

**Chapter 21A.43**  
**IMPACT FEES**

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**21A.43.005 Authority.** The provisions of this chapter for the assessment and collection of impact fees are adopted pursuant to Chapter 82.02 RCW. (Ord. 11621 § 109, 1994).

**21A.43.010 Purpose.** The purpose of this chapter is to implement the capital facilities element of the Comprehensive Plan and the Growth Management Act by:

- A. Ensuring that adequate public school facilities and improvements are available to serve new development;
- B. Establishing standards whereby new development pays a proportionate share of the cost for public school facilities needed to serve such new development;
- C. Ensuring that school 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; and
- D. Providing needed funding for growth-related school improvements to meet the future growth needs of King County. (Ord. 11621 § 110, 1994).

**21A.43.020 Impact fee program elements.** A. Impact fees will be assessed on every new dwelling unit in the district for which a fee schedule has been established.

B. Impact fees will be imposed on a district-by-district basis, on behalf of any school district which provides to the county a capital facilities plan, the district's standards of service for the various grade spans, estimates of the cost of providing needed facilities and other capital improvements, and the data from the district called for by the formula in K.C.C. 21A.43.030. The actual fee schedule for the district will be adopted by ordinance based on this information and the fee calculation set out for K.C.C. 21A.43.030. Any impact fee imposed shall be reasonably related to the impact caused by the development and shall not exceed a proportionate share of the cost of system improvements that are reasonably related to the development. The impact fee formula shall account in the fee calculation for future revenues the district will receive from the development. The ordinance adopting the fee schedule shall specify under what circumstances the fee may be adjusted in the interests of fairness.

C. The impact fee shall be based on a capital facilities plan developed by the district and approved by the school board, and adopted by reference by the county as part of the capital facilities element of the comprehensive plan for the purpose of establishing the fee program. (Ord. 11621 § 111, 1994).

**21A.43.030 Fee calculations.** A. The fee for each district shall be calculated based on the formula set out in Attachment A to Ordinance 11621.

B. Separate fees shall be calculated for single family and multi-family residential units and separate student generation rates must be determined by the district for each type of residential unit. For purposes of this chapter single family units shall mean single detached dwelling units, and multi-family units shall mean townhouses and apartments.

C. The fee shall be calculated on a district-by-district basis using the appropriate factors and data to be supplied by the district, as indicated in Attachment A to Ordinance 11621. The fee calculations shall be made on a district-wide basis to assure maximum utilization of all school facilities in the district used currently or within the last two years for instructional purposes.

D. The formula in Attachment A to Ordinance 11621 also provides a credit for the anticipated tax contributions that would be made by the development based on historical levels of voter support for bond issues in the school district.

E. The formula in Attachment A to Ordinance 11621 also provides for a credit for school facilities or sites actually provided by a developer which the school district finds to be acceptable. (Ord. 13338 § 15, 1998; Ord. 12148 § 1, 1996; Ord. 11621 § 112, 1994).

**21A.43.040 Fee collection.** Fees shall be collected by the department of development and environmental services and maintained in a separate account for each school district, pursuant to K.C.C. 21A.43.070. Fees shall be paid to the district pursuant to administrative rules of an interlocal agreement between the county and the district. (Ord. 11621 § 113, 1994).

**21A.43.050 Assessment of impact fees.** A. In school districts where impact fees have been adopted by county ordinance and except as provided in K.C.C. 21A.43.080, the county shall collect impact fees, based on the schedules set forth in each ordinance establishing the fee to be collected for the district, from any applicant seeking development approval from the county where such development activity requires final plat, PUD or UPD approval or the issuance of a residential building permit or a mobile home permit and the fee for the lot or unit has not been previously paid. No approval shall be granted and no permit shall be issued until the required school impact fees set forth in the district's impact fee schedule contained in K.C.C. Title 27 have been paid.

B. For a plat, PUD or UPD applied for on or after the effective date of the ordinance adopting the fee for the district in question receiving final approval, fifty percent of the impact fees due on the plat, PUD or UPD shall be assessed and collected from the applicant at the time of final approval, using the impact fee schedules in effect when the plat, PUD or UPD was approved. The balance of the assessed fee shall be allocated to the dwelling units in the project, and shall be collected when the building permits are issued. Residential developments proposed for short plats shall be governed by subsection D of this section.

