

THE CITY OF WOODINVILLE, WASHINGTON

ORDINANCE NO. 280

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON RELATING TO SCHOOL IMPACT FEES; ESTABLISHING A FRAMEWORK FOR THE ADOPTION OF A SCHOOL IMPACT FEE PROGRAM BY THE CITY; REQUIRING THE EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY AND THE NORTHSORE SCHOOL DISTRICT; PROVIDING FOR THE ADOPTION OF THE DISTRICT'S CAPITAL FACILITIES PLAN AS AN ELEMENT OF THE CITY'S COMPREHENSIVE PLAN; AUTHORIZING THE IMPOSITION OF IMPACT FEES BY THE CITY AND COLLECTION OF IMPACT FEES BY THE SCHOOL DISTRICT ON BEHALF OF THE CITY ON NEW DEVELOPMENT IMPACTING SCHOOL FACILITIES; PROVIDING THE FORMULA FOR CALCULATION OF THE FEE AND FEE SCHEDULE; DESCRIBING THE PROCEDURES FOR CREDIT, APPEAL AND REFUNDS; ALL AS AUTHORIZED BY THE GROWTH MANAGEMENT ACT, RCW 82.02.050 THROUGH 82.02.100; AMENDING TITLE 3 OF THE WOODINVILLE MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.39; AND SETTING A DATE WHEN THE SAME SHALL BE EFFECTIVE.

WHEREAS, the City Council of the City of Woodinville finds that adequate school facilities should be provided to serve the student population generated from new development in the City; and

WHEREAS, to ensure that school facilities are available to accommodate expected growth when needed, the Council recognizes the cost of new school facilities must be shared by the public and private sectors, and the proportionate share of the expense of school facilities necessitated by the impacts of new development should be borne by developers through the imposition of school impact fees as authorized by the Growth Management Act (RCW 82.02.050 - 82.02.100); and

WHEREAS, an organized framework must be adopted for the determination and analysis of the school district's need for impact fees to partially fund school facilities necessitated by new development, and to allow the imposition of those fees by the City and the collection of those fees by the school district on behalf of the City pursuant to the Growth Management Act and all other applicable law;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Title. There is hereby added to Title 3 of the Woodinville Municipal Code, a new Chapter 3.39, entitled "School Impact Fees," containing the provisions set forth in Sections 1 through 14 of this ordinance.

Section 2. Authority. This ordinance is adopted as an official control to implement Woodinville's comprehensive plan policies, the Growth Management Act, RCW 82.02.050 through 82.02.100; and the State Subdivision Act, Chapter 58.17 RCW. This ordinance is also necessary to address identified impacts of new development on schools, in order to protect the public health, safety and welfare.

Section 3. Definitions. For purposes of this ordinance, the following terms have the indicated meanings:

A. "Capacity" means the number of students the District's facilities can accommodate District-wide, based on the District's standard of service, as determined by the District.

B. "Capital Facilities Plan" means the District's facilities plan adopted by the school board consisting of:

1. A forecast of future needs for school facilities based on the District's enrollment projections;
2. An identification of additional demands placed on existing public facilities by new development;
3. The long-range construction and capital improvement projects of the District;
4. The schools under construction or expansion;
5. The proposed locations and capacities of expanded or new school facilities;
6. An inventory of existing school facilities, including permanent, transitional and relocatable facilities;
7. At least a six-year financing component, updated as necessary to maintain at least a six-year forecast period, for financing needed for school facilities within projected funding levels, and identifying sources of financing for such purposes, including bond issues authorized by the voters;

8. An identification of deficiencies in school facilities serving the student populations and the means by which existing deficiencies will be eliminated within a reasonable period of time; and

9. Any other long-range projects planned by the District.

C. "City" means the City of Woodinville.

D. "Classrooms" mean educational facilities of the District required to house students for its basic educational program. The classrooms are those facilities the District determines are necessary to best serve its student population. Specialized facilities as identified by the District, including but not limited to gymnasiums, cafeterias, libraries, administrative offices, and child care centers, shall not be counted as classrooms.

E. "Construction Cost Per Student" means the estimated cost of construction of a permanent school facility in the District for the grade span of school to be provided, as a function of the District's design standard per grade span.

F. "Design Standard" means the space required, by grade span and taking into account the requirements of students with special needs, which is needed in order to fulfill the educational goals of the District as identified in the District's capital facilities plan.

G. "District" means the Northshore School District No. 417.

H. "Developer" means the person or entity who owns or holds purchase options or other development control over property for which development activity is proposed.

I. "Development Activity" means any residential construction or expansion of a residential building, structure or use, any change in use of a residential building or structure, or any change in the use of residential land that creates additional demand for school facilities.

