



**CITY OF EDGEWOOD
COUNCIL STUDY SESSION AGENDA**

Tues., February 21, 2017 – 7:00 PM ♦ City Hall – 2224 104th Avenue East ♦ Edgewood, WA

1. CALL TO ORDER

Pledge of Allegiance & Roll Call

2. COUNCIL BUSINESS

- A. Interviews** - Parks and Recreation Advisory Board Interviews
- B. Discussion (no material)** – Online Reporting for Property Crimes
- C. Recap (no material) (pg. 2)** - Flood Code Update
- D. Recap (no material) (pg. 3)**- School Impact Fees
- E. Recap (pg. 4)** – City of Milton Franchise Agreement
- F. Review/Discussion (pg. 17)** - Traffic Impact Fees
- G. Review/Discussion (pg. 60)** - Public Finance Contract Renewal (*LID Notice & Billing Service Vendor*)

3. OTHER COUNCIL ITEMS

4. ADJOURN

This meeting is accessible to persons with disabilities. For individuals who may require special accommodations, please contact City Hall at (253) 952.3299, 24 hours in advance.



**CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: Flood Code Update**

Date: February 21, 2017

Title: Ordinance No. 17-0492 – Flood Code Update (New FEMA Maps)

Attachments: None – *See February 14, 2017 council packet material*

Submitted By: Jeremy Metzler, P.E., Senior Stormwater Engineer
 Aaron C. Nix, Assistant City Administrator – Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: This is a recap of discussions with Council at previous Council Study Sessions and the last regular Council meeting held February 14, 2017. As a reminder, the City of Edgewood must adopt the recently released flood insurance study update and associated Flood Insurance Rate Maps (FIRMs) to maintain National Flood Insurance Program (NFIP) eligibility. Since there have not been any changes to the Ordinance since Council accepted the first read, you can view Ordinance No. 17-0482, and all materials associated by accessing the February 14, 2017 packet material from your iPads.

Recommendation: Forward Ordinance No. 17-0492 to Public Hearing and 2nd Reading / Adoption scheduled for February 28, 2017, in order to maintain eligibility in the FEMA NFIP, adopting “The Flood Insurance Study for Pierce County, Washington and Incorporated Areas,” dated March 7, 2017, and updating floodplain management regulations to remain consistent with federal regulations, as required by FEMA.

Fiscal Impact: None directly to the City’s budget resulting from the proposed amendments, but there may be impacts to future development in meeting these updated code requirements. It is Staff’s intent to meet these requirements, as imposed by these federally-mandated amendments, with the least amount of fiscal impact and greatest benefit to the residents of Edgewood.



**CITY OF EDGEWOOD
STAFF REPORT**

STUDY SESSION AGENDA ITEM: School Impact Fees

Date: February 21, 2017

Title: School Impact Fees

Attachments: DRAFT Ordinance 17-0490, School Impact Fees

Submitted By: Community Development Director Kevin Stender

Approved For Agenda By: Daryl Eiding, Mayor

Discussion: Council is seeing this before them for the 5th time, but to recap Starting in January 17, 2017 Study Session, the City Council discussed School Impact fees, reviewed staff recommendations and directed Staff to bring back a DRAFT Ordinance for review incorporating Staff's suggested changes. Staff presented that DRAFT ordinance at the February 7, 2017 Study Session and again for first reading at the February 14, 2017 Regular Council Meeting. Prior to that meeting staff received comments from the Master Builder's Association recommending full consistency with the Pierce County Fee. Staff presented that this would be at the discretion of the City Council and that the difference in the fee is very little and that the Maximum Fee Obligation suggested of \$2,000 was appropriate given the recent influx of multifamily housing and the requests for increase received from the school districts.

Council will provide a public hearing in regards to the proposed school impact fee change at the February 28, 2017 regular council meeting and potential second reading and adoption.

Recommendation: Move forward to Public Hearing and 2nd Reading/Adoption

Fiscal Impact: As previously discussed, this fee is not collected by the City of Edgewood but applicants are required to pay this fee directly to the School District(s) and provide proof of payment at the time of permit issuance or if the fee is deferred, in accordance with the new regulations on impact fee deferral outlined within the EMC.



**CITY OF EDGEWOOD
STAFF REPORT**

**STUDY SESSION AGENDA ITEM: DRAFT Milton Franchise
Agreement Ordinance 17-XXXX**

Date: February 21, 2017

Title: Milton Franchise Agreement Ordinance

Attachments: DRAFT Milton Franchise Agreement Ordinance and transcribed phone message from Milton Staff.

Submitted By: Aaron C. Nix, Assistant City Administrator – Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: Late last year Staff made contact with Public Works Staff with the City of Milton in order to begin discussions as it pertained to working on coming to an agreement on language pertaining to a franchise agreement, as outlined within Edgewood Municipal Code. The City of Milton maintains and provides water services to a small section of Edgewood, near Northwood Elementary on the Westside of Meridian and small section at the north end of town near Jovita Boulevard. As the City of Milton maintains this infrastructure within Edgewood's right of way, the establishment of an agreeable franchise is appropriate and overdue. Staff is bringing this forward to the Council for their review and eventual adoption, with subsequent adoption by the Milton City Council. Although requested, Edgewood Staff have not received formal comments from the City of Milton in regard to the language within the proposed franchise agreement. Mayor Eidinger did recently hand deliver the Draft language to the Mayor of Milton at a recent Chamber meeting, requesting some feedback within the next couple weeks. Staff did receive a phone message from the City of Milton's Community and Economic Development Director, of which the message has been transcribed and included as part of the Council's packet material as reference material. No substantive comments have been received, as of the writing of this Study Session Staff Report.

Recommendation: N/A

Fiscal Impact: Under the current Draft of this franchise agreement, right of way permit fees would be collected at the time of permitting.

ORDINANCE NO. 17-XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, GRANTING UNTO THE CITY OF MILTON, A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR WATER SYSTEM INFRASTRUCTURE, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF EDGEWOOD, WASHINGTON; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, The City of Milton, WA, (hereinafter referred to as "Milton") has requested that the City Council grant it a nonexclusive franchise; and

WHEREAS, Milton has authority to contract with municipal corporations, and to construct, add to, maintain and supply water works; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040; and

WHEREAS, Milton provides public drinking water to portions of citizens within the City of Edgewood, as a privately owned nonprofit municipal water corporation regulated by the Washington State Department of Health; and

WHEREAS, Milton's public water system infrastructure and facilities are identified as critical infrastructure and its staff is classified as first responders by the Federal Government.

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

Section 1. Franchise Granted; Term. Pursuant to RCW 35A.47.040, the City of Edgewood, a Washington municipal corporation (hereinafter the "City"), hereby grants to Milton, a Municipal public utility owned by City taxpayers and organized under the laws of the state of Washington, its heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth and all applicable City codes and regulations, a nonexclusive franchise beginning on the effective date set forth in Section 23 herein. The term of the franchise shall be five (5) years.

This franchise shall grant Milton the right, privilege and authority to construct, operate, maintain, replace, and repair all necessary facilities for water delivery, in, under, on, across, over, through, along or below the public rights-of-way located in the City of Edgewood ("the Franchise Area"), as approved under City permits issued pursuant to this franchise. "Rights-of-way" as used herein means all public streets, roads, alleys and highways of the City as now or hereafter laid out, platted, dedicated or improved.

Section 2. Non-Exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises

in, along, over, through, under, below or across any of said rights-of-way. Such franchise shall in no way prevent or prohibit the City and/or the public from using any of said roads, streets or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, vacation, establishment, maintenance, and improvement of all new rights-of-way, thoroughfares and other public properties of every type and description.

Section 3. Relocation of Water System Facilities.

3.1 MILTON agrees and covenants to, at MILTON's sole expense, protect, support, temporarily disconnect, relocate or remove from any rights-of-way any of MILTON's facilities when so required by the City by reason of traffic conditions, public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, road and walkway construction, change or establishment of street grade, and/or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity (a "governmental project").

3.2 Any condition or requirement imposed by the City upon any person or entity (including without limitation any condition or requirement imposed pursuant to any contract or in conjunction with approvals for permit for zoning, land use, construction or development) which reasonably necessitates the relocation of MILTON's Facilities within the franchise area shall be a required relocation for purposes of subsection 3.1 above.

3.3 If the City determines that a government project or other event or condition, as defined in subsections 3.1 and 3.2, necessitates the relocation of MILTON's Facilities, the City shall, to the extent reasonably practicable:

- A. Notify MILTON during the planning phase to ensure collaborative effort is made to reduce project expense (to the City and MILTON), allow budgeting for the project and facilitate joint applications for grants and low-interest funding by the parties. The City will provide written notification requiring relocation of MILTON's Facilities at least ninety (90) days or additional days, approved by the Mayor or his/her designee prior to the commencement of the government project or other event or condition necessitating the relocation.
- B. Provide MILTON with copies of pertinent portions of the plans and specifications for such project and where possible propose an alternative location for MILTON's Facilities so that MILTON may relocate its facilities within the current right-of-way or to other rights-of-way.
- C. After receipt of such notice and such plans and specifications, MILTON shall complete relocation of its facilities at least ten (10) days prior to commencement of the project at no charge or expense to the City. Relocation shall be accomplished in such a manner as to accommodate the project, event or condition necessitating the relocation.

3.4 Without limitation of the foregoing, MILTON shall specifically indemnify the City, its officers, employees, agents and representatives, for any damages, claims, additional costs or expenses assessed against, or payable by, the City related to, arising out of, or resulting,

directly or indirectly, from MILTON's failure to timely remove, adjust or relocate any of its facilities in accordance with any requirement hereunder. The provisions of this subsection shall survive the expiration or termination of this franchise.

3.5 MILTON may, after receipt of written notice requesting relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives in good faith and advise MILTON in writing if one or more of the alternatives are suitable to accommodate the work which would otherwise necessitate relocation of MILTON's Facilities. If so requested by the City, MILTON shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by MILTON full and fair consideration. In the event the City in its sole discretion ultimately determines that there is no other reasonable or feasible alternative, MILTON shall relocate its facilities as otherwise provided in this Section.

3.6 The provisions of this Section shall in no manner preclude or restrict MILTON from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City or another governmental entity, where the facilities to be constructed by said person or entity are not or will not become governmentally-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a governmental project.

Section 4. Maps and Records. After construction of any new facilities in the City rights-of-way, and as a condition of this franchise, MILTON shall make available to the City upon request and at no cost, a copy of all as-built plans, maps and records revealing the final location and condition of MILTON's facilities within the public rights-of-way. Said plans will be maintained at MILTON per Department of Homeland Security measures.

Section 5. Excavations. All construction work performed by MILTON or its contractors under or in relation to this franchise, specifically including without limitation any relocation, construction or maintenance of MILTON's facilities, shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private, and shall comply with all applicable laws and regulations. MILTON shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the state of Washington, including RCW 39.04.180 for the construction of trench safety systems.

Excavation in City-owned rights-of-way shall be governed by the provisions of the Edgewood Municipal Code (EMC) Chapter 12.06 - "Right-of-Way Franchises and Permits for Public and Private Utilities". MILTON, at its own expense, shall secure any applicable permits required for excavating in any public right-of-way and shall give the City at least five (5) working days notice of its intent to commence work in the public right-of-way. In no case shall any work commence on City-owned and maintained public road surfaces, without the required permit(s).

If either the City or MILTON shall at any time plan to make excavations in any area covered by this franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, a reasonable opportunity to share such excavation, PROVIDED THAT:

- A. Such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and
- B. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
- C. Either party may deny such request for safety reasons. The provisions of this Section shall survive the expiration or termination of this franchise.

Section 6. Restoration after Construction. MILTON shall, after abandonment, installation, construction, relocation, maintenance or repair of its facilities within the Franchise Area, restore the surface of the right-of-way to at least the same condition in which the property existed immediately prior to any such installation, construction, relocation, maintenance or repair. The City's Public Works Director shall have final approval of the condition of such rights-of-way after restoration. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. MILTON agrees to promptly complete all such restoration work and to promptly repair any damage caused by such work at its sole cost and expense. The provisions of this Section shall survive the expiration, revocation or termination by other means of this franchise.

Section 7. WSDOT Standards. The parties expressly acknowledge that some rights-of-way within the franchise area, specifically including without limitation the Meridian Avenue / State Route 161 corridor, are part of the state highway system ("State Highways") and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) requirements in addition to local ordinances and other regulations. Without limitation of any other provision of this franchise, MILTON agrees that:

- (1) any pavement trenching and restoration performed by MILTON within State Highways shall meet or exceed applicable WSDOT requirements;
- (2) any portion of a State Highway damaged or injured by MILTON shall be restored, repaired and/or replaced by MILTON to a condition that meets or exceeds applicable WSDOT requirements; and
- (3) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this franchise with respect to any portion of a State Highway.

Section 8. Emergency Work. Permit Waiver. In the event of any emergency in which any of MILTON's Facilities located in or under any right-of-way breaks, becomes damaged, or if MILTON's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, MILTON shall immediately take the proper emergency measures to repair its facilities, and to cure or remedy the dangerous condition(s) for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve MILTON from the requirement of obtaining any permits necessary for this purpose, and MILTON shall apply for all such permits not later than the next succeeding day during which the Edgewood City Hall is open for business.

Section 9. Dangerous Conditions. Authority for City to Abate. Whenever the construction, installation or excavation of facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining

street or public place, or otherwise endangers the public, an adjoining public place, street utilities or City property, the Mayor may direct MILTON, at MILTON's own expense, to take actions to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time.

In the event that MILTON fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact MILTON to request MILTON affect the immediate repair, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or actions regarded as necessary safety precautions. The provisions of this Section shall survive the expiration, revocation or termination of this franchise.

Section 10. Indemnification. MILTON hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including attorneys' fees and including claims by MILTON's own employees for which MILTON might otherwise be immune under Title 51 RCW, for injury or death of any person or damage to property caused by or arising, in whole or in part, out of the acts or omissions of MILTON, its agents, contractors, subcontractors, servants, officers or employees in the performance of this franchise, and any rights granted hereunder. The above waiver of immunity under Title 51 RCW has been mutually negotiated by the parties.

Inspection or acceptance by the City of any work performed by MILTON at the time of completion of construction shall not be grounds for avoidance by MILTON of any of its obligations under this Section. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of MILTON and the City, MILTON's liability hereunder shall be only to the extent of MILTON's negligence. The provisions of this Section shall survive the expiration or termination of this franchise.

Section 11. Insurance. MILTON shall procure and maintain for the duration of the franchise the following liability insurance policies, insuring both MILTON and naming the City, and its elected and appointed officers, officials, agents, representatives, and employees as additional insureds:

- A. Comprehensive general liability insurance with limits not less than:
 1. \$2,000,000 for bodily injury or death to each person;
 2. \$2,000,000 for property damage resulting per occurrence; and
 3. \$2,000,000 for all other types of liability.
- B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000 for each person and \$3,000,000 for each accident.
- C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.
- D. Comprehensive form premises-operations, explosions and collapse hazard, underground

hazard and products completed operation hazard policies with limits of not less than \$2,000,000.

- E. The liability insurance policies required by this Section shall be maintained at all times by the MILTON. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City Risk Manager of such intent to cancel or not to renew."

MILTON may satisfy the requirements of this section by a self-insurance program or membership in an insurance pool providing substantially the same coverage as set forth above and approved by the City.

Section 12. Restoration Bond. In lieu of a restoration bond pursuant to EMC 12.06.218, MILTON hereby warrants all work performed under this franchise and further specifically represents and warrants that all required restoration of the right-of-way shall be performed timely, in a workmanlike manner, and in full compliance with all applicable regulatory standards.

Section 13. Modification. The City and MILTON hereby reserve the right to mutually alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification. No such alteration, amendment or modification shall be effective without a writing signed by both parties.

Section 14. Forfeiture and Revocation. If MILTON willfully violates or fails to comply with any of the provisions of this franchise, or through willful misconduct or negligence fails to heed or comply with any notice given by the City under the provisions of this franchise, then MILTON shall forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Edgewood City Council after a hearing held upon notice to MILTON.

Section 15. Remedies to Enforce Compliance. The City may elect, in lieu of revocation and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling MILTON to comply with the provisions of this franchise. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force MILTON and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

Section 16. Legal Compliance. City Ordinances and Regulations. MILTON shall comply with applicable federal, state and local laws, rules and regulations, unless otherwise modified as part of this franchise, at all times relevant to this franchise. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. In the event of a conflict between the provisions of this franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein.

Section 17. Planning Coordination.

17.1 Growth Management, The parties agree, as follows, to participate in the development of, and reasonable updates to, the each other's planning documents:

17.1.1 For MILTON's service within the City limits, the District will participate in a cooperative effort with the City of Edgewood to develop a Comprehensive Plan Utilities Element that meets the requirements described in RCW 36.70A.070(4).

17.1.2 MILTON will participate in a cooperative effort with the City to ensure that the Utilities Element of Edgewood's Comprehensive plan is accurate as it relates to the MILTON's operations and is updated to ensure continued relevance at reasonable intervals.

17.1.3 MILTON shall submit information relates to the general location, proposed location, and capacity of all existing and proposed facilities within the City as requested by the Public Works Director within a reasonable time frame, not exceeding sixty (60) days from receipt of a written request for such information, provided that such information is in the MILTON's possession, or can be reasonably developed from the information in MILTON's possession.

17.1.4 MILTON will update information provided to the City under Section 17 – Planning Coordination, whenever there are major changes in MILTON's system plans for the City of Edgewood.

17.1.5 The City will provide information relevant to MILTON's operations within a reasonable period of written request to assist MILTON in the development or update of its Comprehensive Water System Plan, provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

17.2 System Development Information. MILTON and the City will each assign a representative whose responsibility shall be to coordinate planning for CIP projects including those that involve undergrounding. At a minimum, such coordination shall include the following:

17.2.1 By February 1st of each year, MILTON shall provide the City with a schedule of its planned capital improvements, which may affect the right of way for that year.

