



MONROE CITY COUNCIL

Agenda Bill No. 16-026

SUBJECT:	<i>Discussion: Impact Fee Deferral System [ESB 5923]</i>
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DATE:	DEPT:	CONTACT:	PRESENTER:	ITEM:
03/01/2016	Community Development	Dave Osaki Rick Karns	Dave Osaki	Unfinished Business #1

Discussion – Council: 09/15/2015; 10/20/2015; 01/12/2016; 03/01/16

Discussion – Committee: 02/16/2016

- Attachments:**
1. RCW 82.02.050 – “Impact fees - Intent- Limitations”
 2. Letter from Monroe School District
 3. Summary of Stakeholder Input

REQUESTED ACTION: Council direction on the following key policy issues in order to draft an ordinance for the Planning Commission hearing process:

1. **Deferral time period:**
Law allows deferral to occur until:
 - A. Final inspection;
 - B. Issuance of the certificate of occupancy or equivalent certification; and/or
 - C. The closing of the first sale of the property.
2. **Limits on annual deferrals per applicant.**
State law allows a local government to cap annual deferral for an applicant to twenty (20) per year.

DESCRIPTION/BACKGROUND

At its February 2, 2016, meeting, the City Council was briefed on the 2015 Legislature's enactment of ESB 5923. This was preceded by prior briefings in 2015 and early 2016.

ESB 5923 (*see Attachment 1 for codified version [RCW 82.02.050]*) requires counties, cities, and towns to adopt an impact fee deferral system for the collection of impact fees for new single-family detached and attached residential construction. The Monroe Municipal Code currently authorizes the City to collect impact fees for traffic, parks, and schools (although the impact fee amount for schools at this time is \$0.00). The deadline to implement a single family fee deferral program is September 1, 2016.

At the February 2, 2016, City Council meeting, staff indicated that it would do additional stakeholder outreach, have discussion with the P4 Committee, and then bring the matter back for City Council discussion and direction at the City Council's March 1, 2016, meeting.

Under the new law, counties, cities, and towns must adopt a deferral system for the collection of impact fees that, upon developer request, delays payment until the time of either:

1. Final inspection;
2. Issuance of the certificate of occupancy or equivalent certification; and/or
3. The closing of the first sale of the property.

(NOTE: An applicant could, if he/she wishes, pay impact fees at the time of building permit issuance. Payment at the time of building permit issuance is the City's current requirement.)

In the City of Monroe, Item 1 (final inspection) and Item 2 (issuance of the certificate of occupancy) above occur at the same time for single family dwellings. This means that the two options available to the City essentially are:

1. Time of final inspection (this is when the City does an inspection of the single family dwelling and approves the dwelling for occupancy); and/or
2. Time of closing of the first sale of the property.

An applicant seeking an impact fee deferral must grant and record a lien against the property, in the amount of the deferred impact fees, in favor of the municipality. Deferrals may not, however, exceed 18 months from the date of building permit issuance.

Another primary issue to be decided as part of the impact fee deferral code amendment process is that the State law limits the number of annual deferrals for an applicant to 20; although the local government has the option of allowing a higher amount. The City Council will need to consider whether to allow for applicant to obtain annual deferrals in excess of 20.

With regards to the number of deferrals, the legislation states that a local government must consult with school districts about additional deferrals, if there is a desire to go over 20. "Substantial weight" must be given to the recommendation of school districts regarding the number of additional deferrals." Further, if the county, city, or town disagrees with the recommendations of one or more school districts, the county, city, or town must provide the district or districts with a written rationale for its decision (*see Attachment 2 for July 2015 letter from the Monroe School District; the letter does not specifically address the deferral issue*).

Other provisions of the new law include:

- The term of deferral may not exceed 18 months from the date of issuance of the building permit.
- The amount of impact fees that may be deferred is determined by the fees in effect at the time the applicant applies for a deferral.
- Deferral of impact fees can be limited to the first 20 single-family residential building permits, annually, per applicant.
- An applicant seeking a deferral must grant and record a lien against the property in favor of the municipality in the amount of the deferred impact fee.
- Municipalities may collect reasonable administrative fees from applicants seeking a deferral.
- To limit the "spin-off LLC" issue, "applicant" is defined to include "an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant."
- Municipalities and school districts are authorized to institute foreclosure proceedings if impact fees are not paid.
- The City must provide data to the Department of Commerce for an annual report, beginning December 1, 2018, on the payment and collection of impact fees.

STAKEHOLDER OUTREACH

Staff has conducted stakeholder outreach since the last time this matter was before the City Council. This information is summarized in Attachment 3 and includes information provided to date from the Monroe and Snohomish School Districts, the Master Builders Association of King and Snohomish Counties, and various builders who have or will be building single family dwellings in Monroe.

