

**INTERLOCAL AGREEMENT  
FOR THE  
COLLECTION, DISTRIBUTION, AND EXPENDITURE  
OF SCHOOL IMPACT FEES**

THIS AGREEMENT is entered into this 20th day of SEPT., 1999, by and between the City of Mukilteo (the "City") and the Mukilteo School District No. 6 (the "District").

WHEREAS, the Washington State Legislature passed the Growth Management Act, RCW 36.70A et seq. and RCW 82.02 et seq. (the "Act"), which authorizes the collection of impact fees on development activity to provide public school facilities to serve new development; and

WHEREAS, the Act requires that impact fees may be collected for public facilities which are addressed by a capital improvement plan and/or a capital facilities element of a comprehensive plan; and

WHEREAS, the City has adopted Ordinance No. 967 for the purposes of implementing the Act; and

WHEREAS, the District has prepared a capital facilities plan in compliance with the Act and the plan has been adopted by reference in the City's Comprehensive Plan; and

WHEREAS, upon adoption of Ordinance No. 967, the City will collect impact fees upon certain new residential developments on behalf of the District; and

WHEREAS, the City and the District enter into this Agreement pursuant to and in accordance with the State Interlocal Cooperation Act, Chapter 39.34 RCW, for the purposes of administering and distributing the authorized impact fees;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN, IT IS AGREED THAT:

**I. GENERAL AGREEMENT**

The City and the District agree to comply with the terms of this Agreement which govern the collection, distribution, and expenditure of school impact fees.

**II. RESPONSIBILITIES OF THE DISTRICT**

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

- A. Every two years submit to the City a six-year capital facilities plan or an update of a previously adopted plan which meets the requirements of the Act and Ordinance No. 967 on or before Jan 5th of the succeeding year.

- B. Establish a District Impact Fee Account in which impact fee revenues and interest revenues will be recorded.
- C. Expend impact fee revenues provided to the District under this Agreement, and all interest proceeds on such revenues, solely for expenditures as authorized by Ordinance No. 967 related to facilities identified in the District's Capital Facilities Plan.
- D. Prepare an annual report in accordance with the requirements of RCW 82.02.070 and Ordinance No. 967 showing the amount of all monies collected, earned, or received, and the system improvements that were financed in whole or in part by impact fees and the amount of funds expended. The District's annual report shall be sent to the City on or before Apr 1 each year for the preceding calendar year.
- E. Notify property owners of refunds under RCW 82.02.080 and refund impact fees and interest earned on impact fees disbursed to the District whenever required to do so by applicable law, including but not limited to: (1) when the proposed development activity does not proceed and no impact to the District has resulted, unless the District determines that it has expended or encumbered the fees in good faith prior to the application for a refund; (2) when the impact fees or interest earned on impact fees are not expended or encumbered within the time limits established by law; or (3) when the school impact fee program is terminated.
- F. Maintain all accounts and records necessary to ensure proper accounting for all impact fee funds and compliance with this Agreement, the Act, and Ordinance No. 967.
- G. Comply with the State Environmental Policy Act, Chapter 43.21C RCW.
- H. Assist the City, by providing District witnesses or information at the District's sole cost and expense, to defend any administrative or other appeal or challenge of the School Impact Fee Ordinance or this Agreement.

### **III. RESPONSIBILITIES OF THE CITY OF MUKILTEO**

The City of Mukilteo, by and through its employees, agents, and representatives, agrees to:

- A. Timely review and take action on the District's updated Capital Facilities Plan and revised impact fee schedule for the District.
- B. Deposit all impact fees collected on behalf of the District into a separate account and transmit such monies, and any interest earned thereon, to the District within forty-five (45) days of actual receipt of the funds. The City shall make every

reasonable effort to transfer these monies to the District within thirty (30) days of actual receipt of the funds. The City anticipates it will regularly transfer funds to the District twice each month. As used in this Section, "actual receipt" means that date upon which any check or other negotiable instrument is actually paid and the funds are credited to the City's account without further recourse.

- C. Collect an additional charge of two percent (2%) of the school impact fees collected per dwelling unit from the developer to pay for the City's costs of administering the school impact fee program.
- D. Prepare an annual report, as required by RCW 82.02.070(1), utilizing and relying upon the report prepared by the District under II(D) above. The City's report will contain information on the source and amount of all monies collected, earned, or received, and the system improvements that were financed in whole or in part by impact fees, but the City shall only be responsible for independently preparing that portion of the report which details the source and amount of monies collected by the City and the amount distributed to the District, and all other portions of the report shall simply incorporate the information provided by the District.

#### **IV. GENERAL TERMS**

- A. This Agreement shall be effective when executed by both parties.
- B. It is recognized that amendments to this Agreement may become necessary, and such amendments shall become effective only when the parties have executed a written addendum to this Agreement.
- C. The parties acknowledge that the City is vested with the authority to impose and collect school impact fees. The parties agree that, except as otherwise specifically provided for herein, the City shall in no event be responsible for the payment of any funds to the District, except for impact fees collected for the District.
- D. After receiving an application for any development that would be required to pay school impact fees under Chapter 3.100 of the Mukilteo Municipal Code, the City will notify the District of the pending application and the amount which the City calculates will be due as the required impact fee. The District will notify the City within thirty (30) days of any objection the District may have to the proposed amount of the fee or the method of calculating the fee. In the absence of any objection, the City may impose the fee as proposed and the District shall be precluded from raising any objection to the fee thereafter. The notice and the objection provided for in this paragraph shall be in writing and shall be deemed received three days after the same are deposited in the U.S. mail, postage prepaid, and addressed to the representatives of the parties listed in this Agreement.