17.2.2 By February 1st of each year, the City shall provide MILTON with a schedule of its planned capital improvements which may affect the right of way for that year including, but not limited to street overlays and repairs, storm drainage improvements and construction, and all other right of way activities that could affect MILTON's capital improvements and infrastructure.

17.2.3 MILTON shall meet with the City, other franchises and users of the right of way, as necessary, to schedule and coordinate construction activities.

17.2.4 MILTON shall ensure that all MILTON's construction locations, activities, and schedules shall be coordinated, to minimize public inconvenience, disruption, or damages.

17.3 Emergency Management. The City and MILTON agree to cooperate in emergency management planning, emergency operations response procedures, and recover activity strategies, including identifying potential hazards and risks in the MILTON's facilities so that they can be either mitigated or minimized. Provided, that nothing herein shall be construed as altering or otherwise reducing MILTON's obligations under this franchise, specifically including without limitation MILTON's obligations under Section 10.

Section 18. Acceptance. Within sixty (60) days after the passage and approval of this Ordinance, this franchise may be accepted by MILTON by its filing with the City Clerk an unconditional written acceptance thereof. Failure of MILTON to so accept this franchise within said period of time shall be deemed a rejection thereof by MILTON, and the rights and privileges herein granted shall be of no effect whatsoever, unless extended by Ordinance.

Section 19. Survival. All of the provisions, conditions and requirements of Sections 3 (Relocation of Water Facilities); Section 5 (Excavation); Section 6 (Restoration after Construction); Section 8 (Dangerous Conditions); and Section 9 (Indemnification); of this franchise shall be in addition to any and all other obligations and liabilities MILTON may have to the City at common law, by statute, or by contract, and shall survive the expiration or termination of this franchise. All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of MILTON and all privileges, as well as all obligations and liabilities of MILTON shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever MILTON is named herein.

Section 20. Assignment. This franchise may not be assigned or transferred without the written approval of the City, except MILTON may freely assign this franchise in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. MILTON shall provide prompt, written notice to the City of any such assignment.

Section 21. Notice. Any notice or information required or permitted to be given to the parties under this franchise may be sent to the following addresses unless otherwise specified:

CITY OF EDGEWOOD

Mayor
2224 104th Avenue East
Edgewood, Washington 98372

CITY OF MILTON

Mayor
1000 Laurel Street
Milton, Washington 98354

Section 22. 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 unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this franchise materially affected by such court's ruling.

Section 23. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title. Provided, that the franchise granted by this ordinance shall not take effect until the City's receipt of MILTON's signed acceptance of the terms set forth herein in accordance with Section 16.

Section 24. Regulatory Authority Reserved; Water Utility Service. The parties mutually acknowledge that the City is a municipal corporation organized under the Optional Municipal Code of Title 35A RCW. Nothing herein shall be construed as a waiver, abridgement or other limitation of the City's regulatory authority and/or police power, which the City hereby expressly reserves in full. Without limitation of the foregoing, MILTON shall be required to apply for and obtain all applicable City permits, licenses and/or approvals and otherwise operate in full compliance with the requirements thereof. Any water utility service provided by MILTON to City-owned properties shall be governed by a separate contract between the parties.

Section 25. Nonwaiver of Breach. The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall the waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

Section 26. Entire Agreement. This franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and shall supersede all prior oral negotiations and written agreements between the parties.

Section 27. No Third Party Beneficiary. This franchise has been negotiated and executed for the exclusive benefit of the signatory parties and is enforceable only by the same. Nothing herein shall be construed as creating any rights in or for any third parties.

Section 28. Governing Law. Venue. This franchise shall be governed in all respects by the laws of the state of Washington. The exclusive venue for any dispute related to this franchise shall be the Pierce County Superior Court. The substantially prevailing party in any such dispute shall be entitled to an award of its reasonable attorney fees.

Section 29. Abandonment. If MILTON abandons any or all of its facilities during the

franchise term, the City, at its option, may operate said facilities or designate another entity to operate the same temporarily until MILTON restores service under conditions acceptable to the City, or until the franchise is revoked and a new franchisee is selected by the City. If the City designates another entity to operate the water utility system, MILTON shall reimburse the City for all reasonable costs, expenses and damages incurred, including reasonable attorney fees, court expenses and attributed expenses for work conducted by the City's staff or agents.

Section 30. Taxes and Fees. Nothing contained in this franchise shall exempt MILTON from MILTON's obligation to pay any applicable utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on MILTON. Any fees, charges and/or fines provided for in the Edgewood Municipal Code or any other City ordinance, and any compensation charged and paid for the Public Rights-of-Way, whether pecuniary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from MILTON .

Presented to Council for first reading on, XXX 2017
Presented to Council for second reading on, XXXXX 2017

ADOPTED BY THE CITY COUNCIL ON XXXXX , 2017

Daryl Eidinger, Mayor

ATTEST/AUTHENTICATED:

Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

Carol Morris, City Attorney

Published: xxxx , 2017

Effective: xxxxx 2017

ACCEPTANCE OF FRANCHISE

The undersigned authorized representative of Milton, WA hereby declares on behalf of Milton, WA, the acceptance of the nonexclusive franchise to Milton, WA approved by the Edgewood City Council on the day of , 2017, by the adoption of Edgewood City Ordinance No. -.

DATED this day of, 2017

Milton, WA

By: _____
Its: _____

DRAFT

Date of Voicemail: Friday, February 10, 2017

Time of Voicemail:

From: Michael Morales, Community Development Director-City of Milton

To: Aaron Nix, Assistant City Administrator-Municipal Services

Hi Aaron, this is Michael Morales. I work for the City of Milton, in Community Development and Public Works. I had your Mayor give me your proposed franchise agreement on Wednesday, and I shared with him that we still need some more time on this thing and we aren't prepared to do anything with it and asked that he pull it from the agenda - which he did, but then he said to me "I'm only going to give you two weeks", and I guess my response to that would be, or what? And from that matter, we need to make sure that when this goes through that your residents are prepared for significant rate increase. So we don't eat anything in terms of the other fees that you want to place on the system for us, and we also need to re-examine our capacity to serve any future growth in Edgewood secondary to any in Milton. So if you could consider not drawing the hard line for us because it really is not going to mean anything I appreciate it and we look forward to negotiating. My number is 253-517-2735. I'd appreciate a call or an email mmorales@cityofmilton.net. Thanks a lot Aaron, have a good one. Bye.



**CITY OF EDGEWOOD
STAFF REPORT**

STUDY SESSION AGENDA ITEM: Transportation Impact Fees

Date: February 21, 2017

Title: Transportation Impact Fees (TIF) Ordinance 17-0491

Attachments: Draft TIF Fee Schedule, Proposed Ordinance 17-0491, and email correspondence from Master Builders 02/13/2017 and City Attorney Carol Morris 02/14/2017 (Attached Supreme Court Case).

Submitted By: Aaron C. Nix, ACA Municipal Services – Acting Public Works Director
Kevin Stender, Community Development Director

Approved For Agenda By: Daryl Eiding, Mayor

Discussion: City presented the DRAFT TIF program prepared by Transpo at the January 17 and February 7, 2017 Council Study Sessions. Community Development Director Stender and Staff had previously been working this issue through the Planning Commission, who held a public hearing on this issue at their February 13, 2017 meeting. Staff received one comment, via email from the Master Builders Association and that email is included within your packet materials.

As the Council may recall, State law allows for Cities to collect funds from developers, based on the impacts to the Cities transportation system directly attributable to increased roadway trips from new development. These funds are identified as Traffic Impact Fees and are identified during the development process, based on EMC language outlined in Chapter 4.30. The purpose of this most recent work has been to update the City's code to bring it up to current standards, as well as re-evaluate the City's current transportation infrastructure system and fee rate as it pertains to the collection of impact fees, how they are assessed and how resources will be spent to mitigate these impacts.

Recommendation: Forward these materials to Public Hearing and Second Reading of Ordinance 17-0491, Transportation Impact Fees.

Fiscal Impact: This is a non-project item that provides recommendations for future projects and costs related to the City's current and reasonably predicted future transportation infrastructure.

City of Edgewood
Schedule of Transportation Impact Fees

Cost per PM peak hour trip end = \$4,413

Land Use Category - ITE 9th Edition	Notes	ITE Land Use Code	ITE Average PM Peak Hour Trip Rate (1)	Unit*	Pass-By Trip Reduction Factor ** (2)	Net New Trip Rate (3)	Impact Fee Per Unit (4)
RESIDENTIAL							
Detached Housing	3	210	1.00	Dwelling Unit	1.00	1.00	\$4,413
Attached and Stacked Housing	3	220, 221, 230, 233	0.62	Dwelling Unit	1.00	0.62	\$2,736
Senior Housing	3	251, 252	0.27	Dwelling Unit	1.00	0.27	\$1,192
Nursing Home	3	620	0.22	Bed	1.00	0.22	\$971
Congregate Care/Asst. Living	3	253	0.17	Dwelling Unit	1.00	0.17	\$750
INSTITUTIONAL							
County Park	1	412	0.09	Acre	1.00	0.09	\$397
Beach Park	1	415	1.30	Acre	1.00	1.30	\$5,737
Regional Park	1	417	0.20	Acre	1.00	0.20	\$883
Golf Course		430	2.92	Hole	1.00	2.92	\$12,886
Multi-Purpose Recreational Facility	1	435	3.58	1,000 sf GFA	1.00	3.58	\$15,799
Multiplex Movie Theater	1	445	0.08	Seat	1.00	0.08	\$353
Casino/Video Lottery Establishment		473	13.43	1,000 sf GFA	1.00	13.43	\$59,267
Tennis Courts	1	490	3.88	Court	1.00	3.88	\$17,122
Racquet / Tennis Club		491	3.53	Court	1.00	3.53	\$15,578
Elementary School		520	0.15	Student	1.00	0.15	\$662
Middle/Junior High School		522	0.16	Student	1.00	0.16	\$706
High School		530	0.13	Student	1.00	0.13	\$574
Church		560	0.55	1,000 sf GFA	1.00	0.55	\$2,427
Day Care Center	5	565	12.34	1,000 sf GFA	1.00	12.34	\$54,456
Library		590	7.30	1,000 sf GFA	1.00	7.30	\$32,215
Hospital	1	610	0.93	1,000 sf GFA	1.00	0.93	\$4,104
Nursing Home	1	620	0.74	1,000 sf GFA	1.00	0.74	\$3,266
BUSINESS & COMMERCIAL							
Hotel		310	0.6	Room	1.00	0.60	\$2,648
All Suites Hotel	1	311	0.4	Room	1.00	0.40	\$1,765
Motel		320	0.47	Room	1.00	0.47	\$2,074
Resort Hotel		330	0.42	Room	1.00	0.42	\$1,853
Building Materials/Lumber	2(a), 3	812	4.49	1,000 sf GFA	0.75	3.37	\$14,861
Free-Standing Discount Superstore		813	4.35	1,000 sf GFA	0.73	3.18	\$14,013
Variety Store	2(b)	814	6.82	1,000 sf GLA	0.66	4.50	\$19,864
Free-Standing Discount Store		815	4.98	1,000 sf GFA	0.83	4.13	\$18,241
Hardware/Paint Store	3	816	4.84	1,000 sf GFA	0.74	3.58	\$15,806
Nursery-Retail (Garden Center)	2(a)	817	6.94	1,000 sf GFA	0.75	5.21	\$22,970
Nursery-Wholesale	2(a)	818	5.17	1,000 sf GFA	0.75	3.88	\$17,111
Shopping Center	6	820	n/a	1,000 sf GLA	0.66	n/a	n/a
Factory Outlet Center	2(b), 3	823	2.29	1,000 sf GFA	0.66	1.51	\$6,670
Quality Restaurant		931	7.49	1,000 sf GFA	0.56	4.19	\$18,510
High Turnover Sit-Down Restaurant		932	9.85	1,000 sf GFA	0.57	5.61	\$24,777
Fast Food Restaurant w/out Drive-Through	1	933	26.15	1,000 sf GFA	0.50	13.08	\$57,700
Fast Food Restaurant w/ Drive-Through		934	32.65	1,000 sf GFA	0.50	16.33	\$72,042
Quick Lubrication Vehicle Shop	2(c)	941	5.19	Servicing Position	0.72	3.74	\$16,490
Auto Care Center	2(c)	942	3.11	1,000 sf GLA	0.72	2.24	\$9,882
New Car Sales	2(a), 3	841	2.62	1,000 sf GFA	0.75	1.97	\$8,672
Auto Parts Sales	1,3	843	5.98	1,000 sf GFA	0.72	4.31	\$19,001
Gasoline/Service Station		944	13.87	Vehicle Fueling Position	0.58	8.04	\$35,501
Gasoline/Service Station w/ Convenience Market		945	13.51	Vehicle Fueling Position	0.44	5.94	\$26,233
Gasoline/Service Station w/ Convenience Market & Car Wash		946	13.86	Vehicle Fueling Position	0.44	6.10	\$26,912
Self-Service Car Wash		947	5.54	Wash Stall	0.65	3.60	\$15,891
Tire Store		848	4.15	1,000 sf GFA	0.72	2.99	\$13,186
Tire Superstore	2(e)	849	2.11	1,000 sf GFA	0.72	1.52	\$6,704
Supermarket	3	850	9.48	1,000 sf GFA	0.64	6.07	\$26,775
Convenience Market (24 Hr)		851	52.41	1,000 sf GFA	0.49	25.68	\$113,330
Convenience Market (16 Hr)	1	852	34.57	1,000 sf GFA	0.39	13.48	\$59,497
Convenience Market w/ Gas Pump		853	19.07	Vehicle Fueling Position	0.34	6.48	\$28,613
Discount Supermarket	3	854	8.34	1,000 sf GFA	0.79	6.59	\$29,075
Discount Club	2(f)	861	4.18	1,000 sf GFA	0.79	3.30	\$14,573
Home Improvement Superstore		862	2.33	1,000 sf GFA	0.58	1.35	\$5,964
Electronics Superstore	1	863	4.5	1,000 sf GFA	0.60	2.70	\$11,915
Toy/Children's Superstore	1, 2(b)	864	4.99	1,000 sf GFA	0.66	3.29	\$14,534
Apparel Store	2(b)	876	3.83	1,000 sf GFA	0.66	2.53	\$11,155
Pharmacy/Drug Store w/out Drive-Through		880	8.4	1,000 sf GFA	0.47	3.95	\$17,423
Pharmacy/Drug Store w/ Drive-Through		881	9.91	1,000 sf GFA	0.51	5.05	\$22,304
Furniture Store		890	0.45	1,000 sf GFA	0.47	0.21	\$933
Video Rental	2(d), 3	896	13.6	1,000 sf GFA	0.65	8.84	\$39,011
Bank/Savings: Walk-in	2(d)	911	12.13	1,000 sf GFA	0.65	7.88	\$34,794
Bank/Savings: Drive-in		912	24.3	1,000 sf GFA	0.65	15.80	\$69,703

City of Edgewood
Schedule of Transportation Impact Fees

Cost per PM peak hour trip end = \$4,413

Land Use Category - ITE 9th Edition	Notes	ITE Land Use Code	ITE Average PM Peak Hour Trip Rate (1)	Unit*	Pass-By Trip Reduction Factor ** (2)	Net New Trip Rate (3)	Impact Fee Per Unit (4)
OFFICE							
Clinic	1	630	5.18	1,000 sf GFA	1.00	5.18	\$22,859
General Office	3	710	1.49	1,000 sf GFA	1.00	1.49	\$6,575
Corporate Headquarters	3	714	1.41	1,000 sf GFA	1.00	1.41	\$6,222
Single Tenant Office	3	715	1.74	1,000 sf GFA	1.00	1.74	\$7,679
Medical-Dental Office Building	3	720	3.57	1,000 sf GFA	1.00	3.57	\$15,754
U.S. Post Office		732	11.22	1,000 sf GFA	1.00	11.22	\$49,514
Office Park	3	750	1.48	1,000 sf GFA	1.00	1.48	\$6,531
Research and Development Center	3	760	1.07	1,000 sf GFA	1.00	1.07	\$4,722
Business Park	3	770	1.26	1,000 sf GFA	1.00	1.26	\$5,560
INDUSTRIAL							
General Light Industrial	3	110	0.97	1,000 sf GFA	1.00	0.97	\$4,281
General Heavy Industrial	1	120	0.19	1,000 sf GFA	1.00	0.19	\$838
Industrial Park		130	0.85	1,000 sf GFA	1.00	0.85	\$3,751
Manufacturing	3	140	0.73	1,000 sf GFA	1.00	0.73	\$3,221
Warehouse	3	150	0.32	1,000 sf GFA	1.00	0.32	\$1,412
Mini-Warehouse		151	0.26	1,000 sf GFA	1.00	0.26	\$1,147
Utilities	1	170	0.76	1,000 sf GFA	1.00	0.76	\$3,354
PORT and TERMINAL							
Truck Terminal	1	30	0.83	1,000 sf GFA	1.00	0.83	\$3,663
Park and Ride Lot with Bus Service	3	90	0.62	Parking Space	1.00	0.62	\$2,736

* Abbreviations include: GFA = Gross Floor Area, sf = square feet, and GLA = Gross Leasable Area.

** The Pass-By Trip Reduction Factor reduces the Average Trip Rate based on average Pass-By trip percentages published in the *ITE Trip Generation Handbook* (3rd Edition, 2014).

NET NEW TRIP RATE CALCULATION:

ITE Trip Rate	X	Pass-By Reduction Factor	=	Net New Trip Rate
(1)		(2)		(3)

IMPACT FEE CALCULATION:

Net New Trip Rate	X	\$4,413 Per New PM Peak Hour Trip	=	Impact Fee per Unit of Development
(3)				(4)

NOTES:

- (1) *Trip Generation* (9th Edition, 2012) has less than 6 studies supporting this average rate. Applicants are strongly encouraged to conduct, at their own expense, independent trip generation studies in support of their application.
- (2) No pass-by rates are available. Pass-by rates were estimated from other similar uses.

