ORDINANCE NO. 3687

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON AMENDING TITLE 3, REVENUE AND FINANCE, CHAPTERS 3.36 IMPACT FEES FOR SCHOOL FACILITIES AND 3.40 IMPACT FEE FOR PUBLIC STREETS, ROADS, PARKS, OPEN SPACES AND RECREATION FACILITIES AND FIRE PROTECTION TO ADD A MECHANISM THAT PROVIDES A WAY FOR APPLICANTS TO REQUEST A DEFERRAL OF THEIR REQUIRED RESIDENTIAL IMPACT FEES FROM BUILDING PERMIT ISSUANCE TO THE FINALIZATION OF A BUILDING PERMIT AND TO EXTEND THE TIMEFRAME IN WHICH SCHOOL IMPACT FEES ARE REQUIRED TO BE EXPENDED BY A SCHOOL DISTRICT FROM SIX YEARS TO TEN YEARS CONSISTENT WITH RCW 82.02.080

WHEREAS, Engrossed Senate Bill (ESB) 5923 takes effect September 1, 2016 requiring the City to "adopt and maintain a system for the deferred collection of impact fees for single-family detached and attached residential construction"; and,

WHEREAS, Engrossed Senate Bill 5923 provides three options for the deferral of impact fees of which the City is choosing to defer the collection of residential impact fee payment until final inspection; and,

WHEREAS, a SEPA Threshold Determination of Non-significance, non-project action, was issued on July 1, 2016 and published on July 7, 2016. The SEPA comment period lapsed on July 15, 2016; and the SEPA appeal period lapsed on July 25, 2016 and no comments were received or appeals filed; and,

WHEREAS, a notice of public hearing was published on July 7, 2016; and,

WHEREAS, the requisite notice of adoption of the proposed amendments was transmitted to the Department of Commerce on July 2, 2016 with expedited review granted by Commerce on July 4, 2016 in compliance with RCW 36.70A.106 (1); and,

WHEREAS, The City utilized the State Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property for evaluating constitutional issues, in conjunction with and to inform its review of the Ordinance. The City has utilized the process, a process protected under Attorney-Client privilege pursuant to law including RCW 36.70A.370(4), with the City Attorney's Office which has reviewed the Advisory Memorandum has discussed this Memorandum, including the "warning signals' identified in the Memorandum, with decisions makers, and conducted an evaluation of all constitutional provisions potentially at issue and advised of the genuine legal risks, if any, with the adoption of this Ordinance to assure that the proposed regulatory or administrative actions did not result in an unconstitutional taking of private property, consistent with RCW 36.70A.370(2); and,

WHEREAS, the proposed amendments ensure that the City's municipal code is internally consistent.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON, DOES ORDAIN AS FOLLOWS:

SECTION ONE. The City Council does hereby adopt the above listed recitals as set forth fully herein.

SECTION TWO. PLANNING COMMISSION RECOMMENDATION ADOPTED. The City Council adopts the Planning Commission's findings of fact and conclusions of law, outlined below, in their entirety.

A. Planning Commission's Findings of Fact:
   1. The procedural requirements outlined in MVMC Chapter 14.05, Procedures, have been satisfied by City staff. This includes the Notice of Public Hearing, the environmental review pursuant to the SEPA statute, and receiving expedited review from the State Department of Commerce.

B. Planning Commission's Conclusions of Law:
   1. The requirements for public participation in the development of this amendment as required by the State Growth Management Act (GMA) and by the provisions of City of Mount Vernon Resolution No. 491 have all been met.

C. Planning Commission Recommendation to the City Council:
   At their public hearing on July 19, 2016 after review of the materials presented by City staff and holding a public hearing the Planning Commission made a recommendation to adopt the amendments to the Mount Vernon Municipal Code that are contained in this Ordinance.

SECTION THREE. That Section 3.36.020, Definitions, is hereby repealed and reenacted, the new section to read as follows.

The following definitions shall apply for purposes of this chapter unless the context clearly requires otherwise. Terms otherwise not defined herein shall be defined pursuant to RCW 82.02.090, or given their usual and customary meaning.

1. "Act" means the Growth Management Act, Chapter 17, Laws of 1990, 1st Ex. Sess., Chapter 36.70A RCW et seq., and Chapter 32, Laws of 1991, 1st Sp. Sess., as now in existence or as hereafter amended.

2. "Affordable housing" means units to be sold or rented to families earning less than 80 percent of the Skagit County median income adjusted for family size, as determined by the U.S. Department of Housing and Urban Development.

3. "Boundary line adjustment" shall have the same meaning as set forth in Chapter 16.36 MVMC.

4. “Building permit” means an official document or certification which is issued by the building official and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure. For purposes of this chapter, “building permit” also includes a mobile home permit.

5. “Capital facilities” means the facilities or improvements included in a capital budget.

6. “Capital facilities plan” or the “plan” means the capital facilities plan adopted by the board of directors of Mount Vernon School District No. 320.

7. “City” means the city of Mount Vernon.

8. “Council” means the city council of the city of Mount Vernon.

9. “County” means Skagit County.

10. “Department” means the city of Mount Vernon planning department.

11. “Development activity” means any construction or expansion of a residential building or structure, or the siting of a mobile home, or any change in use of a residential building or structure or mobile home, or any change in use of land that creates additional demand and need for school facilities.

12. “Development approval” means any written authorization from the city of Mount Vernon, other than a building permit, which authorizes the commencement of a development activity, including, but not limited to, plat approval, PUD approval, binding site plan approval, mobile home park district approval, boundary line adjustment, and a conditional use permit.

13. “Director” means the director of the city of Mount Vernon Community & Economic Development department.

14. “District” means the Mount Vernon School District No. 320 and the Sedro-Woolley School District No. 101, Skagit County, Washington.