J. "Dwelling Unit" means a dwelling unit as defined in Section 21.06.180 of the Woodinville Municipal Code.

K. "Elderly" means a person aged 62 or older.

L. "Encumbered" means impact fees identified by the District as being committed as part of the funding for a school facility for which the publicly funded share has been assured or building permits sought or construction contracts let.

M. "Interlocal Agreement" means the agreement between the District and the City, governing the operation of the school impact fee program and describing the relationship, duties and liabilities of the parties.

N. "Grade Span" means the categories into which the District groups its grade of students; i.e., elementary, middle or junior high school, and high school.

O. "Impact Fee" means a payment of money imposed upon development as a condition of development approval to pay for school facilities needed to serve new growth and development, 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.

P. "Impact Fee Schedule" means the table of impact fees to be charged per unit of development, computed by the formula adopted under this ordinance, indicating the standard fee amount per dwelling unit that shall be paid as a condition of residential development within the City.

Q. "Low-income and Moderate-income Housing" means housing affordable under Federal standards to households with annual incomes at or below 80 percent of the County median income.

R. "Permanent Facilities" means facilities of the District with a fixed foundation which are not relocatable facilities.

S. "Relocatable Facilities" means any factory-built structure, transportable in one or more sections that is designed to be used as an education space and is needed to prevent the overbuilding of school facilities, to meet the needs of service areas within the District or to cover the gap between the time that families move into new residential developments and the date that construction is completed on permanent school facilities.

T. "Relocatable Facilities Cost Per Student" means the estimated cost of purchasing and siting a relocatable facility in the District for the grade span of school to be provided, as a function of the District's design standard per grade span.

U. "Site Cost Per Student" means the estimated cost of a site in the District for the grade span of school to be provided, as a function of the District's design standard per grade span.

V. "Standard of Service" means the standard adopted by the District which identifies the program year, the class size by grade span and taking into account the requirements of students with special needs, the number of classrooms, the types of facilities the District believes will best serve its student population, and other factors as identified by the District. The District's standard of service shall not be adjusted for any portion of the classrooms housed in relocatable facilities which are used as transitional facilities or any other specialized facilities housed in relocatable facilities.

W. "Student Factor" means the number derived by the District to describe how many students of each grade span are expected to be generated by a dwelling unit. Student factors shall be based on District records of average actual student generated rates for new developments constructed over a period of not more than five (5) years prior to the date of the fee calculation; provided that, if such information is not available in the District, data from adjacent districts, or districts with similar demographics or county wide averages may be used. Student factors must be updated on an annual basis, and separately determined for single family and multi-family dwelling units and for grade spans.

X. "Transitional Facilities" means those school facilities that are being used pending the construction of permanent facilities, provided that the necessary financial commitments are in place to construct the permanent facilities.

Section 4. Exemptions. The following development activities do not create any additional school impacts and are exempt from the requirements of this ordinance:

A. Reconstruction, remodeling or construction of the following facilities, 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 non-exempt purpose, then the school impact fees then in effect shall be paid.

1. Shelters or dwelling units for temporary placement, which provide housing to persons on a temporary basis for not more than four weeks;

2. 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 (24) 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; and

3. Any form of housing for the elderly, including nursing homes, retirement centers, and any type of housing units for persons age 55 and over, which have recorded covenants or recorded declaration of restrictions precluding school-aged children as residents in those units.

B. Rebuilding of legally established dwelling unit(s) destroyed or damaged by fire, flood, explosion, act of God or other accident or catastrophe, or remodeling of existing legally established dwelling unit(s), provided that such rebuilding takes place within a period of one (1) year after destruction, and so long as no additional dwelling units are created.

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

D. Any development activity that is exempt from the payment of an impact fee pursuant to RCW 82.02.100, due to mitigation of the same system improvement under the State Environmental Policy Act.

E. Any development activity for which school impacts have been mitigated pursuant to a condition of plat approval to pay fees, dedicate land or construct or improve school facilities, unless the condition of the plat approval provides otherwise; provided that the condition of the plat approval predates the effective date of fee imposition.

F. Any development activity for which school impacts have been mitigated pursuant to a voluntary agreement entered into with the District 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.

Section 5. Interlocal Agreement Between the City and District. As a condition of the City's authorization to implement this school impact fee ordinance, the City and District shall enter into an interlocal agreement governing the operation of the school impact fee program, and describing the relationship and liabilities of the parties thereunder. The interlocal agreement shall provide for the collection of impact fees by the District on behalf of the City.

Section 6. In addition to the exemptions in Section 4, the following shall be exempt from the requirement to pay all impact fees:

A. Low- or moderate-income housing projects developed or owned by public housing agencies or private non-profit housing developers.