## **V. AUDIT**

- A. The District's records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review, or audit by the City or appropriate state agency.
- B. The District agrees to cooperate with any monitoring or evaluation activities conducted by the City that pertain to the subject of this Agreement. The District agrees to allow the City, or appropriate state agencies and/or any of their employees, agents, or representatives to have full access to and the right to examine during normal business hours, all of the District's records with respect to all matters covered by this Agreement; provided, that access to and examination of legally privileged documents or documents that are exempt from disclosure under the Public Records Act shall be given only where the same is necessary to complete the state audit required for the City or to defend appeals or challenges to this Agreement or the School Impact Fee Ordinance. The City and/or any of its employees, agents, or representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all invoices, materials, payrolls, and record of matters covered by this Agreement. The District shall retain these records and make them available for review or audit by the City for a period not less than six (6) years, and for longer periods when necessary for audit purposes of legal matters. The City will give at least fifteen (15) days advance notice to the District of fiscal audits to be conducted.
- C. The results and records of said audit shall be maintained for a period not less than six (6) years, and for longer periods when necessary for audit purposes of legal matters, and disclosed in accordance with Chapter 42.17 RCW.

## **VI. HOLD HARMLESS**

- A. The District shall, at its sole cost and expense, protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents, from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the acts or omissions of the District, its officers, employees, or agents, relating in any way to the City of Mukilteo school impact fee program. By way of example, and not of limitation, of the foregoing, the District shall protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents, from any and all costs, claims, judgments, or awards of damages arising out of or in any way resulting from the District's (by its officers, employees, agents, or representatives) negligent acts or omissions; intentional acts or omissions; any liability arising from an audit of the District's impact fee account; any liability resulting from a challenge to the validity or legality of Mukilteo Ordinance No. 967, or any amendments thereto; or failure for any reason to comply with the terms of this Agreement, the terms of the Act, or the terms of the City of Mukilteo Ordinance No. 967, all as may be amended from time to time.

The City shall notify the District of any proposed amendments to City of Mukilteo Ordinance No. 967 at least forty-five (45) calendar days in advance of any action to adopt those amendments. This notice shall allow the District opportunity to evaluate the impact of the proposed amendment(s) upon its obligations under this Agreement and to request changes to the proposed amendments. In the event that the District notifies the City that the District objects to a proposed amendment(s) as being illegal or unconstitutional, the District shall not be required to indemnify, defend, or hold the City harmless from any such amendment if the City subsequently enacts it.

- B. The District further agrees that the District shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the District's failure to refund impact fees or interest on such impact fees, including but not limited to, a determination that impact fees from the development activity that was not completed are not refundable because the funds were expended or encumbered by the District whether or not the District's determination was made in good faith; provided, however, that if the District offers to defend, the District shall not be liable for any of the City's attorney's fees or costs incurred after such offer to defend is made. The District shall indemnify and hold harmless the City in the event the District fails or refuses to refund fees or interest on such fees to which the District was not legally entitled.
- C. The District's duties to the City under this section shall not be diminished or extinguished by the prior termination of this Agreement pursuant to Section VII. If the City offers to defend under this section, the City shall not be liable for any of the District's attorney's fees or costs incurred after such offer is made. Notwithstanding any other provision of this paragraph, the District agrees that the City shall not be liable for any failure to collect the proper fee amount or to collect any fee from a developer for any development activity, provided that the City has made a reasonable attempt to collect such fee.
- D. The City shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the District, its officers, employees, and agents from that portion of any costs, claims, judgments, or awards of damages that exceeds the amount of impact fees the City has collected on behalf of the District resulting from the City's (by its officers, employees, agents, or representatives) negligent acts or omissions; intentional acts or omissions; or failure for any reason to comply with the terms of this Agreement, the terms of the Act, or the terms of the City of Mukilteo Ordinance No. 967, all as may be amended from time to time. It is the intent of this Section (VI D) that any liability created by the City's performance of its duties under this Agreement, the Act, or the terms of the City of Mukilteo Ordinance No. 967 be satisfied first out of any impact fees attributable to the activity out of which the liability arises that have been collected by the City on behalf of the District for the particular development activity at issue, and only in



the event that such impact fees collected for the particular development activity at issue are insufficient, shall the City be liable to satisfy the liability.

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

## **VII. TERMINATION**

- A. The obligation to collect impact fees under this Agreement may be terminated without cause by the City, in whole or in part, at any time. All other obligations under this Agreement shall remain in effect until both of the following conditions have been satisfied: (1) the City or the District provides written notice that this Agreement is being terminated; and (2) neither the City nor the District retains unexpended or unencumbered impact fees or interest earned thereon. The obligations under Section VI of this Agreement shall be continuing and shall not be diminished or extinguished by the termination of this Agreement. In addition, in the event that the District breaches any term or condition of this Agreement, the City may suspend the transfer of any funds under this Agreement until said breach is cured.
- B. The District, working with its Treasurer, shall ensure that upon termination of this Agreement, any remaining unexpended or unencumbered funds are refunded pursuant to RCW 82.02.080.
- C. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or law that either party may have in the event that the obligations, terms, and conditions set forth in this Agreement are breached by the other party.