15. “Encumbered” means to reserve, set aside, or otherwise earmark the impact fees in order to pay for commitments, contractual obligations, or other liabilities incurred for public facilities.

16. “Fee payer” is a person, corporation, partnership, an incorporated association, or any other similar entity, or department or bureau of any governmental entity or municipal corporation commencing a development activity which creates the demand for additional school facilities, and which requires development approval and/or the issuance of a building permit. “Fee payer” includes an applicant for an impact fee credit.

17. “Impact fee” means a payment of money imposed by the city of Mount Vernon on development activity pursuant to this chapter as a condition of granting development approval and/or a building permit in order to pay for the school facilities needed to serve new growth and

development. “Impact fee” does not include a reasonable permit fee, an application fee, the administrative fee for collecting and handling school impact fees, the cost of reviewing independent fee calculations, or the administrative fee required for an appeal pursuant to MVMC 3.36.080.

18. “Impact fee account” or “account” means the account established for the school facilities for which impact fees are collected. The accounts shall be established pursuant to MVMC 3.36.090, and comply with the requirements of RCW 82.02.070.

19. “Independent fee calculation” means the school impact calculation, and/or economic documentation prepared by a fee payer, to support the assessment of an impact fee other than by the use of the schedule attached as Appendix A to the ordinance codified in this chapter, or the calculations prepared by the director or District No. 320 where none of the fee categories or fee amounts in Appendix A accurately describe or capture the impacts of the new development on school facilities.

20. “Interest” means the average interest rate earned by District No. 320 in the last fiscal year, if not otherwise defined.

21. “Interlocal agreement” or “agreement” means the school interlocal agreement by and between the city of Mount Vernon and District No. 320 as authorized in MVMC 3.36.090.

22. “Mobile home park district” shall have the same meaning as set forth in Chapter 17.39 MVMC.

23. “Owner” means the owner of record of real property, or a person with an unrestricted written option to purchase property; provided, that if the real property is being purchased under a recorded real estate contract, the purchaser shall be considered the owner of the real property.

24. “Planned unit development” or “PUD” shall have the same meaning as set forth in Chapter 17.69 MVMC.

25. “School facilities” means facilities owned or operated by District No. 320, or the facilities or improvements included in the district’s capital budget and/or capital facilities plan.

26. “Standard of service” means the standard adopted by District No. 320 or 101 which identifies the program year, the class size by grade span and taking into account the requirements of students with special needs, the program capacity, the number of classrooms, the types of facilities the district believes will best serve its student population, and other factors as identified by the district. The district’s standard of service shall not be adjusted for any portion of the classrooms housed in portable facilities which are used as transitional facilities or for any specialized facilities housed in portable facilities. Except as otherwise defined by the school boards pursuant to a board resolution, transitional facilities shall mean those facilities that are used to cover the time required for the construction of permanent facilities.

27. “State” means the state of Washington.

28. “Voluntary agreement” means an agreement between a developer and District No. 320 or 101 as authorized by RCW 82.02.020

SECTION FOUR. That Section 3.36.040, Assessment of impact fees, is hereby repealed and reenacted, the new section to read as follows.

A. The city shall collect impact fees from any applicant seeking either the issuance or finalization of a building permit from the city for any development activity within the city. This shall include, but is not limited to, the development of residential buildings, and may include the expansion of existing uses which creates a demand for additional school facilities. Fees shall be determined using the impact fee schedule in effect at the time of building permit application.

B. Applicants seeking the issuance or the final inspection of a building permit from the city for development activity where the property is located outside the boundaries of either District No. 320 or 101 shall not be required to pay the school impact fee set forth in the impact fee schedules in Appendix A to the ordinance codified in this chapter.

C. An applicant can either pay the required school impact fee when their building permit is issued; or they can request to defer this payment to the final inspection for the building permit they have received. The following shall apply to any request to defer payment of an impact fee:

1. The applicant shall submit to the city a written request to defer the payment of an impact fee for a specifically identified building permit. The applicant’s request shall be on forms provided by the City and shall include all of the following. To be accepted by the City these materials must be accompanied by an administrative fee as provided within this Chapter.
   i. The applicant’s corporate identity and contractor registration number,
   ii. The full names of all legal owners of the property upon which the development activity allowed by the building permit is to occur,
   iii. The legal description of the property upon which the development activity allowed by the building permit is to occur,
   iv. The tax parcel identification number of the property upon which the development activity allowed by the building permit is to occur, and
   v. The address of the property upon which the development activity allowed by the building permit is to occur.
   vi. Completed Deferred Payment of Impact Fee Lien.
2. The impact fee amount due under any request to defer payment of impact fees shall be based on the schedule in effect at the time the applicant provides the city with the information required in subsection 1 of this section.
3. Prior to the issuance of a building permit that is the subject of a request for a deferred payment of impact fee, all applicants and/or legal owners of the property upon which the development activity allowed by the building permit is to occur must sign a deferred impact fee payment lien in a form acceptable to the city attorney. The deferred impact fee payment lien shall be recorded by the applicants and/or legal owners against the property subject to the building permit and be granted in favor of the city in the amount of the deferred impact fee. Any such lien shall be junior and subordinate only to one mortgage for the purpose of construction upon the same real property subject to the building permit. In addition to the administrative fee

