SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 18-012

AMENDING CHAPTER 30.66C OF THE SNOHOMISH COUNTY CODE (SCC) FOR CONSISTENCY WITH THE REVISED CODE OF WASHINGTON; PERTAINING TO THE TIME LIMITATION FOR THE EXPENDITURE OF SCHOOL IMPACT FEES

WHEREAS, in 1997 Snohomish County ("the County") adopted an impact fee ordinance to provide mitigation for the impacts of new development on public school facilities pursuant to RCW 82.02.050; and

WHEREAS, pursuant to RCW 82.02.050(5), impact fees may be collected and spent only for the public facilities defined in RCW 82.02.090, which are addressed by the capital facilities element of the County's Growth Management Act Comprehensive Plan ("GMACP") created under the Growth Management Act (GMA), Chapter 36.70A RCW; and

WHEREAS, pursuant to RCW 82.02.070(3)(b), school impact fees shall be expended or encumbered for a permissible use within ten years of receipt, unless there exists and extraordinary and compelling reason for fees to be held longer than ten years; and

WHEREAS, pursuant to RCW 82.02.080(1), the current property owner on which impact fees have been paid may receive a refund for impact fees not encumbered or spent within ten years of when the fees were paid; and

WHEREAS, on March 14, 2018, the Snohomish County Council ("County Council") held a public hearing after proper notice, received public testimony related to this Ordinance No. 18-012, and considered the entire record; and

WHEREAS, following the public hearing on March 14, 2018, the County Council deliberated on this Ordinance No. 18-012, considered the entire hearing record, including written and oral testimony submitted during the public hearings;

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The County Council adopts the following findings in support of this ordinance:

A. The foregoing recitals are adopted as findings as if set forth herein.

B. This ordinance will amend chapter 30.66C SCC as follows:
1. Amend SCC 30.66C.130 for consistency with RCW 82.02.070, and to reference chapter 82.02 RCW for the limitation on the expenditure of impact fees.

2. Amend SCC 30.66C.220 for consistency with SCC 30.66C.130, and to reference chapter 82.02 RCW for the limitation on the expenditure of impact fees.

C. The proposal implements the following goal, objective, and policy contained in the General Policy Plan (GPP) of the GMACP (“GMACP-GPP”):

1. Goal CF 10 “Ensure that county growth and development anticipated under the comprehensive plan can be accommodated by present and future school facilities.”

2. Policy CF 10.A.4 “The county shall monitor and adjust, when appropriate, its school impact fee program as authorized under the GMA to help fund the cost of school expansions required to serve new development. County acceptance of a district plan which proposes the use of impact fees may not by itself constitute complete approval of the proposed impact fees. Approval of impact fees must be secured in accordance with the provisions of county code and state statute in affect at the time.”

3. Goal ED 2 “Provide a planning and regulatory environment which facilitates growth of the local economy.”

4. Objective ED 2.A “Develop and maintain a regulatory system that is fair, understandable, coordinated and timely.”

5. Policy ED 2.A.1 “Snohomish County shall work to ensure that the Snohomish County Code is an understandable, accessible, and user friendly document.”

D. Procedural requirements.

1. The proposed amendments are consistent with state law, chapter 82.02 RCW.

2. This ordinance is exempt from the State Environmental Policy Act (SEPA), chapter 43.21C RCW, pursuant to Section 197-11-800(19) Washington Administrative Code, because the action relates solely to governmental procedures.

3. This ordinance is exempt from review by the Snohomish County Planning Commission (“Planning Commission”) pursuant to SCC 30.73.040(2)(b) because the amendments are procedural in nature.

4. Pursuant to RCW 36.70A.106, a notice to adopt this ordinance was received by the Washington State Department of Commerce (“Commerce”) on December 28, 2017, for distribution to state agencies.
5. The public participation process used in the adoption of this ordinance complied with all applicable requirements of the GMA and the SCC.