## **VIII. SEVERABILITY**

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

## **IX. NONDISCRIMINATION**

There shall be no discrimination against any employee or independent contractor paid by any funds which are the subject of this Agreement or against any applicant for such employment because of race, religion, color, sex, age, sexual orientation, handicap, or national origin. This provision shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training.

The District and any independent contractor paid by funds which are the subject of this Agreement shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended.

**X. RIGHTS TO OTHER PARTIES**

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

**XI. GOVERNING LAW AND FILING**

This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Washington. This Agreement shall be filed with the Secretary of the District's Board of Directors and the City of Mukilteo.

**XII. ADMINISTRATION**

A. The City's representative shall be City Administrator.

Address: 4480 Chennault Beach Road  
Mukilteo, WA 98275

Phone: 425.355.4141 x234

B. The District's representative shall be Sally McLean, Executive Director, Business Services:

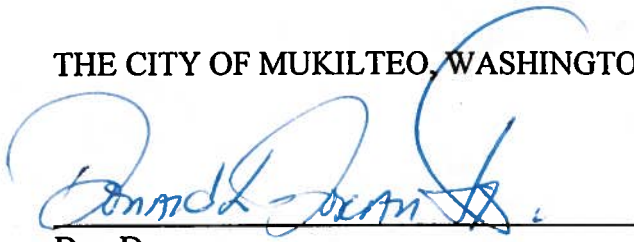
Address: Mukilteo School District No. 6  
9401 Sharon Drive  
Everett, WA 98204-2699

Phone: (425) 356-1281

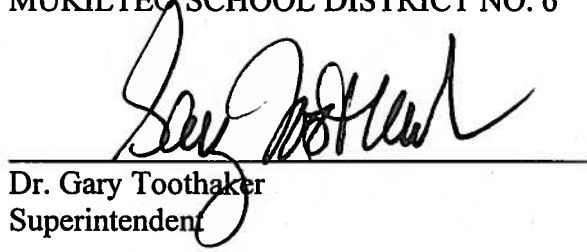
**XIII. ENTIRE AGREEMENT/WAIVER OF DEFAULT**

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the City, which shall be attached to the original Agreement.

THE CITY OF MUKILTEO, WASHINGTON MUKILTEO SCHOOL DISTRICT NO. 6

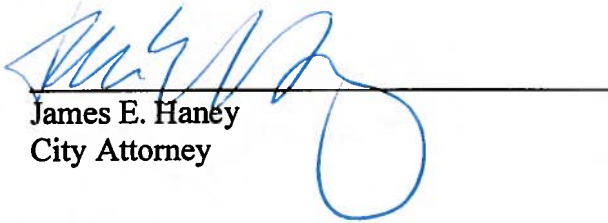


Don Doran  
Mayor



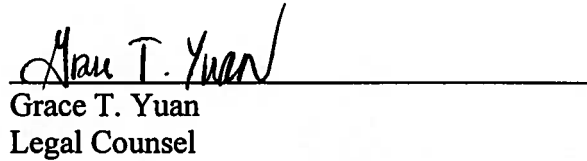
Dr. Gary Toothaker  
Superintendent

APPROVED AS TO FORM:



James E. Haney  
City Attorney

APPROVED AS TO FORM:



Grace T. Yuan  
Legal Counsel

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CITY OF MUKILTEO  
Mukilteo, Washington

ORDINANCE NO. 967

AN ORDINANCE OF THE CITY OF MUKILTEO CREATING A NEW CHAPTER 3.100 OF THE MUKILTEO MUNICIPAL CODE RELATING TO SCHOOL IMPACT FEES, AND REPEALING MMC 15.18, AND MOVING THE PARK IMPACT MITIGATION FEE CHAPTER OF THE MUKILTEO MUNICIPAL CODE FROM MMC 17.85 TO MMC 3.105.

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WHEREAS, the State of Washington enacted the Growth Management Act in 1990 amending RCW 82.02 to authorize the collection of school impact fees on new development under specified conditions, including the adoption by the City of Mukilteo, of a GMA Comprehensive Plan as defined in RCW 36.70A;

WHEREAS, the City of Mukilteo updated its comprehensive plan on September 21, 1998. The revised plan adopts by reference the Capital Facilities Plan of the Mukilteo School District 96;

WHEREAS, the Growth Management Act requires that the City's development regulations be consistent with and support the goals of the comprehensive plan;

WHEREAS, land use policy LUI of the City's Comprehensive Plan encourages the use of GMA impact fees to mitigate land use impact from development proposals as they pertain to schools, parks, transportation, and drainage.