required in this Chapter of this section, the applicant shall be responsible for all fees associated with recording this document with the Skagit County Auditor.
4. The city shall not approve a final inspection until the school impact fees identified in the deferred impact fee payment lien are paid in full.
5. In no case shall payment of the impact fee be deferred for a period of more than 18 months from the date of building permit issuance.
6. Upon receipt of final payment of the deferred impact fee as identified in the deferred impact fee payment lien, the city shall execute a release of lien for the property. The applicant and/or owner, at their own expense, shall record the lien release.
7. In the event that the deferred impact fee is not paid within the time provided in this section, the city shall institute foreclosure proceedings under the process set forth in Chapter 61.12 RCW. The Districts may also institute foreclosure proceedings as set forth in RCW 82.02.050(3).
8. An applicant is entitled to defer impact fees pursuant to this section for no more than 20 single-family dwelling unit building permits per year in the city. For purposes of this section, an "applicant" includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.
9. The Director may adopt rules and procedures and they determine are reasonably necessary to implement the requirements of the impact fee deferral process.
D. Except as provided in subsection C of this section, or due to exemptions or credits provided pursuant to MVMC 3.36.050 or 3.36.060, or pursuant to an independent fee calculation accepted by the director pursuant to MVMC 3.36.150, or fees imposed by the director pursuant to MVMC 3.36.150, the city shall not issue or final the required building permit(s) unless and until the impact fees set forth in the schedule in Appendix A to the ordinance codified in this chapter have been paid.

SECTION FIVE. That Section 3.36.050, Exemptions, is hereby repealed and reenacted, the new section to read as follows.

A. The following shall be exempted from the payment of all impact fees:

1. Any form of housing exclusively for the elderly, including nursing homes and retirement centers, so long as these uses are maintained and the necessary covenants or declarations of restrictions, approved by District No. 320 or 101, are recorded on the property. The department shall keep a sample covenant on file and shall provide a copy of the sample covenant upon request.

2. Any form of housing exclusively used for emergency shelters, including housing provided under local, state and federal programs, so long as these uses are maintained and the necessary covenants or declaration or restrictions, approved by District No. 320 or 101, are recorded on the property. The department shall keep a sample covenant on file and shall provide a copy of the sample covenant upon request.

3. Replacement of a residential structure or mobile home with a new residential structure or mobile home of the same size and use at the same site or lot when such replacement occurs within 12 months of the demolition or destruction of the prior structure or the removal of the mobile home.

4. Alterations or expansion or enlargement or remodeling or rehabilitation or conversion of an existing dwelling unit where no additional units are created and the use is not changed.

5. The construction of accessory residential structures that will not create significant impacts on school facilities.

6. Miscellaneous improvements, including but not limited to fences, walls, swimming pools, and signs.

7. Demolition or moving of a structure.

8. Construction of affordable housing where the affordable housing unit is a one-to-one replacement for a demolished dwelling unit previously sited at another location within the city and where no new housing can be built on the same lot as the demolished dwelling unit, so long as these uses are maintained and the necessary covenants or declarations of restrictions, approved by District No. 320 or 101, are recorded on the property. The request for the exemption shall be filed with the city within 24 months of the demolition or destruction of the prior structure or the removal of the mobile home. The director shall place a notation on the property of the demolished dwelling unit or mobile home lot to indicate that a new dwelling unit or mobile home cannot be built or sited on the same lot unless an impact fee is paid at the time of building permit issuance.

B. Except as otherwise provided pursuant to the terms of a voluntary agreement entered into between District No. 320 or 101 and a developer, the payment of fees, the dedication of land, or the construction of a school facility by the developer pursuant to the terms of a voluntary agreement entered into between District No. 320 or 101 and a developer prior to the effective date of the ordinance codified in this chapter shall be deemed to be complete mitigation for the impacts of the specific development on District No. 320 or 101. The units in the identified development shall be exempt from the payment of school impact fees for District No. 320 or 101. The developer shall provide to the director documentation demonstrating compliance with the terms of the voluntary agreement.

C. Except as otherwise provided pursuant to the terms of a plat condition or a SEPA mitigation condition imposed prior to the effective date of the ordinance codified in this chapter, the payment of fees, the dedication of land, or the construction of a school facility by the developer pursuant to the terms of a plat condition or a SEPA mitigation condition imposed prior to the effective date of the ordinance codified in this chapter shall be deemed to be complete mitigation for the impacts of the specific development on District No. 320 or 101. The units in the identified development shall be exempt from the payment of school impact fees for District No. 320 or 101. The developer shall provide to the director documentation demonstrating compliance with the terms of the plat condition or SEPA mitigation condition.

D. The director shall be authorized to determine, after consultation with the applicable district, whether a particular development activity falls within an exemption identified in this section, in any other section, or under other applicable law. Determinations of the director shall be in

writing and shall be subject to the appeals procedures set forth in MVMC 3.36.080. (Ord. 3318 § 3, 2006).

SECTION SIX. That Section 3.36.060, Credits, is hereby repealed and reenacted, the new section to read as follows.

A. After the effective date of the ordinance codified in this chapter, developer site dedications, construction of school facilities, or improvements to school facilities shall be governed by this section. The fee payer shall direct the request for a credit or credits to the director who shall forward the request to District No. 320 or 101. The district shall first determine the general suitability of the land, improvements, and/or construction for district purposes. The district shall then determine whether the land, improvements, and/or the facility constructed are included within the district's adopted capital facilities plan or the board of directors for District No. 320 or 101 may make the finding that such land, improvements, and/or facilities would serve the goals and objectives of the district's capital facilities plan. The district shall forward its determination to the director, including cases where the district determines that the dedicated land, improvements, and/or construction are not suitable for district purposes. The director shall adopt the determination of District No. 320 or 101, and shall inform the applicant, in writing, of the adoption of the district's determination.

B. For each request for a credit or credits, once District No. 320 or 101 has determined that the land, improvements, and/or construction would be suitable for district purposes, District No. 320 or 101shall select an appraiser. The appraiser shall be directed to determine for the district the value of the dedicated land, improvements, or construction provided by the fee payer on a case-by-case basis.

C. The fee payer shall pay for the cost of the appraisal or request that the cost of the appraisal be deducted from the credit which the director may be providing to the fee payer, in the event that a credit is awarded.