Code	Land Use	Pass-By Trip Reduction Factor
2 (a)	No Data Available 25% Estimated Pass-by	0.75
2 (b)	Shopping Center (850)	0.66
2 (c)	Auto Parts Sales (843)	0.72
2 (d)	Bank/Drive-In (912)	0.65
2 (e)	Tire Store (848)	0.72
2 (f)	Discount Supermarket (854)	0.79

- (3) Alternatively, the PM peak hour trip regression equation in *Trip Generation* can be used instead of the average trip rate identified in the table. However the equation must be used according to the instructions in *Trip Generation*.
- (4) No Average PM peak hour trip rate available. Need to perform own PM peak hour traffic count for the identified land use to calculate impact fee.
- (5) No pass-by data available in *Trip Generation Handbook*; applicants can conduct and provide pass-by study data to support application.
- (6) *ITE Trip Generation* (9th Edition, 2012) equation used instead of trip rate.
- (7) The City of Edgewood has established Traffic Impact Fees (TIF) through Edgewood Municipal Code 4.30, as authorized by RCW 82.02 and RCW 36.70A. Unless otherwise noted, the City of Edgewood utilizes the weekday PM peak hour trip as the base measurement of trip generation. The City utilizes trip generation methodologies as identified in the most recent edition of the Institute of Traffic Engineers Trip Generation Manual.
- (8) No reduction in the City's base cost per trip may be considered at any time, although the City may consider variations to trip reduction rates for non-single family development when documented by the applicant utilizing methodologies accepted by the City.

ORDINANCE NO. 17-0491

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AN ORDINANCE OF THE CITY OF EDGEWOOD, WASHINGTON, AMENDING ORDINANCE NO. 15-4038, AND CHAPTER 4.30 EMC TRAFFIC IMPACT FEES; ESTABLISHING NEWLY UPDATED, TRAFFIC IMPACT FEE RATES, BASED ON A REVISED TRAFFIC IMPACT FEE STUDY PUBLISHED IN OCTOBER 2016 BY TRANSPON ENGINEERS, INC.; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 82.02 RCW, the City of Edgewood has adopted a traffic impact fee program and has codified regulations governing the calculation, assessment, collection, refund and administration of such fees at Chapter 4.30 EMC; and

WHEREAS, on April 28, 2015, the City Council adopted Ordinance No. 15-0438, which established changes to impact fee rates and EMC Chapter 4.30, which were both previously amended by Ordinance 14-0423 and 13-0391 accordingly; and

WHEREAS, the City Council in 2016 commissioned a new Traffic Impact Fee Study underlying Chapter 4.30 EMC in order to more closely align the impact fee and EMC 4.30 with the City's adopted Capital Improvement Plan and the associated Transportation Improvement Plan as supported within the Capital Facilities element of the Comprehensive Plan; and

WHEREAS, Public Works Staff submitted a completed a complete SEPA Environmental Checklist and supporting documents to the City of Edgewood on January 12, 2017 and the City of Edgewood's SEPA Official Issued a DNS on February 8, 2017; and

WHEREAS, on January 17, 2017, the City Council reviewed the updated DRAFT Traffic Impact Fee Study and proposed impact fee rate and asked that City Staff bring the Ordinance forward for Public Hearing with the Planning Commission; and

WHEREAS, on February 13, 2017, the Planning Commission held a public hearing to receive public comments on the proposed changes to the Traffic Impact Fee code and associated fee; and

WHEREAS, one public comment was received via email from the Master Builders Association prior to the public hearing, presented and explained to the Planning Commission and the City of Edgewood Planning Commission voted unanimously to forward the Traffic Impact Fee Study and proposed revisions to Chapter 4.30, Traffic Impact Fees to the City Council for review and adoption; and

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

Section 1. Findings. The recitals above are hereby adopted as legislative findings in support of this ordinance. The City Council further adopts by reference previously held study session staff reports of January 17, 2017, Planning Commission recommendations of February 13, 2017 and the included agenda bill as additional findings.

Section 2. EMC 4.30.030 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

4.30.030 Definitions.

- | A. “Dwelling unit” means one or more rooms designed for or occupied by one family for living or sleeping purposes and containing kitchen, sleeping, and sanitary facilities for use solely by one family.
- | B. “Encumber” means to transfer impact fee dollars from the traffic mitigation impact fee fund to a fund for a particular system improvement that is fully in the current year’s budget. Funds may only be encumbered by an action of the city council.
- | C. “Project improvements” means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in the city’s capital improvement plan or transportation improvement program approved by the city council shall be considered a project improvement.
- | D. “System improvements” means transportation facilities that are included in the city’s six-year capital improvement plan and are designed to provide service to the community at large, in contrast to project improvements.
- | E. “Applicant” means a person, individual, or organization seeking permission to develop land within the city of Edgewood by applying for a building permit.
- | F. “Interest” means the interest earned by the account during the period the fees were retained.
- | G. “Traffic mitigation impact fee” means payment of money imposed by the city of Edgewood upon development activity pursuant to this chapter as a condition of granting development approval and/or a building permit in order to pay for the public facilities needed to serve new growth and development. Traffic mitigation impact fees do not include permit fees, an application fee, the administrative fee for collecting and handling impact fees, the cost of reviewing independent fee calculations or the administrative fee required for an appeal.
- | H. “Peak hour” means the consecutive 60-minute period during the 4:00 p.m. to 6:00 p.m. peak period during which the highest volume occurs.
- | I. “Traffic mitigation impact fee fund” means the fund established by the adoption of Ordinance 05-253 on August 23, 2005, for the public facilities for which traffic impact fees are collected, in compliance with the requirements of RCW [82.02.060](#).

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J. "Traffic impact fee study" means the study which determined the traffic mitigation impact fee dated ~~October~~February 2016~~0~~7.

K. "Transportation Improvement Plan" means a schedule of intended transportation improvements."

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Section 3. EMC 4.30.080 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

4.30.060 Service area.

This section establishes one service area which shall be consistent with the city limits of the city of Edgewood, in accordance with RCW 82.02.060 (7).

Section 4. EMC 4.30.075 of the Edgewood Municipal Code is hereby added as follows:

EMC 4.30.075 Project list.

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(A) The director shall annually review the city's parks, open space and recreation plan, the six-year road plan and the projects listed in Appendices A and B and shall:

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1 Identify each project in the comprehensive plan that is growth-related and the proportion of each such project that is growth-related;

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2 Forecast the total money available from taxes and other public sources for park and transportation improvements for the next six years;

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3 Update the population, building activity and demand and supply data for park and transportation facilities and the impact fee schedule for the next six-year period;

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4 Calculate the amount of impact fees already paid;

5 Identify those comprehensive plan projects that have been or are being built but whose performance capacity has not been fully utilized.

(B) The director shall use this information to prepare an annual draft amendment to the fee schedule in Exhibit A, which shall comprise:

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1 The projects in the comprehensive plan that are growth-related and that should be funded with forecast public monies and the impact fees already paid; and

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2 The projects already built or funded pursuant to this chapter whose performance capacity has not been fully utilized.

(C) The city council, at the same time that it adopts the annual budget and appropriates funds for capital improvement projects, shall, by separate ordinance, establish the

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annual project list by adopting, with or without modification, the director's draft amendment.

(D) Once a project is integrated into the Fee Schedule in Exhibit A, a fee shall be imposed on every development until the project is removed from the project list by one of the following means:

1 The city council by ordinance removes the project from the project list, in which case the fees already collected will be refunded if necessary to ensure that impact fees remain reasonably related to transportation impacts of development that have paid an impact fee; provided, that a refund shall not be necessary if the council transfers the fees to the budget of another project that the council determines will mitigate essentially the same transportation impacts; or

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2 The capacity created by the project has been fully utilized, in which case the director shall remove the project from the project list.

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Section 5. EMC 4.30.080 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

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4.30.080 Impact fee determination and Collection.

A. At the time of building permit issuance, city staff shall determine the total impact fee owed based on the fee schedule in effect at the time of such issuance, in accordance with EMC 4.30.160.

B. Factors Used in Impact Fee Calculations. The calculation of impact fees shall include the factors identified in RCW 82.02.040 through 82.02.070 and shall:

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1. Determine the standard fee for similar types of development, which shall be reasonably related to each development's proportionate share of the cost of projects described in the project list for each type of impact fee.

2. Reduce the proportionate share by applying the benefit factors described in EMC 4.30.100.

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C. Proportionate Share. In calculating proportionate share, the following factors shall be considered:

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1. Identification of all transportation facilities that will be impacted by users from development;

2. Identification of the point at which the capacity of a transportation facility has been fully utilized;

3. Updating of the data as often as practicable, but at least annually;

4. Estimation of the cost of construction of the projects in the Transportation Improvement Program (TIP) for roads at the time they are placed on the list and to then update the cost estimates at least annually, considering the:

- (i) Availability of other means of funding transportation facilities;
- (ii) Cost of existing transportation facility improvements;
- (iii) Methods by which transportation facility improvements were financed; and
- (iv) An adjustment to the cost of the transportation facilities for past or future payments or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes or other payments earmarked for or pro-ratable to the particular system improvement.

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CB. Impact fee collection shall also occur at the time of building permit issuance unless payment has been properly deferred in accordance with Chapter 4.05 EMC.

DC. An applicant may request that the impact fee be calculated in advance of building permit issuance, but any such advance calculation shall not be binding upon the city and should only be used as guidance by the applicant. If the city council revises the impact fee formula or the impact fees prior to the time that a building permit is issued for a particular development, the formula or fee amount in effect at the time of building permit issuance shall apply to the development.

Section 4.Section 6. EMC 4.30.090 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

4.30.090 Impact fee adjustments, independent calculations.

An applicant may request an adjustment to the impact fees determined, in accordance with RCW 82.02.060 (6), according to the fee schedule adopted by the ordinance codified in this chapter by preparing and submitting to the mayor or designee an independent fee calculation for the development activity for which a building permit is sought. The documentation submitted shall show the basis upon which the independent fee calculation was made. Independent fee calculations for traffic impact fees shall use the same formulas and methodology used to establish the impact fees in this chapter and shall be limited to adjustments in trip generation rates used in the traffic impact fee study, and shall not include travel demand forecasts, trip distribution, traffic assignment, transportation service areas, costs of road projects, or cost allocation procedures.

A. If the mayor or designee agrees with the independent fee calculation, a written agreement to accept such amount shall be transmitted to the applicant who shall, in turn, present it to the city upon impact fee collection.

B. If the mayor or designee does not agree with the independent fee calculation, the fee payer may appeal this decision to the hearing examiner through procedures outlined in Chapter [2.40](#) EMC.

~~Section 5.~~**Section 7.** EMC 4.30.100 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

4.30.100 Impact fee credits.

A. An applicant shall be entitled to a credit against the applicable traffic impact fee collected, [in accordance with RCW 82.02.060 \(4\)](#), under the fee schedule adopted by the ordinance codified in this chapter for the value of any dedication of land for, improvement to, or new construction of, any system improvements provided by the applicant, to facilities that are:

1. Included within the six-year transportation improvement program and identified as system improvements that are to be funded in part by traffic impact fees; and
2. At suitable sites and constructed at an acceptable quality as determined by the city; and
3. Completed, dedicated, or otherwise transferred to the city prior to the determination and award of a credit as set forth in this section.

B. No credit shall be given for project improvements.

C. The value of a credit for improvements shall be established by original receipts provided by the applicant for one or more of the same system improvements for which the impact fee is charged.

D. The value of a credit for land shall be established on a case-by-case basis by an appraiser selected by, or acceptable to, the city. The appraiser must be licensed and in good standing with the state of Washington for the category of the property appraised. The appraisal shall be in accordance with the most recent version of the Uniform Standards of Professional Appraisal Practice and shall be subject to review and acceptance by the city. The appraisal and review shall be at the expense of the applicant.

E. Whenever a development is granted approval subject to a condition the system improvements that are identified in the six-year transportation improvement program be constructed or provided, or whenever the applicant has agreed, pursuant to the terms of a voluntary agreement with the city of Edgewood, to donate or dedicate land for road facilities that are identified in the six-year transportation improvement program, and which are included in the list of road projects

that are used to determine the traffic impact fee, as listed in the traffic impact fee study, the applicant shall be entitled to a credit for the value of the land or actual costs of capital facility construction against the fee that would be chargeable under the formula provided. The land value or costs of construction shall be determined pursuant to this section.

F. This subsection applies only to residential developments and the residential portion of a mixed use development. In cases where a developer would be entitled to a credit under this section, but the amount of the credit has yet to be determined on a per dwelling unit basis, the city shall take the total credit amount available to the entire plat or project, calculated by applying subsections (A) through (E) of this section, and divide that amount by the number of dwelling units approved for that plat or project. The impact fee and credit may then be calculated and collected on a per dwelling unit basis as building permits are issued for those dwelling units. Where building permits for some, but not all, of the dwelling units within a plat or project have already been obtained at the time the ordinance codified in this chapter becomes effective, the credit for the unpermitted dwelling units will be calculated to arrive at a per dwelling unit amount in the same manner. For example, if a plat has been approved for 20 dwelling units, and building permits have only been issued for 10 of those units, the per dwelling unit credit for the remaining 10 units will equal the total credit amount divided by 20 dwelling units.

G. This subsection applies to nonresidential developments, or the nonresidential portion of a mixed use development. In cases where a developer would be entitled to a credit under this section, but the amount of the credit has yet to be determined on a per square foot basis, the city shall take the total credit amount available to the entire plat or project, calculated by applying subsections (A) through (C) of this section, and divide that amount by the number of square feet approved for that plat or project. The impact fee and credit may then be calculated and collected on a per square foot basis as building permits are issued for that square footage. Where building permits for some, but not all, of the dwelling units within a plat or project have already been obtained at the time the ordinance codified in this chapter becomes effective, the credit for the unpermitted square footage will be calculated to arrive at a per square footage amount in the same manner. For example, if a 20,000 square foot commercial project has been approved, and building permits have only been issued for 10,000 square feet of the project, the per square foot credit for the remaining 10,000 square feet will equal the total credit amount divided by 20,000 square feet.

H. Pursuant to and consistent with the requirements of RCW [82.02.060 \(1\) \(b\)](#), impact fee schedules have been adjusted for future taxes and other revenue sources to be paid by the new

development which are earmarked or pro-ratable to the same new public facilities which will serve the new development.

I. After receiving the receipts for improvements, the appraisal of land value, the receipts and calculations of prior payments earmarked or pro-ratable to the same system improvements for which the impact fee is imposed, the mayor or designee shall provide the applicant with a letter setting forth the dollar amount of the credit, the reason for the credit, the legal description of the site donated where applicable, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter indicating their agreement to the terms of the letter and return such signed document to the city before the impact fee credit will be awarded. The failures of the applicant to sign, date, and return such document within 60 calendar days shall nullify the credit.

J. If the amount of the credit is less than the calculated fee amount, the difference remaining shall be chargeable as an impact fee and paid at the time of application for the building permit. In the event the amount of the credit is calculated to be greater than the amount of the impact fee due, no further sums shall be due from the applicant.

K. A claim for credit will be processed by the city using whichever of the following options is selected by the applicant:

1. Claims for credits that are submitted prior to, or with, an application for a building permit for which an impact fee will be due will be processed by the city before payment of the impact fee is due in order to allow any credit authorized by the city to reduce the amount of the impact fee; or
2. Claims for credits that are submitted no later than 30 days after the issuance of a building permit for which an impact fee is due shall be processed by the city after the impact fee is paid in full, and any credit authorized by the city will be refunded to the applicant within 90 days of receipt of the claim for credit.

L. Claims for credits that are submitted more than six months after the issuance of a building permit for which an impact fee is due are deemed to be waived and shall be denied.

M. Determinations made by the mayor or designee pursuant to this section shall be subject to appeal to the examiner subject to the procedures set forth in Chapter [2.40](#) EMC.

~~Section 6.~~**Section 8.** EMC 4.30.130 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

4.30.130 Council review of impact fees.

The impact fee schedule adopted by the ordinance codified in this chapter shall be reviewed by the city council, as it deems necessary and appropriate in conjunction with the update of the city's transportation improvement program.

~~Section 7.~~**Section 9.** EMC 4.30.135 of the Edgewood Municipal Code is hereby added as follows:

4.30.135 Funding of projects.

(A) An impact fee fund is hereby created transportation fees. Separate accounts shall be established for each fee type. The City's Finance director shall be the manager of the city's fund. The city shall place transportation impact fees in appropriate deposit accounts within the impact fee fund.

(B) The transportation impact fees paid to the city shall be held and disbursed as follows:

1. The fees collected for each project shall be placed in a deposit account within the impact fee fund, with the exception of school impact fees, which shall be collected by the school district;

2. When the council appropriates Transportation improvement project (TIP) funds for a transportation project on the project list, the transportation fees held in the impact fee fund shall be transferred to the TIP fund. The nonimpact fee monies appropriated for the project shall comprise both the public share of the project cost and an advancement of that portion of the private share that has not yet been collected in transportation impact fees;

3. The first money spent by the director on a project after a council appropriation shall be deemed to be the fees from the impact fee fund;

4. Fees collected after a project has been fully funded by means of one or more council appropriations shall constitute reimbursement to the city of the funds advanced for the private share of the project. The public monies made available by such reimbursement shall be used to pay the public share of other projects;

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5. All interest earned on impact fees paid shall be retained in the account and expended for the purpose or purposes for which the impact fees were imposed.

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(C) Projects shall be funded by a balance between impact fees and public funds, and shall not be funded solely by impact fees.

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(D) Impact fees shall be expended or encumbered for a permissible use for 10 years after receipt, unless there exists an extraordinary or compelling reason for fees to be held longer than 10 years. The director may recommend to the council that the city hold transportation fees beyond 10 years in cases where extraordinary or compelling reasons exist. Such reasons shall be identified in written findings by the council.

