

## **Chapter 18.122**

# **PARKS, RECREATIONAL FACILITIES AND OPEN SPACE IMPACT FEES**

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### **18.122.010 Short title.**

The ordinance codified in this chapter may be referred to or cited as the “City of Covington Community Parks, Open Space and Recreation Facilities Impact Fee Ordinance.” (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.010)

### **18.122.020 Statutory authority.**

This chapter is enacted pursuant to Chapters 36.70A and 82.02 RCW. (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.020)

### **18.122.030 Findings.**

The City finds and declares that new residential growth and development will create increased demand on public facilities including parks, recreational facilities and open space, and further finds that growth and development should pay a proportionate share of the cost of such planned facilities needed to serve that growth and development activity. It is the desire of the City to have new development assessed park impact fees in an orderly and uniform manner and to have common formulae and administrative processes for the levying of those fees. Therefore, pursuant to Chapter 82.02 RCW, the City Council adopts this chapter to assess park impact fees. The provisions of this chapter shall be liberally construed in order to carry out the purpose of establishing the City park impact fee program. (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.030)

### **18.122.040 Definitions.**

The following words, terms and phrases shall have the ascribed meaning for the purpose of this chapter, unless the context clearly requires otherwise. Terms

otherwise not defined hereby shall be defined pursuant to RCW 82.02.090, or given their usual and customary meaning.

(1) "Building permit" means a permit authorized pursuant to Chapter [14.30](#) CMC for new construction or addition. The term "building permit," as used herein, shall not be deemed to include permits required for the remodeling, rehabilitation or other improvement to an existing structure or rebuilding a damaged or destroyed structure; provided, there is no increase in the number of dwelling units resulting therefrom.

(2) "Capital facilities" means the facilities or improvements included in the most recent capital facilities plan element of a comprehensive plan adopted pursuant to Chapter 36.70A RCW, and such plan as subsequently amended and adopted by the City Council.

(3) "Capital facilities plan" means the most recent capital facilities plan element of a comprehensive plan adopted pursuant to Chapter 36.70A RCW, and such plan as subsequently amended and adopted by the City Council.

(4) "City" means the City of Covington.

(5) "Department" means the City of Covington Community Development Department.

(6) "Development activity" means any construction or expansion of a building, structure or use, any change in use of a building or structure, or any change in the use of land, that creates additional demand and need for parks, recreational facilities and/or open space.

(7) "Director" means the Director of the City of Covington Community Development Department or the Director's duly designated representative.

(8) "Duplex" means two dwelling units within the same building. For the purpose of impact fee calculation, duplexes shall be considered equivalent to multiple-family.

(9) "Dwelling unit" means one or more rooms designed for occupancy by a person or family for living and sleeping purposes, containing kitchen facilities and rooms with internal accessibility, for use solely by the dwelling's occupants. Dwelling units include, but are not limited to, bachelor, efficiency and studio apartments, factory-built housing and "mobile homes."

(10) "Encumbered" means to reserve, set aside, or otherwise earmark the impact fees in order to pay for commitments, contractual obligations or other liabilities incurred for planned activities.

(11) "Fee payer" means a person, corporation, partnership, incorporated association, limited liability company or any other similar entity, department or bureau including, without limitation, any government entity or municipal corporation, commencing a development activity which creates a demand for park facilities and which requires development approval and/or the issuance of a building permit. "Fee payer" includes an applicant for impact fee credit.

(12) "Impact fee" means a fee levied pursuant to this chapter as a condition of issuance of a building permit or 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. "Impact fee" does not include a reasonable permit fee, an application fee, an administrative fee, an administrative fee for collecting and processing impact fees, the cost of reviewing independent fee calculations or the administrative fee required for an appeal pursuant to this chapter.

(13) "Impact fee account" or "account" means the account or accounts established for the deposit of collected park impact fees. Impact fee accounts shall comply with the requirements of RCW 82.02.070.

(14) "Impact fee schedule" means the fee schedule and associated formula as set forth in CMC [18.122.070](#).

(15) "Independent fee calculation" means the park impact calculation prepared by a fee payer to support the assessment amount of an impact fee different from the amount derived from use of the impact fee schedules.

(16) "Multiple-family" means a detached or attached building containing two or more dwelling units. For impact fee calculations, this term will include duplexes, triplexes, fourplexes, apartments, townhouses, and group and retirement apartments. Congregate care facilities, nursing homes and other types of assisted care facilities are not considered to be multiple-family for purposes of this chapter.

