

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2007-354A

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: John Everett	JE	10/26/07	RECEIVED OCT 30 2007 WHATCOM COUNTY COUNCIL	2/27/07	PD Committee
Division Head: Linda Peterson	JP	10.26.07		10/23/07	PD Committee
Dept. Head: Sam Ryan	GER	10-26-07		11/07/07	Introduction
Prosecutor:	[Signature]	10-26-07		11/20/07	Council Action
Purchasing/Budget:					
Executive: [Signature]	PK	10-30-07			

TITLE OF DOCUMENT:
School Facility Impact Fees Ordinance

ATTACHMENTS:
Planning Commission staff report, adopting ordinance, Exhibit A

SEPA review required? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO	Should Clerk schedule a hearing? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO
SEPA review completed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO	Requested Date: November 20, 2007

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

An ordinance amending WCC, Title 20 by adding a new Chapter 20.75 authorizing the collection of impact fees for school facilities; providing procedures for calculation of fees and adoption of school district capital facility plans; providing for refund, appeal, exemption, credit and fee adjustment mechanisms; providing findings of concurrency; and providing for certain other matters in connection therewith.

COMMITTEE ACTION:	COUNCIL ACTION: 11/7/2007: Introduced 11/20/2007: Council Adopted 7-0 Ord. 2007-067
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Related County Contract #:	Related File Numbers: ZON2007-0006 Replaced AB2007-119	Ordinance or Resolution Number: Ord. 2007-067
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Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

SPONSORED BY: Consent
PROPOSED BY: Planning
INTRODUCTION DATE: November 7, 2007

ORDINANCE NO. 2007-067

**AMENDING WHATCOM COUNTY CODE TITLE 20 BY ADDING A NEW
CHAPTER 20.75, SCHOOL IMPACT FEES**

WHEREAS, the Washington State Legislature, with the passage of the Growth Management Act, has removed previously enacted restrictions and authorized the imposition of development of impact fees as an additional source of funding for common school facilities, in addition to local tax revenues and state grants from the common school construction fund;

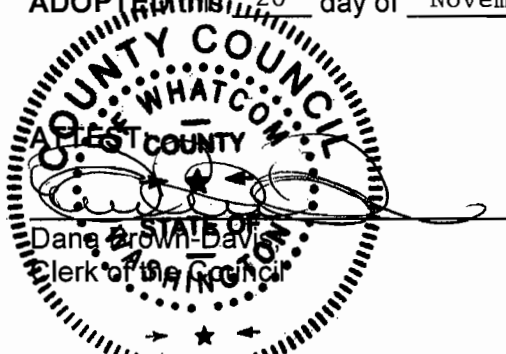
WHEREAS, the Washington State Legislature, through Chapter 82.02 RCW, authorizes cities and counties planning under GMA to impose impact fees on development activity as part of the financing for public facilities to help ensure that adequate facilities are available to serve new growth and development;

WHEREAS, new residential development resulting from forecasted population growth will create additional demand for public school facilities;

WHEREAS, while the general community benefits from new public facilities and should continue to pay the majority of facility costs, it is appropriate to require new development to pay its proportionate share of the cost of new facilities.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that WCC Title 20 is hereby amended to include a new Chapter 20.75 as shown in Exhibit A.

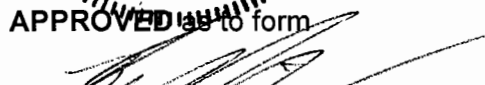
ADOPTED this 20 day of November, 2007.




WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



Carl Weimer, Council Chair

APPROVED as to form


Civil Deputy Prosecutor

Approved Denied


Pete Kremen, County Executive

Date: 11/21/07

EXHIBIT A

Chapter 20.75 SCHOOL FACILITY IMPACT FEES

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Sections:

- 20.75.010 Findings.
- 20.75.020 Purpose.
- 20.75.030 Applicability.
- 20.75.040 Findings, recommendations, and decisions regarding school capacities.
- 20.75.050 School concurrency standard.
- 20.75.060 School district eligibility for impact fees.
- 20.75.070 Imposition of impact fees.
- 20.75.080 Calculation of impact fees.
- 20.75.090 Impact fee credits.
- 20.75.100 Interlocal agreements.
- 20.75.110 Expenditure of Funds.
- 20.75.120 Refunds.
- 20.75.130 Payment Under Protest.
- 20.75.140 Adjustment of Fee Amount.
- 20.75.150 Appeals.

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20.75.010 Findings.