B. Residential housing units dedicated for occupancy by low- or moderate-income households and whose rents or purchase price is affordable to low- or moderate-income persons under the regulations of the U.S. Department of Housing and Urban Development or its successor.

C. Individual low- or moderate-income home purchases (as defined in the current King County Comprehensive Housing Affordability Strategy (CHAS) by households who are purchasing homes with prices within their eligibility limits based on standard lending criteria provided the housing unit they are purchasing has not received an exemption under Section 4 when the impact fees are due and payable.

D. As a condition of receiving an exemption under this section, the owner shall execute and record in King County's real property title records a City-drafted lien, covenant or other contractual provision against the property that provides that the proposed housing unit or development will continue to be used for low- or moderate-income housing and remain affordable to those households under the regulations of the U.S. Department of Housing and Urban Development. The term of this provision shall be 10 years for individual owners and 15 years for private and private non-profit developers/builders. The lien, covenant, or other contractual provision shall run with the land and apply to subsequent owners and assigns. In the

event that the housing unit(s) is no longer used for low- or moderate-income housing during the term of the provision, then the owner shall pay the amount of impact fees from which the housing unit(s) was exempted into the City's account for paying low- and moderate-income impact fees.

E. Any claim or request for an exemption under this section shall be made no later than the time of application for a building permit. If a building permit is not required for the development activity, the claim shall be made when the fee is tendered. Any claim not made when required by this section shall be deemed waived.

F. The impact fees not collected from low- and moderate-income housing shall be paid from public funds from sources other than impact fees or interest on impact fees and budgeted for this purpose by the Northshore School District.

G. If claims or requests for exemptions under this section exceed the funds the Northshore School District budgeted for the payment of impact fees for low- and moderate-income housing, this section shall not apply to claims or requests for exemptions under this section made after the budgeted funds were committed or allocated until additional funds are budgeted.

Section 7. Submission of District Capital Facilities Plan and Data.

A. On an annual basis, the District shall submit the following materials to the City Council:

1. The District's capital facilities plan (as defined in Section 3 herein) and adopted by the school board;
2. The District's enrollment projections over the next six (6) years, its current enrollment and the District's enrollment projections and actual enrollment from the previous year;
3. The District's standard of service;
4. The District's overall capacity over the next six (6) years, which shall take into account the available capacity from school facilities planned by the District but not yet built and be a function of the District's standard of service as measured by the number of students which can be housed in District facilities; and
5. An inventory of the District's existing facilities.

B. To the extent that the District's standard of service identifies a deficiency in its existing facilities, the District's capital facilities plan must identify the sources of funding other than impact fees for building or acquiring the necessary facilities to serve the existing student population in order to eliminate the deficiencies within a reasonable period of time.

C. Facilities to meet future demand shall be designed to meet the adopted standard of service. If sufficient funding is not projected to be available to fully fund a capital facilities plan which meets the adopted standard of service, the District's capital facilities plan should document the reason for the funding gap, and identify all sources of funding that the District plans to use to meet the adopted standard of service.

D. The District shall also submit an annual report to the City Council showing the capital improvements which were financed in whole or in part by the impact fees.

E. In its development of the Financing Plan Component of the Capital Facilities Plan, the District shall plan on a six-year horizon and shall demonstrate its best efforts by taking the following steps:

1. Establish a six-year financing plan, and propose the necessary bond issues and levies required by and consistent with that plan and as approved by the school board consistent with RCW 28A.53.020, RCW 84.52.052 and .056, as amended; and

2. Apply to the state for funding, and comply with the state requirements for eligibility to the best of the District's ability.

Section 8. Annual Council Review. On at least an annual basis, the City Council shall review the information submitted by the District pursuant to Section 7.A herein. The review shall occur in conjunction with any update of the capital facilities plan element of the City's Comprehensive Plan.

Section 9. Impact Fee Program Elements.

A. The City shall impose impact fees on every Development Activity in the City for which a fee schedule has been established.

B. Any impact fee imposed shall be reasonably related to the impact caused by the development and shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development. The impact fee formula shall account in the fee calculation for future revenues the District will receive from the development.

C. The impact fee shall be based on the capital facilities plan developed by the District and approved by the school board, and adopted by reference by the City as part of the capital facilities element of the City's comprehensive plan for the purpose of establishing the fee program.

Section 10. Fee Calculations.

A. The fee shall be calculated based on the formula set out in Attachment A.

B. Separate fees shall be calculated for single family and multi-family types of dwelling units, and separate student generation rates must be determined by the District for each type of dwelling unit. For the purpose of this ordinance, mobile homes shall be treated as single family dwellings and duplexes shall be treated as multi-family dwellings.

