_\_\_\_\_ divided by 2 = \_\_\_\_\_ = DEVELOPER FEE

OBLIGATION

- \_\_\_\_\_ Less FC (if applicable)

\_\_\_\_\_ NET FEE OBLIGATION