ORDINANCE NO. 3504-16

An Ordinance regarding deferred payment of impact fees for single-family homes and an exemption for payment of impact fees for low-income housing, amending Ordinance 3389-14 (EMC Chapter 18.36, Small Project Impact Fee), Ordinance 3387-14 (EMC Chapter 18.40, Transportation Mitigation) and Ordinance 3396-14 (EMC Chapter 18.44, School District Impact Fees, as amended

WHEREAS, Chapter 82.02.050 RCW requires the city to adopt and maintain a system for the deferred collection of impact fees for single-family detached and attached residential construction by September 1, 2016; and

WHEREAS, Chapter 82.02.060 RCW authorizes the city to provide an exemption of not more than eighty percent of impact fees for low-income housing with no explicit requirement to pay the exempted portion of the fee from public funds; and

WHEREAS, the Planning Commission of the City of Everett has reviewed the proposed amendments to Chapter 18.36, Small Project Impact Fee, Chapter 18.40, Transportation Mitigation and Chapter 18.44, School District Impact Fees and found that:

1. RCW 82.02.050(3) requires the city to include one of three options for when payment would be due: final inspection; issuance of the certificate of occupancy or equivalent certification; and/or the closing of the first sale of the property; and
2. RCW 82.02.060(3) authorizes the city to provide an exemption for not more than eighty percent of impact fees for low-income housing if it is conditioned to require the developer to record a covenant that prohibits use of the property for any purpose other than for low-income housing; and
3. RCW 82.02.060(3) requires that any school district that receives school impact fees must approve any exemption; and

WHEREAS, the City Council finds that:

1. The proposed ordinance provides one of the three options for impact fee deferral required by RCW 82.02.050; and
2. The proposed ordinance requires the recording of covenants for any impact fee exemption approved for low-income housing and requires school district approval as a condition of city approval of any school district impact fee exemption.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 1 or Ordinance No. 3389-14, as amended (EMC 18.36.010), regarding "Title, authority and purpose" for Small Project Impact Fees, which reads as follows:

A. Title. The ordinance codified in this chapter may be referred to or cited as the small project impact fee ordinance, or "SPIFO," and will be referred to herein as "this chapter."

B. Purpose and Authorization. The purpose of this chapter is to implement the city's comprehensive plan including its transportation and capital facility elements. This chapter enables the city to collect impact fees from proposed projects that generate additional traffic and are categorically exempt under the State Environmental Policy Act (SEPA) and the state rules adopted thereunder (WAC 197-11-305) and therefore not subject to the city's transportation mitigation ordinance (TMO) (Chapter 18.40). The fees adopted under this chapter are authorized by and in accordance with the provisions of RCW 82.02.050 through 82.02.090.

Is hereby amended to read as follows:

A. Title. The ordinance codified in this chapter may be referred to or cited as the small project impact fee ordinance, or "SPIFO," and will be referred to herein as "this chapter."

B. Purpose and Authorization. The purpose of this chapter is to implement the city's comprehensive plan including its transportation and capital facility elements. This chapter enables the city to collect impact fees from proposed projects that generate additional traffic and are not subject to the city's transportation mitigation ordinance (TMO) (Chapter 18.40). The fees adopted under this chapter are authorized by and in accordance with the provisions of RCW 82.02.050 through 82.02.090.

Section 2. Section 6 of Ordinance No. 3389-14, as amended (EMC 18.36.060), regarding "Administrative procedures and appeals" for Small Project Impact Fees, which reads as follows:

A. RCW 82.02.070 and 82.02.080 are hereby adopted by reference into this chapter as the administrative procedures for collection and refunding of impact fees under this chapter.

B. Payment of all fees shall be made prior to:

1. Final plat approval in the case of subdivisions and short subdivisions; or

2. In all other cases, be prior to the issuance of any building permits.

C. All fees collected under this chapter shall be obligated or expended on public facilities that are addressed by an adopted capital facilities plan element of a comprehensive land use plan. If fees are earmarked for a specific project, and the city determines that it is not feasible to implement that project within six years (or such other time period established pursuant to RCW 82.02.070(3) on public facilities intended to benefit the development activity for which the impact fees were paid), the fees may be expended or encumbered on a replacement project that provides similar or greater improvement to the transportation system.

D. The city engineer or designee shall be the official responsible for preparing the annual reports required under RCW 82.02.070.

E. An applicant's commitment to specific performance to construct a transportation improvement, including any bonds or financial assurance associated with the improvement, shall not be considered a fee under this chapter, regardless of whether a monetary value has been

assigned to the improvement in the traffic analysis or other project review documents or agreements.