C. The fee shall be calculated on a District-wide basis using the appropriate factors and data to be supplied by the District, as indicated in Attachment A to the City-District Interlocal Agreement. The fee calculations shall also be made on a District-wide basis to assure maximum utilization of all school facilities in the District used currently or within the last two (2) years for instructional purposes.

D. The formula in Attachment A to the City-District Interlocal Agreement provides a credit for the anticipated tax contributions that would be made by the development based on historical levels of voter support for bond issues in the District.

E. The formula also provides for a credit for school facilities or sites actually provided by a developer which the District finds acceptable.

Section 11. Fee Collection. At the time of application for a development activity at the City, the school impact fee shall be imposed based on the impact fee schedule. The impact fee shall be collected by the District on behalf of the City, and maintained in separate accounts.

Section 12. Imposition of Impact Fees.

A. Impact fees shall be imposed upon development activity in the City, based upon the schedule set forth in Attachment A, and shall be collected by the District on behalf of the City from any applicant where such development activity requires final plat approval, or issuance of a residential building permit or a mobile home permit and the fee for the lot or unit has not been previously paid.

B. At the time of application for development activity, an applicant will be notified of the requirement to pay school impact fees to the District based on the fee schedule adopted by the City as a part of the impact fee program. Upon receipt of the impact fee payments, the District shall issue a certificate to the applicant indicating that the school impact fees have been paid. Prior to approving or permitting any development activities subject to the impact fees adopted pursuant to this ordinance, the City shall require that the applicant provide to the City the original of the certificate issued by the District. The District shall develop standardized forms for this purpose, showing that impact fees have been paid to the District, and that the City may proceed to issue the permit or grant the necessary approval. Impact fees may be paid to the District under protest pursuant to the procedures set forth in Section 12(I) herein.

C. For a plat applied for on or after the effective date of this ordinance, fifty percent (50%) of the impact fees due on the plat shall be imposed and collected from the applicant at the time of final approval, using the impact fee schedule in effect when the plat was approved. The balance of the fee shall be allocated to the dwelling units in the project, and shall

be collected when the building permits are issued. At the time of final approval, the applicant shall be required to place a covenant on the face of the recorded plat and include in the deed for each affected lot within the plat the requirement to pay the balance of the fee when the building permit is issued. Residential developments proposed for short plats shall not be governed by this subsection, but shall be governed by subsection E below.

D. If on the effective date of this ordinance, a plat has already received preliminary approval, such plat shall not be required to pay fifty percent (50%) of the impact fees at the time of final approval, but the impact fees shall be imposed by the City and collected by the District on behalf of the City from the lot owner at the time the building permit is issued, using the impact fee schedules then in effect. If on the effective date of this ordinance, an applicant has applied for preliminary plat approval, but has not yet received such approval, the applicant shall follow the procedures set forth in subsection C above.

E. For existing lots or lots not covered by subsection C above, application for single family and multi-family residential building permits, mobile home permits, and site plan approval for mobile home parks proposed, the total amount of the impact fees shall be imposed by the City and collected by the District on behalf of the City from the applicant when the building permit is issued, using the impact fee schedules then in effect.

E. The City shall not grant final plat approval nor issue the required building permit or mobile home permit nor grant the required site plan approval for a mobile home park unless and until the impact fees set forth in the impact fee schedule have been paid.

F. Any application for preliminary plat approval or multi-family development which has been approved subject to conditions requiring the payment of impact fees established pursuant to this ordinance shall be required to pay the fee in accordance with the conditions of approval.

Section 13. Determination of the Fee, Adjustments, Exceptions and Appeals.

A. The City shall determine a developer's impact fee, according to the schedule provided by the District.

B. Arrangement may be made for later payment of the impact fee with the approval of the District only if the District determines that it will be unable to use or will not need the payment until a later time, provided that sufficient security, as defined by the District, is provided to assure payment. Security shall be made to and held by the District, which will be responsible for tracking and documenting the security interest.

C. The fee amount established in the schedule shall be reduced by the amount of any payment previously made for the lot or development activity in question, either as a condition of approval or pursuant to a voluntary agreement.

D. Whenever a developer is granted approval subject to a condition that the developer actually provide a school facility acceptable to the District, the developer shall be entitled to a credit for the actual cost of providing the facility, against the fee that would be chargeable under the formula provided by this ordinance. The cost of construction shall be estimated at the time of approval, but must be documented, and the documentation confirmed after the construction is completed to assure that an accurate credit amount is provided. If construction costs are less than the calculated fee amount, the difference remaining shall be chargeable as a school impact fee.