- (1) New residential development resulting from forecasted population growth will create additional demand for public school facilities.
- (2) While the general community benefits from new public facilities and should continue to pay a substantial portion of facility costs, it is appropriate to require new development to pay its proportionate share of the cost of new facilities.
- (3) The Washington State Legislature, with the passage of the Growth Management Act, has removed previously enacted restrictions and authorized development impact fees as an additional source of funding for common school facilities, in addition to local tax revenues and state grants from the common school construction fund.
- (4) The Washington State Legislature, through Chapter 82.02 RCW, authorizes cities and counties planning under GMA to impose impact fees on development activity as part of the financing for public facilities to help ensure that adequate facilities are available to serve new growth and development.

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20.75.020 Purpose.

The purpose of this chapter is (1) to ensure that adequate school facilities are available to serve new residential growth and development; (2) 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; and (3) to ensure that school impact fees are administered consistently and fairly.

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20.75.030 Applicability.

- (1) The terms of this chapter shall apply to all forms of residential development that would result in the creation of new dwelling units.
- (2) Reconstruction or remodeling of existing dwelling units or construction of commercial structures are not subject to the provisions of this chapter.
- (3) Notwithstanding the above, developments for which a complete application for approval was submitted before the effective date of this chapter or that was subject to a prior State

147 Environmental Policy Act (SEPA) threshold determination that provided for school mitigation are
148 not subject to the provisions of this chapter.

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150 **20.75.040 Findings, recommendations, and decisions regarding school capacities.**

151 (1) In making a threshold determination pursuant to SEPA, the director and/or the hearing
152 examiner, in the course of reviewing proposals for residential development including, but not
153 limited to, applications for subdivisions, PUDs, mobile home parks and multifamily building
154 permits, shall consider the school district's capital facilities plan as adopted by the County
155 Council.

156 (2) County-adopted school facility capital facility plans shall be incorporated into the record in
157 every case without requiring the district to offer such plans and data into the record. The school
158 district is also authorized to present testimony and documents demonstrating a lack of
159 concurrency in the district and the inability of the district to accommodate the students to be
160 generated by a specific development.

161 (3) Based upon a finding that adequate school facility requirements are not met per the
162 requirements of WCC 20.75.050, the director may require or recommend phasing or provision of
163 the needed facilities and/or sites as appropriate to address the deficiency or deny or condition
164 approval, consistent with the provisions of this chapter, WCC Title 21, the State Subdivision Act,
165 and the State Environmental Policy Act.

166 (4) Where the County Council has not adopted an impact fee ordinance for a particular school
167 district, the language of this section shall not affect the authority or duties of the hearing examiner
168 or the director pursuant to the State Environmental Policy Act or the State Subdivision Act.

169 (5) Determinations of the hearing examiner or director regarding school facility adequacy may
170 be appealed pursuant to the provisions for appeal of the development permit process for which
171 the determination has been made.

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173 **20.75.050 School concurrency standard.**

174 (1) Schools shall be considered to have been provided concurrently with the development
175 which will impact the schools if:

176 (a) The permanent and interim improvements necessary to serve the development are
177 planned to be in place at the time the impacts of development are expected to occur; or

178 (b) The necessary financial commitments are in place to assure the completion of the
179 needed improvements to meet the district's level of service standard within six years of the time
180 that the impacts of development are expected to occur.

181 (2) Any combination of the following shall constitute the "necessary financial commitments"
182 for the purposes of this section:

183 (a) The district has received voter approval of and/or has bonding authority;

184 (b) The district has received approval for federal, state, or other funds;

185 (c) The district has received a secured commitment from a developer to construct the
186 needed permanent school facility, and the school district has found such facility to be acceptable
187 and consistent with its capital facilities plan; and/or

188 (d) The district has other assured funding, including but not limited to school impact fees
189 which have been paid.

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191 **20.75.060 School district eligibility for impact fees.**

192 (1) A school district becomes eligible to receive school impact fees once the County Council
193 adopts the school district's six-year capital facilities plan (CFP). The school district will remain
194 eligible to receive school impact fees until the timeframe of the adopted CFP elapses or until the
195 date specified in the adopting ordinance, whichever occurs first.

196 (2) Council adoption of the district's CFP also constitutes County adoption of the school impact
197 fee schedule specified in the CFP.