WHEREAS, school impact fees are part of an overall strategy to pay for capital improvements, including school facilities, necessary to serve new growth;

WHEREAS, the City Council of the City of Mukilteo finds that Chapter 15.18 of the Mukilteo Municipal Code, which establishes the framework for the implementing school impact fees should be amended to authorize the collection of impact fees under the Growth Management Act;

WHEREAS, development activity in the City will create additional demand and need for school facilities;

WHEREAS, the City is authorized by Chapter 82.02 RCW to require new growth and development within the City to pay a proportionate share of the cost of new facilities to serve such new growth and development through the assessment of impact fees;

WHEREAS, the school impact ordinance and all attachments set forth a reasonable methodology and analysis for the determination of the impact of development on the need for and costs of planning, design, and /or construction of school improvements within the Mukilteo School District;

WHEREAS, Snohomish County adopted a GMA-based school impact ordinance on November 17, 1997, incorporating a school impact fee program for the Mukilteo School District which operates school facilities and services for City residents; and

WHEREAS, the City believes it is desirable to establish a program and fees which are consistent throughout an entire school district; and

WHEREAS, the Mukilteo City Council held a public meeting on September 20, 1999 and received public testimony on the proposed ordinance and motioned to adopt the ordinance.

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

Section 1      School Impact Fees. A new chapter to Title 3 is hereby added to the Mukilteo Municipal Code, to read as follows:

### **Chapter 3.100**

#### **School Impact Fees**

**Sections:**

<b>3.100.010</b>	<b>Purpose and Applicability</b>
<b>3.100.020</b>	<b>Authority</b>
<b>3.100.030</b>	<b>Definitions</b>
<b>3.100.040</b>	<b>School District Eligibility for Impact Fees</b>
<b>3.100.050</b>	<b>Capital Facilities Plan Requirements and Procedures</b>
<b>3.100.060</b>	<b>School Impact Fee</b>
<b>3.100.070</b>	<b>Impact Fee Accounting</b>
<b>3.100.080</b>	<b>Adjustments, Appeals and Arbitration</b>

**3.100.010      Purpose and Applicability**

- A. The purpose of this title is (1) to ensure that adequate school facilities are available to serve new growth and development; and (2) to require that new growth and development pay a proportionate share of the costs of new school facilities needed to serve new growth and development.
- B. Applicability. The terms of this title shall apply to all development for which a complete application for approval is submitted on or after the effective date of this chapter, except for development that was the subject of a prior SEPA threshold determination that provided for school mitigation. All building permit applications accepted by the department prior to the effective date of this chapter, or for development that was the subject of a prior SEPA threshold determination that included provisions for school mitigation, shall be reviewed for all purposes allowed under state law, including environmental review pursuant to the City of Mukilteo environmental policy ordinance, Chapter 17.84 MMC.

**3.100.020      Authority**

This chapter is adopted as a basis for the exercise of substantive authority by the City under the Growth Management Act, Chapter 36.70.A RCW and Chapter 82.02 RCW as a means of mitigating impacts on school facilities as an element of the environment.

### **3.100.030 Definitions**

A. As used in this chapter the following terms have the meaning set forth below:

Words defined by RCW 82.02.090 – means words used in this title and defined in RCW 82.02.090 shall have the same meaning assigned in RCW 82.02.090 unless a more specific definition is contained herein.

Average Assessed Value - means the district's average assessed value for each dwelling unit type.

Boeckh Index - means the current construction trade index of construction costs for each school type.

Capital Facilities - means school facilities identified in a school district's capital facilities plan and are "system improvements" as defined by the GMA as opposed to localized "project improvements."

Capital Facilities Plan - means a district's facilities plan adopted by its school board consisting of those elements required by Chapter 3.100.040 MMC and meeting the requirements of the GMA.

Council - means the Mukilteo City Council.

County - means Snohomish County.

Department - means the City of Mukilteo Planning Department.

Developer - means the proponent of a development activity, such as any person or entity who owns or holds purchase options or other development control over property for which development activity is proposed.

Development - development, for the purposes of this chapter shall mean, all single-family structures which require a building permit and which have not already paid a park impact fee, condominium and multifamily residential development, including multifamily rezones which require binding site plans, planned residential development, and all multifamily structures which require building permits, but excluding remodel or renovation permits which do not result in additional dwelling units.

Development Activity - means any residential construction or expansion of a building, structure or use of land, or any other change in use of a building, structure, or land that creates additional demand and need for school facilities, but excluding building permits for remodeling or renovation permits which do not result in additional dwelling units. Also excluded from this definition is "Housing for Older Persons" as defined by 46 U. S.C. § 3607, when guaranteed by a restrictive covenant.

Development Approval - means any written authorization from the City which authorizes the commencement of a development activity.

Director - means the Planning Director or the Planning Director's designee.

District - means the Mukilteo School District.

District Property Tax Levy Rate - means the district's current capital property tax rate per thousand dollars of assessed value.

**Dwelling Unit Type** - means (1) single- family residences, (2) multi-family one-bedroom apartment or condominium units and (3) multi-family multiple-bedroom apartment or condominium units.

**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.

**Estimated Facility Construction Cost** - means the planned costs of new schools or the actual construction costs of schools of the same grade span recently constructed by the district, including onsite and off-site improvement costs. If the district does not have this cost information available, construction costs of school facilities of the same or similar grade span within another district are acceptable.

**Facility Design Capacity** - means the number of students each school type is designed to accommodate, based on the district's standard of service as determined by the district.