F. An applicant may appeal the city traffic engineer's determination of the impact fee required under this chapter by following the administrative appeal procedures for the underlying development approval. If there are no administrative appeal procedures for the underlying development approval, the appeal shall follow the administrative appeal procedures in Section 15.20.010 for the appeal of minor administration decisions.

Is hereby amended to read as follows:

A. RCW 82.02.070 and 82.02.080 are hereby adopted by reference into this chapter as the administrative procedures for collection and refunding of impact fees under this chapter.

B. Payment of all transportation impact fees shall be made prior to building permit issuance, except as provided in EMC 18.36.060(C).

C. The deferral of transportation impact fees shall be allowed only for single-family attached and detached construction being constructed by an applicant having a contractor registration number or other unique identification number and in accordance with the following:

1. For this subsection:
   (a) "Applicant" includes an entity that controls, is controlled by, or is under common control with the applicant.
   (b) "Common control" means two or more entities controlled by the same person or entity.
   (c) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise.
2. An applicant wishing to defer the payment of transportation impact fees shall:
   (a) Submit a signed and notarized deferred fee application and completed lien form concurrent with the building permit application for the building subject to the fee; and
   (b) Submit a certification that the applicant has requested no more than a total of twenty deferred impact fee requests in the calendar year within the city; and
   (c) Pay a non-refundable $250.00 administration fee for each unit or lot of a single development project for which the deferral of the fee is requested. Beginning January 1, 2018, and each January 1 thereafter, this fee shall be adjusted in accordance with the most recent change in the Consumer Price Index (CPI) or other official measurement of inflation used by the city. If the change in the CPI or other official measurement of inflation used by the city indicates an increase of less than one percent since the last adjustment of the fees listed herein, there shall be no increase for that year. At such time that the change in the CPI or other official measurement of inflation used by the city for one or more years indicates an increase of one percent or more since the last adjustment of the fees, the cumulative percentage increase since the last adjustment of fees.
3. The lien shall:
   (a) Be in a form approved and provided by the city;
   (b) Be signed by all owners of the property, with all signatures acknowledged as required for a deed;
   (c) Include the legal description, property tax account number, and address for each lot or unit the lien will encumber;
   (d) Be binding and subordinate on all successors in title after the recording;

(e) Be junior and subordinate to a first mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees, but in no case shall the lien be in less than second place.

4. The lien shall be recorded by the applicant, at their own expense, and a conformed copy of the recorded document shall be provided to the city prior to the issuance of the building permit that is subject to the transportation impact fee.
5. Each applicant eligible to defer impact fees shall only be entitled to annually receive deferrals for no more than a total of twenty building permits within the city.
6. The applicant shall be responsible for the payment of all recording fees.
7. The deferred transportation impact fee shall be paid in full prior to whichever of the following occurs first:
   (a) Issuance of a certificate of occupancy;
   (b) The closing of the first sale of the property occurring after the issuance of the applicable building permit for which the fees were deferred; or
   (c) Eighteen months from the date of building permit issuance.
8. If the building for which the deferral of the transportation impact fee is requested is located within a subdivision, unit lot subdivision or short subdivision, the subdivision, unit lot subdivision or short subdivision shall be recorded prior to recording the lien for impact fees and issuance of the building permit.
9. After the applicant has paid all deferred transportation impact fees, the applicant is responsible for submitting a lien release application to the city. The applicant, at their own expense, will be responsible for recording lien releases.
10. Compliance with the requirements of the deferral option shall constitute compliance with subdivision or short subdivision conditions pertaining to the timing of the transportation impact fee payment.
11. If deferred transportation impact fees are not paid in accordance with terms authorized by state law and this section, the City may initiate foreclosure proceedings for the unpaid transportation impact fees and all costs associated with the collection of the unpaid transportation impact fees.
12. A request to defer transportation impact fees under this section may be combined in one application with a request to defer school impact fees under EMC 18.44.090.

D. All fees collected under this chapter shall be obligated or expended on public facilities that are addressed by an adopted capital facilities plan element of a comprehensive land use plan. If fees are earmarked for a specific project, and the city determines that it is not feasible to implement that project within six years (or such other time period established pursuant to RCW 82.02.070(3) on public facilities intended to benefit the development activity for which the impact fees were paid), the fees may be expended or encumbered on a replacement project that provides similar or greater improvement to the transportation system.