D. After receiving the appraisal and after consultation with District No. 320 or 101, the director shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, where applicable, the legal description of the site donated, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter or certificate indicating his/her agreement to the terms of the letter or certificate, and return such signed document to the director before the impact fee credit will be awarded. The failure of the applicant to sign, date, and return such document within 60 calendar days shall nullify the credit.

E. Any claim for credit must be made no later than 20 calendar days after the submission of an application for a building permit.

F. For each request for a credit for significant past tax payments made for particular school system improvements, the fee payer shall submit receipts and a calculation of past tax payments earmarked for or proratable to the particular school system improvements.

G. Determinations made by the director pursuant to this section shall be subject to the appeals procedures set forth in MVMC 3.36.080.

SECTION SEVEN. That Section 3.36.080, Appeals, is hereby repealed and reenacted, the new section to read as follows.

A. Any fee payer may pay the impact fees imposed by this chapter under protest in order to obtain or final a building permit. Appeals regarding the impact fees imposed on any development activity may only be taken by the fee payer of the property where such development activity will occur. No appeal shall be permitted unless and until the impact fees at issue have been paid.

B. The director's determinations with respect to the applicability of the impact fees to a given development activity and/or building permit, the availability of an exemption, the availability or value of a credit, or the director's decision concerning the independent fee calculation which is authorized in MVMC 3.36.150, or the fees imposed by the director pursuant to MVMC 3.36.150, or any other determination which the director is authorized to make pursuant to this chapter, can be appealed to the hearing examiner.

C. If the director makes a determination on an adjustment, credit, exemption, or independent fee calculation contrary to or inconsistent with the determination or analysis prepared by District No. 320 or 101, the district may appeal the director's determination to the hearing examiner.

D. Appeals shall be taken within 10 working days of the director's issuance of a written determination by filing with the hearing examiner a notice of appeal specifying the grounds thereof, and depositing an administrative fee in the amount of $300.00. The director shall transmit to the hearing examiner all papers constituting the record for the determination, including where appropriate the independent fee calculation.

E. The hearing examiner shall fix a time for the hearing of the appeal, give notice to the parties in interest, and decide the same. At the hearing, any party may appear in person or by agent or attorney. If the matter which is the subject of the appeal requires development approval which also requires a hearing before the hearing examiner, both the appeal and the development approval hearing may be combined in a single hearing.

F. The hearing examiner is authorized to make findings of fact regarding the applicability of the impact fees to a given development activity, the availability or amount of the credit, or the accuracy or applicability of an independent fee calculation. The decision of the hearing examiner shall be final, except as provided in this section.

G. The hearing examiner may, so long as such action is in conformance with the provisions of this chapter, reverse or affirm, in whole or in part, or may modify the determinations of the director with respect to the amount of the impact fees imposed or the credit awarded upon a determination that it is proper to do so based on principles of fairness, and may make such order, requirements, decision or determination as ought to be made, and to that end shall have the powers which have been granted to the director by this chapter.

H. District No. 320 or 101 or any fee payer who believes that the decision of the hearing examiner is based on erroneous procedures, errors of law or fact, error in judgment, or has discovered new evidence which could not be reasonably available at the prior hearing, may make a written request for reconsideration by the hearing examiner within 10 working days of the date the decision is rendered. Such fee payer or district is the "appellant" for the purposes of this section. This request shall set forth the specific errors or new information relied upon by such appellant, and the hearing examiner may, after review of the record, take further action as it deems proper.

I. The filing of a request for reconsideration shall effectively stay the appeal period until the hearing examiner takes further action.

J. Where the hearing examiner determines that there is a flaw in the impact fee program or that a specific exemption or credit should be awarded on a consistent basis or that the principles of fairness require amendments to this chapter, the hearing examiner may advise the city council as to any question or questions that the hearing examiner believes should be reviewed as part of the council's annual or other periodic review of the fee schedule as mandated by MVMC 3.36.120.

K. District No. 320, 101. or any fee payer aggrieved by any decision of the hearing examiner may submit an appeal of the decision in writing to the city council within 10 working days from the date the final decision of the hearing examiner is rendered, requesting a review of such decision. Such appeal shall be upon the record, established and made at the hearing held by the hearing examiner; provided, that new evidence which was not available at the time of the hearing held by the hearing examiner may be included in such appeal. The term "new evidence" shall mean only evidence discovered after the hearing held by the hearing examiner and shall not include evidence which was available or which could reasonably have been available and was simply not presented at the hearing for whatever reason.

L. Upon such written appeal being filed within the time period allotted, a hearing shall be held by the city council. Such hearing shall be held in accordance with the following appeal procedures:

1. The director or other designee (the "respondent(s)") shall present a summary of the findings, conclusions, and decision, as well as the alleged errors forming the basis of the appeal.

2. The appellant(s) and the respondent(s) to the appeal shall have the opportunity to present oral arguments before the council; provided, that the appellants may reserve a portion of their time for rebuttal. Such oral argument shall be confined to the record and to any alleged errors therein or to any allegation of irregularities in procedure before the planning commission. The council may request additional information from any staff member or party, or any factual information from members of the audience at its discretion. Such additional information shall be part of the record.

3. If the council finds that:

a. The hearing examiner's findings or decision contains substantial error;

b. The hearing examiner's proceedings were materially affected by irregularities in procedure;

c. The hearing examiner's decision was unsupported by substantial evidence in view of the entire record as submitted; or

d. The hearing examiner's decision is in conflict with the city's adopted plans, policies, and ordinances; it may remand for further hearing before the hearing examiner or may reverse the hearing examiner's decision. In addition, the council may choose to modify the hearing examiner's decision based on the above criteria. Furthermore, any matter may be continued to a time certain for additional city staff analysis desired by the council, before a final determination by the council.