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~~Section 8.~~**Section 10.** EMC 4.30.150 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

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4.30.150 Impact fee calculations.

The traffic impact fee shall be calculated using a schedule that identifies a particular fee amount for a particular type of development, as supported by and consistent with the City of Edgewood Transportation Impact Fee Program Report dated ~~October~~**December** 201**62**, attached hereto and incorporated herein by this reference as if set forth in full. Accessory dwelling units shall be calculated using ITE number 220, Apartment customer type.

Section 11. EMC 4.30.160 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

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4.30.160 Schedule of fees.*

A traffic impact fee shall be assessed against all new development as set forth in Exhibit A – **Transportation Impact** Fee Schedule, attached to the ordinance codified in this chapter and incorporated herein by reference as if set forth in full. This fee schedule represents the city's determination of the appropriate share of system improvement costs to be paid by new growth and development.

~~*Code reviser's note: Section 2 of Ordinance No. 15-438 provides, "The Fee Schedule attached to Ordinance No. 07-0282 and incorporated by reference into Chapter 4.30 EMC pursuant to EMC 4.30.160 is hereby amended to provide in its entirety as set forth in Exhibit A to this ordinance, attached hereto and incorporated herein by this reference as if set forth in full. The provisions of this section shall take effect at the close of business on April 30, 2015, simultaneously with the expiration of the temporary Fee Schedule set forth in Section 5."~~

~~Section 3 of Ordinance No. 15-438 provides, “The Fee Schedule attached to Ordinance No. 07-0282 and incorporated by reference into Chapter 4.30 EMC pursuant to EMC 4.30.160 is hereby amended to provide in its entirety as set forth in Exhibit B to this ordinance, attached hereto and incorporated herein by this reference as if set forth in full. The provisions of this section shall sunset automatically at the close of business on April 30, 2015, simultaneously with the effective date of the permanent Fee Schedule set forth in Section 2.”~~

~~Section 9.~~Section 12. 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 10.~~Section 13. Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

Presented to Council for first reading ~~and adoption~~ on February XX, 2017.

ADOPTED BY THE CITY COUNCIL ON February XX, 2017

Daryl Eiding, Mayor

ATTEST/AUTHENTICATED:

APPROVED AS TO FORM:

Rachel Pitzel, City Clerk

Carol Morris, City Attorney

Date of Publication: February XX, 2017

Effective Date: February XX, 2017

CITY OF EDGEWOOD
2224 104th Avenue East, Edgewood, WA 98372-1513
(253) 952-3299 Fax: (253) 952-3537

LEGAL NOTICE

NOTICE OF ORDINANCE ADOPTED BY EDGEWOOD CITY COUNCIL

The following is a summary of an Ordinance adopted by the City of Edgewood City Council on the XXth day of February 2017, and shall take effect and be in full force on the XX day of March 2017.

ORDINANCE NO. 17-XXXX

AN ORDINANCE OF THE CITY OF EDGEWOOD, WASHINGTON, AMENDING ORDINANCE NO. 15-4038, AND CHAPTER 4.30 EMC TRAFFIC IMPACT FEES; ESTABLISHING A NEW EFFECTIVE DATE FOR THE CITY'S UPDATED, TRAFFIC IMPACT FEE RATES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

The full text of the Ordinance is available at Edgewood City Hall, 2224 104th Avenue East, Edgewood, WA 98372-1513 (253) 952-3299.

Rachel Pitzel, City Clerk

Published in the Tacoma News Tribune on: *Thursday March XX, 2017*

From: [Jeremiah Lafranca](#)
To: [Kevin Stender](#)
Cc: [Aaron Nix](#)
Subject: RE: Traffic impact fees
Date: Monday, February 13, 2017 2:57:04 PM

Hi Kevin,

The feedback I would pass on is that MBA Members do prefer the fee schedule-- traffic impact fees to be calculated based on a development's location/zoning in the City.

Below is a link to Sumner's fee schedule for their traffic impact fees.

<http://sumnerwa.gov/wp-content/uploads/2014/01/Traffic-Impact-Fees-Jan.2017.pdf>

The City of Sumner was split into various sectors and then the TIF was calculated for each sector individually. This approach takes into account the real impact on roads based on the location of the development, type of traffic that exists in that area (such as diesels in industrial areas, etc.) and of course the project list.

For Edgewood, a good illustration of why there should be different TIF sectors would be that an infill project on the outskirts of town would not have as big of an impact on your roads as a multi-family development in downtown. (This of course is dependent on your list of road projects and their location). This takes an equitable approach that the PM peak hour trip rates may not be the same throughout the entire City.

Please let me know if I can be of more assistance. The MBA would ask the City Council to consider taking an approach as Sumner has done with their fee schedule.

Thank you,

Jeremiah Lafranca,
Government Affairs Director / Interim Executive Officer

Master Builders Association of Pierce County
3711 Center Street / Tacoma, Washington 98409
Direct (253) 254-0085 / Office (253) 272-2112, Ext 105 / Fax (253) 383-1047
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Join us on [facebook](#) ~ [twitter](#) ~ [Linkedin](#)

SAVE \$\$-Put your membership to work now. Money saving discounts that benefit your business, your employees and your family. Go to www.nahb.org/MA

From: Kevin Stender [mailto:kevin@cityofedgewood.org]
Sent: Monday, February 13, 2017 9:47 AM

To: Jeremiah Lafranca <jlafranca@mbapierce.com>
Cc: Aaron Nix <aaron@cityofedgewood.org>
Subject: RE: Traffic impact fees

Jeremiah,

Thanks for the email and the interest in this. We are still working on the Ordinance and exploring options regarding a schedule. The City Council asked for us to go in this direction to help simplify the process for developers but if it makes it more difficult we will look back towards an established schedule. The final version will likely change from this version before adoption. If you have some specific examples to look at within a nearby municipality please let me know. Also please feel free to provide comments. I will gladly pass them along to our City Council for consideration.

Thanks,

Kevin Stender

Community Development Director
City of Edgewood
(253) 952-3299

From: Jeremiah Lafranca [<mailto:jlafranca@mbapierce.com>]
Sent: Saturday, February 11, 2017 2:48 PM
To: Kevin Stender
Subject: Traffic impact fees
Importance: High

Kevin,

I was just reviewing the proposed traffic impact fee update and was curious why the city is turning away from a fee schedule approach? For example, in many cities the traffic fee varies depending on location, specifically zoning. This takes into account the impact that trucking for instance may have in one area due to industrial uses vs. the impact residential traffic would have in another area of the City.

Thanks,

Jeremiah Lafranca,
Government Affairs Director / Interim Executive Officer

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156 Wash.2d 289
Supreme Court of Washington,
En Banc.

CITY OF OLYMPIA, a Washington
code city, Petitioner,

v.

John DREBICK and Jane Doe
Drebeck, husband and wife, d.b.a.
Drebeck Investments, Respondents.

No. 75270–2.

|
Argued Feb.8, 2005.

|
Decided Jan. 19, 2006.

Synopsis

Background: After hearing officer ruled that recipient of permit to build office building was required to pay traffic impact fee reasonably related to his particular development rather than to the cumulative impacts of all new office buildings, the Superior Court, Thurston County, [Christine Pomeroy](#), J., reversed. Permittee appealed. The Court of Appeals, [119 Wash.App. 774, 83 P.3d 443](#), reversed and remanded, and the Supreme Court granted city's petition for review.

[Holding:] The Supreme Court, [Owens](#), J., held that impact fee was to be calculated by tying particular development to service area's improvements as a whole.

Judgment of the Court of Appeals reversed.

[Sanders](#), J., filed a dissenting opinion which [J. Johnson](#), J., joined, and in which [Chambers](#), J., concurred in the result.

West Headnotes (10)

^[1] **Appeal and Error**

🔑 [Cases Triable in Appellate Court](#)

The Supreme Court reviews de novo issues of statutory interpretation and claimed errors of law.

[5 Cases that cite this headnote](#)

^[2] **Statutes**

🔑 [Intent](#)

The aim of statutory interpretation is to discern and implement the intent of the legislature.

[7 Cases that cite this headnote](#)

^[3] **Statutes**

🔑 [Superfluoussness](#)

A reviewing court is required,

whenever possible, to give effect to every word in a statute.

2 Cases that cite this headnote

[4]

Statutes

🔑 Plain Language; Plain, Ordinary, or Common Meaning

Where the meaning of a statutory provision is plain on its face, the court must give effect to that plain meaning as an expression of legislative intent.

8 Cases that cite this headnote

[5]

Statutes

🔑 Statute as a Whole; Relation of Parts to Whole and to One Another

Statutes

🔑 Similar or Related Statutes

A statutory provision's plain meaning may be ascertained by an examination of the statute in which the provision at issue is found, as well as related statutes or other provisions of the same act in which the provision is found.

4 Cases that cite this headnote

[6]

Statutes

🔑 In general; factors considered

Statutes

🔑 Plain, literal, or clear meaning; ambiguity

Only when the plain, unambiguous meaning of a statute cannot be derived through examination of the statute in which the provision at issue is found, as well as related statutes or other provisions of the same act, will it be appropriate for a reviewing court to resort to aids to construction, including legislative history.

10 Cases that cite this headnote

[7]

Zoning and Planning

🔑 Fees, bonds and in lieu payments

Under Growth Management Act (GMA) provision providing that impact fees shall only be imposed for a proportionate share of the costs of system improvements that are reasonably related to and reasonably beneficial to the new development, the term “new development” is synonymous with the “development activity”—that is, with the particular new development seeking approval. West's RCWA 82.02.050(3).

2 Cases that cite this headnote

West's RCWA 82.02.050,
82.02.060.

3 Cases that cite this headnote

[8]

Zoning and Planning

🔑 Fees, bonds and in lieu payments

In Growth Management Act (GMA) provision on impact fees, the legislature unambiguously intended that the impact fees were to be a proportionate share of the costs of system improvements, that is, roads, parks, schools, or fire stations identified in the capital facilities plan, that are reasonably related to and reasonably benefit the particular development seeking approval. [West's RCWA 82.02.050\(3\)](#).

2 Cases that cite this headnote

[10]

Zoning and Planning

🔑 Fees, bonds and in lieu payments

Under Growth Management Act (GMA), city's traffic impact fee, which was made a condition of a building permit for a new office building, was to be calculated by tying particular development to service area's improvements as a whole, rather than individualized assessments of the direct impacts each new development will have on each improvement planned in a service area. [West's RCWA 82.02.050, 82.02.060, 82.02.090](#).

3 Cases that cite this headnote

[9]

Zoning and Planning

🔑 Fees, bonds and in lieu payments

In enacting Growth Management Act (GMA) provision requiring that facilities funded by impact fees be reasonably related and beneficial to the particular development seeking approval, Legislature authorized local governments to calculate fees by tying particular development to service area's improvements as a whole, not to particular system improvements within service area.

Attorneys and Law Firms

****803** [David John Lenci](#), [Julie Anne Halter](#), Preston Gates & Ellis LLP, Seattle, Mr. [Jeffrey Scott Myers](#), Law Lyman Daniel Kamerrer et al, Mr. [Bob C. Sterbank](#), Mr. [John Edward Vanek](#), City of Olympia, Olympia, for Petitioner/Appellant.

[Alexander Weal Mackie](#), Perkins Coie LLP,

Olympia, [Eric S Merrifield](#), Perkins Coie LLP, Seattle, for Appellee/Respondent.

Kristopher Ian Tefft, Ass'n of Wash. Business, Olympia, for Amicus Curiae (Building Industry Ass'n of Wash.)

[Russell Clayton Brooks](#), Bellevue, [Robin L Rivett](#), Pacific Legal Foundation, Sacramento, Samuel A. Rodabough, Groen Stephens & Klings LLP, Bellevue, for Amicus Curiae (Pacific Legal Foundation).

[Marilee Jones Scarbrough](#), Wash. State School Directors' Ass'n, Olympia, for Amicus Curiae (Wash. State School Directors Ass'n.)

Opinion

[OWENS](#), J.

***293** ¶ 1 The City of Olympia (the City) seeks reversal of a Court of Appeals decision that invalidated the City's calculation of a transportation impact fee imposed on a commercial developer, Drebrick Investments (Drebrick). At issue is whether the City's impact fee ordinances comply with the impact fee statutes, [RCW 82.02.050–.090](#), of the Growth Management Act (GMA), chapter 36.70A RCW. We hold that, contrary to the city hearing examiner's interpretation, the GMA impact fee statutes do not require local governments to calculate an impact fee by making individualized assessments of the new development's direct impact on each improvement planned in a service area. We reverse the decision of the Court of Appeals.

FACTS

¶ 2 In July 1998, Drebrick sought approval from the City for construction of a four-story, 54,000–square–foot office building within the city limits. The City approved the proposal, subject to Drebrick's payment of a transportation impact fee of \$132,328.98, calculated according to the City's legislatively adopted fee schedule. See former Olympia Municipal Code (OMC) 15.06, 15.10, 15.14, 15.18 (1999). In February 1999, Drebrick sought a fee adjustment by submitting an independent fee calculation, as permitted in former OMC 15.10.020, but two months later the City's director of community planning and development rejected Drebrick's alternative calculations, concluding that they did not meet the requisite accuracy and reliability criteria of former OMC 15.10.020D.

¶ 3 Drebrick appealed the director's decision to the city hearing examiner, and hearings were held on four days in May and June 2000. In November 2000, the hearing examiner ***294** reversed the City, and the City sought review in Thurston County Superior Court under the Land Use Petition Act (LUPA), ****804** chapter 36.70C RCW. The superior court reversed the hearing examiner's decision, and we then denied Drebrick's request for direct review in this court. The Court of Appeals thereafter reversed the superior court and remanded the matter to the City for a recalculation of the impact fee. [City of Olympia v. Drebrick](#), 119 Wash.App. 774, 83 P.3d 443 (2004). We granted the City's petition for review.

ISSUE

¶ 4 In calculating the **transportation impact fees** imposed on the Drebeck development, did the City comply with the statutory standards set forth in [RCW 82.02.050–.090](#) for apportioning such fees?

ANALYSIS

^[1] ¶ 5 *Standard of Review*. At issue are the hearing examiner’s interpretation of the impact fee statutes, [RCW 82.02.050–.090](#), and his conclusion of law that, in calculating the impact fees imposed on Drebeck, the City failed to comply with the requirements of [RCW 82.02.050\(3\)](#).¹ In its LUPA petition, the City asserted that the hearing examiner’s decision was “based on erroneous interpretations of law.” Clerk’s Papers (CP) at 10–11; see [*295 RCW 36.70C.130\(1\)\(b\)](#) (providing relief where party establishes that “land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise”). This court reviews issues of statutory interpretation and claimed errors of law de novo. *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wash.2d 1, 9, 43 P.3d 4 (2002); *Pinecrest Homeowners Ass’n v. Glen A. Cloninger & Assocs.*, 151 Wash.2d 279, 290, 87 P.3d 1176 (2004).

^[2] ^[3] ^[4] ^[5] ^[6] ¶ 6 *Principles of Statutory Interpretation*. The aim of statutory interpretation is “to discern and implement the intent of the legislature.” *State v. J.P.*, 149 Wash.2d 444, 450, 69 P.3d 318 (2003);

Campbell & Gwinn, 146 Wash.2d at 9, 43 P.3d 4. A reviewing “court is required, whenever possible, to give effect to every word in a statute.” *Dennis v. Dep’t of Labor & Indus.*, 109 Wash.2d 467, 479, 745 P.2d 1295 (1987). Where the meaning of a provision is “plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *Campbell & Gwinn*, 146 Wash.2d at 9–10, 43 P.3d 4. A provision’s plain meaning may be ascertained by an “examination of the statute in which the provision at issue is found, as well as related statutes or other provisions of the same act in which the provision is found.” *Id.* at 10, 43 P.3d 4 (citing, inter alia, *C.J.C. v. Corp. of the Catholic Bishop of Yakima*, 138 Wash.2d 699, 708–09, 985 P.2d 262 (1999) (stating that “[r]elated statutory provisions are interpreted in relation to each other and all provisions harmonized”)); see also *State v. Clausing*, 147 Wash.2d 620, 630, 56 P.3d 550 (2002) (Owens, J., dissenting) (noting that “[a]pplication of the statutory definitions to the terms of art in a statute is essential to discerning the plain meaning of the statute”). Only when the plain, unambiguous meaning cannot be derived through such an inquiry will it be “appropriate [for a reviewing court] to resort to aids to construction, including legislative history.” *Campbell & Gwinn*, 146 Wash.2d at 12, 43 P.3d 4.

¶ 7 *Impact Fees under the GMA*. In 1990, the legislature enacted [RCW 82.02.050–.090](#) as part of the GMA, [*296](#) authorizing local governments to condition the approval of development [**805](#) proposals on the payment of “impact fees” to defray a portion of the costs arising from “new growth and

development.” RCW 82.02.050(1)(a). The legislature expressly stated that its “intent” is “[t]o ensure ... adequate facilities ... to serve new growth and development; ... [t]o promote orderly growth and development by establishing standards by which [local governments] may require, by ordinance, that new growth and development pay a proportionate share of the cost of the new facilities needed to serve new growth and development; and ... [t]o ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.” *Id.* subsection (1)(a)-(c). Thus, by enacting the impact fee statutes, the legislature intended to enable towns, cities, and counties to plan for “new growth and development” and to recoup from developers a predictable share of the infrastructure costs attributable to the planned growth, with the qualification that the local government’s “procedures and criteria” were to protect “specific developments” from impact fees that were “arbitrary” or that “duplicat[ed]” the amount paid for “the same impact.”