E. The city engineer or designee shall be the official responsible for preparing the annual reports required under RCW 82.02.070.

F. An applicant's commitment to specific performance to construct a transportation improvement, including any bonds or financial assurance associated with the improvement, shall not be considered a fee under this chapter, regardless of whether a monetary value has been assigned to the improvement in the traffic analysis or other project review documents or agreements.

G. An applicant may appeal the city traffic engineer's determination of the impact fee required under this chapter by following the administrative appeal procedures for the underlying

development approval. If there are no administrative appeal procedures for the underlying development approval, the appeal shall follow the administrative appeal procedures in Section 15.20.010 for the appeal of minor administration decisions.

Section 3. Section 18.36.065, "Fee Exemptions" is added to the Everett Municipal Code for Small Project Impact Fees as follows:

A. The city may, on a case-by-case basis, grant exemptions to the application of the transportation impact fee for new low income housing units in accordance with the conditions specified under RCW 82.02.060(2). To qualify for the exemption, the developer shall submit an application to the planning and community development director for consideration by the city prior to application for building permit. Conditions for such approvals shall meet the requirements of RCW 82.02.060(2), which includes payment of the fee from public funds other than the fee for transportation improvement account. In addition, any approved exemption will require a covenant that will assure the project's continued use for low income housing. The covenant shall be an obligation that runs with the land upon which the housing is located, and shall be recorded against the title of the real property.

B. The city may, on a case-by-case basis, grant a partial exemption of not more than eighty percent of transportation impact fees, with no explicit requirement to pay the exempted portion of the fee from public funds, for low-income housing units, pursuant to the following:

1. The Mayor, or designee, may grant an exemption to a low-income housing project for each low-income unit.
2. The decision to grant, partially grant or deny an exemption shall be based on the public benefit of the specific project, the extent to which the applicant has sought other funding sources, the financial hardship to the project of paying the transportation impact fees, the impacts of the project on public facilities and services, and the consistency of the project with adopted city plans and policies relating to low-income housing.
3. An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the director of planning and community development that prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and require that, if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner must pay the applicable transportation impact fees in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Snohomish County Auditor.
4. For purposes of this section, low-income housing is defined as any housing with a monthly housing expense, that is no greater than thirty percent of fifty percent of the median family income adjusted for family size, for Everett, as reported by the United States Department of Housing and Urban Development.

Section 4. Section 4 of Ordinance No. 3387-14, as amended (EMC 18.40.040), regarding "When a traffic analysis is required" for Transportation Mitigation, which reads as follows:

The applicant shall provide the responsible official with a written traffic analysis as part of the city's project review process, which includes SEPA review, whenever a proposed project will generate fifty or more additional peak hour trips, or if deemed necessary by the city traffic engineer. The traffic analysis shall be paid for by the applicant and shall be prepared by a licensed professional engineer or transportation planner with standing in the Institute of Transportation Engineers or is acceptable to the city traffic engineer.

Is hereby amended to read as follows:

The applicant shall provide the city traffic engineer with a written traffic analysis as part of the city's project review process whenever a proposed project will generate fifty or more additional peak hour trips, or if deemed necessary by the city traffic engineer. The traffic analysis shall be paid for by the applicant and shall be prepared by a licensed professional engineer or transportation planner with standing in the Institute of Transportation Engineers or is acceptable to the city traffic engineer.

Section 5. Section 14 of Ordinance No. 3387-14, as amended (EMC 18.40.140), regarding "Procedure for payment and use of fees" for Transportation Mitigation, which reads as follows:

A. Payment of all fees shall be made prior to:

1. Final plat approval in the case of subdivisions and short subdivisions; or

2. In all other cases, be prior to the issuance of any building permits.

B. All fees collected under this chapter shall be obligated or expended on transportation improvements. Fees collected for specific projects shall be expended on those projects or may be expended on replacement projects that provide similar or greater improvements.

C. The fees shall be obligated or expended in all cases within five years of collection. Any fees not so obligated or expended shall be refunded with interest at the rate applied to judgments to the property owners of record at the time of refund; however, if the payment is not obligated or expended within five years due to delay attributable to the project applicant, the payment shall be refunded without interest.

D. An applicant's commitment to specific performance to construct a transportation improvement, including any bonds or financial assurance associated with the improvement, shall not be considered a fee, regardless of whether a monetary value has been assigned to the improvements in the traffic analysis or other project review documents or agreements.

Is hereby amended to read as follows:

A. Payment of all transportation fees shall be made prior to building permit issuance, except as provided in EMC 18.40.140(B).