E. The standard impact fees may be adjusted, if one of the following circumstances exist, provided that the discount set forth in the fee formula fails to adjust for the error in the calculation or fails to ameliorate for the unfairness of the fee:

1. The developer demonstrates that an impact fee assessment was improperly calculated; or

2. Unusual circumstances identified by the developer demonstrate that if the standard impact fee amount was applied to the development, it would be unfair or unjust.

F. In cases where a developer requests an independent fee calculation, adjustment exception or a credit pursuant to RCW 82.02.060(3), the City shall consult with the District and the District shall advise the City prior to the City making the final impact fee determination.

G. A developer may provide studies and data to demonstrate that any particular factor used by the District may not be appropriately applied to the development proposal.

H. Any appeal of the decision of the City with regard to fee amounts shall follow the process for the appeal of the underlying development application, as set forth in the Woodinville Municipal Code. Any errors in the formula identified as a result of the appeal should be referred to the Council for possible modification.

I. Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.

Section 14. Impact Fee Accounts and Refunds.

A. Impact fee receipts shall be earmarked specifically and retained in a special interest-bearing account established by the District solely for the District's school impact fees. All interest shall be retained in the account and expended for the purpose or purposes for which impact fees were imposed. Annually, the District, based in part on its report prepared pursuant to Section 6, shall prepare a report on the impact fee account showing the source and amount of all moneys collected, earned or received, and capital or system improvements that

were financed in whole or in part by impact fees. The District shall submit a copy of this report to the City Council. The District shall maintain separate school impact fee accounts pursuant to Section 10, and shall prepare a report on the source and amount of all school impact fees collected by the District on behalf of the City.

B. Impact fees for the District's system improvements shall be expended by the District only in conformance with the capital facilities plan element of the City's comprehensive plan.

C. Impact fees shall be expended or encumbered by the District for a permissible use within six (6) years of receipt by the District, unless there exists an extraordinary or compelling reason for fees to be held longer than six (6) years. Such extraordinary or compelling reasons shall be identified to the City by the District in a written report. The City Council shall identify the District's extraordinary and compelling reasons for the fees to be held longer than six (6) years in the Council's own written findings.

D. The current owner of property on which an impact fee has been paid may receive a refund of such fees if the impact fees have not been expended or encumbered within six (6) years of receipt of the funds by the District on school facilities intended to benefit the development activity for which the impact fees were paid. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. On behalf of the City, the District shall notify potential claimants by first-class mail deposited with the United States postal service addressed to the owner of the property as shown in the County tax records.

E. An owner's request for a refund must be submitted to the District in writing within one (1) year of the date the right to claim the refund arises or the date that notice is given, whichever date is later. Any impact fees that are not expended or encumbered by the District in conformance with the capital facilities plan within these time limitations, and for which no application for a refund has been made within this one (1) year period, shall be retained and expended consistent with the provisions of this section. Refunds of impact fees shall include any interest earned on the impact fees.

F. Should the City seek to terminate any or all school impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded to the current owner of the property for which a school impact fee was paid. 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 the refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first-class mail addressed to the owner of the property as shown in the County tax records. All funds available for refund shall be retained for a period of one (1) year. At the end of one (1) year, any remaining funds shall be retained by the District, but must be expended by the District, consistent with the provisions of this section. The notice requirement set forth above shall not apply if there are no unexpended or unencumbered balances within the account or accounts being terminated.

G. A developer may request and shall receive a refund, including interest earned on the impact fees, when:

1. The developer has not received final plat approval, the building permit, the mobile home permit, the site plan approval, nor final approval for the development activity as required by statute or City Code including the Uniform Building Code; and

2. No impact on the District has resulted. "Impact" shall be deemed to include cases where the District has expended or encumbered the impact fees in good faith prior to the application for a refund. In the event that the District has expended or encumbered the fees in good faith, no refund shall be forthcoming. However, if within a period of three (3) 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. The owner must petition the District 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 District shall determine whether to grant a credit, and such determinations may be appealed by following the procedures set forth in Section 13 above.

H. Interest due upon the refund of impact fees required by this section shall be calculated according to the average rate received by the District on invested funds throughout the period during which the fees were retained.

Section 15. 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.

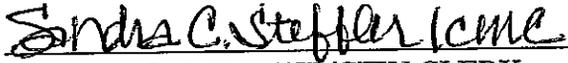
Section 16. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, shall be effective five (5) days after passage and publication of the ordinance or a summary thereof consisting of the title PROVIDED THAT the City Clerk shall not publish this ordinance until the City and the District execute an interlocal agreement pursuant to Section 5 of this ordinance.

Passed by the City Council of the City of Woodinville, the 5th day of February, 2001.