¶ 8 Just as RCW 82.02.050(1)(a)-(c) distinguishes “specific developments” from, in general, “new growth and development,” subsection (2) authorizes local governments to impose impact fees on particular “development activity” as a means of financing the “system improvements” planned to accommodate overall “new development” in a defined service area:

Counties, cities, and towns that are required or choose to plan under RCW 36.70A.040 are authorized

to impose impact fees on *development activity* as part of the financing for public facilities, provided that the financing for system improvements to serve *new development* must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

*297 (Emphasis added.) The definition in RCW 82.02.090(1) leaves no doubt that “[d]evelopment activity” refers to the particular new development seeking approval: “ ‘Development activity’ means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities.” RCW 82.02.050(2) therefore authorizes local governments, planning under the GMA, to impose impact fees on individual developments to cover the increased demand for roads, parks, schools, or fire stations identified in the capital facilities plan for a designated service area.²

^[7] ¶ 9 The legislature provided two overlapping definitions of “impact fees.” First, setting forth three limitations on such fees, RCW 82.02.050(3) mandates that they

(a) Shall only be imposed for system improvements that are reasonably related to *the new development*;

(b) Shall not exceed a proportionate share of the costs of system improvements that

are reasonably related to *the new development*; and

(c) Shall be used for system improvements that will reasonably benefit *the new development*.

(Emphasis added.) Compressing (a)-(c), [RCW 82.02.050\(3\)](#) explains that impact fees “[s]hall only be imposed for [a proportionate share of the costs of] system improvements that are reasonably related to [and reasonably beneficial to] the new development.” That, here, the statute speaks of “*the new development*,” (emphasis added) as opposed to “new growth and development” or “new development” (as in the preceding section .050(1) and (2)), indicates that “*the new development*” is synonymous with the “development activity”—that is, with *the particular* new development *298 seeking approval. See [Cowie *806 Growers, Inc. v. Bates, 10 Wash.2d 585, 618, 117 P.2d 624 \(1941\)](#) (Simpson, J., dissenting) (noting that the use of the definite article has a “ ‘specifying or particularizing effect’ ” (quoting 1 WORDS AND PHRASES 1 (perm.ed., n.d.))); [Dennis, 109 Wash.2d at 479, 745 P.2d 1295](#) (requiring courts “to give effect to every word in a statute”).

[8] ¶ 10 The definition of impact fees in [RCW 82.02.090\(3\)](#) echoes the criteria set forth in 82.02.050(3)(a)-(c) and establishes that the phrase “the new development” means the individual development seeking approval: “ ‘Impact fee’ means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is

reasonably related to *the new development that creates additional demand and need for public facilities*, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit *the new development*.” (Emphasis added.) Requiring that the impact fee be “reasonably related to the new development that creates additional demand and need for public facilities,” the [RCW 82.02.090\(3\)](#) definition grafts onto “the new development” the definition of “development activity” (a term indisputably denoting the particular development); the legislature thus identified “the new development” as the individual development seeking approval. Moreover, the refund provision plainly equates the beneficiary of the system improvements with the particular new development seeking approval; [RCW 82.02.080\(1\)](#) refers to the local government’s six-year window for spending the impact fees “on public facilities *intended to benefit the development activity for which the impact fees were paid*.” (Emphasis added.) In sum, we conclude that, in [RCW 82.02.050\(3\)](#) and [82.02.090\(3\)](#), the legislature unambiguously provided that the impact fees were to be a “proportionate share” of the costs of “system improvements” (that is, roads, parks, schools, or fire stations identified in the capital facilities *299 plan) that are “reasonably related to” and “reasonably benefit” the particular development seeking approval.³

[9] ¶ 11 The question, then, is what the legislature intended when it required that the facilities funded by impact fees be *reasonably related and beneficial to* the particular development seeking approval. To discern the legislature’s intended meaning,

we must turn, in the first instance, to “related statutes or other provisions of the same act.” *Campbell & Gwinn*, 146 Wash.2d at 10, 43 P.3d 4. The legislature declared at the outset its aim of “establishing standards” by which local governments could impose impact fees. RCW 82.02.050(1)(b). Those standards, most of which are spelled out in RCW 82.02.060, presumably enable local governments to arrive at fees that satisfy the criteria of RCW 82.02.050(3). The primary standard prescribed by the legislature is the local government’s creation of a fee schedule: “The local ordinance by which impact fees are imposed ... [s]hall include *a schedule of impact fees ... for each type of development activity* that is subject to impact fees, *specifying the amount of the impact fee* to be imposed *for each type of system improvement*. The schedule shall be based upon *a formula or other method* of calculating such impact fees.” RCW 82.02.060(1) (emphasis added). The legislature further prescribed that the local government’s impact fee ordinance “[s]hall establish one or more *reasonable* service areas within which it shall calculate and impose impact fees for *various land use categories per unit of development*.” RCW 82.02.060(6) (emphasis added). The *300 legislature thus indicated that a reasonable relationship would be achieved between the funded improvements and the individual development if the local government defined a reasonable service area, identified the public facilities therein that would require improvement over a span of six years, and prepared a fee schedule taking into account the type and size of the development seeking approval as well as the type of public facility being funded.

¶ 12 Other provisions in the GMA impact fee statutes support the conclusion that the legislature authorized local governments to calculate the fees by tying the particular development to the service area’s improvements *as a whole*, not to *particular* system improvements within the service area. First, RCW 82.02.060(4) and (5) provide that the local government’s impact fee ordinance must “allow the county, city, or town ... to adjust the standard impact fee ... to consider unusual circumstances in specific cases” and to consider “studies and data submitted by the developer.” These provisions, in conjunction with the requirements of the fee schedule, serve the legislature’s aim of “ensur[ing] that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.” RCW 82.02.050(1)(c). Just as the very existence of section .060(4) and (5) underscores that a particular development’s impact fee is the product of a predetermined schedule for the service area, the distinction between “system improvements” and “project improvements” likewise makes it clear that a particular development’s impact fee is computed with reference to all improvements in the service area, not simply with regard to those individual projects that the particular development directly affects. *See supra* note 2.

¶ 13 By requiring a general fee schedule for planned, systemwide improvements and allowing individualized fee calculations as an exception, the legislature distinguished the impact fee statutes from the regulatory fees referred to in RCW 82.02.020:

***301** Except as provided in [RCW 82.02.050](#) through [82.02.090](#), no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land ... within the proposed development ... which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a *direct* result of the proposed development

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a *direct* impact that has been identified as a consequence of a proposed development....

(Emphasis added.) GMA impact fees are likewise distinct from those exacted under the State Environmental Policy Act (SEPA), chapter 43.21C RCW, which authorizes local jurisdictions to impose conditions on a proposed development “to mitigate *specific* adverse environmental impacts.” [RCW 43.21C.060](#) (emphasis added). Similarly, the local transportation act (LTA), chapter 39.92 RCW, limits the fee to “the amount that the local government can demonstrate is reasonably necessary as a *direct* result of the proposed development.” [RCW 39.92.030\(4\)](#) (emphasis added). Notably, in the GMA impact fee statutes, the legislature did *not*

require that the funded facilities be *directly* or *specifically* related and beneficial to the development seeking approval. Whereas the starting point in the calculation of SEPA or LTA fees is the individual development and its direct impact, the local government’s calculation of a proposed development’s GMA impact fee begins, in contrast, with the anticipation of the area-wide improvements needed to serve new growth and development in the aggregate.

¶ 14 Ignoring the distinction between impact fees under [RCW 82.02.050–.090](#) and land ****808** dedications under [RCW 82.02.020](#), the dissent takes the contrary view that local governments must base GMA impact fees on individualized assessments of the direct impacts each new development ***302** will have on each improvement planned in a service area. To advance this claim, the dissent resorts to inapposite legislative history. *See supra* note 3. According to the dissent, “[t]he legislative history, well documented by the Court of Appeals, *conclusively demonstrates*” the legislature’s intent that “the *Nollan/ Dolan* standard”—drawn from two Fifth Amendment physical takings cases, the latter postdating the GMA—“be applied with regard to [RCW 82.02.050\(3\)\(a\)-\(c\)](#).” Dissent at 14–15 & n.11 (emphasis added) (citing [Nollan v. Cal. Coastal Comm’n](#), 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987); [Dolan v. City of Tigard](#), 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994)). The dissent does not explain that neither *Nollan* nor *Dolan* concerned the imposition of impact fees but addressed instead the authority of a local government to condition development approval on a property owner’s dedication of a portion of

land for public use; nor does the dissent mention that neither the United States Supreme Court nor this court has determined that the tests applied in *Nollan* and *Dolan* to evaluate land exactions must be extended to the consideration of fees imposed to mitigate the direct impacts of a new development, much less to the consideration of more general growth impact fees imposed pursuant to statutorily authorized local ordinances. See *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 702–03, 119 S.Ct. 1624, 143 L.Ed.2d 882 (1999) (noting that the Court has “not extended the rough-proportionality test of *Dolan* beyond the special context of exactions-land-use decisions conditioning approval of development on the dedication of property to public use”). For the proposition that the *Nollan–Dolan* standard should apply to GMA impact fees, the dissent inaptly cites decisions from other jurisdictions applying that standard to *direct* mitigation fees of the type referred to in RCW 82.02.020 (that is, to fees in lieu of possessory exactions), not to the legislatively prescribed development fees at issue here.⁴

***303 ¶ 15** Nevertheless, despite the absence of any link between the *Nollan–Dolan* standard and the impact fees authorized in RCW 82.02.050–.090, the dissent identifies, as “the most important conclusion to be drawn from the legislative history,” “the legislature’s deliberate use of the *identical* terms [used by the *Nollan* Court] to describe the ‘nexus’ requirement of the Fifth Amendment: ‘reasonably related to.’ ” Dissent at 817 (citing *Drebeck*, 119 Wash.App. at 785, 83 P.3d 443 (quoting *Nollan*, 483 U.S. at 838, 107 S.Ct. 3141)).

First, to be clear, the Court of Appeals pointed to *nothing* in the legislative history that referred to the *Nollan* test, much less anything revealing that legislators had considered and deliberately applied language drawn from *Nollan*. Second, given that the legislature has used the phrase “reasonably related to” in literally dozens of statutes, its use of the phrase in the impact fee statutes could not be less remarkable; certainly, the presence of this commonplace standard does not, as the dissent claims, “conclusively demonstrate[]” the legislature’s “deliberate use” of the *Nollan* standard.⁵ Finally, we find equally flawed the ****809** dissent’s claim that “the definition of ‘proportionate share’ in RCW 82.02.090(5) supports the conclusion that the legislature intended the *Nollan* definition of ‘reasonably related.’ ” Dissent at 818. The dissent states that the “definition clearly defines the amount of impact fees that can be charged in relation to the specific proposed ***304** development,” but here the dissent rewrites the provision, which refers to “*the service demands and needs of new development*”—not “*the new development*,” as the dissent interprets it. *Id.* (second emphasis added). In sum, legislative history provides no support for the dissent’s claim that, by using the term “reasonably related to,” the legislature manifested its intention to require local governments to calculate GMA impact fees by making individualized assessments of each proposed development’s direct impact on each improvement planned in a service area.

^[10] ¶ 16 *The City’s Calculation of Transportation Impact Fees*. Exercising the authority granted in RCW 82.02.050(2) and adhering to the requirements of

82.02.060, the City adopted its transportation impact fee ordinances, codified in former OMC 15.06, 15.10, 15.14, and 15.18. As permitted in RCW 82.02.060(6), the City “elected to base its fee structure on a single service area coterminous with its Urban Growth Area.” Admin. R. at 6. Having reviewed the City’s method of calculating **transportation impact fees**, the hearing examiner summarized the City’s method as follows:

(a) Project the cost of the transportation improvement projects in the UGA needed to provide capacity for new growth over the six-year period from 1994 to 2000. This estimate does not include the cost of improvements to address existing deficiencies and has been reduced to account for the percentage of pass-through traffic and funds expected from grants and various other sources.

(b) Project the total number of new, afternoon peak-hour trips with at least one end in the UGA during the same six-year period.

(c) Divide the projected cost from (a) by the projected number of trips in (b) for the average cost of a new trip in the UGA over the six-year period.

(d) Convert this average cost into impact fees for specific types and sizes of development by considering the number of vehicle trips entering or leaving the land use at issue during the afternoon peak hour, the varying trip lengths generated by different land uses, and the percentage of “pass-by” trips.

*305 CP at 21. In former OMC 15.18.010, the City set forth the resulting fee schedule, as required in RCW 82.02.060(1). In compliance with RCW 82.02.060(4) and (5), former OMC 15.10.020 allowed individual developers to request departures from the fee schedule and permitted the City to consider independent fee calculations on a case-by-case basis.⁶

¶ 17 The hearing examiner then made the following findings regarding the City’s legislatively adopted fee schedule:

34. Under the method used by Olympia to calculate **transportation impact fees**, the impact fee assessed a specific development *is proportionate to and reasonably related to the jurisdiction-wide need for new transportation improvements created by that development.*

35. Every land use benefits in a general sense from a smoothly functioning transportation system with adequate capacity *in the jurisdiction in which it is located.* Under Olympia’s method the transportation impact fee assessed a specific development *is used for improvements that will reasonably benefit that development, if benefit is judged by the effect of the transportation improvements in the jurisdiction as a whole.*

CP at 22 (emphasis added). Paraphrasing his findings, the hearing examiner repeated that “the Drebeck fee is proportionate to and reasonably related to the demand for new ****810** capacity improvements *considered as a whole* ” and that “those improvements

considered as a whole will benefit the Drebeck development.” *Id.* at 32 (emphasis added). The hearing examiner’s reference to “the jurisdiction-wide need for new transportation improvements,” “the transportation improvements in the jurisdiction as a whole,” and “improvements considered as a whole” is consistent with the statute’s definition of “system improvements” as those “public facilities ... designed to provide service to service areas *306 within the community at large, in contrast to project improvements.” RCW 82.02.090(9). The City permissibly defined its “service area” as the City’s urban growth area, a fact that explains the hearing examiner’s use of the words “jurisdiction-wide” and “jurisdiction.” The hearing examiner thus found that the City’s method for calculating **transportation impact fees** met the statutory requirement that “system improvements” be “reasonably related to” and “reasonably benefit” the specific development. RCW 82.02.050(3)(a)-(c), .090(9).

¶ 18 The dissent takes issue with the City’s designation of a single service area. However, RCW 82.02.060(6) mandates that a local government’s impact fee ordinance must “establish *one* or more reasonable service areas.” (Emphasis added.) Moreover, nowhere in the hearing examiner’s findings and conclusions was the City’s compliance with RCW 82.02.060(6) questioned. See CP at 13–48. Indeed, in the only finding touching on the reasonableness of the City’s designation of a single service area, the hearing examiner stated that the City’s traffic consultant had found “the use of a jurisdiction-wide average cost as the basis for the impact fee rates ... justified, because

the City’s relatively compact geography matched closely with the average trip lengths, such that in most cases an average trip would traverse a good portion of the City boundaries.” Id. at 22 (emphasis added). Nevertheless, proceeding as though the reasonableness of the service area were an issue before this court, the dissent attacks the City’s designation and, in a hallucinatory sequence, actually likens Olympia to the San Juan Islands. See dissent at 12–13. The dissent disregards the qualification in RCW 82.02.090(8) that “[s]ervice areas *shall be designated on the basis of sound planning or engineering principles.*” (Emphasis added.) Were we called upon to review a city’s compliance with that statutory requirement, we would doubtless rely on evidence previously provided by city planners, engineers, and other experts, not on the deployment of our own strained hypotheticals. We also note that, while the definition of *307 “[s]ervice area” requires that the “public facilities” within the designated area “provide service to development within the area,” that requirement simply does not mean, as the dissent contends, that for a service area to be reasonable each public facility in the service area must directly serve each new development project. RCW 82.02.090(8). The dissent’s contention rests on the insupportable notion that “development within the area” does not mean area-wide development but means instead *the particular new “development” project seeking approval “within the area.”* In the dissent’s view, the only “reasonable” service area would be one no larger than the project site for the new development seeking approval, but the statutory scheme clearly distinguishes between project sites and

service areas.⁷

¶ 19 The hearing examiner's inquiry should have ended with his factual findings that "the Drebeck fee is proportionate to and reasonably related to the demand for new capacity improvements *considered as a whole* " and that "those improvements *considered as a whole* will benefit the Drebeck development." CP at 32 (emphasis added). However, the hearing examiner went on to hold that the City's calculations violated [RCW 82.02.050\(3\)](#) ***811** because Drebeck's impact fee was not "reasonably related to the service demands or needs created by the Drebeck proposal on *each* of the individual project groups on which the impact fees [were] based." CP at 22 (emphasis added); *see supra* note 6. But as discussed above, nothing in the plain language of the GMA impact fee statutes supports the hearing examiner's view that the City was required to calculate Drebeck's impact fees by *individually* assessing his development's ***308** *direct, specific* impact on *each* of the improvements listed in the City's capital facilities plan.

¶ 20 Nor is there any support to be found in prior cases interpreting the impact fee statutes. In [New Castle Investments v. City of LaCenter](#), 98 Wash.App. 224, 989 P.2d 569, *review denied*, 140 Wash.2d 1019, 5 P.3d 9 (2000), a developer challenged the applicability of the city's GMA impact fee ordinance on the grounds that it was adopted two days after the proposed development was approved. The developer argued that, under the vesting statute ([RCW 58.17.033](#)), the development was subject only to the "land use control ordinances" in effect at the time the application was perfected. Division

Two concluded, however, that the GMA impact fees' "resemblance to taxes" removed them from the definition of " 'land use control ordinance.' " *Id.* at 235, 989 P.2d 569. Noting that the GMA impact fee statutes were "codified among excise taxes in RCW 82," the *New Castle* court distinguished the fees from the regulatory exactions of SEPA, the LTA, and [RCW 82.02.020](#): "By the clear language of the statute, GMA impact fees are not intended to compensate local governments for the *direct impacts* of specific development projects on *specific components of local infrastructure systems* or to finance programs that regulate development." *Id.* at 235–36, 989 P.2d 569 (emphasis added). In [Wellington River Hollow, L.L.C. v. King County](#), 121 Wash.App. 224, 54 P.3d 213 (2002), *review denied*, 149 Wash.2d 1014, 70 P.3d 965 (2003), Division One of the Court of Appeals agreed with the *New Castle* court's interpretation of [RCW 82.02.050\(3\)](#) and rejected a developer's claim that school impact fees imposed on a proposed apartment complex had to "specifically benefit" the students generated by the development. *Id.* at 237, 989 P.2d 569.

