

**Table 2: General Requirements for Fees Related to System Improvements (Continued)**

Number of Trips Generated	Level of Service at Horizon Year	Fee Calculation
More than 50 additional peak hour trips*	1. Fee for fair share of planned system improvements (e.g., identified in the city's six-year transportation improvement program) →	Fee for each peak hour trip per Section 18.40.100(D)
	<i>plus:</i>	<i>plus:</i>
	2. Fair share of additional improvements, if any, to maintain acceptable levels of service as a result of the proposed project, as follows:	
	If "D" or better at horizon year and no need for additional improvements (taking growth into account) →	0
	Project alone causes need for additional improvements at horizon year (no need if project did not occur, taking growth into account) →	100% of cost of improvements
	Additional improvements needed to maintain "D" or better at horizon year, due to project and growth →	Project's % of total peak hour trips at horizon year, minus existing peak hour volume
	Additional improvements needed at horizon year due to project and growth, but current level of service is "E" or "F" →	Project's % of total peak hour trips at horizon year
*For proposed projects in core area, trip calculation at 75% of ITE Trip Generation Manual or as justified in a traffic analysis		

(Ord. 3387-14 § 9, 2014)

#### **18.40.100 Fair share for system improvements.**

A. Two Components of Fair Share. This section specifies the mitigation for transportation system improvements, unless otherwise agreed by the city traffic engineer. The fair share shall consist of two components:

1. A fee for each peak hour trip calculated to provide a fair share, attributed to new development, of the cost of "planned system improvements" (see subsection D of this section for fee amount); plus
2. Responsibility for a fair share of cost of additional improvements, if any, to maintain acceptable lev-

els of service as a result of the proposed project (see Table 2 and subsection B of this section for method of calculating the fair share).

When level of service "D" or better will be met at the horizon year with the project, the applicant shall not be required to pay a fair share contribution for additional transportation system improvements. This section does not duplicate, replace, or substitute for any local transportation improvements for which an applicant is responsible.

B. Fair Share Cost of Additional Improvements. Based on the actual traffic projected to be generated by a project onto the transportation system and the consequent need to make system improvements to maintain acceptable levels of service and address the impacts resulting from the project, the project's fair share cost to the city for the any transportation system improvements—in addition to the applicant's fair share of planned system improvements—shall be determined by the following (inclusion of county, state, and/or other city facilities shall be required when the city traffic engineer deems it appropriate):

1. Where the need for transportation system improvements to mitigate a project's impacts would not be required at the horizon year if the development were not constructed, the cost for the system improvements will be entirely borne by the project.

2. Where the need to provide transportation system improvements to mitigate a project's impacts by the horizon year would be required regardless of the proposed project, but the project will increase the traffic and add to the need for improvements now or in the future, and:
  - a. The current level of service is "D" or better, the traffic impacts of the project will be considered mitigated by a contribution of a share of the costs for the improvements based on the project's percentage of the total peak hour traffic trips at the horizon year on the facility to be improved less existing peak hour traffic volume; or

- b. The current level of service is "E" or "F," the traffic impacts of the project will be considered mitigated by a contribution of a share of the costs for the improvements based on the project's percentage of the total peak hour traffic trips at the horizon year on the facility to be improved.

C. Generally, an applicant should expect to pay the fair share fee in accordance with the formula in this section along with any local improvements that may be needed. Further explanation on whether improvements or fees in fact address all or part of a project's local and systemwide impacts can be found in Sections 18.40.080(G), 18.40.090(A) and (B), and 18.40.120, and associated definitions in Section 18.40.180.

D. **Traffic Mitigation Fee.** The current traffic mitigation fee rate shall be calculated as follows and published in the city of Everett's standards and specifications manual section on traffic impact analysis. The initial traffic mitigation fee at the implementation of the ordinance codified in this chapter shall be two thousand four hundred dollars per PM peak hour trip. This rate shall be adjusted annually to account for inflation based on the official Washington State Department of Transportation (WSDOT) Construction Cost Index (CCI), using the year of implementation of the ordinance codified in this chapter as the base year.

Subsequent to the adoption of any updates to transportation element of the city of Everett's comprehensive plan a study may be undertaken to reevaluate the city of Everett's traffic mitigation fee. If it is determined that an update is appropriate the initial traffic mitigation fee shall be revised and the base year for calculating inflation shall be the year of that fee's implementation. (Ord. 3387-14 § 10, 2014)

**18.40.110 Requirements for transportation improvements when traffic analysis is not required.**

A. If a traffic analysis is not required under Section 18.40.040, but the proposed project would generate ten or more vehicle trips per day, the applicant shall mitigate the project's transportation impacts as follows.

