

Chapter 14.300
PARK IMPACT FEES

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14.300.010 Purpose. The purposes of this chapter are to: (1) Ensure that parks, recreation, and trail facilities necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing service levels below established minimum standards for the City; and (2) Establish standards and procedures so that new development pays a proportionate share of costs for facilities and services necessary to serve growth and does not pay arbitrary or duplicative fees for the same impact.

14.300.020 Establishment of Impact Fees and Fund. As a condition of approval of all residential development or development activity, as defined herein, the City will require mitigation of adverse impacts on the park system pursuant to the State Growth Management Act, RCW 36.70A, RCW 82.02, and this chapter. Park impact fees collected by the City shall be deposited in a fund entitled “Park Impact Fee Fund.” The fund shall include deposits from payments made pursuant to this chapter and shall permit tracking and segregation of all mitigation payments.

14.300.030 Incorporation of Parks Capital Facilities Plan. By separate ordinance, Ordinance 2135, the City Council has adopted the Parks Element of the Comprehensive Plan and the Parks, Recreation, and Open Space Long Range Plan (Parks Plan). The Parks Plan includes the 20-Year Parks and Recreation Capital Facilities Plan (Capital Facilities Plan) which identifies park facilities necessary to provide for growth, and the methodology used to calculate park impact fees. The Parks Plan as adopted and amended is hereby incorporated into this chapter by reference as if set forth in full.

14.300.040 Applicability.

- A. Except as exempted by 14.300.050 SMC and subsection B below, the terms of this chapter shall apply to all residential development, including:
1. The issuance of any building permit that increases the number of dwellings.
 2. The approval of a change in use or occupancy that increases the number of dwellings.
 3. Final plat approval for plats and short plats.

B. The terms of this chapter shall not apply to:

1. Residential lots and dwellings for which the park impact or mitigation fee has been paid pursuant to a previous permit or approval.
2. Complete applications for building permits or changes in use or occupancy received prior to the effective date of this chapter.
3. Final plat approval and building permits related to a preliminary plat approved prior to the effective date of this chapter.

14.300.050 Impact Fee Schedule Exemptions.

A. A person required to pay a fee pursuant to RCW 43.21C.060 (SEPA) for system improvements shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090 (GMA) for those same system improvements.

B. The following development activities are exempt from paying park impact fees because they do not have a measurable impact on the City's park facilities, or because the City has chosen to exempt them pursuant to RCW 82.02.060(2).

1. Existing Dwelling Unit. Any alteration, expansion, reconstruction, remodeling, or replacement of existing single-family or multifamily dwelling units that does not result in the creation of one or more additional dwelling unit(s).
2. Facilities for Long-Term Care. Any housing facility or long-term care facility exclusively providing any or all of the following services as

defined in RCW 74.39A.009: "assisted living services," "enhanced adult residential care," or "nursing home;" provided that this exemption ceases if the housing facility is later converted to permanent use as a single-family or multifamily residence not providing such services, in which case park impact fees shall be imposed at that point; and provided further that where a housing facility provides a mixture of independent senior housing in combination with any of the above mentioned services, the exemption shall be limited to that portion of the facility providing such services and the impact fee shall be appropriately calculated on a per dwelling unit basis for that portion of the facility not providing such services.

3. Temporary Accommodation. Any dwelling unit licensed and operated as transient accommodations under Chapter 70.62 RCW and WAC 248-144-026(26), such as hotels, motels, and resorts; provided that this exclusion ceases if the housing is later converted to permanent use as a single-family or multifamily residence not subject to such restrictions. (Ord. 279 § 1, 2001)

4. Any accessory dwelling unit as that term is defined in SMC 14.100.

C. The City Council may, on a case-by-case basis, grant exemptions to the application of the fee schedule for low-income or senior housing that achieves broad public purposes as defined in Chapter 14.05.020 SMC, and authorized by and in accordance with the conditions specified under RCW 82.02.060(2), provided that the impact fees for such

development activity shall be paid from public funds other than impact fee accounts. To qualify for the exemption, the developer of such housing shall submit a petition to the City Planner for consideration by the Council prior to application for building permit. Conditions for such approvals shall be established by the Council at the time of approval that, at a minimum, meet the requirements of RCW 82.02.060(2), and that include a requirement for a covenant to assure the project's continued use for low-income or senior housing. The covenant entered into by and between the developer and the City shall be an obligation that runs with the land for no less than 25 years, and shall be recorded against the title of the real property upon which such housing is located in the real property records of the Snohomish County Auditor. The covenant shall be reviewed and approved as to form by the City Attorney

<u>Land Use Activity</u>	<u>Fee</u>
Single Family Dwelling Unit	\$4,150 per unit
Multi-Family Dwelling Unit	\$3,600 per unit