CONCLUSION

¶ 21 The GMA impact fee statutes permit local governments to base impact fees on area-wide infrastructure improvements reasonably related and beneficial to the ***309** particular development seeking approval. We agree with the superior court's conclusion that "this 'rational' [or 'relational'] standard ... [is] broader than the

standard under [SEPA or the LTA].” CP at 674. As the superior court correctly determined, the hearing examiner erred in concluding that the GMA impact fee statutes required the City to calculate Drebeck’s impact fee by making individualized assessments of the Drebeck development’s direct impact on each improvement planned in a service area. We hold that the City’s method for calculating **transportation impact fees** complied with the plain language of the GMA impact fee statutes. We therefore reverse the Court of Appeals.

C. Johnson, Madsen, Bridge, Fairhurst, JJ. and Becker, J.P.T. concur.

SANDERS, J. (dissenting).

¶ 22 The City of Olympia (City) claims the fees at issue here “are, in essence, excise taxes on new development generally ...”¹ “because the ultimate purpose of the fees is to generally raise revenue to fund needed public facilities and infrastructure.”² I agree. The resulting problem for the City is therefore twofold: (1) the City has not been statutorily authorized to impose an excise tax on new development and (2) the City has been specifically prohibited by [RCW 82.02.020](#) from doing just that. To put it simply, the only way these fees could pass statutory, much less constitutional,³ muster is ****812** that they be true “impact fees” as that term is defined and limited by the legislature, which excise taxes clearly are not.

¶ 23 Having stated the general proposition, I repair to the facts which demonstrate these fees are indeed excise ***310** taxes on new construction, precisely as contended by the City.

¶ 24 In 1998 petitioner Drebeck Investments (Drebeck) sought land use approval from the City to construct a four-story office building complex at a corner of the city boundary near an exit to Highway 101. The municipality imposed a \$132,000 traffic fee as a condition to new development based upon contemplated cost of citywide traffic projects without regard to the specific impact the Drebeck development might or might not have on any proposed project or any benefit the Drebeck development would derive from the new public facilities.⁴ Drebeck contended any additional traffic added by his construction would make minimal, if any, use of the contemplated improvements because of the remote proximity of his development to those projects and traffic patterns which would substantially exclude their use by new development traffic.

¶ 25 The matter ultimately proceeded to the City’s hearing examiner. He factually found:

36. Under Olympia’s method, a transportation impact fee does not depend on or vary with the location within the City of the development charged. The fee does not depend on or take into account whether the development charged actually contributes any trips to any of the project groups on which the fee is based.

....

39. Under Olympia's method, the transportation impact fee assessed the Drebeck proposal is not proportionate to or reasonably related to the service demands or needs created by the *311 Drebeck proposal on each of the individual project groups on which the impact fees are based.

40. The only manner in which the Drebeck proposal could be benefited by specific transportation improvements projects it will not use, considered individually, is if those improvements relieve traffic pressure on other links used by the Drebeck proposal or if they improved emergency response to the Drebeck proposal. No evidence was submitted showing this for any of the individual improvements. Under Olympia's method, the **transportation impact fees** assessed the Drebeck proposal may be used for individual transportation facilities which do not reasonably benefit the Drebeck proposal.

Clerk's Papers (CP) at 22–23 (Hr'g Exam'r Findings and Decision). No error has been assigned to these findings. Thus they are verities for the purposes of this appeal. *Henderson Homes, Inc. v. City of Bothell*, 124 Wash.2d 240, 244, 877 P.2d 176 (1994).

¶ 26 Notwithstanding, the City conditioned Drebeck's use and development of his property upon payment of a transportation "impact fee" of more than \$132,000. The hearing examiner set aside this fee because of its perceived conflict with chapter 82.02 RCW. The superior court then reversed the hearing examiner. However, the Court of Appeals reversed again, affirmed the hearing

examiner, and remanded for further proceedings. In this context, our majority characterizes the issue to be determined:

In calculating the **transportation impact fees** imposed on the Drebeck development, **813 did the city comply with the statutory standards set forth in [RCW 82.02.050](#)—.090 for apportioning such fees?

Majority at 804. Although I generally agree with the majority's characterization of the issue as a statutory one, the majority assumes the answer to the real question which is whether we should characterize these fees as "impact fees," the only fees permitted by [RCW 82.02.050](#) through .090.

*312 ¶ 27 The relevant statutes are contained in chapter 82.02 RCW. [RCW 82.02.020](#) is a broad prohibition on development fees with certain exceptions:

Except as provided in [RCW 82.02.050](#) through [82.02.090](#), no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of ... commercial buildings

¶ 28 The \$132,000 exaction at issue is obviously within the scope of the aforementioned text since it is imposed on

the construction of commercial buildings. Moreover, and just as clearly, it is statutorily barred unless it falls within the statutory exemptions codified in [RCW 82.02.050](#) through .090, all of which relate to “impact fees.” As used in the statute, “impact fee” is a term of art defined as:

[A] payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development....

[RCW 82.02.090\(3\)](#). Impact fees are therefore by definition site specific to the new development, unlike taxes which generally raise revenue to fund needed public facilities without regard to the impact on or benefit derived by the new individual development from those facilities. [Arborwood Idaho, LLC v. City of Kennewick](#), 151 Wash.2d 359, 371, 89 P.3d 217 (2004).⁵ Keeping this distinction in mind, it is telling that even the City of Olympia claims the fees at issue here “are, in essence, excise taxes on new development generally.” Br. of Resp’t City of Olympia

(Ct.App.29018–9–II) at 12. The problem is “excise taxes on new development generally” cannot meet the definition of “impact fees” because taxes have no necessary relationship to meeting the additional demands of “the new development” nor do they *313 necessarily benefit “the new development” by building facilities to be actually used by the new development.

¶ 29 [RCW 82.02.050\(3\)](#) reinforces the statutory definition with express limitations:

The impact fees:

- (a) Shall only be imposed for system improvements that are reasonably related to *the new development*;
- (b) Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to *the new development*; and
- (c) Shall be used for system improvements that will reasonably benefit *the new development*.

(Emphasis added.) [RCW 82.02.060](#) prescribes the format of a local impact fee ordinance:

Impact fees—Local ordinances—required provisions. The local ordinance by which impact fees are imposed:

- (1) Shall include a schedule of impact fees which shall be adopted for each type of development activity The schedule shall be based upon a formula or other method of calculating such impact fees. In

determining proportionate share, the formula or other method of calculating impact fees shall incorporate, among other things, the following:

(a) The cost of public facilities necessitated by new development;

(b) An adjustment to the cost of the public facilities for past or future payments;

****814** (c) The availability of other means of funding;

(d) The cost of existing public facilities improvements; and

(e) The methods by which public facilities improvements were financed;

....

(4) Shall allow the county, city, or town imposing the impact fees to adjust the standard impact fee at the time the fee is imposed to consider unusual circumstances in specific cases to ensure that impact fees are imposed fairly;

(5) Shall include a provision for calculating the amount of the fee to be imposed on a *particular development* that permits ***314** consideration of studies and data submitted by the developer to adjust the amount of the fee;

(6) Shall establish one or more reasonable service areas within which it shall calculate and impose impact fees for various land use categories per unit of development

[RCW 82.02.060](#) (emphasis added).

¶ 30 I agree with the majority that the statutory terms “the new development” and “development activity” and “particular development” relate to a specific proposed project, not projected community development in the aggregate. Majority at 805–06. However, the majority essentially fails to recognize that “Impact fees” as that term is used in [RCW 82.02.060](#) is a term of art specifically defined to be “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*.” [RCW 82.02.090\(3\)](#) (emphasis added). Further, the majority ignores [RCW 82.02.050](#), which specifically *limits* impact fees to (a) system improvements that are reasonably related to *the new development*, (b) the proportionate share of the cost of those reasonably related system improvements reasonably related to *the new development*, and (c) system improvements that will reasonably benefit *the new development*. Rather the fees allowed by the Olympia ordinance are not calculated to specifically cure an impact of “the new development,” nor are they for projects which serve the new development. Rather this fee is based on the aggregate of *all* new development without regard to the cause, consequence, or proportionality as it relates to the specific development at issue here.

¶ 31 In the context of this case the fee imposed on Drebeck under the municipal ordinance does not meet the definition of “impact fee” because the projects funded by the fee were not reasonably necessitated by the Drebeck development nor would they be

necessarily even used by the Drebeck development. In the same sense they violate the limitation criteria in [RCW 82.02.050\(3\)](#).

¶ 32 ***315** The conclusion that the definition and limitation clauses necessarily apply to the application of any ordinance adopted pursuant to [RCW 82.02.060](#) is buttressed by that statute's reference to "impact fees" and other language which requires site specific consideration by any proper ordinance. Section .060(4) of the statute requires the ordinance to adjust the fee imposed "to consider unusual circumstances in specific cases to ensure that impact fees are imposed fairly." Subsection (5) requires the ordinance to "include a provision for calculating the amount of the fee to be imposed on a *particular development* that permits consideration of studies and data submitted by the developer to adjust the amount of the fee." And subsection (6) requires the ordinance "[s]hall establish one or more reasonable service areas within which it shall calculate and impose *impact fees* for various land use categories per unit of development." (Emphasis added.) Each of those provisions specifically contemplate, consistent with the definition of impact fee and the limitations on an impact fee, that the fee be tailored to the actual impact of the specific individual new development notwithstanding the prescriptive manner of calculating the fee. The "reasonable" service areas requirement also highlights the proposition that a proper ordinance would establish service areas which actually serve the proposed development.

¶ 33 As to the last point, the majority seems to confuse the propriety of the service area designation with the quite independent

****815** analysis of whether the resulting fee imposed as a precondition to development meets the statutory definition of "impact fee." See majority at 809–10. Just because [RCW 82.02.060](#) provides the statutory authority and outlines the necessary components of a local ordinance to assess "impact fees" within a "reasonable service area[]," does not mean that the resulting fee will actually *be* an "impact fee" as statutorily defined. That statutory definition includes the requirement that the fee "is reasonably related to the new development that creates additional demand and need for public facilities" ***316** [RCW 82.02.090\(3\)](#). Therefore, by the majority's own statutory analysis the ultimate fee must be calculated on site specific criteria. Whether or not a local ordinance which sets up a fee schedule based upon a formula and a service area actually produces a legitimate "impact fee" must, however, be determined on an as applied basis, to the Drebeck building, for example.

¶ 34 The crux of the majority's flaw in reasoning is its assumption, absent statutory or precedential support, that any impact fee ordinance that meets the procedural requirements contained in [RCW 82.02.060](#) *per se* produces a statutory impact fee tailored to the requirements of proportionality and reasonable causation by, and reasonable benefit to, the specific development project at issue. Majority at 806–07. The majority's conclusion that "the legislature did *not* require that the funded facilities be *directly* or *specifically* related and beneficial to the development seeking approval,"⁶ is therefore most problematic. Majority at 807.

¶ 35 The majority assumes this conclusion through an unanalyzed premise: a city or county is permitted to draw a single service area encompassing the whole of that city or county, and therefore all “system improvements” within that service area may be properly charged to any new development consistent with the statute. The majority’s conclusory statement, “As permitted in [RCW 82.02.060\(6\)](#), the City ‘elected to base its fee structure on a single service area coterminous with its Urban Growth Area,’ ” majority at 809,⁷ is devoid of any discussion of the actual statutory requirement. Indeed, the actual text requires the “local ordinance by which impact fees are imposed ... (6)[s]hall establish one or more *reasonable* service areas within which *317 it shall calculate and impose impact fees for various land use categories per unit of development.” [RCW 82.02.060](#).

¶ 36 [Trimen Development Co. v. King County](#), 124 Wash.2d 261, 877 P.2d 187 (1994) provides an example of an appropriate ordinance, although its facts arose before the adoption of sections .050 through .090. Under that ordinance, King County imposed park development fees on new construction. Although King County did not conduct a site specific study relating to the Trimien Development, it did calculate the general deficit of parks in the vicinity and the statistical probability of additional park use by each unit of new residential development. The fee was to be expended only in the “park service area” of the new development, an area roughly the size of elementary school boundaries. This methodology, we held, adequately demonstrates the additional need for park space necessitated by each new unit of

residential development along with the cost of acquiring it within the specific area to be used by the specific new development. We went on to specifically distinguish the park fee as there calculated from a “tax” which not only lacked legislative authorization but would violate the prohibition of [RCW 82.02.020](#), holding these park fees “are reasonably necessary as a direct result of the proposed development,” and are required to mitigate the direct impact of the development. *Id.* at 270–71, 877 P.2d 187 (quoting [RCW 82.02.020](#)). However **816 in the case at bar, as acknowledged by the City of Olympia, the fees at issue are in the nature of taxes to fund generalized public improvements which cost money, not impact fees.

¶ 37 Moreover, it is important to notice that the park fees were sustained in *Trimien* because they were calculated based upon a “park service area” around the new development only approximately the size of elementary school boundaries, i.e., an area where projected new residents would reasonably recreate in any new park space to be acquired. However, the difference between the park service area approved in *Trimien* and the citywide service area in the case at bar is a qualitative difference of exponential *318 magnitude. Trimien residents would probably use the new park space whereas Drebeck customers would not necessarily use new traffic improvements geographically remote from the Drebeck building.

¶ 38 But by the majority’s logic, it is “reasonable” for a city which comprises 17 square miles,⁸ has almost 80 miles of major roads,⁹ and has a population of 43,330

people,¹⁰ to draw a *single* service area and therefore any resulting fee must be a legitimate “impact fee.”

¶ 39 Thus, King County could define its service area as the entire county. A new resident of Vashon Island could be made to pay fees for a system improvement made in Skykomish, even though the Vashon resident may *never* use a road improvement located 60 miles—and one large body of water—away. Or perhaps Stevens County might decide to charge “new development” located outside Northport for a transportation improvement located outside Tumtum, 80 miles distant? Or San Juan County could charge developers on Orcas Island to add a lane to a road on Lopez Island? All this is perfectly sanctioned by the majority opinion, although none of the resulting fees imposed under such ordinances would be reasonably related to the new development nor reasonably benefit the new development and hence neither fits the statutory definition of “impact fee” nor complies with [RCW 82.02.050](#).

¶ 40 Further, the statutory definition of “service area” belies the majority’s conclusion that Olympia appropriately drew a single service area for the entire city. [RCW 82.02.090\(8\)](#) defines “[s]ervice area” as “a geographic area defined by a county, city, town, or intergovernmental agreement in which a defined set of public facilities *provide *319 service* to development within the area.” (Emphasis added.) A road which no customer, resident, or visitor to the new development will use hardly provides service to that development.

¶ 41 In addition to its failure to properly

follow the “reasonable” requirement in relation to the scope of the service area, which might at least begin to re-moor the statute to its constitutional pilings, the majority fails to apply “reasonably related” or “reasonably benefit” according to the expressed intent of the legislature. The majority does this by accepting unchallenged the assertion that “Every land use benefits in a general sense from a smoothly functioning transportation system with adequate capacity *in the jurisdiction in which it is located.*” Majority at 809 (quoting CP at 22 (Hr’g Exam’r Findings and Decision, Finding 35)). Yes, but that is what taxes are for.

¶ 42 At this level of abstraction every improvement in any city or county is *per se* reasonably related to new development in that city or county and reasonably benefits new development in that city or county. The “reasonableness” protections of the statute, the definition of impact fees, the statutory limits on impact fees, are thus rendered a nullity. The legislature could have composed ****817** a much simpler statute by simply authorizing local governments to impose jurisdiction-wide excise taxes on all new development without regard to the impact that new development might have on public facilities. But it didn’t. Yet that’s what the majority gives us.

¶ 43 Most fundamentally only “system improvements” can be financed by “impact fees,” [RCW 82.02.050\(3\)](#), but such system improvements must still be reasonably related to and reasonably benefit the new development to be “impact fees.” [RCW 82.02.050\(3\)\(a\)-\(c\)](#).

¶ 44 However this ordinance requires *no* relation between the new development and the public facility, yet alone a “reasonable” one. But we need not rely on the common understanding of the text. The legislative history, well documented by the Court of Appeals, conclusively ***320** demonstrates that the standard of “reasonableness” the legislature intended to be applied with regard to [RCW 82.02.050\(3\)\(a\)-\(c\)](#) and [82.02.060\(6\)](#) is the *Nollan/Dolan* standard.¹¹

¶ 45 The Court of Appeals extensively reviewed the legislative history of House Bill 2929,¹² which was the initial legislation of what became known as the Growth Management Act (chapter 36.70A RCW). For our purposes the most important conclusion to be drawn from the legislative history is the legislature’s deliberate use of the *identical* terms the United States Supreme Court used to describe the “nexus” requirement of the Fifth Amendment: “reasonably related to.” [City of Olympia v. Drebeck](#), 119 Wash.App. 774, 785, 83 P.3d 443 (2004) (quoting *Nollan*, 483 U.S. at 838, 107 S.Ct. 3141). As the Court of Appeals noted:

When the 1990 legislature was considering the GMA, it undoubtedly knew about *Nollan*, which was then the *only* case in which the United States Supreme Court had addressed the propriety of conditioning a building permit on the exaction of private property without compensation. Thus, we infer that the 1990 legislature did not use *Nollan*’s phrase (“reasonably related to”) by coincidence; instead, we think, the legislature used the same phrase with

intent to adopt *Nollan*’s meaning and assure the new statute’s constitutionality. *Nollan* had used the phrase (“reasonably related to”) to mean a link or “nexus” between the public problem to be alleviated and the individualized impacts of the permittee’s *specific* project, and we conclude that the 1990 legislature used the same phrase in the same way.