(NOTE: Outreach is still taking place at the time of this Agenda Bill's preparation; any new information will be presented verbally at the March 1, 2016, City Council meeting.)

OTHER INFORMATION

Other information related to the Impact fee deferral issue includes:

- Staff reached out to adjacent communities. The City of Marysville has implemented a deferral program since at least 2012. Marysville ties its fee deferral program to final inspection (for single family dwellings). Snohomish County did implement a deferral program during the great recession; however, it sunset in 2012. That program deferred fee payment to closing. Only four homes utilized the program during the 3-4 years the deferral program was in effect.
- The legislation provides that local governments may collect reasonable administrative fees to cover costs of implementing the impact fee deferral program. This would be set in the City's fee resolution when the impact fee deferral ordinance is passed. To-date, administrative fees imposed elsewhere are in the \$200-\$250 range per deferral.
- Once City Council direction on an impact fee deferral ordinance is received, the proposed ordinance will be scheduled before the Planning Commission for a public hearing and recommendation to the City Council.

IMPACT – BUDGET

Again, the legislation provides that local governments may collect reasonable administrative fees to cover costs of implementing the program. Staff will recommend an administrative fee amount as an ordinance gets closer to adoption. The amount may vary depending on the deferral option selected. Staff time to implement a deferral program at the time of final inspection would be less than a deferral program at the time of closing of first sale.

TIME CONSTRAINTS

The impact fee deferral system must be in place by September 1, 2016.

Tentative Schedule:

03/01/2016	City Council Direction
03/28/2016	Planning Commission Workshop
04/11/2016	Planning Commission Workshop
05/09/2016	Planning Commission Public Hearing
05/23/2016	Planning Commission Recommendation
06/07/2016	First Reading
06/14/2016	Ordinance Adopted
06/21/2016	Ordinance Published
06/26/2016	Ordinance Effective (<i>although ordinance could set an effective date a later time, no later than September 1, 2016</i>).

RCW 82.02.050**Impact fees—Intent—Limitations. (Effective until September 1, 2016.)**

(1) It is the intent of the legislature:

- (a) To ensure that adequate facilities are available to serve new growth and development;
- (b) To promote orderly growth and development by establishing standards by which counties, cities, and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development; and
- (c) To 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.

(2) 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.

(3) 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.

(4) Impact fees may be collected and spent only for the public facilities defined in RCW **82.02.090** which are addressed by a capital facilities plan element of a comprehensive land use plan adopted pursuant to the provisions of RCW **36.70A.070** or the provisions for comprehensive plan adoption contained in chapter **36.70**, 35.63, or **35A.63** RCW. After the date a county, city, or town is required to adopt its development regulations under chapter **36.70A** RCW, continued authorization to collect and expend impact fees shall be contingent on the county, city, or town adopting or revising a comprehensive plan in compliance with RCW **36.70A.070**, and on the capital facilities plan identifying:

- (a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;
- (b) Additional demands placed on existing public facilities by new development; and
- (c) Additional public facility improvements required to serve new development.

If the capital facilities plan of the county, city, or town is complete other than for the inclusion of those elements which are the responsibility of a special district, the county, city, or town may impose impact fees to address those public facility needs for which the county, city, or town is responsible.

[1994 c 257 § 24; 1993 sp.s. c 6 § 6; 1990 1st ex.s. c 17 § 43.]

NOTES:

Severability—1994 c 257: See note following RCW **36.70A.270**.

Effective date—1993 sp.s. c 6: See note following RCW **36.70A.040**.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW **36.70A.900** and **36.70A.901**.

SEPA: RCW **43.21C.065**.

RCW 82.02.050

Impact fees—Intent—Limitations. (*Effective September 1, 2016.*)

(1) It is the intent of the legislature:

- (a) To ensure that adequate facilities are available to serve new growth and development;
- (b) To promote orderly growth and development by establishing standards by which counties, cities, and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development; and
- (c) To 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.

(2) 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.

(3)(a)(i) Counties, cities, and towns collecting impact fees must, by September 1, 2016, adopt and maintain a system for the deferred collection of impact fees for single-family detached and attached residential construction. The deferral system must include a process by which an applicant for a building permit for a single-family detached or attached residence may request a deferral of the full impact fee payment. The deferral system offered by a county, city, or town under this subsection (3) must include one or more of the following options:

- (A) Deferring collection of the impact fee payment until final inspection;
- (B) Deferring collection of the impact fee payment until certificate of occupancy or equivalent certification; or
- (C) Deferring collection of the impact fee payment until the time of closing of the first sale of the property occurring after the issuance of the applicable building permit.

(ii) Counties, cities, and towns utilizing the deferral process required by this subsection (3)(a) may withhold certification of final inspection, certificate of occupancy, or equivalent certification until the impact fees have been paid in full.

