

ORDINANCE NO. 010/2010

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON, AMENDING CHAPTER 20.07 OF THE MONROE MUNICIPAL CODE (SCHOOL IMPACT MITIGATION FEE PROGRAM); PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Monroe imposes school impact fees under the authority of the Growth Management Act and tenders those fees to the affected school districts; and

WHEREAS, Chapter 20.07 of the Monroe Municipal Code sets forth the impact fees to be collected for new development adopted in the Capital Facilities Plan of the Monroe School District, Capital Facilities Plan of the Snohomish School District and incorporated into the Capital Facilities Element of the Monroe Comprehensive Plan; and

WHEREAS, the City Council found it appropriate to amend Chapter 20.07 of the Monroe Municipal Code to include more general language to reference all affected school districts within the Monroe city limits; and

WHEREAS, on April 20, 2010, the regulations were submitted to the Washington State Department Commerce and other state agencies for review; and

WHEREAS, on April 15, 2010, the city of Monroe SEPA Official issued a Categorical Exemption from SEPA under WAC 197-11-800(19); and

WHEREAS, on May 10, 2010, the Monroe Planning Commission held a duly advertised public hearing on the proposed regulations and made a final recommendation to the City Council; and

WHEREAS, the Monroe City Council considered the recommendation of the Monroe Planning Commission and determined to approve the zoning code amendment; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Municipal Code Amendment. The City Council hereby amends the sections of Chapter 20.07 of the Monroe Municipal Code denoted with underline and strike-through text, attached as Exhibit A, incorporated by this reference, as if set forth in full

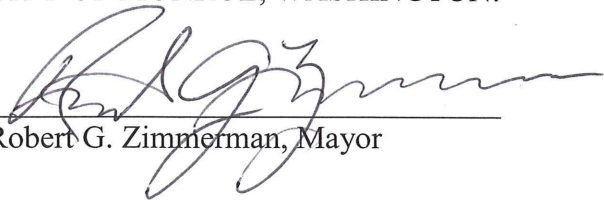
Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 3. Effective Date. This ordinance shall be in full force and effect five (5) days from and after its passage and approval and publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this 6th day of July 2010.

1st and Final Reading: 7/6/10
Published: 7/13/10
Effective: 7/18/10

CITY OF MONROE, WASHINGTON:



Robert G. Zimmerman, Mayor

ATTEST:



Eadye Martinson, Deputy City Clerk

APPROVED AS TO FORM:



Phil Olbrechts, City Attorney

Exhibit A

Chapter 20.07 School Impact Mitigation Fee Program

20.07.010 Title.

This chapter shall be hereinafter known as the "school impact mitigation fee program ordinance," may be cited as such, and will be hereinafter referred to as "this chapter." (Ord. 1205, 2000)

20.07.020 Purpose.

This chapter provides the necessary regulatory mechanism for determining school impact mitigation fees, that a property owner meets the concurrency provisions of the comprehensive plan for development purposes and which ensures that adequate public facilities at acceptable levels of service are available to support the development's impact. (Ord. 1205, 2000)

20.07.030 Words defined by RCW 82.02.090.

Words used in this chapter and defined in RCW 82.02.090 shall have the same meaning assigned in RCW 82.02.090 unless a more specific definition is contained in MMC 20.07.040. (Ord. 1205, 2000)

20.07.040 School mitigation definitions.

~~"District" means the Monroe School District No. 103.~~

20.07.050 School capital facilities plan.

The Monroe School District's capital facilities plan and the Snohomish School District's capital facilities plan shall be included in and shall be considered as a part of the capital facilities plan element of the city of Monroe comprehensive plan as adopted by the city council. School mitigation fees shall be based upon this element of the current city comprehensive plan. (Ord. 1205, 2000)

20.07.060 Updating of school district plan.

- A. ~~The district's plan~~School district plans shall be transmitted to the city at least sixty days prior to the biannual public hearing date for the capital facilities element of the city comprehensive plan. The plan must be submitted to the state by the city as a part of the city comprehensive plan review required under GMA; consequently, the district plan must meet any submittal deadline imposed by the state. The city shall notify the affected school district of the schedule for review of the capital facilities element of the comprehensive plan at such time as the schedule is established.
- B. ~~The district~~School districts shall amend ~~its~~ their facilities plan on a biannual basis in conjunction with the city biannual amendment to the comprehensive plan. However, the affected school district may amend its facilities plan on an annual basis if the district finds it necessary to adjust impact fees. The city may not consider such an amendment more than once per year unless otherwise allowed by state law. The plan shall require approval by the city council as an amendment to the city's comprehensive plan.
- C. The timing of amendments to ~~the either school~~ district's school impact fees shall be commensurate with the current amendment schedule adopted by Snohomish County. Conformance with the county schedule is designed to ensure a uniform procedural change throughout both the incorporated and unincorporated areas of the school district. (Ord. 033/2004; Ord. 1205, 2000)