B. The applicant shall implement, or pay the city the cost of implementing, local transportation improvements as required by the city code and the city traffic engineer to meet street standards, safety requirements, or other localized impacts on or in close proximity to the project site that have been identified in the project review process.

C. The applicant shall pay a fee for transportation system improvements as defined in Section 18.40.100(D) for each PM peak hour trip that the project will produce, as determined in the latest edition of the ITE Trip Generation Manual or as otherwise approved by the city traffic engineer. Any agreement to pay in accordance with the provisions of this section shall be in a form provided in Section 18.40.130.

D. For projects within the core area (see Section 18.40.180), the fee shall be calculated by using seventy-five percent of projected trip generation using the ITE Trip Generation Manual, or as otherwise approved by the city traffic engineer based on reasonable trip generation assumptions and transportation demand management (TDM) plans as detailed in an approved traffic study.

E. If an applicant disputes the fee described in this section, the applicant has the option of preparing a traffic analysis at its expense, as described in this chapter and as approved by the city traffic engineer, to demon-

strate a lesser impact and to mitigate the transportation impacts in accordance with Section 18.40.090. (Ord. 3387-14 § 11, 2014)

**18.40.120 Credit for improvements and nonduplication of mitigation.**

A. When determining the mitigation costs attributable to the proposed project, the city traffic engineer shall take into consideration and give fair credit for transportation improvements, including dedication land, that: (1) address some or all of a proposed project's impacts; and/or (2) have previously been imposed and fulfilled as a condition of a prior land use approval related to the proposed project. The city traffic engineer shall also take into consideration and give fair credit for the contributions made by the subject property owner or his/her predecessor(s) in interest under any transportation funding device, such as a local improvement district (LID), transportation benefit district (TBD), development agreement, or similar mechanism. Any claim for credit made later than the time of application for a building permit shall be deemed to be waived.

B. A person required to pay a fee for system improvements under RCW 82.02.050 through 82.02.090 shall not be required to pay a fee under SEPA and this chapter for those same system improvements.

C. The prohibition on nonduplication limits the city from requiring an applicant to pay more than once for a transportation improvement to address the same environmental impact. It is not a duplicative requirement for an applicant to pay a fee for system improvements and to pay or install local transportation improvement, provided these different mitigation obligations do not address the same, specific environmental impact resulting from the project.

D. Agreements may provide for credit for future improvements if the city and the applicant agree that the applicant is implementing transportation improvements beyond those required under this chapter. (Ord. 3387-14 § 12, 2014)

**18.40.130 Form of commitment.**

The applicant may enter into contractual and financing arrangements, including latecomer agreements, development agreements, or other agreements, in any form that is satisfactory to the city and is legally binding and enforceable on the applicant. Any agreement must bind the applicant's successors in interest, at least until such time as the improvements have been paid for or are operational. Any agreements must be in a form approved by the city attorney. (Ord. 3387-14 § 13, 2014)

**18.40.140 Procedure for payment and use of fees.**

A. Payment of all transportation fees shall be made prior to building permit issuance, except as provided in subsection B of this section.

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 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 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 Section 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 Section 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. (Ord. 3504-16 § 5, 2016; Ord. 3387-14 § 14, 2014)

#### **18.40.145 Fee exemptions.**

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 Section 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 Section 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. (Ord. 3504-16 § 6, 2016)

#### **18.40.150 Application to projects currently underway.**

If a mitigation commitment has been made but has not been fully met by an applicant, the applicant is required to fulfill the commitment and, in addition, may be responsible for complying with the traffic study and mitigation requirements of this chapter. Nothing in this chapter shall be construed to contravene the authority of the responsible official to withdraw a SEPA threshold determination as provided in WAC 197-11-340(3)(a). (Ord. 3387-14 § 15, 2014)

#### **18.40.160 Projects in core area.**

Proposed projects located entirely or partially within the core area shall be governed by Section 18.40.110(D). For purposes of this chapter the core area is defined in Section 18.40.180. (Ord. 3387-14 § 16, 2014)

#### **18.40.170 Interpretation and implementation.**

A. This chapter shall be liberally construed to achieve the purposes set forth in Section 18.40.010.

B. Compilation and Update. This chapter is a compilation of and replaced existing previously adopted traffic mitigation ordinances (Ordinance Nos. 1670-89, 1773-90, 1754-90, 1781-91, 2425-99, 2496-00 and related ordinances that extended these ordinances). The ordinance codified in this chapter repeals and supersedes prior ordinances and updates them in order to be consistent with and implement the city's comprehensive

plan, as well as the improved permit processing requirements and maintains standards governing use of the environment substantially similar to those in existing plans and laws. Section 19 of Ordinance 3387-14 repeals the previous interim traffic mitigation ordinances.