(iii) The amount of impact fees that may be deferred under this subsection (3) must be determined by the fees in effect at the time the applicant applies for a deferral.

(iv) Unless an agreement to the contrary is reached between the buyer and seller, the payment of impact fees due at closing of a sale must be made from the seller's proceeds. In the absence of an agreement to the contrary, the seller bears strict liability for the payment of the impact fees.

(b) The term of an impact fee deferral under this subsection (3) may not exceed eighteen months from the date of building permit issuance.

(c) Except as may otherwise be authorized in accordance with (f) of this subsection (3), an applicant seeking a deferral under this subsection (3) must grant and record a deferred impact fee lien against the property in favor of the county, city, or town in the amount of the deferred impact fee. The deferred impact fee lien, which must include the legal description, tax account number, and address of the property, must also be:

- (i) In a form approved by the county, city, or town;
- (ii) Signed by all owners of the property, with all signatures acknowledged as required for a deed, and recorded in the county where the property is located;
- (iii) Binding on all successors in title after the recordation; and
- (iv) Junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

(d)(i) If impact fees are not paid in accordance with a deferral authorized by this subsection (3), and in accordance with the term provisions established in (b) of this subsection (3), the county, city, or town may institute foreclosure proceedings in accordance with chapter **61.12** RCW.

(ii) If the county, city, or town does not institute foreclosure proceedings for unpaid school impact fees within forty-five days after receiving notice from a school district requesting that it do so, the district may institute foreclosure proceedings with respect to the unpaid impact fees.

(e)(i) Upon receipt of final payment of all deferred impact fees for a property, the county, city, or town must execute a release of deferred impact fee lien for the property. The property owner at the time of the release, at his or her expense, is responsible for recording the lien release.

(ii) The extinguishment of a deferred impact fee lien by the foreclosure of a lien having priority does not affect the obligation to pay the impact fees as a condition of final inspection, certificate of occupancy, or equivalent certification, or at the time of closing of the first sale.

(f) A county, city, or town with an impact fee deferral process on or before April 1, 2015, is exempt from the requirements of this subsection (3) if the deferral process delays all impact fees and remains in effect after September 1, 2016.

(g)(i) Each applicant for a single-family residential construction permit, in accordance with his or her contractor registration number or other unique identification number, is entitled to annually receive deferrals under this subsection (3) for the first twenty single-family residential construction building permits per county, city, or town. A county, city, or town, however, may elect, by ordinance, to defer more than twenty single-family residential construction building permits for an applicant. If the county, city, or town collects impact fees on behalf of one or more school districts for which the collection of impact fees could be delayed, the county, city, or town must consult with the district or districts about the additional deferrals. A county, city, or town considering additional deferrals must give substantial weight to recommendations of each applicable school district regarding the number of additional deferrals. If the county, city, or town disagrees with the recommendations of one or more school districts, the county, city, or town must provide the district or districts with a written rationale for its decision.

(ii) For purposes of this subsection (3)(g), an "applicant" includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.

(h) Counties, cities, and towns may collect reasonable administrative fees to implement this subsection (3) from permit applicants who are seeking to delay the payment of impact fees under this subsection (3).

(i) In accordance with RCW **44.28.812** and **43.31.980**, counties, cities, and towns must cooperate with and provide requested data, materials, and assistance to the department of commerce and the joint legislative audit and review committee.

(4) 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.

(5)(a) Impact fees may be collected and spent only for the public facilities defined in RCW **82.02.090** which are addressed by a capital facilities plan element of a comprehensive land use plan adopted pursuant to the provisions of RCW **36.70A.070** or the provisions for comprehensive plan adoption contained in chapter **36.70**, 35.63, or **35A.63** RCW. After the date a county, city, or town is required to adopt its development regulations under chapter **36.70A** RCW, continued authorization to collect and expend impact fees is contingent on the county, city, or town adopting or revising a comprehensive plan in compliance with RCW **36.70A.070**, and on the capital facilities

plan identifying:

(i) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(ii) Additional demands placed on existing public facilities by new development; and

(iii) Additional public facility improvements required to serve new development.

(b) If the capital facilities plan of the county, city, or town is complete other than for the inclusion of those elements which are the responsibility of a special district, the county, city, or town may impose impact fees to address those public facility needs for which the county, city, or town is responsible.

[2015 c 241 § 1; 1994 c 257 § 24; 1993 sp.s. c 6 § 6; 1990 1st ex.s. c 17 § 43.]

NOTES:

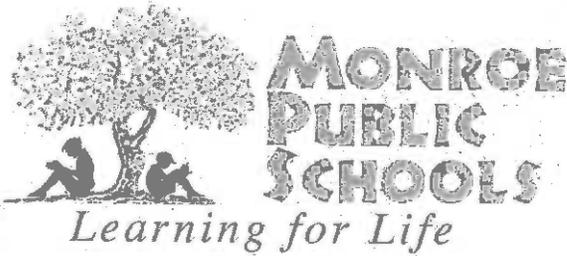
Effective date—2015 c 241: See note following RCW [44.28.812](#).