14.300.080 In-Kind Mitigation Option.

- A. The Public Works Director (Director) and the developer may consider in-kind options to satisfy all or part of the mitigation obligation. Land dedication, site preparation, and related public parks and trails system development, as well as other in-kind mitigation options, may be utilized if acceptable to the Director and the Parks and Recreation Board (Parks Board), and conforms to the 20-Year Parks and Recreation Capital Facilities Plan.
- B. In approving or permitting a development, the approval authority shall consider the Director's recommendations and act in conformity with this chapter.
- C. Dedication of land and/or provision of improvements for public parks, recreation facilities, and open spaces may be accepted in lieu of payment of the park impact fees under this chapter. Credit shall be allowed only to the extent agreed between the applicant and the Director. If agreement cannot be reached, or is not appropriate, the park impact fees imposed by this chapter shall be paid.
- D. The Director shall request Parks Board review of proposed dedication of land and improvements for parks, recreation facilities, and open spaces. The Parks Board recommendation shall be considered in determining the acceptability of the proposed dedication.

14.300.060 Impact Fee Collection and Assessment.

- A. Impact fee collection shall occur prior to building permit issuance unless the development is a subdivision or short subdivision, in which case the payment shall be made prior to approval of the final plat. If the scope of work does not require a building permit, then payment is required prior to approval of occupancy.
- B. Assessment. City permit staff shall determine the total impact fee owed based on the fee schedule in effect at the time of permit issuance or, in the case of subdivisions, the fee schedule in effect at the time of final plat approval.

14.300.070 Schedule of Park Impact Fees.

The impact fee shall be as follows:

- E. Some or all of a developer's mitigation obligation may be satisfied by dedication or conveyance of land to the City for park and recreation facilities if, after review of an analysis of supply/demand data, the Parks Plan, and a recommendation by the Parks Board, the Director determines that the proposed land dedication or conveyance better meets the community's need for park and recreation facilities than payment of park impact fees.
- F. The following criteria shall be considered in determining the extent to which the proposed dedication or conveyance meets the requirements of this chapter:
 - 1. The land and its development shall result in an integral element of the Parks Capital Facilities Plan identified as serving growth;
 - 2. The land should be suitable for future active park and recreation facilities;
 - 3. The land should be of a size and horizontal and vertical configuration necessary to accommodate identified recreational uses;
 - 4. The land should have public access via a public street or an easement of an appropriate width and accessibility;
 - 5. The land should be located in or near areas designated by City park, trail, or land use plans for parks and recreation purposes;
 - 6. The land should provide linkage between City and/or other publicly owned recreation properties;
 - 7. The land shall be surveyed or adequately marked with survey monuments, or otherwise readily distinguishable from adjacent privately owned property;
 - 8. The land should have no known physical problems associated with it, such as problems with drainage, erosion, or the presence of hazardous waste, which the Director determines would cause inordinate demands on public resources for maintenance and operation;
 - 9. The land should be reasonably unencumbered with easements, utilities, and critical areas to be suitable for identified recreational uses and improvements.
- G. Some or all of a developer's mitigation obligation may be satisfied by the purchase, installation, and/or improvement of park and recreation facilities located on land owned by the City if:
 - 1. The City is responsible for permanent, continuing maintenance and operation of the facilities;
 - 2. The Director determines that the facilities correspond to the type(s) of park and recreation facilities designated as serving growth in the Parks Capital Facilities Plan; and
 - 3. A final plat may be approved or a building permit for an individual lot may be issued following the City's determination that the specified in-kind mitigation has been completed in a satisfactory manner. The City may approve a final plat or a building permit for an individual lot

with in-kind mitigation incomplete only when the provisions of SMC 14.215.060 are satisfied.

14.300.090 Credit for Payment or Obligation Previously Incurred.

- A. The City may provide a credit for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer that are identified in the Capital Facilities Plan and that are required by the City as a condition of approving the development activity.
- B. A developer may be entitled to a credit against the park impact fees collected under this chapter in any of the following situations:
 - 1. Where the applicant is required to provide park system improvements identified in the Capital Facilities Plan; or
 - 2. Where the applicant has agreed, pursuant to the terms of a voluntary agreement with the City, to provide land for system improvements identified in the Capital Facilities Plan; or
 - 3. Where the applicant has agreed, pursuant to the terms of a voluntary agreement with the City, to make system improvements to existing park facilities.
- C. If applicable, improvements for which credit is requested must be identified prior to approval of a preliminary plat, conditional use permit, development plan, or other development permit.
- D. For the purposes of calculating the credit, the land value or costs of

construction shall be determined as follows:

- 1. The amount of credit for land dedicated shall be the higher of either the most recent land valuation by the Snohomish County Assessor, or by an appraisal conducted by an independent professional appraiser chosen by the applicant and acceptable to the City. Either the fee payer or the City may request an appraisal, in which event the cost of the appraisal shall be borne by the requesting party. For the purposes of this section, the value shall be established as of the date the land is dedicated to the City.
 - 2. Credit for facilities constructed shall be based upon the actual cost of construction at the time of construction and shall apply only to approved park system improvements.
- E. Applicants for credit for construction of park improvements shall submit acceptable engineering drawings and specifications, legal description, and construction cost estimates to the Director. The estimated value of credits for in-kind improvements shall be based on either the submitted cost estimates or upon alternative engineering criteria and construction cost estimates, at the Director's discretion. The Director shall provide the applicant with a letter setting forth the estimated dollar amount of the credit, the reason for the credit, and the legal description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter or certificate indicating their agreement to the terms of the letter or certificate and return such signed document to the

Director before credit will be given. The failure of the applicant to sign, date, and return such document within 60 days shall nullify the credit. Final credit will be established at acceptance of improvements.

- F. In cases where a developer would be entitled to a credit under this section, but the amount of the credit has yet to be determined on a per dwelling unit basis, the City shall take the total credit amount available to the entire plat or project, calculated by applying Subsections (A) through (F) of this section, and divide that amount by the number of dwelling units planned for that plat or project. The impact fee and credit may then be calculated and collected on a per dwelling unit basis as application is made for building permits. Where building permits for some, but not all, of the dwelling units within a plat or project have already been obtained at the time the ordinance codified in this chapter becomes effective, the credit for remaining dwelling units will be calculated to arrive at a per dwelling unit amount in the same manner. For example, if a plat is planned for 20 dwelling units, and building permits have only been issued for 10 of those units, the per dwelling unit credit for the remaining 10 units will equal the total credit amount divided by 20.
- G. To utilize an approved credit to reduce impact fees assessed at the time of building permit issuance, the credit must be requested prior to building permit issuance or it is deemed waived.
- H. No refund will be allowed in the event that the impact fee credit exceeds the amount of the impact fee itself.

14.300.100 Administrative Adjustment of Fee Amount – Payment under Protest.

- A. Within 14 days of issuance by the City of a building permit, an applicant may appeal to the Planning Director for an adjustment to the fees imposed by this title. The Planning Director may adjust the amount of the fee, in consideration of studies and data submitted by the developer and any affected district, if one of the following circumstances exists:
 - 1. It can be demonstrated that the impact fee assessment was incorrectly calculated;
 - 2. Unusual circumstances of the development demonstrate that application of the impact fee to the development would be unfair or unjust;
 - 3. A credit specified in RCW 82.02.060(1)(b) may be warranted.
- B. To avoid delay pending resolution of the appeal, impact fees may be paid under protest in order to obtain development approval.
- C. Failure to exhaust this administrative remedy shall preclude appeals of the impact fee pursuant to SMC 14.300.110 below.

14.300.110 Appeals. Appeals of mitigation requirements imposed pursuant to this title shall be as provided in Chapter 14.75 SMC.

14.300.120 Service Area Established. The service area established in this section assures a proportional benefit of public facilities to development applicants and establishes a nexus between those paying for the fees and those benefiting from the

capital facilities. Because the City's size allows its park and recreation facilities to provide a reasonable benefit to its entire population regardless of their location within the City, the service area for the park impact fee shall be the entire City of Snohomish. The boundary within which impact fees will be charged shall include all unincorporated areas annexed to the City on and after the effective date of the ordinance codified in this chapter.

14.300.130 Use of Funds.

- A. Park impact fees shall be used for development of parks, linear trail parks, and recreation facilities to serve new growth and development in Snohomish; provided that such impact fees may only be spent on system improvements. Sidewalks located parallel to public streets are not eligible for the use of park impact fee funds except as identified in the parks and recreation Capital Facilities Plan. The park Capital Facilities Plan distinguishes between facilities and funds needed to serve new development and those facilities and funds needed to correct existing deficiencies.
- B. Impact fees may be spent on the following items to the extent that they relate to a particular system improvement: facility planning; land acquisition costs including survey, appraisal, recording fees, and other related expenses; site improvements, necessary off-site improvements; facility construction, engineering, design work, and permitting fees; facility financing, grant matching funds, applicable mitigation costs, capital equipment pertaining to public facilities, and any other expenses which can be capitalized and are consistent with the Capital Facilities Plan.

- C. In the event that bonds or similar debt instruments are or have been issued for the construction of public facility or system improvements for which impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this chapter and are used to serve new development.