C. Savings. Except as specifically provided in Section 18.40.150, the enactment of this chapter shall not affect any case, proceeding, appeal, or other matter in any court of law before the city or in any way modify any obligation, right or liability, civil or criminal, which may be in existence on the effective date of the ordinance codified in this chapter or as may exist by virtue of any of the ordinances herein superseded or repealed.

D. Third Party Liability. This chapter is intended to provide for and promote the health, safety and welfare of the general public, and is not intended 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 chapter. It is the specific intent of this chapter to place the obligation of complying with its requirements upon the applicant.

It is the specific intent of this chapter that no provision nor any term used in this chapter is intended to impose any duty whatsoever upon the city or any of its officers or employees, for whom the implementation and enforcement of this chapter shall be discretionary and not mandatory.

Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the city, or its officers, employees or agents, for any injury or damage resulting from the failure of an applicant to comply with the provisions of this chapter, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or done in connection with the implementation or enforcement pursuant to this chapter, or by reason of any action or inaction on the part of the city related in any manner to the enforcement of this chapter by its officers, employees or agents.

E. Interpretation. The city traffic engineer may interpret the requirements of this chapter on a case-by-case basis, consistent with the purposes set forth in Section 18.40.010. The city engineer and responsible official are authorized to promulgate rules and regulations consistent with the terms of this policy.

F. In the event that transportation impact fee or other mitigation programs are otherwise adopted by the city council under other authorization and requirements such as Chapter 36.73 or 39.92 RCW or the Growth Management Act, Chapters 36.70A and 36.70B RCW, et seq., mitigation of the traffic and transportation impacts within the scope of those programs will be required under those programs and shall supersede this chapter. The incorporation by reference and supplement-

tion of certain definitions from RCW 82.02.090 in this chapter shall not be construed as the adoption of an impact fee program under the Growth Management Act. Avoidance of duplication between the requirements of this chapter and those programs shall be governed by RCW 82.02.100 and 43.21C.065 and Section 18.40.120. (Ord. 3387-14 § 17, 2014)

#### **18.40.180 Definitions and usage.**

A. Usage. For purposes of this chapter, unless the context clearly requires otherwise:

1. Any official identified in this chapter includes any designee of or successor to that official.

2. "Applicant" refers to the person or entity proposing a project. "Applicant" includes private or public entities. "Applicant" includes the entity for which an authorized representative is submitting an application. "Application" includes any project permit application under Chapter 15.12.

3. "Environmental impact" has the same meaning as in SEPA and includes: (a) effects on transportation network; (b) physical effects on people using the transportation network, such as public health and safety; and (c) effects of traffic or of the location or operation of transportation facilities on people and the environment, such as noise, air quality, and critical areas.

4. "Fee for transportation system improvements" refers to a fair share of regulatory fee that is placed in a dedicated fund and that helps to address and mitigate a proposed project's impacts on the transportation system, as provided in this chapter, and does not refer to a method to raise revenue for the general fund to pay for transportation improvements.

5. "Including" means including but not limited to.

6. "May" is optional and permissive and does not impose a requirement.

7. Section and paragraph titles are not intended to have regulatory effect.

8. "Shall" is mandatory.

9. Singular includes plural and conversely, unless context clearly requires otherwise.

B. Definitions. Terms in this chapter shall have the same meaning as terms defined in: (1) Sections 20.04.030 (SEPA definitions incorporated by reference from Chapter 197-11 WAC) and 20.04.040 (additional SEPA definitions); and (2) RCW 82.02.090 (except that, as defined in subsection C of this section, "project improvements" shall be referred to as "local transportation improvements" and "system improvements" shall be referred to as "transportation system improvements" and are not limited to facilities identified in the capital facilities plan.