20.07.070 City adoption.

Upon receiving a recommendation from the hearing authority, on the affected school district's amendments to its capital facilities plan, the city council shall consider adoption of said plan or amendment by reference as part of the capital facilities element of the city's comprehensive plan. (Ord. 1205, 2000)

20.07.080 Delays.

If ~~the~~ either school district fails to submit ~~its-an~~ updated ~~of-the~~ capital facilities plan in a timely manner, the city shall not be obligated to complete review prior to the city's comprehensive plan amendment date. If an updated capital facilities plan has not been adopted by the city council prior to the existing plan's expiration date, due to the affected school district's failure to submit an updated plan, ~~the-that~~ school district shall be ineligible to receive school impact fees until the updated plan has been adopted by the city council. (Ord. 1205, 2000)

20.07.090 Fee required.

Each development activity, as a condition of approval, shall be subject to the impact fee established pursuant to this section. ~~The-s~~ School impact fees shall be calculated in accordance with the formula set forth in either the current Monroe School District No. 103's Capital Facilities Plan, or the current Snohomish School District Capital Facilities Plan, as adopted into and made a part of the capital facilities element of the city of Monroe comprehensive plan. (Ord. 034/2008 § 1; Ord. 019/2007 § 1; Ord. 033/2004; Ord. 014/2004; Ord. 1277, 2002; Ord. 1205, 2000)

20.07.100 Impact fee schedule – Exemptions.

A. The school impact fees specified in the affected school district's capital facilities plan and adopted by the city council shall constitute the city's schedule of school impact fees. The department shall, for the convenience of the public, keep available an information sheet summarizing the schedule of school impact fees.

B. The city council may, on a case-by-case basis, grant exemptions to the application of the fee schedule for low-income housing activities in accordance with RCW 82.02.060(2). Low-income housing is defined as follows: (1) low-income housing projects that are constructed by public housing agencies or private nonprofit housing developments; or (2) low-income residential units, rented or purchased, that are dedicated and constructed by private developers. To qualify for such exemption, the developer of such housing shall submit a petition to the director 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 which shall also include a requirement for a covenant acceptable to the affected school district to assure the project's continued use for low-income housing. The covenant entered into by and between the developer and the affected school district shall be an obligation that runs with the land, and shall be recorded against the title of the real property upon which such housing is located in the real property records of Snohomish County. (Ord. 1205, 2000)

20.07.110 Impact fee limitations.

A. School impact fees shall be imposed for the affected school 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. School impact fees must be expended or encumbered for a permissible use within six years of receipt by the affected school 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 district 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.

E. A condition of eligibility shall be that the ~~district~~affected school district must provide documentation that it has petitioned every other county or city served by the district to establish a school impact fee or mitigation program. (Ord. 1205, 2000)

20.07.120 Fee determination.

A. At the time of development approval, the city shall determine whether school impact fees will be due at the time of building permit issuance. Where such fees are due, the development approval shall state that the payment of school impact fees will be required prior to issuance of building permits. The amount of the fee due shall be based on the fee schedule in effect at the time of building permit issuance. Credit amounts and allocation of credits to be applied against the fees shall be determined at the time of development approval to the extent that information is reasonably available to make this determination. If information is not reasonably available, credit amounts may be deferred to a later date prior to building permit issuance by written decision of the community development director or his/her designee. If a subdivision is involved, any deferred final credit decision shall be issued by the community development director or his/her designee prior to final plan approval. The city may not approve a final plat until all adjustment requests and administrative appeals regarding credit amounts are resolved.

B. The final determination of a development activity's fee obligation under this section shall be made prior to the application for building permit. Said final determination shall include any credits for in-kind contributions. Final determinations may be appealed pursuant to the procedures established in MMC 20.07.190. (Ord. 033/2004; Ord. 1205, 2000)

20.07.130 Credit for in-kind contributions.

A. A developer may request and the director may grant a credit against school impact fees otherwise due under this title, for the value of any dedication of land, improvement to, or new construction of any capital facilities identified in the affected school 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 activity. Each request for credit will be immediately forwarded to the ~~district~~affected school district for evaluation.

B. Where the affected school district determines that a development activity 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 activity in question.

C. Where there is agreement between the developer and the affected school district concerning the value of proposed in-kind contributions, their eligibility for a credit, and the amount of any credit, the director may: (1) approve the request for credit and adjust the impact fee obligation accordingly, and (2) require that such contributions be made as a condition of development approval. Where there is disagreement between the developer and the affected school district regarding the value of in-kind contributions, however, the director may render a decision that can be appealed by either party pursuant to city administrative appeal procedures.