4. If the council determines that there is no basis for the alleged errors set forth in the appeal, it may adopt the findings of the hearing examiner and accept the decision of the hearing examiner.

M. This procedure is the only method for appealing alleged errors or irregularities in procedure which may have occurred before the hearing examiner. All objections are deemed waived if no appeal is taken from the action by the hearing examiner.

N. Any matter requiring action by the council shall be taken by the adoption of a motion by the council. When taking any such final action, the council shall make and enter findings of fact from the record and conclusions thereof which support its action. The council may adopt all or portions of the findings and conclusions.

O. The action of the council approving, modifying, or rejecting a decision of the hearing examiner shall be final and conclusive, unless within 20 calendar days from the date of the council action District No. 320, 101, or any fee payer applies for a writ of certiorari to the superior court of Washington for Skagit County, for the purpose of review of the action taken. .

SECTION EIGHT. That Section 3.36.090, Authorization for the school interlocal agreement and the establishment of the schools impact account, is hereby repealed and reenacted, the new section to read as follows.

A. The mayor is authorized to execute, on behalf of the city, an interlocal agreement for the collection, expenditure, and reporting of school impact fees; provided, that such interlocal agreement comply with the provisions of this section.

B. As a condition of the interlocal agreement, District No. 320 or 101 shall establish a schools impact account with the office of the Skagit County treasurer, who serves as the treasurer for District No. 320 and 101. The account shall be an interest-bearing account.

C. For administrative convenience while processing the fee payments, school impact fees may be temporarily deposited in a city account; provided, that the city shall transfer the school impact fees and the interest earned on the fees to the district or shall deposit the school impact fees and

the interest earned on the fees in the schools impact account established by the district within 31 days of receiving the fees.

D. Funds withdrawn from the schools impact account for District No. 320 or 101 must be used in accordance with the provisions of MVMC 3.36.110. The interest earned shall be retained in this account and expended for the purposes for which the school impact fees were collected.

E. On an annual basis, pursuant to the interlocal agreement, District No. 320 or 101 shall provide a report to the council on the schools impact account, showing the source and amount of all moneys collected, earned, or received, and the public improvements that were financed in whole or in part by impact fees.

F. School impact fees shall be expended or encumbered within ten years of receipt, unless the city council identifies in written findings extraordinary and compelling reason or reasons for District No. 320 or 101 to hold the fees beyond the ten-year period. Under such circumstances, the council shall establish the period of time within which the impact fees shall be expended or encumbered, after consultation with District No. 320 or 101.

SECTION NINE. That Section 3.36.100, Refunds, is hereby repealed and reenacted, the new section to read as follows.

A. If District No. 320 or 101 fails to expend or encumber the impact fees within ten years of when the fees were paid, or where extraordinary or compelling reasons exist, such other time periods as established pursuant to MVMC 3.36.090, the current owner of the property on which impact fees have been paid may receive a refund of such fees. In determining whether impact fees have been expended or encumbered, impact fees shall be considered expended or encumbered on a first-in, first-out basis.

B. The city shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of such claimants. A potential claimant or claimants must be the owner of the property.

C. Owners seeking a refund of impact fees must submit a written request for a refund of the fees to the director within one year of the date the right to claim the refund arises or the date that notice is given, whichever is later.

D. Any impact fees for which no application for a refund has been made within this one-year period shall be retained by District No. 320 or 101 and expended on the appropriate school facilities.

E. Refunds of impact fees under this section shall include any interest earned on the impact fees by District No. 320 or 101.

F. When the city seeks to terminate any or all components of the impact fee program, all unexpended or unencumbered funds from any terminated component or components, including interest earned, shall be refunded pursuant to this section. Upon the finding that any or all fee

requirements are to be terminated, the city shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first class mail at the last known address of the claimants. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by District No. 320 or 101, but must be expended for the appropriate school facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within the account or accounts being terminated.

G. The city shall also refund to the current owner of property for which impact fees have been paid all impact fees paid, including interest earned on the impact fees, if the development activity for which the impact fees were imposed did not occur; provided, that if District No. 320 or 101 has expended or encumbered the impact fees in good faith prior to the application for a refund, District No. 320 or 101 can decline to provide the refund. If within a period of three years, the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner can petition District No. 320 or 101 for an offset. The petitioner must provide receipts of impact fees previously paid for a development of the same or substantially similar nature on the same property or some portion thereof. District No. 320 or 101 shall determine whether to grant an offset. District No. 320 or 101 shall forward its determination to the director, and the director may adopt the determination of district No. 320 or 101 and may grant or decline to grant an offset, or the director may make an alternative determination and set forth the rationale for the alternative determination. Determinations of the director shall be in writing and shall be subject to the appeals procedures set forth in MVMC 3.36.080.

SECTION TEN. That Section 3.36.110 Use of funds, is hereby repealed and reenacted, the new section to read as follows.

A. Pursuant to this chapter, impact fees:

1. Shall be used for school improvements of District No. 320 or 101 that will reasonably benefit the new development; and

2. Shall not be imposed to make up for deficiencies in District No. 320 or 101 school facilities serving existing developments; and

3. Shall not be used for maintenance or operation.

B. Impact fees may be spent for District No. 320 or 101 improvements, including but not limited to school planning, land acquisition, site improvements, necessary off-site improvements, construction, engineering, architectural, permitting, financing, and administrative expenses, applicable impact fees or mitigation costs, capital equipment pertaining to educational facilities, and any other expenses which can be capitalized.

C. Impact fees may also be used to recoup District No. 320 or 101 school facilities improvement costs previously incurred by the district to the extent that new growth and development will be served by the previously constructed improvements or incurred costs.