C. If on the effective date of an ordinance adopting an impact fee for a district, a plat, PUD or UPD has already received preliminary approval, such plat, PUD or UPD shall not be required to pay fifty percent (50%) of the impact fees at the time of final approval, but the impact fees shall be assessed and collected from the lot owner at the time the building permits are issued, using the impact fee schedules in effect at the time of building permit application. If on the effective date of a district's ordinance, an applicant has applied for preliminary plat, PUD or UPD approval, but has not yet received such approval, the applicant shall follow the procedures set forth in subsection B of this section.

D. For existing lots or lots not covered by subsection B of this section, application for single family and multifamily residential building permits, mobile home permits, and site plan approval for mobile home parks, the total amount of the impact fees shall be assessed and collected from the applicant when the building permit is issued, using the impact fee schedules in effect at the time of permit application.

E. Notwithstanding the provisions of this section, any application for preliminary plat, PUD or UPD approval submitted before January 22, 1991, shall not be required to pay school impact fees at the time of final plat, PUD or UPD approval. However, where the county has adopted a fee ordinance for the district, the full impact fee in effect when the building permits were applied for shall be paid by such developments at the time the building permits are issued if the applications for the building permits are submitted after January 22, 1991.

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Available at the office of the clerk of the council.

(King County 9-2001)

F. Any application for preliminary plat, PUD or UPD approval or multifamily zoning which has been approved subject to conditions requiring the payment of impact fees established pursuant to this chapter, shall be required to pay the fee in accordance with the condition of approval. (Ord. 11621 § 114, 1994).

**21A.43.060 Effective Date.** As of September 10, 1993, no fee shall be assessed or collected on any pending building permit which had been applied for prior to the effective date of the impact fee. (Ord. 11621 § 115, 1994).

**21A.43.070 Adjustments, exceptions, and appeals.**

A. The following are excluded from the application of the impact fees:

1. Any form of housing exclusively for the senior citizen, including nursing homes and retirement centers, so long as these uses are maintained;

2. Reconstruction, remodeling, or replacement of existing dwelling units which does not result in additional new dwelling units. In the case of replacement of a dwelling, a complete application for a building permit must be submitted within three years after it has been removed or destroyed;

3. Shelters for temporary placement, relocation facilities, transitional housing facilities and Community Residential Facilities as defined in K.C.C. 21A.06.220;

4. 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;

5. Any development activity for which school impacts have been mitigated pursuant to a condition of plat, PUD or UPD approval to pay fees, dedicate land or construct or improve school facilities, unless the condition of the plat, PUD or UPD approval provides otherwise; provided that the condition of the plat, PUD or UPD approval predates the effective date of a school district's fee implementing ordinance;

6. Any development activity for which school impacts have been mitigated pursuant to a voluntary agreement entered into with a school district to pay fees, dedicate land or construct or improve school facilities, unless the terms of the voluntary agreement provide otherwise; provided that the agreement predates the effective date of a school district's fee implementing ordinance;

7. Housing units which fully qualify as housing for persons age 55 and over meeting the requirements of the Federal Housing Amendments Act of 1988, 42 U.S.C. 3607(b)(2)(c) and (b)(3), as subsequently amended, and which have recorded covenants or other legal arrangements precluding school-aged children as residents in those units;

8. Mobile homes permitted as temporary dwellings pursuant to K.C.C. 21A.32.170; and

9. Accessory dwelling units as defined in K.C.C. 21A.06.350 and K.C.C. 21A.08.030B.7.a.

B. Arrangement may be made for later payment with the approval of the school district only if the district determines that it will be unable to use or will not need the payment until a later time, provided that sufficient security, as defined by the district, is provided to assure payment. Security shall be made to and held by the school district, which will be responsible for tracking and documenting the security interest.

C. The fee amount established in the schedule shall be reduced by the amount of any payment previously made for the lot or development activity in question, either as a condition of approval or pursuant to a voluntary agreement with a school district entered into after the effective date of a school district's fee implementing ordinance.