**Grade Span** - means a category into which a district groups its grades of students (e.g., elementary, middle or junior high, and high school).

**Growth Management Act/GMA** - means the Growth Management Act, Chapter 17, Laws of the State of Washington of 1990, 1st Ex. Sess., as now in existence or as hereafter amended.

**Interest Rate** - means the current interest rate as stated in the Bond Buyer Twenty Bond General Obligation Bond Index.

**Land Cost Per Acre** - means the estimated average land acquisition cost per acre (in current dollars) based on recent site acquisition costs, comparisons of comparable site acquisition costs in other districts, or the average assessed value per acre of properties comparable to school sites located within the district.

**Multi-Family Unit** - means any residential dwelling unit that is not a single-family unit as defined by this ordinance.

**Permanent Facilities** - means school facilities of the district with a fixed foundation.

**Relocatable Facilities** - means factory-built structures, transportable in one or more sections, that are designed to be used as education spaces and are needed to prevent the over building of school facilities, to meet the needs of service areas within a district, or to cover the gap between the time that families move into new residential developments and the date that construction is completed on permanent school facilities.

**Relocatable Facilities Cost** - means the total cost, based on actual costs incurred by the district, for purchasing and installing portable classrooms.

**Relocatable Facilities Student Capacity** - means the rated capacity for a typical portable classroom used for a specified grade span.

**School Impact Fee** - means a payment of money imposed upon development as a condition of development approval to pay for school facilities needed to serve new growth and development. The

school impact fee does not include a reasonable permit fee, an application fee, the administrative fee for collecting and handling impact fees, or the cost of reviewing independent fee calculations.

**Single-Family Unit** - means any detached residential dwelling unit designed for occupancy by a single family or household.

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

**State Match Percentage** - means the proportion of funds that are provided to the district for specific capital projects from the state's Common School Construction Fund. These funds are disbursed based on a formula which calculates district assessed valuation per pupil relative to the whole state assessed valuation per pupil to establish the maximum percentage of the total project eligible to be paid by the state.

**Student Factor (Student Generation Rate)** - means the number of students of each grade span (elementary, middle/jr. high, high school) that the district determines are typically generated by different dwelling unit types within the district. The school district will use a survey or statistically valid methodology to derive the specific student generation rate.

### **3.100.040 School District Eligibility**

- A. Capital facilities plan required. The Mukilteo School District shall be eligible to receive school impact fees upon adoption by the Mukilteo City Council of a capital facilities plan for the district by reference as part of the capital facilities element of the City's Comprehensive Plan. The plan shall meet the requirements of the GMA. These actions will also constitute adoption by the City of the schedule of school impact fees specified in such capital facilities plan.
- B. Expiration of district plan. For purposes of school impact fee eligibility, the district's capital facilities plan shall expire two years from the date of its adoption by the council, or when an updated plan meeting the requirements of the GMA is adopted by the council, whichever date first occurs.
- C. Updating of district plan.
  - 1. The district's capital facilities plan shall be updated by the district and transmitted to the City by the district at least 60 days prior to its biennial expiration date. The district's updated plan shall be submitted by the department to the council for its consideration within forty-five (45) days of the department's receipt of the district's approved CFP. In the event the district desires to amend its capital facilities plan prior to the biennial expiration date, the district may propose an amendment to be considered by the City, provided such amendments shall be considered by the City no more than once per year unless the board of directors of the district declares, and the City finds, that an emergency exists.



2. The district's updated capital facilities plan may include revised data for the fee calculation and a corresponding modification to the impact fee schedule, consistent with the City's GMA Comprehensive Plan.

### **3.100.050 Capital Facilities Plan Requirements and Procedures**

- A. Minimum requirements for the district's capital facilities plan. To be eligible for school impact fees, the district must submit a capital facilities plan to the City pursuant to the procedure established by this chapter. The capital facilities plan shall contain data and analysis necessary and sufficient to meet the requirements of the GMA. The plan must provide sufficient detail to allow computation of school impact fees according to the formula contained in Attachment A.
- B. Council adoption. Following receipt of the district's capital facilities plan or amendment thereof, the council shall consider adoption of said plan or amendment by reference as part of the capital facilities element of the City's comprehensive plan.
- C. If an updated capital facilities plan has not been adopted by the council prior to the existing plan's expiration date due to the district's failure to submit an updated plan, the district shall be ineligible to receive school impact fees until the updated plan has been adopted by the council.

### **3.100.060 School Impact Fee**

- A. Fee required. Each development activity, as a condition of approval, shall be subject to the school impact fee established pursuant to this title. The school impact fee shall be calculated in accordance with the formula established in Attachment A, and incorporated in full by this reference. The school impact fee due and payable shall be as shown in Attachment B.
- B. Administrative Costs. Each development activity shall be required to pay two percent (2%) of the school impact fees collected per dwelling unit to pay for the City's costs of administering the school impact fee program.
- C. Impact fee schedule. The school impact fees specified in the district's capital facilities plan and adopted by the council shall constitute the City's schedule of school impact fees. The department shall, for the convenience of the public, keep available an information sheet summarizing the schedule of school impact fees applicable throughout the City.
- D. Service areas established. For purposes of calculating and imposing school impact fees for various land use categories per unit of development, the geographic boundary of the district constitutes a separate service area.
- E. 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.
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.