C. Additional Definitions. In addition to the definitions referenced in subsection B of this section, when

used in this chapter, the following terms shall have the following meaning:

“Characteristics of development” means the specific features of and effects caused by a proposed project, including its compliance with development standards (referred to as character of development in Chapter 15.04).

“Comprehensive plan” means the city of Everett comprehensive plan adopted by the city council and existing at the time of project review. The term “comprehensive plan” includes adopted subarea plans.

“Core area” means the portion of the city of Everett defined as the B-3 zone in Title 19.

“Fair share cost” means the proportional share of the cost of transportation system improvements that is attributable to a project’s impacts on the transportation system, as required by Section 18.40.100.

“Level of service” or “LOS” standard means the acceptable service standard adopted by the city in its comprehensive plan, as described in Section 18.40.090. If the comprehensive plan is amended to revise the acceptable level of service standard, the standard stated in Section 18.40.090 shall be deemed to be the revised, adopted LOS standard.

“Local transportation improvement” means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not transportation system improvements. No specific improvement or facility included in the city’s capital facilities plan shall be considered a local transportation improvement.

“Peak hour trips” means total inbound and outbound trips during the PM peak period (commonly known as “rush hours”), as may be further defined by the city traffic engineer.

“Planned action” means a project that meets the criteria set forth in RCW 43.21C.031 and WAC 197-11-164 and whose probable significant adverse environmental impacts have previously been analyzed in an environmental impact statement, and that is authorized by Chapter 15.16 and the specific planned action ordinance relating to the project.

“Planned system improvement” means a transportation system improvement identified in the city’s six-year transportation improvement program and other transportation system improvements that are planned to occur, to the knowledge of the city engineer.

“Practical” means reasonable and capable of being accomplished, as provided by WAC 197-11-660.

“Project” means a development, construction, or management activity located in a defined geographic area, whether private or public. Proposed projects subject to this chapter are those that generate more than ten

vehicle trips per day or require project review, including SEPA review, under Chapters 15.08 and 20.04.

“Project review process” means the city process for considering and making decisions on proposed projects under Chapter 15.04, including staff, environmental and public review.

“Traffic analysis” means the study of transportation impacts and mitigation measures, as provided in Sections 18.40.060 through 18.40.090. A traffic analysis may be combined with other project review documents, as determined appropriate by the city engineer or responsible official.

“Transportation improvement” means either a local transportation improvement, a transportation system improvement, or an improvement that is both a local and system improvement.

“Transportation network” means all facilities and means of transportation used by the public in the city or in areas affected by project traffic, including land, air, and waterborne traffic.

“Transportation system improvement” means public facilities that are included in the capital facilities plan or identified by the traffic analysis and are designed to provide service to service areas within the community at large, in contrast to local transportation improvements.

“Trips” means inbound and outbound trips. (Ord. 3387-14 § 18, 2014)

## Chapter 18.44

## SCHOOL DISTRICT IMPACT FEES

## Sections:

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- 18.44.150 Arbitration of disputes.

**18.44.010 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. (Ord. 3396-14 § 1, 2014)

**18.44.020 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. (Ord. 3396-14 § 2, 2014)

**18.44.030 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. (Ord. 3396-14 § 3, 2014)

**18.44.040 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. (Ord. 3396-14 § 4, 2014)

**18.44.050 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. (Ord. 3396-14 § 5, 2014)

**18.44.060 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. (Ord. 3504-16 § 7, 2016; Ord. 3396-14 § 6, 2014)

#### **18.44.070 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 15.24. (Ord. 3396-14 § 7, 2014)

#### **18.44.080 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. (Ord. 3396-14 § 8, 2014)

**18.44.090 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. (Ord. 3504-16 § 8, 2016; Ord. 3396-14 § 9, 2014)

#### **18.44.100 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 18.44.110. (Ord. 3396-14 § 10, 2014)

#### **18.44.110 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. (Ord. 3396-14 § 11, 2014)

#### **18.44.120 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 18.44.110. (Ord. 3396-14 § 12, 2014)

#### **18.44.130 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 18.44.070, 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 15.24.

D. Refunds approved under this section, or following an administrative appeal as provided in Chapter 15.24, 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 15.24. (Ord. 3396-14 § 13, 2014)

**18.44.140 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 I appeal pursuant to Chapter 15.24. 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 18.44.130. (Ord. 3396-14 § 14, 2014)

**18.44.150 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. (Ord. 3396-14 § 15, 2014)