B. The deferral of transportation fees shall be allowed only for single-family attached and detached construction being constructed by an applicant having a contractor registration number or other unique identification number and in accordance with the following:

1. For this subsection:
   (a) "Applicant" includes an entity that controls, is controlled by, or is under common control with the applicant.
   (b) "Common control" means two or more entities controlled by the same person or entity.
   (c) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise.

2. An applicant wishing to defer the payment of fees for transportation system improvements shall:
   (a) Submit a signed and notarized deferred fee application and completed lien form concurrent with the building permit application for the building subject to the fee; and

(b) Submit a certification that the applicant has requested no more than a total of twenty deferred transportation system improvement fee requests in the calendar year within the city; and

(c) Pay a non-refundable $250.00 administration fee for each unit or lot of a single development project for which the deferral of the fee is requested. Beginning January 1, 2018, and each January 1 thereafter, this fee shall be adjusted in accordance with the most recent change in the Consumer Price Index (CPI) or other official measurement of inflation used by the city. If the change in the CPI or other official measurement of inflation used by the city indicates an increase of less than one percent since the last adjustment of the fees listed herein, there shall be no increase for that year. At such time that the change in the CPI or other official measurement of inflation used by the city for one or more years indicates an increase of one percent or more since the last adjustment of the fees, the cumulative percentage increase since the last adjustment of fees.

3. The lien shall:
   (a) Be in a form approved and provided by the city;
   (b) Be signed by all owners of the property, with all signatures acknowledged as required for a deed;
   (c) Include the legal description, property tax account number, and address for each lot or unit the lien will encumber;
   (d) Be binding and subordinate on all successors in title after the recording;
   (e) Be junior and subordinate to a first mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees, but in no case shall the lien be in less than second place;
4. The lien shall be recorded by the applicant, at their own expense, and a conformed copy of the recorded document shall be provided to the city prior to the issuance of the building permit that is subject to the fee for transportation improvements.
5. Each applicant eligible to defer transportation fees shall only be entitled to annually receive deferrals for no more than a total of twenty building permits within the city.
6. The applicant shall be responsible for the payment of all recording fees.
7. The deferred fee for transportation improvements shall be paid in full prior to whichever of the following occurs first:
   (a) Issuance of a certificate of occupancy;
   (b) The closing of the first sale of the property occurring after the issuance of the applicable building permit for which the fees were deferred; or
   (c) Eighteen months from the date of building permit issuance.
8. If the building for which the deferral of the fee for transportation improvements is requested is located within a subdivision, unit lot subdivision or short subdivision, the subdivision, unit lot subdivision or short subdivision shall be recorded prior to recording the lien for fees and issuance of the building permit.
9. After the applicant has paid all deferred fees for transportation improvements, the applicant is responsible for submitting a lien release application to the city. The applicant, at their own expense, will be responsible for recording lien releases.
10. Compliance with the requirements of the deferral option shall constitute compliance with subdivision or short subdivision conditions pertaining to the timing of the fee payment.
11. If deferred fees for transportation improvements are not paid in accordance with terms authorized by state law and this section, the City may initiate foreclosure proceedings for the unpaid impact fees and all costs associated with the collection of the unpaid fees.
12. A request to defer transportation fees under this section may be combined in one application with a request to defer school impact fees under EMC 18.44.090.

C. All fees collected under this chapter shall be obligated or expended on transportation improvements. Fees collected for specific projects shall be expended on those projects or may be expended on replacement projects that provide similar or greater improvements.

D. The fees shall be obligated or expended in all cases within five years of collection. Any fees not so obligated or expended shall be refunded with interest at the rate applied to judgments to the property owners of record at the time of refund; however, if the payment is not obligated or expended within five years due to delay attributable to the project applicant, the payment shall be refunded without interest.

E. An applicant's commitment to specific performance to construct or to pay a fair share of a transportation improvement (as specified in EMC 18.40.100.A.2), including any bonds or financial assurance associated with the improvement, shall not be considered a fee, regardless of whether a monetary value has been assigned to the improvements in the traffic analysis or other project review documents or agreements.