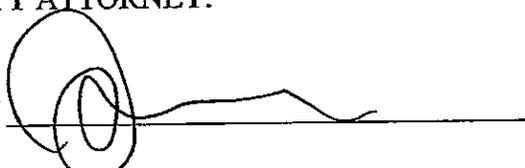
APPROVED:


RANDOLPH L. RANSOM, MAYOR

ATTEST/AUTHENTICATED:


SANDRA C. STEFFLER/CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY:

BY 

FILED WITH THE CITY CLERK: - - -01
PASSED BY THE CITY COUNCIL: 2-5-01
PUBLISHED: 7-23-01
EFFECTIVE DATE: 7-28-01
ORDINANCE NO. 280

K:\30016-00.001\NLS\DL_S_0203X.DOC

{R:\CITY\ORD\280.DOC

ATTACHMENT A
To Ordinance No. 280

SCHOOL IMPACT FEE SCHEDULE FOR 2001
(Applies to residential development only)

Housing Type:

Single-Family \$ 879.00

Multi-Family \$ 0

INTERLOCAL AGREEMENT
BY AND BETWEEN
THE CITY OF WOODINVILLE, WASHINGTON
AND
THE NORTSHORE SCHOOL DISTRICT

RECEIVING NO. 1223
DATE 10-10-01
CITY CLERK [Signature]
01-108

THIS AGREEMENT is entered into this 10th day of October, 2001, by and between the City of Woodinville (hereinafter "City") and the Northshore School District (hereinafter "District").

WHEREAS, the Washington State Legislature passed the Growth Management Act, Chapter 36.70A RCW, and Chapter 82.02 RCW (hereinafter "Act"), which authorizes the imposition of impact fees on development activity as part of the financing for public facilities, which financing must provide for a balance between impact fees and other sources of public funds; and

WHEREAS, the Act permits the collection and expenditure of impact fees only for public facilities which are addressed by a capital facilities element of a comprehensive land use plan adopted under the Act; and

WHEREAS, the District has prepared a capital facilities plan, and authorization to collect and expend fees is contingent upon the City adopting the District's Capital Facilities Plan as part of the City's Comprehensive Plan, all as required by RCW 36.70A.070, and on the Plan's adherence with the statutory requirements of the Act; and

WHEREAS, the City has adopted Ordinance No. 280 (the "school impact fee ordinance"), which describes the features of the school impact fee program, and allows the District to receive and expend school impact fees in conformance with the Act; and

WHEREAS, the City and the District have entered into this Interlocal Agreement pursuant to Chapter 39.34 RCW, for the purposes of setting forth the duties and responsibilities of the parties with regard to the school impact fee program.

NOW, THEREFORE, in consideration of the mutual promises herein, the parties agree as follows:

I. RESPONSIBILITIES OF THE DISTRICT

The District, by and through its officials, employees, agents, and representatives, agrees to:

A. On or before April 1st of each calendar year, submit to the City a six (6) year capital facilities plan or an update of the previously adopted plan together with an impact fee schedule which meets the requirements of the Act and the school impact fee ordinance. In addition, the District shall submit all other information required by Section 7(a) of the school impact fee ordinance.

- B. On behalf of the City, collect impact fees from developers under the school impact fee ordinance and this Agreement.
- C. Issue certificates to developers indicating payment of school impact fees under the school impact fee ordinance.
- D. Establish and maintain impact fee accounts as required by RCW 82.02.070.
- E. Properly expend and account for impact fees as required in RCW 82.02.050(4) and 82.02.070(2).
- F. Prepare and submit to the City on or before April 1 of each calendar year a report showing the source and amount of all moneys collected, earned, or received, and all system improvements that were financed in whole or in part by impact fees during the preceding calendar year, together with all information necessary to allow the City to meet all of the requirements of RCW 82.02.070(1).
- G. Encumber and expend impact fees only as provided in RCW 82.02.070(3), and where the District has extraordinary and compelling reasons for noncompliance with this statute, the District shall identify such reasons in written findings to the City Council.
- H. On behalf of the City, notify property owners of refunds under RCW 82.02.080.
- I. Make timely payments of refunds due under RCW 82.02.080, together with any interest which may be due thereon.
- J. Review and approve as to form all covenants and declarations of restrictions, as these documents are required to maintain exemptions from payment of impact fees.
- K. Maintain all accounts and records necessary to ensure compliance with this Agreement, the school impact fee ordinance, and all other applicable law.