D. After the effective date of a school district's fee implementing ordinance, whenever a development is granted approval subject to a condition that the developer actually provide school sites, school facilities, or improvements to school facilities acceptable to the district, or whenever the developer has agreed, pursuant to the terms of a voluntary agreement with the school district, to provide land, provide school facilities, or make improvements to existing facilities, the developer shall be entitled to a credit for the value of the land or actual cost of construction against the fee that would be chargeable under the formula provided by this chapter. The land value or cost of construction shall be estimated at the time of approval, but must be documented. If construction costs are estimated, the documentation shall be confirmed after the construction is completed to assure that an accurate credit amount is provided. If the land value or construction costs are less than the calculated fee amount, the difference remaining shall be chargeable as a school impact fee.

E. Impact fees may be adjusted by the county, at the county's discretion, if one of the following circumstances exist, provided that the discount set forth in the fee formula fails to adjust for the error in the calculation or fails to ameliorate for the unfairness of the fee:

1. The developer demonstrates that an impact fee assessment was incorrectly calculated; or
2. Unusual circumstances identified by the developer demonstrate that if the standard impact fee amount was applied to the development, it would be unfair or unjust.

F. A developer may provide studies and data to demonstrate that any particular factor used by the district may not be appropriately applied to the development proposal, but the district's data shall be presumed valid unless clearly demonstrated to be otherwise by the proponent.

G. Any appeal of the decision of the director or the hearing examiner with regard to imposition of an impact for or fee amounts 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 council for possible modification.

H. Impact fees may be paid under protest in order to obtain a building permit or other approval of development activity, when an appeal is filed. (Ord. 12148 § 2, 1996; Ord. 11621 § 116, 1994).

**21A.43.080 Exemption or reduction for low or moderate income housing.**

A. Low or moderate income housing projects being developed by public housing agencies or private non-profit housing developers shall be exempt from the payment of school impact fees. The amount of the school impact fees not collected from low or moderate income household development shall be paid from public funds other than impact fee accounts. The impact fees for these units shall be considered paid for by the district through its other funding sources, without the district actually transferring funds from its other funding sources into the impact fee account. The planning and community development division shall review proposed developments of low or moderate income housing by such public or non-profit developers pursuant to criteria and procedures adopted by administrative rule, and shall advise the department of development and environmental services as to whether the project qualifies for the exemption.

B. Private developers who dedicate residential units for occupancy by low or moderate income households may apply to the division for reductions in school impact fees pursuant to the criteria established for public housing agencies and private non-profit housing developers pursuant to subsection A, and subject to the provisions of subsection A. The division shall review proposed developments of low or moderate income housing by such private developers pursuant to criteria and procedures adopted by administrative rule, and shall advise the department of development and environmental services as to whether the project qualifies for the exemption. If the division recommends the exemption, the department of development and environmental services shall reduce the calculated school impact fee for the development by an amount that is proportionate to the number of units in the development that satisfy the adopted criteria.

C. Individual low or moderate income home purchasers (as defined pursuant to the King County Comprehensive Housing Affordability Strategy (CHAS) who are purchasing homes at prices within their eligibility limits based on standard lending criteria and meet other means tests established by rule by the division are exempted from payment of the impact fee, provided that at such time as the property in question is transferred to another owner who does not qualify for the exemption, at which time the fee shall be due and payable.

D. The division is hereby instructed and authorized to adopt, pursuant to K.C.C. Chapter 2.98, administrative rules to implement this section. Such rules shall provide for the administration of this program and shall:

1. Encourage the construction of housing for low or moderate income households by public housing agencies or private non-profit housing developers participating in publicly sponsored or subsidized housing programs;
2. Encourage the construction in private developments of housing units for low or moderate income households that are in addition to units required by another housing program or development condition;

3. Ensure that housing that qualifies as low or moderate cost meets appropriate standards regarding household income, rent levels or sale prices, location, number of units and development size; and

4. Ensure that developers who obtain an exemption from or reduction of school impact fees will in fact build the proposed low or moderate cost housing and make it available to low or moderate income households for a minimum of fifteen (15) years.