Section 6. Section 18.40.145, "Fee Exemptions" is added to the Everett Municipal Code for Transportation Mitigation as follows:

A. The city may, on a case-by-case basis, grant exemptions to the application of the fee for planned system improvements (as specified in EMC 18.40.100.A.1) for new low income housing units in accordance with the conditions specified under RCW 82.02.060(2). To qualify for the exemption, the developer shall submit an application to the planning and community development director for consideration by the city prior to application for building permit. Conditions for such approvals shall meet the requirements of RCW 82.02.060(2), which includes payment of the fee from public funds other than the fee for transportation improvement account. In addition, any approved exemption will require a covenant that will assure the project's continued use for low income housing. The covenant shall be an obligation that runs with the land upon which the housing is located, and shall be recorded against the title of the real property.

B. The city may, on a case-by-case basis, grant a partial exemption of not more than eighty percent of fees for planned system improvements (as specified in EMC 18.40.100.A.1), with no explicit requirement to pay the exempted portion of the fee from public funds, for low-income housing units, pursuant to the following:

1. The Mayor, or designee, may grant an exemption to a low-income housing project for each low-income unit.
2. The decision to grant, partially grant or deny an exemption shall be based on the public benefit of the specific project, the extent to which the applicant has sought other funding sources, the financial hardship to the project of paying the impact fees, the impacts of the project on public facilities and services, and the consistency of the project with adopted city plans and policies relating to low-income housing.
3. An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the director of planning and community development that prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and require that, if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner must pay the applicable fees for transportation improvements in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Snohomish County Auditor.

4. For purposes of this section, low-income housing is defined as any housing with a monthly housing expense that is no greater than thirty percent of fifty percent of the median family income adjusted for family size, for Everett, as reported by the United States Department of Housing and Urban Development.

Section 7. Section 6 of Ordinance No. 3396, as amended (EMC 18.44.060), regarding "Impact fee schedule--Exemptions" for School District Impact Fees, which reads as follows:

The city council may, on a case-by-case basis, grant exemptions to the application of the fee schedule for low income housing in accordance with the conditions specified under RCW 82.02.060(2). To qualify for the exemption, the developer shall submit a petition to the planning and community development director for consideration by the council prior to application for building permit. Conditions for such approvals shall meet the requirements of RCW 82.02.060(2) and include a requirement for a covenant to assure the project's continued use for low income housing. The covenant shall be an obligation that runs with the land upon which the housing is located, and shall be recorded against the title of the real property.

Is hereby amended to read as follows:

A. The city council may, on a case-by-case basis, grant exemptions to the application of the fee schedule for low income housing in accordance with the conditions specified under RCW 82.02.060(2). To qualify for the exemption, the developer shall submit a petition to the planning and community development director for consideration by the council prior to application for building permit. Conditions for such approvals shall meet the requirements of RCW 82.02.060(2) and include a requirement for a covenant to assure the project's continued use for low income housing. The covenant shall be an obligation that runs with the land upon which the housing is located, and shall be recorded against the title of the real property.

B. The city may, on a case-by-case basis, grant a partial exemption of not more than eighty percent of school impact fees, with no explicit requirement to pay the exempted portion of the fee from public funds, for low-income housing units, pursuant to the following:

1. The Mayor, or designee, after approval by the applicable school district, may grant an exemption to a low-income housing project for each low-income unit.
2. The decision to grant, partially grant or deny an exemption shall be based on the public benefit of the specific project, the extent to which the applicant has sought other funding sources, the financial hardship to the project of paying the impact fees, the impacts of the project on school facilities and services, and the consistency of the project with adopted city plans and policies relating to low-income housing.
3. An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the director of planning and community development that prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and require that, if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner must pay the applicable impact fees in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Snohomish County Auditor.
4. For purposes of this section, low-income housing is defined as any housing with a monthly housing expense that is no greater than thirty percent of fifty percent of the median family income adjusted for family size, for Everett, as reported by the United States Department of Housing and Urban Development.

Section 8. Section 9 of Ordinance No. 3396, as amended (EMC 18.44.090), regarding "Collection and transfer of fees" for School District Impact Fees, which reads as follows:

A. School impact fees shall be due and payable to the city by the developer at the time of issuance of residential building permits for all developments. The city may make alternative arrangements with a school district for collection of impact fees, provided payment is made prior to the issuance of residential building permits for all developments.

B. Districts eligible to receive school impact fees required by this chapter shall establish an interest-bearing account and method of accounting for the receipt and expenditure of all impact fees collected under this chapter. The school impact fees shall be deposited in the appropriate district account within ten days after receipt, and the receiving school district shall provide the city with a notice of deposit.

C. Each district shall institute a procedure for the disposition of impact fees and providing for annual reporting to the city that demonstrates compliance with the requirements of RCW 82.02.070, and other applicable laws.