(17) "Municipal code," "code" or "CMC" means the municipal code of the City of Covington.

(18) "Open space" means any area left predominately in a natural state to create urban separators and greenbelts, sustain native ecosystems, connect and increase protective buffers for environmentally sensitive areas, provide a visual contrast to continuous development, reinforce community identity and aesthetics, or provide links between important environmental or recreational resources.

(19) "Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

(20) "Park" means a site designed or developed for recreational use by the public, including those dedicated parklands, developed parks and associated improvements so designated in the parks and community services element of the City's comprehensive plan.

(21) "Park, developed" means any parcel or area and the improvements on those areas controlled by the City that have been designated for public passive or active recreational use.

(22) "Park impact fee" means the impact fee designated to assist in funding the acquisition and development of publicly owned parks, outdoor recreational facilities and open space.

(23) "Parkland, dedicated" means any undeveloped or underdeveloped parcel or area of land or water that is controlled by the City for the intent of future park development.

(24) "Project" means a development with the necessary site improvements on a specific parcel of land.

(25) "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. An improvement or facility included in a capital facilities plan approved by the City shall be not considered a project improvement.

(26) "Public facilities" means the following capital facilities planned, owned or operated by the City: publicly owned parks, recreational facilities and open space.

(27) "Service area" means a geographic area defined by the City in which a defined set of public facilities provides service to development within the area.

(28) "Single-family" means a detached building which meets the requirements of the Uniform Building Code or portions thereof and is used exclusively for occupancy by one family, including their guests, servants and employees, and including one dwelling unit.

(29) "Structure" means anything that is permanently constructed in or on the ground, or over the water; excluding fences six feet or less in height, decks less than 18 inches above grade, paved areas and structural or nonstructural fill.

(30) "System improvements" means public facilities that are included in the City's capital facilities plan and are designed to provide service to service areas within the City, in contrast to project improvements. (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.040)

#### **18.122.050 Assessment of impact fees.**

(1) Park impact fees shall be based on the calculations set forth in this chapter and shall be collected from all applicants seeking approval for residential development activity within the areas controlled by the City. The City shall collect the park impact fee charges prior to preliminary plat approval. No permit shall be issued and no development activity approved until the required park impact fee is paid in full.

(2) If the development for which the approval is sought contains a mixture of residential use types, the impact fee must be separately calculated for each type of use. If the site on which development is sought contains an existing use, the impact of that use shall be subtracted from the calculation of the demand caused by the proposed development so that the impact fee is assessed only for the additional demand created by the proposed development. (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.050)

#### **18.122.060 Exemptions.**

(1) The following shall be exempt from the required payment of park impact fees:

(a) Alteration, expansion, enlargement, remodeling or rehabilitation of an existing dwelling unit where no additional units are created and the use is not changed;

(b) Miscellaneous improvements, including but not limited to fences, walls, signs, decks, swimming pools, drives, walkways, docks and/or piers;

(c) Demolition or moving of a structure;

(d) The construction of accessory structures, as defined in CMC

[18.20.350](#), that will not create significant impacts on public facilities;

(e) Replacement of a previously demolished structure with the same number of dwellings which previously occupied the property, provided, the demolition occurred no more than three years prior to the date of application for a building permit;

(f) New nonresidential development; provided, that a nonresidential development may still be required to dedicate land, or, based on the Director's written findings, an equivalent in-lieu payment for parks under the State Environmental Policy Act, Chapter 43.21C RCW. Mixed-use developments will be charged park impact fees based on the number of dwelling units at multiple-family residential rates;

(g) Shelters for temporary placement, relocation facilities, transitional housing facilities, and community residential facilities as defined in CMC [18.20.220](#);

(h) Congregate care facilities, nursing homes and other types of assisted care facilities;

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

(j) Any development activity for which park impacts have been mitigated pursuant to a voluntary agreement entered into with the applicant to pay fees, dedicate land or construct or improve park facilities, unless the terms of the voluntary agreement provide otherwise; provided, said park facilities are constructed or improved to applicable City standards.

(2) The Director is authorized to determine whether a particular development activity falls within the exemption identified in this section, or any other section or under other applicable law. Determinations of the Director shall be in writing and are subject to a payment of a fee for a Type 1 decision letter as set forth in the current fee resolution. Such determinations shall be subject to the appeal procedures set forth in CMC [18.122.140](#). (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.060)

#### **18.122.070 Park impact fee schedule.**

A park impact fee shall be assessed on all new residential and the residential portion of mixed use development according to the type of residential land use and based on the formula set forth in Exhibit "A"\* attached to the ordinance codified in this chapter and incorporated herein by this reference.