*Id.*¹³

¶ 46 ***321** *Nollan*, of course, required a nexus between the exaction¹⁴ and the individualized ****818** impacts of the specific project. [Nollan](#), 483 U.S. at 837, 107 S.Ct. 3141. *Dolan* extended *Nollan* by additionally requiring that the exaction be roughly proportional to the impacts of the development. [Dolan](#), 512 U.S. at 391, 114 S.Ct. 2309. But even if the legislature had only *Nollan*’s definition of “reasonably related” in mind when it used the exact same phrase, our majority defeats the *Nollan* and the Washington State Legislature’s definition.

¶ 47 The citywide averaged fee imposed in this case by definition does not consider the individual impacts of Drebeck’s development and therefore fails both the *Nollan* ***322** test and the requirement that the impact fee be “reasonably related” to the development under [RCW 82.02.050\(3\)](#).¹⁵

¶ 48 Finally, the definition of “[p]roportionate share” in [RCW 82.02.090\(5\)](#) supports the conclusion that the legislature intended the *Nollan* definition of “reasonably related” (and also tracks *Dolan*). [RCW 82.02.050\(3\)\(b\)](#) provides that “impact fees ... [s]hall not exceed a proportionate share of the costs of system improvements that are reasonably related to

the new development.” [RCW 82.02.090\(5\)](#) defines “[p]roportionate share” as “that portion of the cost of public facility improvements that are reasonably related to *the service demands and needs of new development.*” This definition clearly defines the amount of impact fees that can be charged in relation to the specific proposed development. The “service demands” of the new development aren’t for a “functioning transportation system,” an abstract notion not susceptible to definition in any event, but for certain capacities on specific roadways that will be utilized by the development’s customers and employees.

¶ 49 *323 This court’s duty is to construe statutes constitutionally if such is possible. [High Tide Seafoods v. State](#), 106 Wash.2d 695, 698, 725 P.2d 411 (1986). Given that the legislatively intended definition of “reasonably related to” in [RCW 82.02.050](#) complies with—and indeed is identical to—the requirements of *Nollan* and *Dolan*, a constitutional construction is certainly available. Indeed, we have upheld impact fees while **819 specifically noting *Dolan*’s requirements where a reasonable service area was drawn under an ordinance that required the infrastructure to actually serve the new development. See [Trimen Dev. Co. v. King County](#), 124 Wash.2d 261, 274, 877 P.2d 187 (1994).¹⁶

Footnotes

¹ Relying on [New Castle Investments v. City of LaCenter](#), 98 Wash.App. 224, 989 P.2d 569 (1999), review denied, 140 Wash.2d 1019, 5 P.3d 9 (2000), the hearing examiner determined that the “impact fees must be deemed taxes,” but he concluded that, even so, they “must still meet the relationship, proportionality and benefit requirements of [RCW 82.02.050 et seq.](#)” Clerk’s Papers (CP) at 42. Similarly, the Court of Appeals described “the [tax-fee] distinction” as “immaterial”: “Given that [RCW 82.02.020](#) bars *either* a tax or a fee ‘[e]xcept as provided in [RCW 82.02.050](#) through [82.02.090](#),’ the question here is not whether the City assessed a tax or fee, but whether the City complied with [RCW 82.02.050](#) through [RCW 82.02.090](#).” [Drebeck](#), 119 Wash.App. at 778–79, 83 P.3d 443 (citing [New Castle](#), 98 Wash.App. at 234, 236, 989 P.2d 569 (concluding that impact fees “resemble taxes” but declining to “hold that these fees are taxes”)). We agree that merely labeling the GMA impact fees either taxes or regulatory fees will not be

¶ 50 The literal text of chapter 82.02 RCW requires an impact fee imposed under [RCW 82.02.050–.090](#) be “reasonably related to” and “reasonably benefit” the new development and that local governments define “reasonable” service areas. The legislature used *Nollan*’s exact language for a reason, and the requirement that there at least be a nexus between the impact of the development and the fee imposed thus defines the “reasonableness” of such fees. But here there is no demonstrated connection between this fee and any impact of this development; just the opposite. Thus I *324 would hold that Olympia’s citywide averaged fee as applied here violates [RCW 82.02.020](#).

I dissent.

J.M. JOHNSON, J., concurs.
CHAMBERS, J., concurs in result only.

All Citations

156 Wash.2d 289, 126 P.3d 802

dispositive here. Our task is to interpret the relational standard prescribed in [RCW 82.02.050\(3\)](#) and to determine whether the City complied with that standard.

2 The term “[s]ystem improvements” denotes those “public facilities that are included in the capital facilities plan and are designed to provide service to *service areas within the community at large*, in contrast to project improvements.” [RCW 82.02.090\(9\)](#) (emphasis added); see [RCW 82.02.090\(6\)](#) (defining “[p]roject improvements” as “site improvements ... planned and designed to provide service for a particular development project”); [RCW 82.02.090\(7\)](#) (defining “[p]ublic facilities” as, generally, roads, parks, schools, and fire stations).

3 In contrast to this analysis, the Court of Appeals decision rests on the unpersuasive view that [RCW 82.02.050\(3\)](#) is “ambiguous in at least two ways.” [119 Wash.App. at 780, 83 P.3d 443](#). The Court of Appeals contended that the phrase “the new development” referred ambiguously to all new developments or to the particular development seeking approval. *Id.* The court necessarily found a second instance of ambiguity in whether the impact fees had to be “reasonably related to” “the cumulative impacts of all new development activity” or to “the individualized impacts of the permittee’s specific project.” *Id.* Only by declaring [RCW 82.02.050\(3\)](#) ambiguous was the court able to embark sua sponte on a lengthy examination of legislative history, *id.* at 781–86, [83 P.3d 443](#), and to conclude with an application of two canons of statutory construction. *Id.* at 786–90, [83 P.3d 443](#); see [Campbell & Gwinn, 146 Wash.2d at 11–12, 43 P.3d 4](#) (noting that recourse to legislative history is appropriate only where intended meaning is indiscernible from plain language of provision and related provisions and statutes).

4 For example, the dissent relies on [Ehrlich v. City of Culver City, 12 Cal.4th 854, 50 Cal.Rptr.2d 242, 911 P.2d 429, 444, cert. denied, 519 U.S. 929, 117 S.Ct. 299, 136 L.Ed.2d 218 \(1996\)](#). There, the owner of a tennis and fitness club sought approval to replace the facility with a condominium development. To address the loss of the recreational space, the city, in response to the developer’s offer to build four new tennis courts, conditioned project approval on a payment of \$280,000 in lieu of the four courts. The California State Supreme Court concluded that the *Nollan–Dolan* standard applicable to land exactions for direct impacts should also apply to fees imposed in lieu of such exactions for direct impacts. *Id.* [50 Cal.Rptr.2d 242, 911 P.2d at 447](#). Significantly, the *Ehrlich* court observed that “it is not at all clear that the rationale (and the heightened standard of scrutiny) of *Nollan* and *Dolan* applies to cases in which the exaction takes the form of a *generally* applicable development fee or assessment—cases in which the courts have deferred to legislative and political processes to formulate ‘public program[s] adjusting the benefits and burdens of economic life to promote the common good.’” *Id.* (quoting [Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 124, 98 S.Ct. 2646, 57 L.Ed.2d 631 \(1978\)](#)).

5 Notably, the hearing examiner did not import the *Nollan–Dolan* standard into his analysis of the statutory standards. CP at 42.

6 “Independent fee calculations have been granted by the City in the past where it was shown that the development in question did not generate projected peak hour traffic flows or that the traffic, if generated, primarily utilized transportation facilities in other cities. Cited examples were an apartment complex for the aged, a boat repair workshop, and a hotel on the edge of the City.” CP at 7.

7 See *supra* note 2 (distinguishing “project improvements” and “system improvements”). The dissent’s reliance on [Trimen Development Co. v. King County, 124 Wash.2d 261, 877 P.2d 187 \(1994\)](#), underscores the dissent’s mistaken belief that GMA impact fees are indistinguishable from the direct mitigation fees of [RCW 82.02.020](#). Dissent at 815–16. Even though the fees at issue in *Trimen* predated the adoption of GMA impact fees and aimed to mitigate the direct impact of a development project, the dissent nevertheless claims that King County’s designation of a “park service area” immediately surrounding the new development “provides an example of an appropriate ordinance” for Olympia. *Id.* at 816.

1 Br. of Resp’t City of Olympia (Ct.App.29018–9–II) at 12.

2 *Id.* at 13.

3 Absent express authorization, municipalities may not impose a tax ([Hillis Homes, Inc. v. Snohomish County, 97 Wash.2d 804, 809, 650 P.2d 193 \(1982\)](#), Wash. Const. art. VII, § 2), and municipalities may not tax contrary to the general laws ([R/L Assoc., Inc. v. City of Seattle, 113 Wash.2d 402, 780 P.2d 838 \(1989\)](#) and [San Telmo Assocs. v. City of Seattle, 108 Wash.2d 20, 24, 735 P.2d 673 \(1987\)](#), Wash. Const. art. VII, § 5). See also [Nollan v. Cal. Coastal Comm’n, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 \(1987\)](#), discussion *infra* pp. 817–18.

- 4 The City projected the cost of all transportation improvement projects inside the urban growth area (UGA) needed to provide capacity for all new growth over a six year period. The City then projected the total number of new afternoon peak hour trips with one end inside the UGA, and it divided the cost by the number of trips. This per-trip cost was then applied to new development by multiplying the derived figure by the number of trips the new development would generate, *regardless of whether any of those trips would actually use any of the new transportation improvement projects*. Clerk's Papers (CP) at 21 (Findings and Decision of the Hr'g Exam'r of the City of Olympia, Finding 32) (Nov. 2, 2000) (Hr'g Exam'r Findings and Decision).
- 5 The majority asserts "merely labeling the GMA impact fees either taxes or regulatory fees will not be dispositive here." Majority at 804 n.1. I disagree because taxes by their nature cannot be "impact fees" as statutorily defined, and only impact fees are excepted from the broad statutory prohibition.
- 6 "Directly" and "specifically" are not statutory terms, nor are they derived from the relevant constitutional cases. Such terms are easily confused and misunderstood when divorced from the statutory and constitutional context. As noted, *supra*, the requirement of a nexus and rough proportionality—which define the "reasonable" relationship under the statute—dictate a certain level of connection between the impact fee and the impacts of the development. Whatever that level of connection, whether directly, specifically, reasonably, or roughly related, it is not present in this case.
- 7 The majority repeats its conclusion at page 808 without further analysis.
- 8 See U.S. Census Bureau, State and County Quickfacts, <http://quickfacts.census.gov/qfd/states/53/5351300.html> (last visited Jan. 13, 2006).
- 9 Including interstates, arterials, and collectors, but not even including smaller roads.
- 10 See Municipal Research & Servs. Ctr. of Wash., <http://www.mrsc.org/cityprofiles/cityprofile.aspx?id=167> (last visited Jan 13, 2006). Olympia is the 19th largest city in Washington State. *Id.*, <http://www.mrsc.org/subjects/finance/ctytax04p.aspx>.
- 11 *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994).
- 12 See *City of Olympia v. Drebeck*, 119 Wash.App. 774, 781–85, 83 P.3d 443 (2004).
- 13 Further, the legislature is presumed to be familiar with judicial decisions on the subject on which it is legislating. *Daly v. Chapman*, 85 Wash.2d 780, 782, 539 P.2d 831 (1975).
- 14 The majority claims "nor does the dissent mention that neither the United States Supreme Court nor this court has determined that the tests applied in *Nollan* and *Dolan* to evaluate land exactions must be extended to the consideration of fees imposed to mitigate the direct impacts of a new development, much less to the consideration of more general growth impact fees imposed pursuant to statutorily authorized local ordinances." Majority at 808–09. Quite correct, because the United States Supreme Court *has* vacated statutorily imposed monetary impact fees for further consideration in light of *Dolan*. *Ehrlich v. City of Culver City*, 512 U.S. 1231, 114 S.Ct. 2731, 129 L.Ed.2d 854 (1994). On remand the California Supreme Court "reject[ed] the proposition that *Nollan* and *Dolan* are entirely without application to monetary exactions." *Ehrlich v. City of Culver City*, 12 Cal.4th 854, 876, 50 Cal.Rptr.2d 242, 911 P.2d 429, 444 (1996). See also *Benchmark Land Co. v. City of Battle Ground*, 103 Wash.App. 721, 14 P.3d 172 (2000), *aff'd on other grounds by Benchmark Land Co. v. City of Battle Ground*, 146 Wash.2d 685, 49 P.3d 860 (2002) (holding that *Dolan* proportionality test applies to impact fees); Sandra M. Stevenson, ANTIEAU ON LOCAL GOVERNMENT LAW 4–56, at § 56.05 (2d ed.2005); ZONING AND LAND USE CONTROLS, PART II, MODERN ZONING TRENDS, CH. 9: EXACTIONS, IMPACT FEES AND OTHER LAND DEVELOPMENT CONDITIONS, 2–9 ZONING AND LAND USE CONTROLS § 9.02, "Nexus, Proportionality, and Takings: *Nollan*, *Dolan* and Progeny, [4] Applicability of *Nollan* and *Dolan* to All Land Development Conditions" (Matthew Bender 2005) and *id.*, § 52A.04 at 8–52A, "Established and Emerging Rules in Takings Cases, [2] Categorical Rules in Exactions Cases, [c] Combined Effect of the 'Rational Nexus' and 'Rough Proportionality' Tests" (citing *Benchmark Land Co.*, 94 Wash.App. 537, 972 P.2d 944, concluding that *Nollan* and *Dolan* tests apply to fees); *City of Portsmouth v. Schlesinger*, 57 F.3d 12, 16–17 (1st Cir.1995) (impact fee unlawful exaction); *Consumers Union of U.S., Inc. v. State*, 5 N.Y.3d 327, 354–355, 806 N.Y.S.2d 99, 840 N.E.2d 68 (2005) (fee is exaction to which *Nollan* and *Dolan* apply);

Beavercreek, 89 Ohio St.3d 121, 128, 729 N.E.2d 349, 356 (2000) (using *Nollan* and *Dolan* tests when “evaluating the constitutionality of an impact fee ordinance”); *Town of Flower Mound v. Stafford Estates, L.P.*, 135 S.W.3d 620, 639–40 (Tex.2004) (applying *Nollan* and *Dolan* to impact fees); J. David Breemer, *The Evolution of the “Essential Nexus”: How State and Federal Courts Have Applied Nollan and Dolan and Where They Should Go From Here*, 59 WASH. & LEE L. REV. 373, 390 (2002) (noting “growing recognition that the logic of *Nollan* and *Dolan* ” applies to fees).

- 15 The majority posits a distinction between a “ ‘generally applicable development fee’ ” and a site specific fee. Majority at 808 n.4 (quoting *Ehrlich v. City of Culver City*, 12 Cal.4th 854, 881, 50 Cal.Rptr.2d 242, 911 P.2d 429, 444, cert. denied, 519 U.S. 929, 117 S.Ct. 299, 136 L.Ed.2d 218 (1996)). I think the majority’s misimpression might be cured if it placed the quoted material in proper context:

One of the central promises of the takings clause is that truly public burdens will be publicly borne. Where the regulatory land-use power of local government is deployed against individual property owners through the use of conditional permit exactions, the *Nollan* test helps to secure that promise by assuring that the monopoly power over development permits is not illegitimately exploited by imposing conditions that lack any logical affinity to the public impact of a particular land use. The essential nexus test is, in short, a “means-ends” equation, intended to limit the government’s bargaining mobility in imposing permit conditions on individual property owners—whether they consist of possessory dedications or the exaction of cash payments—that, because they appear to lack any evident connection to the public impact of the proposed land use, may conceal an illegitimate demand—may, in other words, amount to “ ‘out and out ... extortion.’ ” (*Nollan, supra*, 483 U.S. at p. 837 [107 S.Ct. at p. 3149, 97 L.Ed.2d at p. 689].).

Ehrlich, 12 Cal.4th at 876, 50 Cal.Rptr.2d 242, 911 P.2d 429. Drebeck was indeed subjected to a “conditional permit exaction[]” which also “lack [ed] any logical affinity to the public impact of [his] particular land use.” *Id.* The fact that the fee was calculated pursuant to a formula the application of which “lack[s] any logical affinity to the public impact of a particular land use” hardly cures the constitutional problem which would exist if the same exaction were imposed in the absence of a formulaic ordinance.

- 16 The majority’s citation to *New Castle Investments v. City of LaCenter*, 98 Wash.App. 224, 989 P.2d 569 (1999), and *Wellington River Hollow, L.L.C. v. King County*, 121 Wash.App. 224, 54 P.3d 213 (2002) are unavailing. *New Castle* was not a case about the validity of impact fees but about whether the impact fees are land use control ordinances for purposes of our state vesting statute. Further, the Court of Appeals specifically noted that *Nollan/Dolan*’s requirement of rough proportionality is not necessarily a direct relationship (which would comport with the “exacting correspondence” rejected in *Dolan*, 512 U.S. at 389–90, 114 S.Ct. 2309), but there still must be a “roughly proportional” relationship—a relationship the *Dolan* court derived specifically from the “reasonable relationship” test adopted by numerous other state courts. See *Dolan*, 512 U.S. at 391, 114 S.Ct. 2309. *Wellington* upheld a school impact fee imposed based on projected student enrollment in the school district from the new development. This was at least some link between the impact—more students—and the solution—school improvements. But here the City of Olympia did not demonstrate any link between the “impact” of the new development and the capital facilities to be built. In *Wellington* some of the improvements were the addition of classrooms at a high school near the development. However, to the extent that *Wellington* held that impact fees could be imposed where no use of the facilities by students from the new development would occur, the Court of Appeals opinion in *Wellington* should not be followed.