**F. Fee determination**

1. At the time of development approval, the City shall determine whether school impact fees will be due at the time of building permit issuance. Where such fees are due, the development approval shall state that the payment of school impact fees will be required prior to issuance of building permits. The amount of the fee due shall be based on the fee schedule in effect at the time of building permit application. Credit amounts and allocation of credits to be applied against the fees shall be determined at the time of development approval in accordance with MMC 3.100.060.G.
2. The final determination of a development activity's fee obligation under this chapter shall be made prior to the application for building permit. Said final determination shall include any credits for in-kind contributions provided under MMC 3.100.060.G below. Final determinations may be appealed pursuant to the procedures established in Chapter 3.100.080.

**G. Credit for in-kind contributions.**

1. A developer may request and the district may grant a credit against school impact fees otherwise due under this title for the value of any dedication of land, improvement to, or new construction of any capital facilities identified in the district's capital facilities plan provided by the developer. Such requests must be accompanied by supporting documentation of the estimated value of such in-kind contributions. All requests must be submitted to the district in writing prior to the City's determination under Section F above.
2. Where the district determines that a development activity is eligible for a credit for a proposed in-kind contribution, it shall provide the department and the developer with a letter setting forth the justification for and dollar amount of the credit, the legal description of any dedicated property, and a description of the development activity to which the credit may be applied. The value of any such credit may not exceed the impact fee obligation of the development activity in question.
3. Where there is agreement between the developer and the school district concerning the value of proposed in-kind contributions, the developer's eligibility for a credit, and the amount of any credit, the director may 1) approve the request for credit and adjust the impact fee obligation accordingly, and 2) require that such contributions be made as a condition of development approval. Where there is disagreement between the developer and the school district regarding

the value of in-kind contributions, however, the director may render a decision that can be appealed by either party pursuant to the procedures in Chapter 3.100.080.

4. For subdivisions, PRDs and other large-scale developments where credits for in-kind contributions are proposed or required, it may be appropriate or necessary to establish the value of the credit on a per-unit basis as a part of the development approval. Such credit values will then be recorded as part of the plat or other instrument of approval and will be used in determining the fee obligation - if any - at the time of building permit application for the development activity. In the event that such credit value is greater than the impact fee in effect at the time of permit application, the fee obligation shall be considered satisfied.

#### **H SEPA mitigation and other review.**

1. The City shall review development proposals and development activity permits pursuant to all applicable state and local laws and regulations, including the State Environmental Policy Act (Chapter 43.21C RCW), the state subdivision law (Chapter 58.17 RCW), and the applicable sections of the Mukilteo Municipal Code. Following such review, the City may condition or deny development approval as necessary or appropriate to mitigate or avoid significant adverse impacts to school services and facilities, to assure that appropriate provisions are made for schools, school grounds, and safe student walking conditions, and to ensure that development is compatible and consistent with the district's services, facilities and capital facilities plan.
2. Impact fees required by this title for development activity, together with compliance with development regulations and other mitigation measures offered or imposed at the time of development review and development activity review, shall constitute adequate mitigation for all of a development's specific adverse environmental impacts on the school system for the purposes of Chapter 17.84. Nothing in this chapter prevents a determination of significance from being issued, the application of new or different development regulations, and/or requirements for additional environmental analysis, protection, and mitigation measures to the extent required by applicable law.

### **3.100.070 Impact Fee Accounting**

#### **A. Collection and transfer of fees.**

1. School impact fees shall be due and payable to the City by the developer at the time of issuance of residential building permits for all development activities.
2. The district shall establish an interest-bearing account separate from all other district accounts in which to deposit the impact fees. The City will remit to the district all impact fees collected, without interest, within forty-five (45) days of receipt. The district shall deposit all impact fees received from the City in the impact fee account.
3. The district shall institute a procedure for the disposition of impact fees and providing for annual reporting to the City that demonstrates compliance with the requirements of RCW 82.02.070, and other applicable laws.

**B. Use of funds.**

1. School impact fees may be used by the district only for capital facilities that are reasonably related to the development for which they were assessed and may be expended only in conformance with the district's adopted capital facilities plan.
2. In the event that bonds or similar debt instruments are issued for the advance provision of capital facilities for which school impact fees may be expended, and where consistent with the provisions of the bond covenants and state law, school impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the capital facilities provided are consistent with the requirements of this title.
3. The responsibility for assuring that school impact fees are used for authorized purposes rests with the district. All interest earned on a school impact fee account must be retained in the account and expended for the purpose or purposes for which the school impact fees were imposed, subject to the provisions of Section 3.100.070.C below.
4. The district shall provide the City an annual report showing the source and the amount of school impact fees received by the district and the capital facilities financed in whole or in part with those school impact fees.

**C. Refunds.**

1. School impact fees not spent or encumbered within six years after they were collected shall upon receipt of a proper and accurate claim be refunded, together with interest, to the then current owner of the property. In determining whether school impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. At least annually, the City, based on the annual report received from the district pursuant to MMC 3.100.070.B(4) and shall give notice to the last known address of potential claimants of any funds, if any, that it has collected that have not been spent or encumbered. The notice will state that any persons entitled to such refunds may make claims.
2. Refunds provided for under this section shall be paid only upon submission of a proper claim pursuant to City claim procedures. Such claims must be submitted to the director within one year of the date the right to claim the refund arises, or the date of notification provided for above, where applicable, whichever is later.