Any residential development type not listed in Exhibit "A" will be assessed the impact fee for the most similar type of development, as determined by the Director. (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.070)

\*Code reviser's note: Exhibit A, attached to Ordinance No. 14-06, may be found on file in the City Clerk's office.

#### **18.122.080 Independent fee calculation.**

(1) If, in the sole discretion of the Director, none of the categories of fee amounts set forth in CMC [18.122.070](#) accurately reflect the impacts of the new development, the Director may conduct independent park impact fee

calculations, and the Director may impose alternative fees on a specific development based on those calculations.

(2) If a fee payer opts not to have the park impact fees determined according to the fee schedules in CMC [18.122.070](#), then the fee payer shall prepare and submit to the Director an independent fee calculation for the development activity for which a building permit or development approval is sought. The documents submitted shall show the basis upon which the independent fee calculation was made and the proposed amount of the fee.

(a) A fee payer submitting an independent fee calculation shall be required to pay the Department an administrative fee pursuant to the City's fee schedule.

(b) While there is a presumption that the calculations set forth in CMC [18.122.070](#) are valid for each type of development, the Director shall consider the independent fee calculation documentation submitted by the fee payer. However, the Director is not required to accept any documentation that the Director reasonably deems to be inaccurate or unreliable and may, in the alternative, require the fee payer to submit additional or different documentation for consideration. Based on the information within the Director's possession, the Director is authorized to adjust the park impact fee calculation to the specific characteristics of the development. (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.080)

#### **18.122.090 Impact fee credits and adjustments.**

(1) The fee payer shall be entitled to a credit, against the park impact fee that would be chargeable under the formula set forth in this chapter, for the present value of any dedication of land for, improvement to, or new construction of any system improvements provided by the development applicant for facilities that are identified in the capital facilities plan and that are required as a condition of approval for the development activity; provided, that said improvement or new construction is built to applicable City standards. The amount of the credit shall be determined no later than the time of application for the related building permit. Any claim not so made shall be deemed to be waived.

(2) Credit for dedication of land or improvements shall be based upon the cost assumptions contained within the capital facilities plan, or established by an appraiser retained by the fee payer and approved by the Department to determine the value of the dedicated land improvements or construction provided by the fee payer. The cost of said appraisal shall be borne by the fee payer.

(3) After receiving the request for credit, the Director shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, where applicable, the legal description of the site donated, and the legal description or other adequate description of the project or development to which the credit may be applied. Costs for preparing the legal description shall be borne by the fee payer. If the accepted credit value is less than the calculated fee amount, the difference remaining shall be chargeable as a park impact fee. In the event the amount of the credit is calculated to be greater than the amount of the impact fee due, the development applicant may apply such excess credit toward



impact fees imposed on similar capital facilities for other developments within the service area. Such credits are not transferable between fee payers.

(4) Notwithstanding the foregoing, in any subdivision in excess of 100 lots, the City may require the applicant to build a park on-site to the standards of a community park. The City will grant an appropriate credit against any fee imposed hereinabove for the value of the undeveloped land utilized and actual cost of improvements constructed, including capital assets as well as labor. (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.090)

#### **18.122.100 Use of funds.**

Pursuant to this chapter:

(1) Park impact fees collected for system improvements shall be used only in conformance with the most recent capital facilities plan element of the comprehensive plan adopted by the City Council.

(2) Park impact fees shall not be used to eliminate or reduce deficiencies in existing facilities serving existing development.

(3) Park impact fees shall not be used for maintenance or operation expenses.

(4) Park impact fees may be spent for public improvements for planned facilities, including but not limited to planning, land acquisition, right-of-way acquisition, easement or access acquisition, construction, permitting, financing, engineering, architectural design and any other expenses which are consistent with the most recent capital facilities plan element adopted by the City Council.

(5) Park impact fees may be used to recoup public improvement costs previously incurred by the City to the extent that new growth and development activity will be served by the previously constructed improvements; provided, such fee shall not be imposed to make up for any system improvement deficiencies. (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.100)

#### **18.122.110 Impact fee accounts.**

(1) Impact fee receipts shall be earmarked specifically and retained in a special interest-bearing account established by the City solely for park impact fees. The fees received shall be prudently invested in a manner consistent with the investment policies of the City. Funds withdrawn from this account must be used in accordance with the provisions of CMC [18.122.100](#).