D. For subdivisions, PRDs and other large-scale developments where credits for in-kind contributions are proposed or required, it may be appropriate or necessary to establish the value of the credit on a per-unit basis as a part of the development approval. Such credit values will then be recorded as part of the plat or other instrument of approval and will be used in determining the fee obligation, if any, at the time of building permit issuance for development activity. In the event that such credit value is greater than the impact fee in effect at the time of permit issuance, the fee obligation shall be considered satisfied, and the balance of the credit may be transferable to future developments by the applicant with agreement by the districtaffected school district. (Ord. 033/2004; Ord. 1205, 2000)

20.07.135 Exemptions.

The following development activities shall be exempt from payment of school impact fees:

A. Reconstruction, remodeling or construction of the following activities, subject to the recording of a covenant or recorded declaration of restrictions precluding use of the property for other than the exempt purpose; provided, that if the property is used for a nonexempt purpose, the school impact fees then in effect shall be paid:

1. Construction or remodeling of transitional housing facilities or dwelling units that provide housing to persons on a temporary basis for not more than twenty-four months, in connection with job training, self-sufficiency training and human services counseling, the purpose of which is to help persons make the transition from homelessness to placement in permanent housing.

B. Rebuilding or replacement of an existing legally established dwelling unit(s) where no additional dwelling unit(s) is created.

C. Alteration or expansion:

1. Of an existing building where no additional residential units are created and where the use is not changed, and/or

2. The construction of any accessory building or structures.

D. Manufactured homes where:

1. The installation of a replacement manufactured home on a lot or other such site where a school impact fee for such manufactured home has previously been paid pursuant to this chapter or where a manufactured home legally existed on such site on or prior to the effective date of the ordinance codified in this section.

2. The construction of any nonresidential building or structure or the installation of a nonresidential manufactured home. Any claim or exemption must be made no later than the time of application for a building permit or permit for manufactured home installation. Any claim not so made shall be deemed waived.

E. Condominium projects in which existing dwelling units are converted into condominium ownership where no new dwelling units are created.

F. Previous mitigation where:

1. The development activity is exempt from the payment of an impact fee pursuant to RCW 82.01.010, due to mitigation of the same system improvement under the State Environmental Policy Act (SEPA).

2. The development activity's school impact fees have been mitigated pursuant to a condition of plan or PRD approval to pay fees, dedicate land or construct or improve school facilities, unless the condition of the plat or PRD approval provides otherwise; provided, that the condition of the plat or PRD approval predates the effective date of fee imposition as provided herein.

3. Any development activity for which school impacts have been mitigated pursuant to a voluntary agreement entered into with the Monroe School-affected school district District and the city to pay fees, dedicate land or construct or improve school facilities, unless the terms of the voluntary agreement provide otherwise; provided, that the agreement predates the effective date of fee imposition as provided herein. (Ord. 033/2004)

20.07.140 SEPA mitigation and other review.

A. The city shall review development proposals and development activity permits pursuant to all applicable state and city laws and regulations, including the State Environmental Policy Act (Chapter 43.21C RCW), the state subdivision law (Chapter 58.17 RCW) and the applicable sections of this code. Following such review, the city may condition or deny development approval as necessary or appropriate to mitigate or avoid significant adverse impacts to school services and facilities, to assure that appropriate provisions are made for school, school grounds, and safe student walking conditions, and to ensure that development is compatible and consistent with the district's services, facilities and capital facilities plan.

B. Impact fees required by this title for development activity, together with compliance with development regulations and other mitigation measures offered or imposed at the time of development review and development activity review, shall constitute adequate mitigation for all of a development's specific adverse environmental impacts on the school system for the purposes of this section. Nothing in this title prevents a determination of significance from being issued, the application of new or different development regulations and/or requirements for additional environmental analysis, protection and mitigation measures to the extent required by applicable law. (Ord. 1205, 2000)

20.07.150 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 development activities.

B. The affected school district, to receive school impact fees collected by the city, shall establish an interest-bearing account separate from all other school district accounts. The city shall deposit school

impact fees in the appropriate district account within ten days after receipt, and shall contemporaneously provide the receiving district with a notice of deposit.

C. The affected school district shall institute a procedure for the disposition of impact fees and provide for an annual reporting to the city that demonstrates compliance with the requirements of MMC 20.07.160 and RCW 82.02.070, and other applicable laws. (Ord. 1205, 2000)

20.07.160 Use of funds.

A. School impact fees may be used by the affected school 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 affected school 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 section.