**3.100.080 Adjustments, Appeals, and Arbitration**

**A. Administrative adjustment of fee Amount.**

1. Within 21 days of acceptance by the City of a building permit application, a developer or school district may appeal to the director for an adjustment to the fees imposed by this title. The director may adjust the amount of the fee, in consideration of studies and data submitted by the developer and any affected district, if one of the following circumstances exists.
  - a. It can be demonstrated that the school impact fee assessment was incorrectly calculated;

- b. Unusual circumstances of the development activity demonstrate that application of the school impact fee to the development would be unfair or unjust;
  - c. A credit for in-kind contributions by the developer, as provided for under MMC 3.100.060.F above, is warranted; or
  - d. Any other credit specified in RCW 82.02.060(l) (b) may be warranted.
- 2. To avoid delay pending resolution of the appeal, school impact fees may be paid under protest in order to obtain a development approval.
  - 3. Failure to exhaust this administrative remedy shall preclude appeals of the school impact fee pursuant to MMC 3.100.080.13 below.
- B Appeals of decisions - procedure.
- 1. Appeals of the requirements imposed pursuant to this chapter shall be governed by the appeal provisions of Chapter 17.13 MMC.
  - 2. At the hearing, the appellant shall have the burden of proof, which burden shall be met by a preponderance of the evidence. The impact fee may be modified upon a determination that it is proper to do so based on the application of the criteria contained in MMC 3.100.080.A. Appeals shall be limited to application of the impact fee provisions to the specific development activity and the provisions of this title shall be presumed valid.
- C. Arbitration of disputes. With the consent of the developer and the district, a dispute regarding imposition or calculation of a school impact fee may be resolved by arbitration.

Section 2. Repeal of Old Mitigation Ordinance. Mukilteo Municipal Code Chapter 15.18, School Impact Mitigation, relating to mitigation of impacts resulting from development proposals is hereby repealed.

Section 3. Park Mitigation Ordinance. The Park Impact Mitigation chapter of the Mukilteo Municipal Code is hereby moved in its entirety from MMC 17.85 and reinstated as MMC 3.105, and shall be referenced as such.

Section 4. 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 5. 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 five (5) days after passage and publication of an approved summary thereof consisting of the title.

PASSED by the City Council and APPROVED by the Mayor this day 20<sup>th</sup> of September, 1999.

APPROVED:

  
MAYOR, DONALD L. DORAN, Jr.

ATTEST/AUTHENTICATED:

  
CITY CLERK, THOMAS G. CARLSON

APPROVED AS TO FORM  
OFFICE OF THE CITY ATTORNEY:

By:

  
JAMES E. HANEY

Filed with the City Clerk: 9-20-99  
Passed by the City Council: 9-20-99  
Published: 9-24-99  
Effective Date: 9-29-99  
Ordinance No. 967

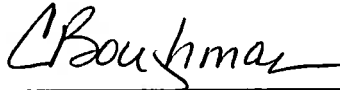
**SUMMARY OF ORDINANCE NO. 967**  
of the City of Mukilteo, Washington

On September 20, 1999, the City Council of the City of Mukilteo, Washington, approved Ordinance No. 967, the main point of which may be summarized by its title as follows:

AN ORDINANCE OF THE CITY OF MUKILTEO CREATING A NEW CHAPTER 3.100 OF THE MUKILTEO MUNICIPAL CODE RELATING TO SCHOOL IMPACT FEES, AND REPEALING MMC 15.18, AND MOVING THE PARK IMPACT MITIGATION FEE CHAPTER OF THE MUKILTEO MUNICIPAL CODE FROM MMC 17.85 TO MMC 3.105.

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their meeting of September 20, 1999.



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DEPUTY CITY CLERK, CHRISTINA BOUGHMAN



## **Attachment A**

### **Impact Fee Calculation Formula**

The formula listed below provides the basis for the impact fee schedule for the district. The district's capital facilities plan shall include a calculation of its proposed impact fee schedule, by dwelling unit type, utilizing this formula. In addition, a detailed listing and description of the various data and factors needed to support the fee calculation is included herein and within MMC 3.100.030, Definitions.

#### **Determination of Projected School Capacity Needs**

The district shall determine, as part of its capital facilities plan, projected school capacity needs for the current year and for not less than the succeeding five-year period. The capital facilities plan shall also include estimated capital costs for the additional capacity needs. The district shall then calculate the impact fees using the formula set forth in this Attachment A.

#### **Cost Calculation by Element**

The fees shall be calculated on a "per dwelling unit" basis, by "dwelling unit type" as set forth below:

##### **Site Acquisition Cost Element**

$$\{[B(2) \times B(3)] \div B(I)J\} \times A(I) = \text{Site Acquisition Cost Element}$$

Where:

B(2) = Site Size (in acres, to the nearest 1/10th)

B(3) = Land Cost (Per Acre, to the nearest dollar)

B(I) = Facility Design Capacity [see MMC 3.100.030]

A(I) = Student Factor (for each dwelling unit type)see MMC 3.100.030]

The above calculation shall be made for each of the identified grade levels (e.g. elementary, middle, junior high and/or senior high). The totals shall then be added with the result being the "Total Site Acquisition Cost Element" for purposes of the final school impact fee calculation below.