(2) There is hereby established a park impact fee account for the fees collected pursuant to this chapter. All interest shall be retained in the account and expended for the purpose or purposes identified in CMC [18.122.100](#).

(3) On an annual basis, the City Finance Director shall provide a report to the City Council on the park impact fee account showing the source and amount of all monies collected, earned or received, and capital or system improvements that were financed in whole or in part by the park impact fees.

(4) Park impact fees shall be expended or encumbered within six years of receipt, unless the City Council identifies in written findings an extraordinary and compelling reason(s) for the City to hold the fees beyond the six-year period. Under such circumstances, the City Council shall establish the period of time within which the park impact fees shall be expended or encumbered. A “first-in,

first-out” basis will be used for determining which impact fees have been used or encumbered. (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.110)

#### **18.122.120 Review of park impact fees.**

The fee schedule set forth in this chapter shall be reviewed and may be amended by the City Council as it may deem necessary and appropriate in conjunction with the update of the capital facilities plan element of the City’s comprehensive plan. (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.120)

#### **18.122.130 Refunds.**

(1) The current owner of property on which a park impact fee has been paid may receive a refund of such fees if the impact fees have not been expended or encumbered within six years of when the funds were paid or within such other time periods as established pursuant to CMC [18.122.110](#)(4). In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a “first-in, first-out” basis.

(a) The City shall notify potential claimants by first class mail, postage prepaid, deposited with the United States Postal Service addressed to the owner of the property as shown on the City tax records. A potential claimant must be the legal owner of record for the property.

(b) An owner’s request for a refund must be submitted to the City Council in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever date is later.

(c) Any park impact fees that are not expended or encumbered within these time limitations, and for which no application for a refund has been made within this one-year period, shall be retained and expended on appropriate park facilities.

(d) Refunds of park impact fees shall include any interest earned on the impact fees. Interest due on any refund of park impact fees shall be calculated according to the average rate received by the City on investing funds throughout the period during which the funds were retained.

(2) An owner may request and shall receive a refund, including interest earned on the park impact fee, when the owner does not proceed to finalize the development activity and no impact has resulted. “Impact” shall be deemed to include cases where the City has expended or encumbered the impact fees in good faith prior to the application for a refund. In the event that the City has expended or encumbered the fees in good faith, no refund shall be forthcoming. However, if within a period of three years, the same or subsequent owner of the real property proceeds with the same or substantially similar development activity, the owner shall be eligible for a credit. The owner must petition the City and provide receipts of park impact fees paid by the owner for a development of the same or substantially similar nature on the same property or some portion thereof. The City shall determine whether to grant a credit.

(3) When the City seeks to terminate any or all components of the park impact fee requirements, all unexpended or unencumbered funds from any terminated component or components, including interest earned, shall be refunded to the current owner of the property for which the impact fee was paid, pursuant to this



section. Upon the finding that any or all fee requirements are to be terminated, the City shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first class mail addressed to the owner of the property as shown in the City tax records. All funds available for refund shall be retained for a period of one year from the date of the notice. At that time, any remaining funds shall be retained by the City, but must be expended for appropriate public facilities. The notice requirement set forth above shall not apply if there are no unexpended or unencumbered funds within the account being terminated. (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.130)

#### **18.122.140 Appeals.**

(1) Any fee payer may pay the park impact fee under protest in order to obtain a building permit or other development activity approval. No appeals shall be permitted unless and until the park impact fee at issue has been paid.

(2) Any appeal of the decision of the Director with respect to the applicability of the impact fees to a given development activity, the availability or value of a credit, the independent fee calculation or any other determination which the Director is authorized to make pursuant to this chapter shall follow the appeal process for the underlying permit and not be subject to a separate appeal process. Where no other administrative appeal process is available, an appeal may be taken to the Hearing Examiner using the appeal procedures for variances. Any errors in the formula identified as a result of an appeal should be referred to the City Council for possible modification. (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.140)

#### **18.122.150 Establishment of service area.**

The service area for parks, recreation facilities and open space shall be the corporate limits of the City. (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.150)

#### **18.122.160 Existing authority unimpaired.**

Nothing in this chapter shall impair the authority of the City to require the fee payer or the proponent of a development activity to provide parks, park improvements, trails, open space or other park and/or recreational facilities under other provisions of the code; provided, that the exercise of this authority is consistent with the provisions of RCW 82.02.050(1)(c). (Ord. 20-07 § 76; Ord. 14-06 § 1. Formerly 14.92.160)

**This page of the Covington Municipal Code is current through Ordinance 09-09, passed May 12, 2009.**

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