Is hereby amended to read as follows:

A. School impact fees shall be due and payable to the city by the developer at the time of issuance of residential building permits for all developments, except as provided in EMC 18.44.090(B). The city may make alternative arrangements with a school district for collection of impact fees, provided payment is made prior to the issuance of residential building permits for all developments.

B. The deferral of school impact fees shall be allowed only for single-family attached and detached construction being constructed by an applicant having a contractor registration number or other unique identification number and in accordance with the following:

1. For this subsection:
   (a) "Applicant" includes an entity that controls, is controlled by, or is under common control with the applicant.
   (b) "Common control" means two or more entities controlled by the same person or entity.
   (c) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise.
2. An applicant wishing to defer the payment of school impact fees shall:
   (a) Submit a signed and notarized deferred fee application and completed lien form concurrent with the building permit application for the building subject to the fee; and
   (b) Submit a certification that the applicant has requested no more than a total of twenty deferred impact fee requests in the calendar year within the city; and
   (c) Pay a non-refundable $250.00 administration fee for each unit or lot of a single development project for which the deferral of the fee is requested. Beginning January 1, 2018, and each January 1 thereafter, this fee shall be adjusted in accordance with the most recent change in the Consumer Price Index (CPI) or other official measurement of inflation used by the city. If the change in the CPI or other official measurement of inflation used by the city indicates an increase of less than one percent since the last adjustment of the fees listed herein, there shall be no increase for that year. At such time that the change in the CPI or other official measurement of inflation used by the city for one or more years indicates an increase of one percent or

more since the last adjustment of the fees, the cumulative percentage increase since the last adjustment of fees.

3. The lien shall:
   (a) Be in a form approved and provided by the city;
   (b) Be signed by all owners of the property, with all signatures acknowledged as required for a deed;
   (c) Include the legal description, property tax account number, and address for each lot or unit the lien will encumber;
   (d) Be binding and subordinate on all successors in title after the recording;
   (e) Be junior and subordinate to a first mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees, but in no case shall the lien be in less than second place;
4. The lien shall be recorded by the applicant, at their own expense, and a conformed copy of the recorded document shall be provided to the city prior to the issuance of the building permit that is subject to the impact fee.
5. Each applicant eligible to defer impact fees shall only be entitled to annually receive deferrals for no more than a total of twenty building permits within the city.
6. The applicant shall be responsible for the payment of all recording fees.
7. The deferred impact fee shall be paid in full prior to whichever of the following occurs first:
   (a) Issuance of a certificate of occupancy;
   (b) The closing of the first sale of the property occurring after the issuance of the applicable building permit for which the fees were deferred; or
   (c) Eighteen months from the date of building permit issuance.
8. If the building for which the deferral of the impact fee is requested is located within a subdivision, unit lot subdivision or short subdivision, the subdivision, unit lot subdivision or short subdivision shall be recorded prior to recording the lien for impact fees and issuance of the building permit.
9. After the applicant has paid all deferred impact fees, the applicant is responsible for submitting a lien release application to the city. The applicant, at their own expense, will be responsible for recording lien releases.
10. Compliance with the requirements of the deferral option shall constitute compliance with subdivision or short subdivision conditions pertaining to the timing of the impact fee payment.
11. If deferred impact fees are not paid in accordance with terms authorized by state law and this section, the City may initiate foreclosure proceedings for the unpaid impact fees and all costs associated with the collection of the unpaid impact fees.
12. If the city does not institute foreclosure proceedings for unpaid school impact fees within forty-five days after receiving notice from a school district requesting that it do so, the district may institute foreclosure proceedings with respect to the unpaid impact fees.
13. A request to defer school impact fees under this section may be combined in one application with a request to defer transportation impact fees under EMC 18.36.060 or transportation fees under EMC 18.40.140.

C. Districts eligible to receive school impact fees required by this chapter shall establish an interest-bearing account and method of accounting for the receipt and expenditure of all impact fees collected under this chapter. The school impact fees shall be deposited in the appropriate district account within ten days after receipt, and the receiving school district shall provide the city with a notice of deposit.

D. Each district shall institute a procedure for the disposition of impact fees and providing for annual reporting to the city that demonstrates compliance with the requirements of RCW 82.02.070, and other applicable laws.

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

Section 10. Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 11. Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

Section 12. General Duty. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Ray Stephanson, **Mayor**

ATTEST: _____
CITY CLERK

Passed: 07-27-16

Valid: 08-01-16

Published: 08-06-16

Effective Date: 08-16-16