##### **School Construction Cost Element**

$$[C(I) \div B(I)] \times A(I) = \text{School Construction Cost Element}$$

Where:

C(I) = Estimated Facility Construction Cost [see MMC 3.100.030]

B(I) = Facility Design Capacity

A(I) = Student Factor (for each dwelling unit type)

The above calculation shall be made for each of the identified grade levels (e.g. elementary, middle, junior high and/or senior high). The totals shall then be added and multiplied by the square footage of permanent facilities divided by the total square footage of school facilities, with the result being the "Total School Construction Cost Element" for purposes of the final school impact fee calculation below.

#### Relocatable Facilities (Portables) Cost Element

$$[E(1) \div E(2)] \times A(1) = \text{Relocatable Facilities Cost Element}$$

Where:

E(1) = Relocatable Facilities Cost

E(2) = Relocatable Facilities Student Capacity [see MMC 3.100.030]

A(1) = Student Factor (for each dwelling unit type)

The above calculation shall be made for each of the identified grade levels (e.g. elementary, middle, junior high and/or senior high). The totals shall then be added and multiplied by the square footage of relocatable facilities divided by the total square footage of school facilities, with the result being the "Total Relocatable facilities Cost Element" for purposes of the final school impact fee calculation below.

#### Credits Against Cost Calculation-Mandatory

The following monetary credits shall be deducted from the calculated cost elements defined above for purposes of calculating the final school impact fee below.

##### 1. State Match Credit:

$$D(1) \times D(3) \times D(2) \times A(1) = \text{State Match Credit}$$

Where:

D(1) = Boeckh Index [see MMC 3.100.030]

D(3) = Square footage of school space  
allowed per student, by grade  
span, by the Office of the  
Superintendent of Public Instruction

D(2) = State Match Percentage [see MMC 3.100.030]

A(1) = Student Factor (for each dwelling unit type)

The above calculation shall be made for each of the identified grade levels (e.g. elementary, middle, junior high and/or senior high). The totals shall then be added with the result being the "Total State Match Credit" for purposes of the final school impact fee calculation below.

##### 2. Tax Payment Credit

$$[(1 + F(1))^{10}] - 1$$

\_\_\_\_\_ x F(2)] x F(3) = Tax Credit

F(1)(1 + F(1))<sup>10</sup>

Where:

F(1) = Interest Rate [see MMC 3.100.030]

F(2) = District Property Tax Levy Rate [see MMC 3.100.030]

F(3) = Average Assessed Value (for each dwelling unit type) [see MMC 3.100.030]

#### Calculation of Total Impact Fee

The total school impact fee, per dwelling unit, assessed on a development activity shall be:

The sum of:

Total Site Acquisition Cost Element

Total School Construction Cost Element

Total Relocatable Facilities Cost Element

Minus the sum of:

Total State Match Credit

Total Tax Payment Credit

Elective Adjustment by District

Equals:

Total Dollars per Dwelling Unit, by Dwelling Unit Type.

The total school impact fee obligation for each development activity pursuant to the school impact fee schedule of this ordinance shall be calculated as follows:

Number of Dwelling Units, by Dwelling Unit Type

multiplied by

School Impact Fee for Each Dwelling Unit Type

less

the value of any in-kind contributions proposed by the developer and accepted by the school district, as provided in MMC 3.100.060.F.

#### Adjustments

The school impact fee calculated in accordance with the formula established in Attachment A shall then be multiplied by 0.5 to determine the school impact fee due and payable in accordance with Section 3.100.070. Such school impact fee shall, however, be subject to the limitations listed below.

1. The school impact fee amount calculated in accordance with Section 3.100.070 shall not exceed the amount of \$2,000 per each single-family unit proposed for a given development activity.
2. The school impact fee amount calculated in accordance with Section 3.100.070 shall not exceed the amount of \$1,500 per each multi-family unit proposed for a given development activity.
3. The school impact fee limitations set above (i.e., \$2,000 per single-family unit and \$1,500 per multi-family unit) shall be subject to annual adjustment to reflect the increase (if any) in the adjustment index for the adjustment year, as follows:

School Impact Fee Limitation	X	Adjustment Index for Adjustment Year ÷ Adjustment Limitation Index for Base year	=	Adjusted School Impact Feet
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The "adjustment index for the adjustment year" shall be determined by reference to the Producer Price Index, Material Inputs to Construction Industries, New Construction. The "adjustment index for the base year" is 135.1 (May, 1997). If for any reason the adjustment index reference herein shall cease to exist, the director shall determine a successor adjustment index.

Ordinance No. 967

**Attachment B**  
School Impact Fee Schedule

Type of Development	Base Fee	City Administrative Charge	Total Fee
Single-Family	\$2,000.00	\$40.00	\$2,040.00
Multifamily, 1 Bedroom	\$255.00	\$5.10	\$260.10
Multifamily, 2+ Bedroom	\$1,500.00	\$30.00	\$1,530.00

Base Fee Amount transferred to School District.

City Administrative Charge retained by City to cover processing costs.

Effective September 1999

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