II. RESPONSIBILITIES OF THE CITY

The City, by and through its officers, officials, employees, agents and representatives, agrees to:

- A. Be responsible for the following aspects of the impact fee program:
 - 1. Determine, pursuant to the school impact fee ordinance, whether or not residential development activity in the City is exempt from payment of fees;
 - 2. Notify applicants of the requirement to pay school impact fees based on the fee schedule adopted by the City pursuant to the school impact fee ordinance;

3. Require certificates indicating payment of school impact fees from the developer prior to approving or permitting residential development activity; and
4. Calculate the fee amount for any non-exempt residential development activity, based upon the schedule of fees adopted by the City pursuant to the school impact fee ordinance.

B. Amend, update, and maintain its Comprehensive Plan and development regulations and the school impact fee ordinance at all times in order to permit the District to continue collecting school impact fees.

C. When applications for exempt development activity within the City have been submitted, enforce covenants or declarations of covenants and restrictions, where the same have been executed as a condition of an exemption from school impact fees after having been approved as to form by the District. When enforcement action is appropriate, the City shall advise the District of such potential enforcement action, and the District shall determine whether to request that the City take enforcement action. If the District requests that the City take enforcement action, the District shall reimburse the City for the City's cost of enforcement.

D. Provide a consolidated appeal process by which an aggrieved party may appeal the impact fee or independent fee calculation.

III. AUDIT

A. The District shall provide to the City excerpts, if any, from the annual audit conducted by the Office of the State Auditor showing all impact fees collected, encumbered, expended and retained by the District during the preceding fiscal year. The District shall provide such excerpts, if any, to the City not less than ninety (90) days following the completion of such audit.

B. The District's records and documents with respect to all matters covered by the school impact fee ordinance or this Agreement shall be subject to inspection, review or audit by the City or an appropriate state agency.

C. The District agrees to cooperate with any monitoring or evaluation activities conducted by the City that pertain to the subject of this Agreement. The District agrees to allow the City or appropriate state agencies and/or any of their authorized officers, employees, agents or representatives to have full access to and the right to examine, audit, and make excerpts or transcripts during normal business hours, all of the District's records with respect to all matters covered by the school impact fee ordinance or this Agreement. The City shall provide 14 days advance written notice of fiscal audits to be conducted.

IV. INDEMNIFICATION, HOLD HARMLESS, AND WAIVER

A. The District shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents, from any and all costs, claims, judgments or awards of damages, including attorney fees, arising out of or in any way resulting from the acts or omissions of the District, its officers, employees or agents, relating to the District's implementation of the school impact fee program, performance of the duties set forth in Section I of this Agreement, or compliance with the terms of the school impact fee ordinance, as passed by the City Council of the City of Woodinville on the 5th day of February 2001, including any future amendments to that ordinance. This indemnification by the District of the City shall include, but not be limited to the District's responsibility to refund any fees with interest, which are determined by a court of competent jurisdiction to have been improperly paid, regardless of whether the City erroneously required the fee amount.

B. The District shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents, from any and all costs, claims, judgments, or awards of damages, including attorney fees, resulting in any way from a challenge to the legality of the school impact fee ordinance, as passed by the City Council of the City of Woodinville on the 5th day of February 2001, including any future amendments to that ordinance.

C. The District shall, at its own costs and expense, protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, including attorney fees, arising out of or in any way resulting from a dispute regarding the proper collection of impact fees, improper calculation of impact fees, the propriety or rejection of an independent fee calculation, failure to refund impact fees, or failure to refund interest on such impact fees, including but not limited to a determination that impact fees from development activity that was not completed are not refundable because the funds were expended or encumbered by the District, whether or not the District's determination was made in good faith.

D. The District's duties to the City under this Section shall not be diminished or extinguished by the prior termination of this Agreement pursuant to Section V.

E. In the event that a claim is brought which does not activate the District's defense responsibilities provided by subsections A, B, and C, above, the City may offer, at its own cost and expense, to defend itself and/or the District, its officers, employees, or agents, from any claims arising solely out of or solely resulting from the acts or omissions of the City, its officers, employees or agents, relating to the City's implementation of the school impact fee program or performance of the duties set forth in Section II of this Agreement except to the extent that the subject matter of certain duties in Section II are covered by the indemnification provisions in subsections A through C; and provided that, the City shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the District, its officers, employees, and agents from that portion of any costs, claims, judgments, or awards of damages resulting from the City's (by its officers, employees, agents, or representatives) negligent acts or omissions or failure to comply with the terms of this Agreement, the terms of the Act, or the terms of Ordinance No. 280, all as may be amended from time to time. If the City elects to defend the District, the City shall not be liable for any of the District's attorney's fees or litigation costs incurred outside of the City's defense of the District. The District shall promptly refund any impact fees, as required by a final

Court order, including payment of any pre- or postjudgment interest, and shall pay any costs and attorney fees that might be awarded by the Court. The District retains the option to defend itself in any situation, and may be required to do so in the event that the City does not offer to defend the District pursuant to this subsection.