**CITY OF EDGEWOOD
STAFF REPORT**

STUDY SESSION AGENDA ITEM: Public Finance Addendum

Date: February 21, 2017

Title: Public Finance, Inc. First Addendum

Attachments: Agreement for Professional Services between the City of Edgewood and Public Finance, Inc. together with the First Addendum.

Submitted By: Dave Gray, Asst. City Administrator

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: The City entered a Professional Service Agreement with Public Finance, Inc., a LID administration company, in 2013, for the administration, notice and debt reduction tracking for all parcels participating in the Edgewood Sewer LID No. 1.

Recommendation: To move the Addendum with a Resolution to the February 28th Regular Council Meeting Consent Agenda for Council action.

Fiscal Impact: There is no increase in cost or other modification to the agreement, including scope of work, other than the date extending the agreement for three more years. The current annual cost to the City is about \$4,500.

ADDENDUM 1 TO PROFESSIONAL SERVICES AGREEMENT
Public Finance, Inc.

THIS FIRST ADDENDUM is made by and between the City of Edgewood (hereinafter referred to as “City”), a Washington municipal corporation, and Public Finance, Inc. (hereinafter referred to as “Service Provider”), collectively the “Parties”.

WHEREAS, on February 9, 2013 the Parties entered into that certain Professional Services Agreement (“the Agreement”) for the provision of services related to the LID No. 1 Assessment Roll maintenance, notice and debt retirement administration; and

WHEREAS, the Parties desire to amend the Agreement in order to extend the Agreement for three years, replacing the Duration of Work (section 5) to December 31, 2019.

NOW, THEREFORE, IN CONSIDERATION OF the mutual promises, terms and conditions set forth in the Agreement and contained herein, the Parties hereby agree as follows:

Section 1. Amendment of Section 5, Duration of Work. Section 5 of the Agreement is hereby revised to provide in its entirety as follows:

5. Duration of Work. This Agreement shall be effective as of date set forth above and shall expire automatically on December 31, 2019, unless extended by mutual agreement of the Parties or terminated earlier pursuant to Section 6.

Section 2. Effect of Addendum. This First Addendum is in addition to the Agreement. Except as otherwise provided herein, the provisions of this First Addendum modify, but do not supersede, the provisions of the original Agreement. Except as otherwise provided herein, each provision of the Agreement shall continue in full force and effect as if this First Addendum did not exist. Except as otherwise provided herein, capitalized words and phrases shall have the meanings ascribed to them in the Agreement.

DATED THIS 28TH DAY OF FEBRUARY, 2017.

CITY OF EDGEWOOD

By: _____
Mayor Daryl Eiding

ATTEST/AUTHENTICATED:

Rachel Pitzel, City Clerk

APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY:

By: _____
Carol Morris, City Attorney

SERVICE PROVIDER

By: _____
Rick Knopf, PFI

ORIGINAL

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF EDGEWOOD AND PUBLIC FINANCE, INC.**

THIS AGREEMENT, is made this 9th day of April, 2013, by and between the City of Edgewood (hereinafter referred to as "City"), a Washington Municipal Corporation, and Public Finance, Inc.(hereinafter referred to as "Service Provider"), doing business at 17519 NE 137th Street, Redmond WA 98052-2182.

WHEREAS, Service Provider is in the business of providing certain services specified herein; and

WHEREAS, the City desires to contract with Service Provider for the provision of such services for Local Improvement District Administration Services, and Service Provider agrees to contract with the City for same;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

1. **Description of Work.** Service Provider shall perform work as described in Exhibit A, Scope of Services, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. Service Provider shall not perform any additional services without the expressed written permission of the City.
2. **Payment.**
 - A. The City shall pay Service Provider at the rate set forth in Exhibit A, but not more than a total of Five Thousand, Five Hundred dollars (\$5,500) annually for the services described in this Agreement. This is the maximum amount to be paid under this Agreement, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed supplemental agreement.
 - B. Service Provider shall submit quarterly payment invoices to the City after such services have been performed, and the City shall make payment within four (4) weeks after the submittal of each approved invoice. Such invoice shall detail the hours worked, a description of the tasks performed, and shall separate all charges for clerical work and reimbursable expenses.
 - C. If the City objects to all or any portion of any invoice, it shall so notify Service Provider of the same within five (5) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.

3. **Relationship of Parties.** The parties intend that an independent contractor - client relationship will be created by this Agreement. As Service Provider is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subcontractor of Service Provider shall be or shall be deemed to be the employee, agent, representative or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to the Service Provider or its employees, agents, representatives or subcontractors. Service Provider will be solely and entirely responsible for its acts and omissions and for the acts and omissions of Service Provider's agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that Service Provider performs hereunder.
4. **Project Name.** Local Improvement District- Administration Services
5. **Duration of Work.** This Agreement shall be effective as of date set forth above and shall expire automatically on December 31, 2016, unless extended by mutual agreement of the Parties or terminated earlier pursuant to Section 6.
6. **Termination.**
- A. Termination Upon the City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon ten (10) days written notice to the Service Provider.
- B. Termination for Cause. If Service Provider refuses or fails to complete the tasks described in Exhibit A, or to complete such work in a manner unsatisfactory to the City, then the City may, by written notice to Service Provider, give notice of its intention to terminate this Agreement. After such notice, Service Provider shall have ten (10) days to cure, to the satisfaction of the City or its representative. If Service Provider fails to cure to the satisfaction of the City, the City shall send Service Provider a written termination letter which shall be effective upon deposit in the United States mail to Service Provider's address as stated below.
- C. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by Service Provider to the effective date of termination, as described in the final invoice to the City. The City Manager shall make the final determination about what services have been satisfactorily performed.
7. **Nondiscrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Service Provider, its subcontractors or any person acting on behalf of Service Provider shall not, by reason of race, religion, color, sex, sexual orientation, marital status, national origin or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

8. **Indemnification / Hold Harmless.** Service Provider shall fully protect, defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of, resulting from or in connection with Service Provider's acts, errors or omissions in the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The Service Provider's obligations under this section shall specifically include, but are not limited to, responsibility for claims, injuries, damages, losses and suits arising out of or in connection with the acts and omissions of Service Provider's employees, contractors, consultants and agents.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Service Provider and the City, its officers, officials, employees, and volunteers, the Service Provider's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Service Provider's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Service Provider's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Agreement.

9. **Insurance.** The service provider shall be and remain self-insured for the duration of this Agreement in an amount not less than \$300,000.
10. **Entire Agreement.** The written provisions and terms of this Agreement, together with all documents attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement. The provisions contained in the body of this Agreement preceding the parties' signatures shall supersede any conflicting provisions set forth in the exhibits or attachments hereto; provided, that without prejudice to the foregoing, any provision contained in such exhibits or attachments purporting to limit the Service Provider's liability or modify the indemnity provisions set forth in Section 8 shall be null and void.
11. **City's Right of Supervision, Limitation of Work Performed by Service Provider, and Legal Compliance.** Even though Service Provider works as an independent contractor in the performance of his duties under this Agreement, the work must meet the approval of the City and be subject to the City's general right of inspection and supervision to secure the satisfactory completion thereof. In the performance of work under this Agreement, Service Provider shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to Service Provider's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

12. **Work Performed at Service Provider's Risk.** Service Provider shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Service Provider's own risk, and Service Provider shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
13. **Ownership of Products and Premises Security.**
- A. All reports, plans, specifications, data maps, and documents produced by the Service Provider in the performance of services under this Agreement, whether in draft or final form and whether written, computerized, or in other form, shall be the property of the City.
 - B. While working on the City's premises, the Service Provider agrees to observe and support the City's rules and policies relating to maintaining physical security of the City's premises.
14. **Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Service Provider.
15. **Assignment.** Any assignment of this Agreement by Service Provider without the written consent of the City shall be void.
16. **Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.
17. **Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.
18. **Resolution of Disputes, Venue and Governing Law.** Should any dispute, misunderstanding or conflict arise under this Agreement, the matter shall be referred to the City Manager, whose decision shall be final. The Superior Court for Pierce County, Washington, shall be the exclusive venue for any litigation arising out of this Agreement. Both parties hereby consent to the jurisdiction of said court. In the event of any such litigation, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
19. **Public Records Disclosure.** Service Provider acknowledges that the City is an agency governed by the public records disclosure requirements set forth in Chapter 42.56 RCW. Service Provider shall fully cooperate with and assist the City with respect to any request for

public records received by the City concerning any public records generated, produced, created and/or possessed by Service Provider and related to the services performed under this Agreement. Service Provider shall retain all such records for a period of six years. Upon written demand by the City, the Service Provider shall furnish the City with full and complete copies of any such records within five business days.

Service Provider's failure to timely provide such records upon demand shall be deemed a material breach of this Agreement. To the extent that the City incurs any monetary penalties, attorneys' fees, and/or any other expenses as a result of such breach, Service Provider shall fully indemnify and hold harmless the City as set forth in Section 8.

For purposes of this section, the terms "public records" and "agency" shall have the same meaning as defined by Chapter 42.56 RCW, as said chapter has been construed by Washington courts.

The provisions of this section shall survive the expiration or termination of this Agreement.

- 20. Service Provider Claims.** Any claims by the Service Provider against the City for monetary damages, including without limitation claims for expenses, costs, losses, reimbursement, extras, and compensation, arising out of or otherwise related to this Agreement shall strictly comply with the provisions of this section.

A. All such claims must be submitted in writing, together with a written explanation of each claim, to the City within thirty (30) days after discovery by Service Provider, and in no event later the date of Service Provider's final invoice to the City for services rendered hereunder. Failure to comply with said deadlines shall be construed as a conclusive waiver of such claims.

B. Anything contained in this Agreement to the contrary notwithstanding, Service Provider must look solely to the corporate entity of the City for the collection of any judgment or other judicial process requiring the payment of money by the City for any default or breach by the City under this Agreement. No officers, officials, employees or volunteers of the City shall be subject to levy, execution or other judicial process for the satisfaction of any such claim.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF EDGEWOOD

By: 
City Manager

SERVICE PROVIDER

By: 
Title: Managing Director
Taxpayer ID #: 556-37-5045

CITY CONTACT

City of Edgewood
2221 Meridian Avenue E.
Edgewood, WA 98371-1010
Phone: 253-952-3299
Fax: 253-952-3537

SERVICE PROVIDER CONTACT

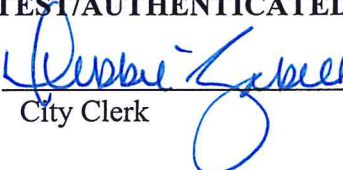
Rick Knopf

Public Finance Inc.

17519 NE 137th Street

Redmond WA 98052-2182
Phone: 425-885-1604
Fax: N/A

ATTEST/AUTHENTICATED

By: _____
City Clerk

APPROVED AS TO FORM

By: _____
Office of the City Attorney



Public Finance Inc.

LID Administration / Debt Management

ORIGINAL

Agreement to Provide Local Improvement District Administration Services

City of Edgewood

February 26, 2013

SCOPE OF SERVICES

Setup and Data Verification

After we import the assessment data into our system we go through an extensive verification process to ensure a reliable starting point. This examination includes the following elements:

- Make sure individual assessments add up to the displayed total. The sum of final assessments does not always equal the reported total due to the complexity of benefit formulas. Although each final assessment is displayed with two decimal points, the spreadsheet amount may not have been rounded to the nearest penny.
- Compare the final assessment roll to current County Assessor's data to make sure all tax parcel numbers are still valid.
- Update property owner name and mailing address information with real property data. A number of ownership transfers and other changes will likely have occurred. If the Treasurer's Notice of Collection is not sent to the correct party following confirmation of the final assessment roll you may have difficulty collecting annual installments and enforcing the lien.
- Generate a balance report to establish a reliable starting point to match against receipts posted during the 30-day interest free collection period and reconcile subsequent year-end balance reports.
- Track and review the accuracy of any discount offered during the 30-day interest free collection period to ensure that the sum of the receipted amount and the discount credit equal the final assessment amount.
- Provide electronic copies of the final assessment roll to local title companies. There is no legal requirement to do this, but making the information available helps guard against the possibility of overlooked assessments in the future.

Records Access and Retention

- We maintain complete electronic billing and collection archives along with copies of relevant documentation that can be quickly accessed as needed.

- Physical documents are also kept for the entire term of the project and turned over to city staff for permanent storage.
- Whenever possible, documents and reports are generated, transmitted and stored electronically for the purposes of efficiency, energy conservation and convenience to city staff.

Assessment Administration

- We become the primary contact for inquiries from property owners, attorneys, title and escrow companies, the state auditor and all other interested parties.
- We calculate annual installment amounts, generate billing statements and mail them to property owners each year until the final assessment is paid in full. Statements include a remittance coupon to facilitate receipt processing.
- Payments are receipted by city staff or a designated agent and the information relayed to our office. At no time will Public Finance Inc. handle or have access to any LID funds. Besides the benefit of having backup information in separate locations, this practice ensures the clear separation of billing and collection functions as mandated by state law.
- We monitor each account and post late penalties at the close of each annual collection period.
- We prepare a list of delinquent accounts and identify any assessments subject to foreclosure action.
- We research property ownership changes and re-send any returned mail.
- We respond to requests for pre-payment quotes, overdue amounts, amortization schedules, release of lien confirmations, etc.
- We generate monthly payment reports showing the amounts posted to current and past due principal, interest and penalties for each account.
- We generate quarterly trial balance reports to ensure that payments and adjustments are allocated correctly and that totals match city records.
- We produce year-end reports and advise city staff regarding debt service recommendations, fund management and cost recovery.
- We provide assessment roll data to local title companies. This helps guard against the possibility of missed assessments even when liens are not formally recorded at the county office.

Delinquency Management

- We mail overdue notices to delinquent property owners 30-45 days after a missed installment due date.
- Unresponsive property owners will receive a second overdue notice.
- If the assessment is subject to foreclosure we send a "final warning" notice to make sure the property owner is aware of the potential legal action.
- When necessary, we send a Notice of Intent to Foreclose in accordance with Section 35.50.030 of the *Revised Code of Washington*. Copies of the notice are sent both via certified mail and regular US mail.
- Unresponsive accounts are turned over to the foreclosure attorney for commencement of foreclosure proceedings. We provide copies of all relevant documentation to the foreclosure attorney along with a notarized affidavit of mailing in accordance with state law.
- We serve as liaison to the foreclosure attorney throughout the entire process.

Segregation of Assessments

- We create an application form for property owners to request segregation of the existing assessment in accordance with RCW 35.44.410.
- The property owner must pay the engineering and clerical costs required to make the requested segregation in advance.
- We confirm that all previously billed installments are paid current; delinquent assessments cannot be segregated.
- We re-apportion the existing assessment to the newly created lots as nearly as possible on the same basis as the original assessment was levied and make sure the total of the segregated parts of the assessment equal the original assessment amount.
- The resolution will describe the parent parcel and amount of the original assessment, define the boundaries of the child parcels and the amount of each new assessment, and order said changes to the final assessment roll.
- We also prepare the staff report, including maps, exhibits and other documentation for the council agenda package.
- We modify the final assessment roll to reflect the approved changes.

CHARGES FOR SERVICES

Initial Setup and Data Verification

There is a one-time charge of \$285 to import, format and reconcile electronic assessment record data and district balance information.

Assessment Administration

Monthly charges are based on a tiered schedule that reflects the actual number of active assessments as presented in the table below.

Accounts	Monthly Fee	Accounts	Monthly Fee
100 – 140	\$360	25 – 49	\$235
75 – 99	\$320	10 – 24	\$180
50 – 74	\$275	1 – 9	\$125

Automatic Reduction of Fees

As assessments are paid in full we automatically adjust our fees to reflect the smaller number of accounts under active management.

Incidental Expenses are Included

This fee schedule includes all incidental costs except postage, paper stock, envelopes or other items approved in advance by city staff. All such expenses are reimbursed at actual cost.

Delinquency Management

- Notices of Overdue Account \$18 per account
- Final Warning Notices \$24 per account
- Notices of Intent to Foreclose \$54 per account

Segregation of Assessments

Segregation fees are collected in advance from the property owner submitting the application as a condition of final map approval.

- Less than 5 new lots \$850
- 5 - 10 new lots \$925
- More than 10 new lots \$925 + \$15 per lot

Inflation Adjustments

Annual fee adjustments are determined by the 12-month percentage change in the *Average Wage Earners and Clerical Workers Consumer Price Index for Seattle/Tacoma/Bremerton* published by the U.S. Department of Labor.

Cost Recovery

Assessment districts are intended to be self-supporting, but in practice, administrative functions are usually assigned to existing staff without consideration for the added responsibility. Operating costs are simply absorbed into the department budget. We work with city staff to recover ongoing administrative costs from sources within the LID program itself.

Payment for Services

Charges for Assessment Administration services will be invoiced on a quarterly basis. Charges for Delinquency Management and Segregation services will be invoiced when provided.

Contractor Status

Neither Public Finance Inc. nor anyone employed by Public Finance Inc. shall be deemed agents of the City of Edgewood for any purpose other than as specified herein. Public Finance Inc. shall be deemed an independent contractor and be responsible in full for payment of its employees, including worker's compensation, insurance, payroll deductions, and all related costs.

Cancellation of Agreement

The City of Edgewood may cancel this agreement at anytime, for any reason, by providing written Notice of Intent to Cancel at least 30 days prior to cancellation. Public Finance Inc. will turn over all electronic information and related documents within 5 business days of the effective cancellation date.

Indemnification / Hold Harmless

Public Finance Inc. shall defend, indemnify, and hold the City of Edgewood, its officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, efforts or omissions of Public Finance Inc. in performance of these services, except for injuries or damages caused by the sole negligence of the City of Edgewood.

ACCEPTED BY:

PUBLIC FINANCE INC.



Rick M. Knopf
Managing Director

February 26, 2013

CITY OF EDGEWOOD

Name

Title

Date