Severability—1994 c 257: See note following RCW [36.70A.270](#).

Effective date—1993 sp.s. c 6: See note following RCW [36.70A.040](#).

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW [36.70A.900](#) and [36.70A.901](#).

SEPA: RCW [43.21C.065](#).



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July 20, 2015

Mayor Geoffrey Thomas
City of Monroe
806 W. Main St.
Monroe, WA 98272

Dear Mayor Thomas:

As you may know, the Legislature enacted a bill in the 2015 Session that provides developers with the limited option of deferring impact fee payments (ESB 5923). In the upcoming months, we would like to work with the City on implementation issues. The new law outlines a specific role for school districts as the City develops the deferral process.

The new law limits the number of deferrals that each applicant can receive for single-family detached or attached dwelling units. By July 1, 2016, cities and counties must have in place a program that allows the collection of impact fees at one of three possible points in time: 1) final inspection; 2) issuance of the certificate of occupancy; or 3) closing. Deferrals may not exceed 18 months from the date of building permit issuance. In order to receive a deferral, an applicant must record a lien on the property.

As the City reviews the deferral process and works on amendments to the City Code, we would like to encourage the City to set the date of collection either at the time of final inspection or when the certificate of occupancy is issued. These points of collection are still within the City's control and will ensure the payment of impact fees. Because our District serves several/the City/cities and the County, we are encouraging all of our jurisdictions to adopt the same process. This will promote consistency and predictability among the programs.

In addition to the date of collection, we look forward to working with you regarding the question of whether more than 20 deferrals per applicant should be authorized. We welcome the opportunity to meet with you to discuss these issues. Thank you.

Sincerely,

Dr. Fredrika Smith
Superintendent

cc: Grace T. Yuan, K&L Gates

STAKEHOLDER COMMENTS

Stakeholder	Preferred Time of Deferral	Should the Number of Annual Deferrals per Applicant be Capped at 20?	Comments
Monroe School District	Final Inspection or certificate of occupancy <i>(in Monroe these times are the same)</i>	Staff and the School District have been attempting to schedule a meeting to discuss the number of deferrals. Staff is waiting on the school district for a meeting date/time.	See letter dated July 20, 2015. Monroe School District requested final inspection/certificate of occupancy as the preferred time of deferral. The letter also expresses a desire to work with the City to discuss whether more than 20 annual deferrals per applicant should be authorized.
Snohomish School District	Final Inspection	Yes	In responding to growth, the Snohomish School District verbally explained that it can take 3 months or more to acquire portables and secure necessary permits. Impact fees are needed as early as possible to address growth, before the dwelling unit is occupied (with potential students). Final Inspection is the preferred time of deferral as that is typically the earliest point in time (as provided for in the deferral legislation). Receiving impact fees when the dwelling unit closes for sale means the dwelling unit will be occupied imminently, leaving less time to address the growth impact (e.g. occupancy of the single family dwelling with potential students). Staff has requested a written comment letter from the School District.
Master Builders Association of King and Snohomish counties	Closing of First Sale	Was going to contact membership for feedback.	The MBAKS prefers that impact fees be paid as late in the process as possible. Banks do not lend money for impact fees, so this money is coming directly out of the builders pocket or is being privately financed, making it difficult to get some projects off the ground. The MBAKS indicates that the 18 month limit would ensure the City will receive payment even if the house is never sold.
Developer/Builder #1 <i>(had over 20 single family permits issued in 2015)</i>	Final inspection is acceptable	Acceptable	Also commented that they would likely continue to pay impact fees at time of building permit issuance as not to encumber the title with lien language.
Developer/Builder #2 <i>(had over 20 single family permits issued in 2015)</i>	See Comments Column	See Comments Column	Indicated that they would likely continue to pay at the time of building permit. Views impact fee deferrals as a nice tool to have available if needed, but felt that the paperwork needed to apply for deferrals (e.g. recording and removing liens) outweighed the benefit of using it. Thought that impact fee deferral program is a much more important tool for smaller builders.
Developer/Builder #3 <i>(previously built homes in Monroe w/ additional development in progress)</i>	See Comments Column	See Comments Column	Indicated that they would likely continue to pay at time of building permit. Felt the paperwork and company staff time needed to process impact fee deferrals outweighed their benefit. They also indicated that the time difference between paying at the time of building permit and the time the home was completed or sold wasn't significant enough to take advantage of the deferral program and extra administrative work it required.
Developer/Builder #4 <i>(pending subdivision)</i>	See Comments Column	See Comments Column	Indicated that they will likely just pay impact fees at time of building permit rather than use deferrals.