F. The City's duties to the District under this Section shall not be diminished or extinguished by prior termination of this Agreement pursuant to Section V.

G. The Indemnitee shall promptly notify the Indemnitor of any claim described in paragraphs A, B, C or E, and shall cooperate fully with the Indemnitor in defending the claim.

H. The District agrees not to impose any liability on the City for the City's failure to properly perform any of its responsibilities as set forth in Section II of this Agreement provided that the City shall make reasonable attempts to fulfill those responsibilities.

V. EFFECTIVE DATE AND TERMINATION

A. The District's authorization to receive and collect school impact fees under this Agreement may be terminated without cause by the City, in whole or in part, at any time, but only upon the repeal or validation of the school impact fee ordinance. All other obligations under this Agreement shall remain in effect until both of the following conditions shall have been satisfied:

1. The City or the District provides written notice that this Agreement is being terminated; and
2. The District no longer retains unexpended or unencumbered impact fees and interest earned thereon.

The obligations under Section IV, Indemnification, shall be continuing and shall not be diminished or extinguished by the termination of this Agreement.

B. The District shall, upon the repeal of the school impact fee ordinance and/or termination of this Agreement, either properly expend or refund any remaining unexpended or unencumbered impact fees together with interest earned thereon pursuant to Chapter 82.02 RCW.

C. Nothing herein shall limit, waive or extinguish any right or remedy provided by this Agreement or by law that either party may have in the event that the obligation, terms and conditions set forth in this Agreement are breached by the other party.

VI. MODIFICATION

No changes or modifications of this Agreement shall be valid or binding upon either party unless such changes or modifications are in writing and executed by both parties.

VII. INTEGRATION

This Agreement, together with the school impact fee ordinance, contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to bind either party.

VIII. SEVERABILITY

In the event that any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

IX. RIGHTS OF OTHER PARTIES

It is understood that this Agreement is solely for the benefit of the parties hereto and conveys no right to any other party.

X. DISPUTES

Jurisdiction of any dispute arising under this Agreement shall be in King County Superior Court, and the substantially prevailing party shall be entitled to recover its costs and reasonable attorney fees.

XI. GOVERNING LAW AND FILING

This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Washington. This Agreement shall become effective following occurrence of the following:

- A. Adoption of the school impact fee ordinance by the City;
- B. Approval of this Agreement by the official action of the governing bodies of each of the parties hereto;
- C. Execution of this Agreement by the duly authorized representative of each of the parties hereto; and
- D. The filing of the Agreement by the District with the following public officials:
 - 1. The City Clerk of the City of Woodinville; and
 - 2. The Secretary of the Board of Directors of the Northshore School District.

XII. ADMINISTRATION

A. The City's representative for purposes of administering this Agreement is the City Manager or his/her designee whose address is c/o City Hall, 17301 133rd Avenue NE, Woodinville, Washington 98072.

B. The District's representative for purposes of administering this Agreement is the Superintendent or his/her designee whose address is 18315 Bothell Way N.E., Bothell, Washington 98011-1983.

XIII. WAIVER OF DEFAULT

Waiver of any default in the performance of this Agreement shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be waiver of any other or subsequent breach and shall not be construed to be a modification of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date and year set forth below.

THE CITY OF WOODINVILLE By <u>Donald D. Rose</u> Its <u>City Manager</u>	NORTHSHORE SCHOOL DISTRICT By <u>Karen A. Surup</u> Its <u>Superintendent</u>
APPROVED AS TO FORM: OFFICE OF THE CITY ATTORNEY <u>[Signature]</u>	APPROVED AS TO FORM: SCHOOL DISTRICT ATTORNEY <u>Joseph A. McTearney</u>

ATTEST/AUTHENTICATED:

Sandra C. Steffler/CME

City Clerk

K:\30016-00001\DLSDLS_A203X.DOC

Karen A. Forys, Ph.D.

18315 Bothell Way NE
Bothell, WA 98011-1983
(425) 489-6353

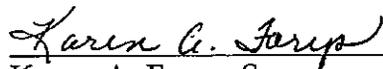
September 14, 2001

EXCERPT from the regular minutes of the Northshore School District No. 417,
Board of Directors' Meeting, held September 11, 2001.

CONSENT AGENDA

The City Of Woodinville Interlocal Agreement for School Impact Fees Approved.
The Board approved the Interlocal Agreement with the City of Woodinville
governing school impact fees.

I, Karen A. Forys, Secretary to the Board of Directors, do hereby certify the
above excerpts from the September 11, 2001, meeting to be true and correct.



Karen A. Forys, Secretary
Board of Directors