14.300.140 Refunds.

- A. The current owner of property on which an impact fee has been paid may receive a refund of such fees if the City fails to expend or encumber the impact fees within six years of when the fees were paid on public facilities intended to benefit the development activity for which the impact fees were paid. This 6-year period may be extended by City Council, based on extraordinary and compelling reasons, which shall be identified in written findings approved by City Council. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. The amount to be refunded shall include the interest earned by this portion of the account from the date that it was deposited into the impact fee fund.
- B. An owner may request and shall receive a refund, including interest earned on the impact fees, when:
 - 1. The owner does not proceed to finalize the development activity as required by statute or City code or the Uniform Building Code; and
 - 2. The City has not expended or encumbered the impact fees prior to the application for a refund. In the

event that the City has expended or encumbered the fees in good faith, no refund shall be forthcoming. However, if within a period of three years, the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner shall be eligible for a credit against any then-existing park impact fee requirement. The owner must petition the City in writing and provide receipts of impact fees paid by the owner for a development of the same or substantially similar nature on the same property or some portion thereof. The City shall determine whether to grant a credit and such determinations may be appealed by following the procedures set forth in this chapter.

C. The City shall provide for the refund of fees according to the requirements of this section and RCW 82.02.080.

1. The City shall notify potential claimants of the refund availability by first-class mail deposited with the United States Postal Service addressed to the owner of the property as shown in the Snohomish County Assessor's property records.
2. An owner's request for a refund must be submitted to the City Finance Director in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever date is later. Notice is considered given on the date of mailing by the City.

D. Any impact fees that are not expended or encumbered within six years of their receipt by the City, and for which no application for a refund has been made

within this one-year period, shall be retained by the City and expended consistent with the provisions of this chapter.

- E. If the City seeks to terminate park impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded pursuant to this section. Upon the finding that any or all fee requirements are to be terminated, the City shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first-class mail to the last known address of claimants. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the City, but must be expended for the indicated public facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within the account being terminated.

14.300.150 Use and Disposition of Land.

All land dedicated or conveyed pursuant to this chapter shall be set aside for development of park and recreation facilities. The City shall make every effort to use, develop and maintain land dedicated or conveyed for park and recreation facilities. In the event that the use of any such dedicated land is determined by the City Council to be infeasible for development of park and recreation facilities, the dedicated land may be sold or traded for another parcel of land, subject to the requirements of state law and City code. The proceeds from such a sale shall be used to acquire land or develop park and recreation facilities in the City. Prior to any proposed sale of land which has been dedicated to the City, the City shall notify

each current taxpayer of record or resident of known address in the plat in which the dedicated land is proposed for sale and each taxpayer of record and resident of known address within five hundred feet of the park site.

14.300.160 Annual Report. The City Finance Department shall prepare an annual report in accordance with the requirements of RCW 82.02.070 showing the system improvements that were financed in whole or in part by impact fees and the amount of funds collected, expended and held for future improvements. The annual report shall be complete on or before April 1 of each year for the preceding calendar year.

14.300.170 Definitions. Unless the context clearly requires otherwise, the following definitions shall apply.

Department means the City of Snohomish Public Works Department.

Development approval means any written authorization from the City which authorizes the commencement of development activity.

Director means Public Works Director or his/her authorized designee.

Dwelling Unit is defined in SMC 14.100.

Encumber means to transfer funds from the general park impact fee fund to an account created to fund, in whole or in part, a particular system improvement. Once funds have been encumbered they cannot be used to fund any other system improvement. Funds may only be encumbered by an action of the City Council.

Impact fee means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and

development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

Owner means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

Proportionate share means that portion of the cost of public facility improvements that is reasonably related to the service demands and needs of a new development.

Project improvements mean 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 system improvements. No improvement or facility included in a capital facilities plan approved by the governing body of the City shall be considered a project improvement.

Public facilities means the following capital facilities owned or operated by government entities: (a) Public streets and roads; (b) publicly owned parks, open space, trails and recreation facilities; (c) school facilities; and (d) fire protection facilities in jurisdictions that are not part of a fire district.

Service area is defined in SMC 14.300.120.

System improvements mean public facilities that are designed to provide service to the community at large, in contrast to project improvements. System improvements are facilities included in any of the

following documents: Capital Facilities Element of the Comprehensive Plan; Parks Element of the Comprehensive Plan; or Parks, Recreation, and Open Space Long Range Plan.

14.300.180 Severability. If any section, subsection, sentence, clause, phrase, or word of this Chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this Chapter.

14.300.190 No Special Duty. It is the purpose of this Chapter to provide for the health, welfare, and safety 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 Chapter. No provision or term used in this Chapter is intended to impose any duty whatsoever upon the City or any of its officers, agents, or employees for whom the implementation or 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, agents, and employees for any injury or damage resulting from the failure to comply with the provisions of this Chapter or be a reason or a consequence of any inspection, notice or order, in connection with the implementation or enforcement of this Chapter, or by reason of any action of the City related in any manner to enforcement of this Chapter by its officer, agents, or employees.

(Ord. 2141, 2008)