C. The responsibility for assuring that school impact fees are used for authorized purposes rests with the affected school district. 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 MMC 20.07.170.

D. The affected school district shall provide the city an annual report showing the source and the amount of school impact fees received by the district and the capital facilities financed in whole or in part with those school impact fees. The annual report shall be submitted to the city collectively with the affected school district's capital facilities plan. If the affected school district has previously submitted a biannual plan, the annual report shall be due on the anniversary date of the previously submitted plan. If an annual report is not submitted as required, the city may withhold deposit of future impact fees until the annual report has been submitted to the city. (Ord. 1205, 2000)

20.07.170 Refunds.

A. School impact fees not spent or encumbered within six years after receipt by the affected school district shall, upon receipt of a proper and accurate claim, be refunded, together with interest, to the then-current owner of the property. In determining whether school impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. At least annually the city, pursuant to MMC 20.07.150, shall give notice to the last known address of potential claimants of any funds, if any, that it has collected that have not been spent or encumbered. The notice will state that any persons entitled to such refunds may make claims.

B. Refunds provided for under this section shall be paid only upon submission of a proper claim pursuant to city claim procedures. Such claims must be submitted to the director within one year of the date the right to claim the refund arises, or the date of notification provided for above, where applicable, whichever is later. (Ord. 1205, 2000)

20.07.180 Administrative adjustment of fee amount.

A. Within fourteen days of issuance of a building permit by the city, a developer or the affected school district may appeal to the director for an adjustment to the fees imposed by this title. The director may adjust the amount of the fee, in consideration of studies and data submitted by the developer and the ~~district~~affected school district, if one of the following circumstances exists:

1. It can be demonstrated that the school impact fee assessment was incorrectly calculated;
2. Unusual circumstances of the development activity demonstrate that application of the school impact fee to the development would be unfair or unjust;
3. A credit for in-kind contributions by the developer, as provided for under this section, is warranted;
or
4. Any other credit specified in RCW 82.02.060(1)(b) may be warranted.

B. To avoid delay pending resolution of the appeal, school impact fees may be paid under protest in order to obtain a 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 of community development.

C. Failure to exhaust this administrative remedy shall preclude appeals of the school impact fee pursuant to MMC 20.07.190. (Ord. 033/2004; Ord. 1205, 2000)

20.07.190 Appeals of decisions – Procedure.

A. Any person aggrieved by a decision applying an impact fee under this title to a development activity may appeal such decision to the hearing examiner pursuant to provisions of MMC 21.60.010. Appeals of this title must be combined with the administrative appeal for the underlying development approval. The impact fee amount specified in a building permit issuance shall be construed as subject to appeal under this section and a separate appeal must be filed for each and every permit issuance after each permit has been issued. The community development director or his/her designee may consolidate appeal hearings; provided, that no appeal hearing shall be scheduled more than ninety days after its impact fee decision unless agreed to by the person/entity that owes the fee. Only one appeal fee shall be required for consolidated appeals. All appeals filed under this section must be filed within the specified appeal period of the final decision applying an impact fee to a development activity, or a decision on an adjustment request to that decision, whichever comes later.

B. At the hearing, the appellant shall have the burden of proof, which burden shall be met by a preponderance of the evidence. The impact fee may be modified upon a determination that it is proper to do so based on the application of the criteria contained in MMC 20.07.180. Appeals shall be limited to the application of the impact fee provisions to the specific development activity and the provisions of this title shall be presumed valid.

C. The decision of the hearing examiner pursuant to this subsection shall be final and conclusive with an optional right of reconsideration as provided in MMC 21.50.080 unless appealed to the city council in accordance with Chapter 21.60 MMC. (Ord. 003/2008 (Exh. E); Ord. 033/2004; Ord. 022/2004; Ord. 1205, 2000)

20.07.200 Vesting of school mitigation.

School mitigation for a proposed land use development shall not be vested at the time a development proposal is deemed complete, but rather at the time of issuance of a building permit. The applicant for a development proposal shall have the option of claiming vesting for school mitigation at the time an

application is deemed complete, however school mitigation must then be paid on all lots of a final plat along with other vested mitigation prior to filing with the county. (Ord. 1205, 2000)

20.07.210 Conflict with other ordinances and codes.

In cases of conflict between this chapter or any part thereof, and any part of any other existing or future ordinance or code, the most restrictive in each case shall apply. (Ord. 1205, 2000)

20.07.220 Savings provision.

If any part of this chapter is held to be unconstitutional, it shall be construed to have the legislative intent to pass the ordinance codified in this chapter without such unconstitutional part and the remainder of this chapter as to exclusion of such part shall be deemed and held to be valid as if part had not been included herein. (Ord. 1205, 2000)