

Instructions to reader: This is a new chapter in the Unified Development Code. This chapter has been recodified from [EMC 18.44](#). For a summary of the effect of the changes, please visit the Rethink Zoning Library at <https://everettwa.gov/2453/Rethink-Zoning-Library>.

Chapter 19.52 SCHOOL DISTRICT IMPACT FEES

Table of Contents

CHAPTER 19.52 SCHOOL DISTRICT IMPACT FEES	1
19.52.010 PURPOSE.....	1
19.52.020 APPLICABILITY.....	1
19.52.030 ELIGIBILITY.....	1
19.52.040 ESTABLISHMENT OF SCHOOL DISTRICT IMPACT FEES.....	2
19.52.050 IMPACT FEE LIMITATIONS.....	2
19.52.060 IMPACT FEE SCHEDULE—EXEMPTIONS.....	2
19.52.070 CREDIT FOR IN-KIND CONTRIBUTIONS.....	3
19.52.080 SEPA MITIGATION AND OTHER REVIEW.....	3
19.52.090 COLLECTION AND TRANSFER OF FEES.....	3
19.52.100 USE OF FUNDS.....	5
19.52.110 REFUNDS.....	5
19.52.120 REIMBURSEMENT FOR ADMINISTRATIVE COSTS, LEGAL EXPENSES, AND REFUND PAYMENTS.....	5
19.52.130 ADMINISTRATIVE ADJUSTMENT OF FEE AMOUNT.....	5
19.52.140 APPEALS OF DECISIONS—PROCEDURE.....	6
19.52.150 ARBITRATION OF DISPUTES.....	6

19.52.010 Purpose.

The purposes of this chapter are:

- A. To provide for a predictable and timely collection system of impact fees for eligible school districts providing services to students living within the city of Everett;
- B. To help ensure that adequate school facilities are available to serve new growth and development; and
- C. To require that new growth and development pay a proportionate share of the costs of new school facilities needed to serve new growth and development.

19.52.020 Applicability.

This chapter shall apply to all residential development establishing a new dwelling unit, unless such residential dwelling unit has been the subject of a development application that:

- A. Previously paid school mitigation fees;
- B. Was approved under a SEPA process that established a school mitigation fee, for which the SEPA approval has not expired, and for which a building permit has not been issued; or
- C. Is for a building permit within a development approved prior to the effective date of this chapter, which was not subject to school mitigation fees under the State Environmental Policy Act, provided the building permit is not expired.

19.52.030 Eligibility.

Any district serving the city of Everett shall be eligible to receive school impact fees provided the district has submitted a current capital facilities plan for the district to Snohomish County and said capital facilities plan has been incorporated by reference into the capital facilities element of the Snohomish County general policy plan.

19.52.040 Establishment of school district impact fees.

The city of Everett hereby adopts by reference the school impact fee schedule contained in the applicable school district's adopted capital facilities plan, as incorporated by the city in the capital facilities element of its comprehensive plan. Each school district shall provide a copy of their adopted biennial capital facilities plan to the city within fifteen days after it is incorporated into the Snohomish County general policy plan. The city shall use the impact fee incorporated in the Snohomish County general policy plan, except as may otherwise be provided by this chapter.

19.52.050 Impact fee limitations.

- A. School impact fees shall be imposed for district capital facilities that are reasonably related to the development under consideration, shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the development, and shall be used for system improvements that will reasonably benefit the new development.
- B. Except as otherwise provided in RCW 82.02.070(3)(b), school impact fees must be expended or encumbered for a permissible use within ten years of receipt by the district.
- C. To the extent permitted by law, school impact fees may be collected for capital facilities costs previously incurred to the extent that new growth and development will be served by the previously constructed capital facilities; provided, that school impact fees shall not be imposed to make up for any existing system deficiencies.
- D. A developer required to pay a fee pursuant to RCW 43.21C.060 for capital facilities shall not be required to pay a school impact fee pursuant to RCW 82.02.050 through 82.02.090 and this title for the same capital facilities.

19.52.060 Impact fee schedule—Exemptions.

- 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.

19.52.070 Credit for in-kind contributions.

- A. A developer may request, and the planning and community development director may grant, a credit against school impact fees otherwise due under this chapter for the value of any dedication of land or improvement to or new construction of any capital facilities identified in the district’s capital facilities plan provided by the developer. Such requests must be accompanied by supporting documentation of the estimated value of such in-kind contributions. All requests must be submitted to the department in writing prior to its determination of the impact fee obligation for the development. Each request for credit will be immediately forwarded to the affected school district for its evaluation and comment prior to a decision by the director. The director shall consider the school district comments in light of the consistency of the dedication, improvement or construction with the district’s capital facilities plan and the impact to school district facilities from the proposed development.
- B. Where a school district determines that a development is eligible for a credit for a proposed in-kind contribution, it shall provide the department and the developer with a letter setting forth the justification for and dollar amount of the credit, the legal description of any dedicated property, and a description of the development activity to which the credit may be applied. The value of any such credit may not exceed the impact fee obligation of the development unless requested by the school district and approved by the city’s planning and community development director.
- C. Where there is agreement between the developer and the school district concerning the value of proposed in-kind contributions, their eligibility for a credit, and the amount of any credit, the director may approve the request for credit and adjust the impact fee obligation accordingly, and require that such contributions be made as a condition of development approval. Where there is disagreement between the developer and the school district regarding the value of in-kind contributions, however, the planning and community development director may render a decision that can be appealed by either party pursuant to the procedures in Chapter 15.02.600.