249 Whenever a development includes or is granted approval subject to a condition that the
250 development applicant actually provide a school facility, land dedication, or system improvement
251 that is acceptable to the district and the County and is identified in the district's capital facilities
252 plan, the development applicant shall be entitled to a credit for the actual cost of providing the
253 facility against the fee that would be chargeable under this chapter. The cost of construction shall
254 be estimated at the time of approval but must be documented and confirmed after the construction
255 is complete to assure that an accurate credit amount is provided. If construction costs are less than
256 the calculated impact fee amount, the difference remaining shall be chargeable as a school impact
257 fee. In the event the amount of the credit is calculated to be greater than the amount of the impact
258 fee due, the development applicant may apply such excess credit toward impact fees imposed on
259 other developments by the applicant within the same service area.

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261 **20.75.100 Interlocal agreements.**

262 (1) The school district and the County shall by interlocal agreement provide for the
263 establishment and maintenance of separate accounts by the County finance department and for
264 the expenditure of fees by the district in a timely fashion on appropriate capital projects as
265 required by Chapter 82.02 RCW.

266 (a) The agreement shall provide for the keeping of records for each such account whereby
267 collected impact fees can be segregated by type of facility.

268 (b) The agreement shall specify the fees, if any, the County will charge the school district
269 for the collection of the fees authorized in this chapter.

270 (c) The agreement shall provide for the transfer of collected fees from the County to the
271 district.

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273 **20.75.110 Expenditure of Funds.**

274 (1) School impact fees may be used by the District only for capital facilities that are reasonably
275 related to the development for which they were assessed and may be expended only in
276 conformance with the District's adopted School Facilities Plan.

277 (2) In the event that bonds or similar debt instruments are issued for the advance provision of
278 capital facilities for which school impact fees may be expended, and where consistent with the
279 provisions of the bond covenants and state law, school impact fees may be used to pay debt
280 service on such bonds or similar debt instruments to the extent that the capital facilities provided
281 are consistent with the requirements of this title.

282 (3) The responsibility for assuring that school impact fees are used for authorized purposes rests
283 with the District. All interest earned on a school impact fee account must be retained in the
284 account and expended for the purpose or purposes for which the school impact fees were
285 imposed, subject to the refund provisions of WCC 20.75.120.

286 (4) The District shall provide the County an annual report showing the source and the amount
287 of school impact fees received by the District and the capital facilities financed in whole or in part
288 with those school impact fees.

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290 **20.75.120 Refunds.**

291 (1) Current owners of property on which an impact fee has been paid may receive a refund of
292 such fees if the district fails to expend or encumber the impact fees within six years of when the
293 fees were paid or such other period of time established pursuant to WCC 20.75.110.

294 (a) In determining whether impact fees have been encumbered, impact fees shall be
295 considered encumbered on a first-in, first-out basis.

296 (b) If funds are not encumbered, the district shall notify the County, and the County shall
297 notify potential claimants by first class mail deposited with the United States Postal Service at the
298 last known address of claimants.

299 (c) The request for refund money must be submitted to the County finance director in
300 writing within one year of the date the right to claim the refund arises or the date the notice is
301 given, whichever is later. Any impact fees that are not expended within the six-year time
302 limitation, and for which no application for refund has been made within this one-year period,
303 shall be retained and expended on the indicated public facilities. Refunds of impact fees under
304 this subsection shall include interest earned on the impact fees.

305 (d) A development applicant may request and shall receive a refund, including interest
306 earned on the impact fees, when the building permit for which the impact fee has been paid has
307 lapsed for noncommencement of construction. A partial refund shall be provided where the
308 project for which a building permit has been issued has been altered, resulting in a decrease in the
309 amount of the original impact fee due.

310 (2) The interlocal agreement required in WCC 20.75.100 shall detail a refund process, as
311 required by Chapter 82.02 RCW.

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313 **20.75.130 Payment Under Protest.**

314 Impact fees may be paid under protest. If the fee is protested, the County shall make final
315 resolution of the protest a condition of the permit. Final occupancy of structures within the
316 development shall not be approved until the protest is resolved. Arbitration may be utilized if
317 agreeable to the County and the applicant. Any costs related to arbitration shall be distributed
318 evenly between the applicant and the subject district.

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320 **20.75.140 Adjustment of Fee Amount**

321 The County Council may adjust the fee and if one of the following exists:

322 (1) An applicant requests reduction in writing and submits compelling data demonstrating a lower
323 student generation rate and the district concurs; or

324 (2) The proposed development will result in the provision of Low-Income Housing as defined by
325 the then current Whatcom County Code. Fees reduced or waived in this circumstance must be
326 replaced with other public funds.

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328 **20.75.150 Appeals.**

329 Determinations of the hearing examiner or director regarding the application of the terms of this
330 chapter may be appealed pursuant to the provisions for appeal of the development permit process
331 for which the determination has been made.