5. Ensure that individual low or moderate income purchasers meet appropriate eligibility standards based on income and other financial means tests.

E. As a condition of receiving an exemption under paragraph B or C, the owner must execute and record a county-drafted lien, covenant, and/or other contractual provision against the property for a period of ten (10) years for individual owners, and fifteen (15) years for private developers, guaranteeing that the proposed development will continue to be used for low or moderate income housing. In the event that the pattern of development or the use of the development is no longer for low or moderate income housing, then the owner shall pay the impact fee amount from which the owner or any prior owner was exempt. The lien, covenant, or other contractual provision shall run with the land and apply to subsequent owners. (Ord. 11621 § 117, 1994).

**21A.43.090 Impact fee accounts and refunds.** A. Impact fee receipts shall be earmarked specifically and retained in a special interest-bearing account established by the county solely for the district's school impact fees. All interest shall be retained in the account and expended for the purpose or purposes identified in subsection B. Annually, the county, based in part on the report submitted by the district pursuant to Section 21A.28.152 shall prepare a report on each impact fee account showing the source and amount of all moneys collected, earned or received, and capital or system improvements that were financed in whole or in part by impact fees.

B. Impact fees for the district's system improvements shall be expended by the district for capital improvements including but not limited to school planning, land acquisition, site improvements, necessary off-site improvements, construction, engineering, architectural, permitting, financing, and administrative expenses, relocatable facilities, capital equipment pertaining to educational facilities, and any other expenses which could be capitalized, and which are consistent with the school district's capital facilities plan.

C. In the event that bonds or similar debt instruments are issued for the advanced provision of capital facilities for which impact fees may be expended and where consistent with the provisions of the bond covenants, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this section.

D. Impact fees shall be expended or encumbered (i.e. committed as part of the funding for a facility for which the publicly funded share has been assured, or building permits applied for, or construction contracts let) by the district for a permissible use within six (6) years of receipt by the county, unless there exists an extraordinary and compelling reason for fees to be held longer than six (6) years. Such extraordinary or compelling reasons shall be identified to the county by the district. The county must prepare written findings concurring with the district's reasons, and authorizing the later encumbrance or expenditure of the fees prior to the district so encumbering or expending the funds, or directing a refund of the fees.

E. The current owner of property on which an impact fee has been paid may receive a refund of such fees if the impact fees have not been expended or encumbered within six (6) years of receipt of the funds by the county. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. The county shall notify potential claimants by first-class mail deposited with the United States Postal Service addressed to the owner of the property as shown in the county tax records.

F. An owner's request for a refund must be submitted to the county council in writing within one (1) year of the date the right to claim the refund arises or the date that notice is given, whichever date is later. Any 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 (1) year period, shall be retained and expended consistent with the provisions of this section. Refunds of impact fees shall include any interest earned on the impact fees.

G. Should the county seek to terminate any or all school impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded to the current owner of the property for which a school impact fee was paid. Upon the finding that any or all fee requirements are to be terminated, the county shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two (2) times and shall notify all potential claimants by first-class mail addressed to the owner of the property as shown in the county tax records. All funds available for refund shall be retained for a period of one (1) year. At the end of one (1) year, any remaining funds shall be retained by the county, but must be expended for the district, consistent with the provisions of this section. The notice requirement set forth above shall not apply if there are no unexpended or unencumbered balances within the account or accounts being terminated.

H. A developer may request and shall receive a refund, including interest earned on the impact fees, when:

1. The developer does not proceed to finalize the development activity as required by statute or county code or the Uniform Building Code, and

2. No impact on the district has resulted. "Impact" shall be deemed to include cases where the district has expended or encumbered the impact fees in good faith prior to the application for a refund. In the event that the district has expended or encumbered the fees in good faith, no refund shall be forthcoming. However, if within a period of three (3) years, the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner shall be eligible for a credit. The owner must petition the county and provide receipts of 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 county shall determine whether to grant a credit, and such determinations may be appealed by following the procedures set forth in Section 21A.43.070.

- I. Interest due upon the refund of impact fees required by this section shall be calculated according to the average rate received by the county or the district on invested funds throughout the period during which the fees were retained. (Ord. 11621 § 118, 1994).