19.52.080 SEPA mitigation and other review.

- A. The city may condition or deny development approval pursuant to SEPA as necessary or appropriate to mitigate or avoid significant adverse impacts to school services and facilities, to assure that appropriate provisions are made for schools, school grounds, and safe student walking conditions, and to ensure that development is compatible and consistent with each district’s services, facilities and capital facilities plan.
- B. Impact fees required by this chapter shall constitute adequate mitigation for impacts on capital facilities identified in the district’s capital facilities plan; except that nothing in this chapter prevents issuance of a determination of significance under SEPA and conditioning or denial of the project based on specific adverse environmental impacts identified during project review.

19.52.090 Collection and transfer of fees.

- 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 subsection B of this section. 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 nonrefundable two hundred fifty dollar 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 1st 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 shall be applied.
 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 Section 18.36.060 or transportation fees under Section 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.

19.52.100 Use of funds.

- A. School impact fees may be used by the district only for capital facilities that are reasonably related to the development for which they were assessed and may be expended only in conformance with the district's adopted capital facilities plan.
- B. In the event that bonds or similar debt instruments are issued for the advance provision of capital facilities for which school impact fees may be expended, and where consistent with the provisions of the bond covenants and state law, school impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the capital facilities provided are consistent with the requirements of this title.
- C. The responsibility for assuring that school impact fees are used for authorized purposes rests with the district receiving the school impact fees. All interest earned on a school impact fee account must be retained in the account and expended for the purpose or purposes for which the school impact fees were imposed, subject to the provisions of Section 19.52.110.

19.52.110 Refunds.

- A. School impact fees not spent or encumbered within ten years after they were collected or such longer period as may be authorized pursuant to RCW 82.02.070(3)(b) shall be refunded pursuant to RCW 82.02.080(1). For purposes of this chapter, "encumbered" means school impact fees identified by the district to be committed as part of the funding for capital facilities for which the publicly funded share has been assured, development approvals have been sought or construction contracts have been let.
- B. When the county seeks to terminate any or all impact fee requirements under this section, all unexpended or unencumbered funds, including interest earned, shall be refunded in accordance with RCW 82.02.080(2).
- C. Refunds provided for under this section shall be paid only upon submission of a proper claim pursuant to county claim procedures. Such claims must be submitted within one year of the date the right to claim the refund arises, or the date that notice is given, whichever is later.

19.52.120 Reimbursement for administrative costs, legal expenses, and refund payments.

Each participating school district shall enter into an agreement with the city for reimbursement of the actual administrative costs of assessing, collecting and handling fees for the district, any legal expenses and staff time associated with defense of this chapter against district-specific challenges, and payment of any refunds provided under Section 19.52.110.

19.52.130 Administrative adjustment of fee amount.

- A. Within fourteen days of acceptance by the city of a building permit application, a developer or school district may appeal to the director for an adjustment to the amount of or an elimination of fees imposed under this chapter by submitting a written explanation of the basis for the appeal. The planning and community development director may adjust the amount of or eliminate the fee, in consideration of studies and data submitted by the developer and the affected school district, if one of the following circumstances exists:
 - 1. The school impact fee assessment was incorrectly calculated;
 - 2. Unusual circumstances exist that demonstrate the school impact fee is unfair as applied to the specific development;
 - 3. A credit for in-kind contributions by the developer, as provided for under Section 19.52.070, is warranted;
 - 4. Any other credit specified in RCW 82.02.060(1)(b) is warranted; or
 - 5. The school impact fee assessment was improper under RCW 82.02.020 or 82.02.050 et seq.
- B. To avoid any delay pending resolution of the appeal, school impact fees may be paid under written protest in order to obtain development approval. Such written protest must be submitted at or prior to the time fees are paid, and will relate only to the specific fees identified in the protest. Failure to provide such written protest at the time of fee payment shall be deemed a withdrawal of any appeal to the director.
- C. Failure to file a written protest and to seek a timely appeal to the director shall preclude any appeal of the school impact fee pursuant to Chapter 15.02.600.
- D. Refunds approved under this section, or following an administrative appeal as provided in Chapter 15.02.600, shall be made to the current property owner at the time the refund is authorized, unless the current property owner releases the county and the school district from any obligation to refund the current property owner.
- E. The developer or the school district may appeal the director's decision as provided in Chapter 15.02.600.

19.52.140 Appeals of decisions—Procedure.

- A. Any person aggrieved by a decision to impose, impose modifications to, or waive an impact fee under this chapter may appeal the decision to the hearing examiner. Where there is an administrative appeal process for the underlying development approval, appeals of an impact fee under this chapter must be combined with the administrative appeal for the underlying development approval. Where there is no administrative appeal for the permit, then appeal of the impact fee shall proceed as a Type 1 appeal pursuant to Chapter 15.02.600. Appeals shall be limited to application of the impact fee provisions to a specific development.
- B. The impact fee may be modified or refunded upon a determination based on the application of the criteria contained in Section 19.52.130.

19.52.150 Arbitration of disputes.

With the consent of the developer and the affected district, a dispute regarding imposition or calculation of a school impact fee may be resolved by arbitration.