6. The Washington State Attorney General last issued an advisory memorandum, as required by RCW 36.70A.370, in December 2015, entitled “Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property” to help local governments avoid the unconstitutional taking of private property. The process outline in the State Attorney General’s 2015 advisory memorandum was used by Snohomish County in objectively evaluating the regulatory changes proposed by this ordinance.

E. The proposed amendments are consistent with the record.

1. Amendments to chapter 30.66C SCC are necessary for consistency with Washington state law, chapter 82.02 RCW, and for internal code consistency.

2. Adoption of these amendments would provide greater clarity for the school districts and the public.

3. The proposal implements goals, objectives, and policies of the GMACP-GPP.

Section 2. The County Council makes the following conclusions:

A. The proposed amendments provide greater clarity for the code provisions regarding school impact fees.

B. The proposed amendments are consistent with Washington state law and the SCC.

C. The proposed amendments implement and are consistent with the goals, objectives, and policies of the GMACP-GPP.

D. The proposed amendments are exempt from SEPA review.

E. The proposed amendments do not result in an unconstitutional taking of private property for a public purpose and they do not violate substantive due process.

Section 3. Snohomish County Code Section 30.66C.130, adopted by Amended Ordinance No. 02-064 on December 9, 2002, is hereby amended to read:

30.66C.130 Impact fee limitations.

(1) School impact fees shall be imposed for district capital facilities that are reasonably related to the development under consideration, shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the development, and shall be used for system improvements that will reasonably benefit the new development.
(2) School impact fees must be expended or encumbered for a permissible use within ((six years of receipt by the district)) the time limits established in chapter 82.02 RCW.

(3) To the extent permitted by law, school impact fees may be collected for capital facilities costs previously incurred to the extent that new growth and development will be served by the previously constructed capital facilities, provided that school impact fees shall not be imposed to make up for any existing system deficiencies.

(4) A developer required to pay a fee pursuant to RCW 43.21C.060 for capital facilities shall not be required to pay a school impact fee pursuant to RCW 82.02.050 -.090 and this title for the same capital facilities.

Section 4. Snohomish County Code Section 30.66C.220, last amended by Amended Ordinance No. 12-018 on May 2, 2012, is hereby amended to read:

30.66C.220 Refunds.

(1) School impact fees not spent or encumbered within ((ten years after they were collected)) the time limits established in chapter 82.02 RCW, shall be refunded pursuant to RCW 82.02.080(1). For purposes of this chapter, "encumbered" means school impact fees identified by the district to be committed as part of the funding for capital facilities for which the publicly funded share has been assured, development approvals have been sought or construction contracts have been let.

(2) When the county seeks to terminate any or all impact fee requirements under this section, all unexpended or unencumbered funds, including interest earned, shall be refunded in accordance with RCW 82.02.080(2).

(3) Refunds provided for under this section shall be paid only upon submission of a proper claim pursuant to county claim procedures. Such claims must be submitted within one year of the date the right to claim the refund arises, or the date that notice is given, whichever is later.

Section 5. The County Council bases its findings and conclusions on the entire record of the County Council, including all testimony and exhibits. Any findings, which should be deemed a conclusion, and any conclusion, which should be deemed a finding, are hereby adopted as such.
Section 6. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by the Growth Management Hearings Board or 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. If any section, sentence, clause or phrase of this ordinance is held to be invalid by the board or court of competent jurisdiction, the section, sentence, clause or phrase in effect prior to the effective date of this ordinance shall be in full force and effect for that individual section, sentence, clause or phrase as if this ordinance had never been adopted.

PASSED this 14th day of March, 2018.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Chairperson

PASSED this 14th day of March, 2018.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Chairperson

ATTEST:

Clerk of the Council

DATE: 3/15, 2018

Snohomish County Executive

APPROVED

VETOED

EMERGENCY

ATTEST:

Cora E. Palmer

Approved as to form only:

Deputy Prosecuting Attorney

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