D. In the event that bonds or similar debt instruments are or have been issued for the advanced provision of District No. 320 or 101 school improvements for which impact fees may be expended, 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 and are used to serve the new development.

SECTION ELEVEN. That Section 3.36.120 Review, is hereby repealed and reenacted, the new section to read as follows.

The fee schedule set forth in Appendix A, a copy of which is kept on file with the Mount Vernon Finance Department, shall be reviewed by the council as it may deem necessary and appropriate in conjunction with the annual update of the capital facilities plan element of the city's comprehensive plan.

SECTION TWELVE. That Section 3.36.130, School impact fee and administrative fees, is hereby repealed and reenacted, the new section to read as follows.

A. The school impact fees set forth in Appendix A, are generated from the formula for calculating impact fees set forth in District No. 320's or 101's (as applicable) capital facilities plans. Except as otherwise provided in MVMC 3.36.050, 3.36.060, or 3.36.150, all development activity in the city will be charged the school impact fee in Schedule A.
B. The city's cost of administering the impact fee program shall be $35.00 per dwelling unit when paid at building permit issuance; and shall be $150.00 for single family residential permits and shall be $200.00 for multi-family residential permits when an applicant applies to defer impact fees to building permit finalization and shall be paid by the applicant to the city as part of the development application fee.

SECTION THIRTEEN. That Section 3.36.140 Fee adjustments, is hereby repealed and reenacted, the new section to read as follows.

The adjustments to the impact fees reflect the legislative determination that while the full impact fees per dwelling unit accurately characterize the cost of the school facilities required for each new development, as documented in District No. 320's or 101's capital facilities plan, the council has, as a matter of policy and at the request of District No. 320 or 101, decided to provide discretionary adjustments for local bond issues. The council is authorized to reduce or to increase the adjustments as part of its annual or periodic review of the fee schedule, or at any other time, by adopting an amendatory ordinance. No additional technical analysis is required for reductions to or increases in the amount of the adjustments.

SECTION FOURTEEN. That Section 3.36.150 Independent fee calculations, is hereby repealed and reenacted, the new section to read as follows.

A. If District No. 320 or 101 believes in good faith that none of the fee categories or fee amounts set forth in the schedule in Appendix A accurately describe or capture the impacts of a new

development on schools, District No. 320 or 101 may conduct independent fee calculations and submit such calculations to the director. The director may impose alternative fees on a specific development based on the calculations of District No. 320 or 101, or may impose alternative fees based on the calculations of the department. The alternative fees and the calculations shall be set forth in writing and shall be mailed to the fee payer.

B. If a fee payer opts not to have the impact fees determined according to the schedule set forth in Appendix A, then the fee payer shall prepare and submit to District No. 320 or 101 an independent fee calculation for the development activity for which a building permit is sought. The documentation submitted shall show the basis upon which the independent fee calculation was made. District No. 320 or 101 shall review the independent fee calculation and provide an analysis to the director concerning whether the independent fee calculation should be accepted, rejected, or accepted in part. The director may adopt, reject, or adopt in part the independent fee calculation based on the analysis prepared by District No. 320 or 101, or may impose alternative fees based on the calculations of the department, the fee payer's independent fee calculation, the specific characteristics of the development, and/or principles of fairness. The fees or alternative fees and the calculations shall be set forth in writing and shall be mailed to the fee payer and to District No. 320 or 101.

C. Any fee payer submitting an independent fee calculation will be required to pay the city of Mount Vernon a fee to cover the cost of reviewing the independent fee calculation. The fee shall be $500.00 plus any additional staff time spent in the review and the cost of consultant services if the city deems these services to be necessary. The city shall require the fee payer to post a cash deposit of $500.00 prior to initiating the review.

D. While there is a presumption that the calculations set forth in District No. 320's or 101's capital facilities plan are valid, the director shall consider the documentation submitted by the fee payer and the analysis prepared by District No. 320 or 101, but is not required to accept such documentation or analysis which the director reasonably deems to be inaccurate or not reliable, and may, in the alternative, require the fee payer or District No. 320 or 101 to submit additional or different documentation for consideration. The director is authorized to adjust the impact fees on a case-by-case basis based on the independent fee calculation, the specific characteristics of the development, and/or principles of fairness. The fees or alternative fees and the calculations shall be set forth in writing and shall be mailed to the fee payer and to District No. 320 or 101.

E. Determinations made by the director pursuant to this section may be appealed to the Hearing Examiner subject to the procedures set forth in MVMC 3.36.080.

SECTION FIFTEEN. Accompanying this Ordinance is a revised and updated Appendix A that contains the school impact fee schedules for Districts 320 and 101 that is hereby adopted by reference as if set forth in its entirety by this reference.

SECTION SIXTEEN. That Section 3.40.040 Assessment of impact fees, is hereby repealed and reenacted, the new section to read as follows.

A. The city shall collect impact fees, based on the schedules in Appendix A, from any applicant seeking a building permit from the city.

B. Except as may be due to exemptions or credits provided pursuant to MVMC 3.40.050 or 3.40.060, or pursuant to an independent fee calculation accepted by the community and economic development director pursuant to MVMC 3.40.140, or impact fees imposed by the community and economic development director pursuant to MVMC 3.40.140, the city shall not issue or finalize (as applicable) a building permit(s) unless and until the impact fees set forth in the schedules in Appendix A to this chapter have been paid.

C. An applicant can either pay the required impact fees when their building permit is issued; or they can request to defer this payment to the final inspection for residential building permit(s) they have received. The following shall apply to any request to defer payment of an impact fee:

1. The applicant shall submit to the city a written request to defer the payment of an impact fee for a specifically identified residential building permit. The applicant's request shall be on forms provided by the City and shall include all of the following. To be accepted by the City these materials must be accompanied by an administrative fee as provided within this Chapter.
   i. The applicant's corporate identity and contractor registration number,
   ii. The full names of all legal owners of the property upon which the development activity allowed by the building permit is to occur,
   iii. The legal description of the property upon which the development activity allowed by the building permit is to occur,
   iv. The tax parcel identification number of the property upon which the development activity allowed by the building permit is to occur, and
   v. The address of the property upon which the development activity allowed by the building permit is to occur.
   vi. Completed Deferred Payment of Impact Fee Lien.
2. The impact fee amount due under any request to defer payment of impact fees shall be based on the schedule in effect at the time the applicant provides the city with the information required in subsection 1 of this section.
3. Prior to the issuance of a building permit that is the subject of a request for a deferred payment of impact fee, all applicants and/or legal owners of the property upon which the development activity allowed by the building permit is to occur must sign a deferred impact fee payment lien in a form acceptable to the city attorney. The deferred impact fee payment lien shall be recorded by the applicants and/or legal owners against the property subject to the building permit and be granted in favor of the city in the amount of the deferred impact fee. Any such lien shall be junior and subordinate only to one mortgage for the purpose of construction upon the same real property subject to the building permit. In addition to the administrative fee required in this Chapter of this section, the applicant shall be responsible for all fees associated with recording this document with the Skagit County Auditor.
4. The city shall not approve a final inspection until the traffic, parks, and fire impact fees identified in the deferred impact fee payment lien are paid in full.
5. In no case shall payment of the impact fee be deferred for a period of more than 18 months from the date of building permit issuance.

6. Upon receipt of final payment of the deferred impact fee as identified in the deferred impact fee payment lien, the city shall execute a release of lien for the property. The applicant and/or owner, at their own expense, shall record the lien release.
7. In the event that the deferred impact fee is not paid within the time provided in this section, the city shall institute foreclosure proceedings under the process set forth in Chapter 61.12 RCW.
8. An applicant is entitled to defer impact fees pursuant to this section for no more than 20 single-family dwelling unit building permits per year in the city. For purposes of this section, an "applicant" includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.
9. The Director may adopt rules and procedures they determine are reasonably necessary to implement the requirements of the impact fee deferral process.

SECTION SEVENTEEN. That Section 3.40.080 Appeals, is hereby repealed and reenacted, the new section to read as follows.

A. Any fee payer may pay the impact fees imposed by this chapter under protest in order to obtain a development approval and/or issuance or finalization of a building permit. Appeals regarding the impact fees imposed on any development activity may only be taken by the fee payer of the property where such development activity will occur. No appeal shall be permitted unless and until the impact fees at issue have been paid.

B. The community and economic development director's determinations with respect to the applicability of the impact fees to a given development approval and/or building permit, the availability of an exemption, the availability or value of a credit, or the community and economic development director's decision concerning the independent fee calculation which is authorized in MVMC 3.40.140, or the impact fees imposed by the community and economic development director pursuant to MVMC 3.40.140, or any other determination which the community and economic development director is authorized to make pursuant to this chapter, can be appealed to the hearing examiner.

C. Appeals shall be taken within 10 working days of the community and economic development director's issuance of a written determination by filing with the community and economic development department a notice of appeal specifying the grounds thereof, the items listed in MVMC 14.05.210(B) under the heading "Appeal," and depositing an administrative fee in the amount of $300.00. The community and economic development department shall transmit to the hearing examiner all papers constituting the record for the determination including the submitted appeal items, including where appropriate, the independent fee calculation.

D. The community and economic development department, after consultation with the hearing examiner, shall fix a time for the hearing of the appeal, give notice to the parties in interest, and decide the same. At the hearing, any party may appear in person or by agent or attorney. If the matter which is the subject of the appeal requires development approval which also requires a hearing before the hearing examiner, both the appeal and the development approval hearing may be combined in a single hearing.

E. The hearing examiner is authorized to make findings of fact regarding the applicability of the impact fees to a given development activity, the availability or amount of the credit, or the accuracy or applicability of an independent fee calculation. The decision of the hearing examiner shall be final, except as provided in this section.

F. The hearing examiner may, so long as such action is in conformance with the provisions of this chapter, reverse or affirm, in whole or in part, or may modify the determinations of the community and economic development director with respect to the amount of the impact fees imposed or the credit awarded upon a determination that it is proper to do so based on principles of fairness, and may make such order, requirements, decision or determination as ought to be made, and to that end shall have the powers which have been granted to the community and economic development director by this chapter.

G. Any fee payer who believes that the decision of the hearing examiner is based on erroneous procedures, errors of law or fact, error in judgment, or has discovered new evidence which could not be reasonably available at the prior hearing, may make a written request for reconsideration by the hearing examiner within 10 working days of the date the decision is rendered. Such fee payer is the "appellant" for the purposes of this section. This request shall set forth the specific errors or new information relied upon by such appellant, and the hearing examiner may, after review of the record, take further action as it deems proper.

H. The filing of a request for reconsideration shall effectively stay the appeal period until the hearing examiner takes further action.

I. Where the hearing examiner determines that there is a flaw in the impact fee program or that a specific exemption or credit should be awarded on a consistent basis or that the principles of fairness require amendments to this chapter, the hearing examiner may advise the city council as to any question or questions that the hearing examiner believes should be reviewed as part of the council's annual or other periodic review of the impact fee schedules as mandated by MVMC 3.40.120.

J. Any fee payer aggrieved by any decision of the hearing examiner may submit an appeal of the decision in writing to the city council within 10 working days from the date the final decision of the hearing examiner is rendered, requesting a review of such decision. Such appeal shall be upon the record, established and made at the hearing held by the hearing examiner; provided, that new evidence which was not available at the time of the hearing held by the hearing examiner may be included in such appeal. The term "new evidence" shall mean only evidence discovered after the hearing held by the hearing examiner and shall not include evidence which was available or which could reasonably have been available and was simply not presented at the hearing for whatever reason.

K. Upon such written notice of appeal being filed within the time period allotted, a hearing shall be held by the city council. Such hearing shall be held in accordance with the following appeal procedures:

1. The community and economic development director or other designee (the "respondent(s)") shall present a summary of the findings, conclusions, and decision, as well as the alleged errors forming the basis of the appeal.

2. The appellant(s) and the respondent(s) to the appeal shall have the opportunity to present oral arguments before the council; provided, that the appellants may reserve a portion of their time for rebuttal. Such oral argument shall be confined to the record and to any alleged errors therein or to any allegation of irregularities in procedure before the hearing examiner. The council may request additional information from any staff member or party, or any factual information from members of the audience at its discretion. Such additional information shall be part of the record.

3. If the council finds that:

a. The hearing examiner's findings or decision contains substantial error;

b. The hearing examiner's proceedings were materially affected by irregularities in procedure;

c. The hearing examiner's decision was unsupported by substantial evidence in view of the entire record as submitted; or

d. The hearing examiner's decision is in conflict with the city's adopted plans, policies, and ordinances, it may remand for further hearing before the hearing examiner or may reverse the hearing examiner's decision. In addition, the council may choose to modify the hearing examiner's decision based on the above criteria. Furthermore, any matter may be continued to a time certain for additional city staff analysis desired by the council, before a final determination by the council. If the council requests additional staff analysis the appellant shall be provided a copy and afforded reasonable time to review the analysis and respond to the council before final determination by the council.

4. If the council determines that there is no basis for the alleged errors set forth in the appeal, it may adopt the findings of the hearing examiner and accept the decision of the hearing examiner.

L. This procedure is the only method for appealing alleged errors or irregularities in procedure which may have occurred before the hearing examiner. All objections are deemed waived if no appeal is taken from the action by the hearing examiner.

M. Any matter requiring action by the council shall be taken by the adoption of a motion by the council. When taking any such final action, the council shall make and enter findings of fact from the record and conclusions thereof which support its action. The council may adopt all or portions of the hearing examiner's findings and conclusions.

N. The action of the council approving, modifying, or rejecting a decision of the hearing examiner shall be final and conclusive, unless within 20 calendar days from the date of the council action any fee payer applies for a writ of certiorari or writ of review to the Superior Court of Washington for Skagit County, for the purpose of review of the action taken.

SECTION EIGHTEEN. That Section 3.40.090 Establishment of impact fee accounts, is hereby repealed and reenacted, the new section to read as follows.

A. The city shall establish separate impact fee accounts for the following: (1) transportation impact fees; (2) park impact fees; and (3) fire impact fees. The accounts shall be interest bearing accounts.

B. Funds withdrawn from the impact fee accounts must be used in accordance with the provisions of MVMC 3.40.110. The interest earned shall be retained in each account and expended for the purposes for which the impact fees were collected.

C. On an annual basis, the city finance director shall provide a report to the council on the impact fee accounts, showing the source and amount of all moneys collected, earned, or received, and the planned facilities that were financed in whole or in part by impact fees.

D. Impact fees shall be expended or encumbered within ten years of receipt, unless the city council identifies in written findings extraordinary and compelling reason or reasons to hold the impact fees beyond the ten-year period. Under such circumstances, the council shall establish the period of time within which the impact fees shall be expended or encumbered. (Ord. 3612 § 2, 2013).

SECTION NINETEEN. That Section 3.40.130 Independent fees and administrative fees, is hereby repealed and reenacted, the new section to read as follows.

A. The impact fees set forth in Appendix A, attached to this chapter, are based upon the data and assumptions set forth therein, and the information and public input provided to the city council in considering adoption of this chapter. Except as otherwise provided in MVMC 3.40.050, 3.40.060 or 3.40.140, all development activity in the city will be charged the impact fees set forth in the schedules contained in Appendix A attached to the ordinance codified in this chapter.

B. The city's cost of administering the impact fee program shall be $35.00 per unit for single family residential permits, or $70.00 per multifamily residential permit when paid at building permit issuance; and shall be $150.00 for single family residential permits and shall be $200.00 for multi-family residential permits when an applicant applies to defer impact fees to building permit finalization. Non-residential permits shall be charged one percent of the impact fees calculated to be due, per impact fee, and shall be paid by the applicant to the city as part of the permit application fee.

C. The city's cost of administering the impact fee program shall be $35.00 per dwelling unit and shall be paid by the applicant to the city as part of the development application fee.

SECTION TWENTY. That Section 3.40.140 Independent fee calculations, is hereby repealed and reenacted, the new section to read as follows.

A. If the community and economic development director believes in good faith that none of the impact fee categories or impact fee amounts set forth in the schedules in Appendix A attached to

the ordinance codified in this chapter accurately describe or capture the impacts of a development activity on planned facilities, the community and economic development director may conduct independent fee calculations. The community and economic development director may impose alternative impact fees on a specific development activity based on these calculations. The alternative impact fees and the calculations shall be set forth in writing and shall be mailed to the fee payer.

B. If a fee payer opts not to have the impact fees determined according to the schedules set forth in Appendix A, then the fee payer shall prepare and submit to the community and economic development director an independent fee calculation for the development activity for which final plat, PUD, binding site plan, or other development approval, or a building permit is sought. The documentation submitted shall show the basis upon which the independent fee calculation was made. The appropriate department heads and appropriate consultants that the city can hire at the applicant's expense, shall review the independent fee calculation and provide an analysis to the community and economic development director concerning whether the independent fee calculation should be accepted, rejected, or accepted in part. The community and economic development director may adopt, reject, or adopt in part the independent fee calculation based on the analysis prepared by appropriate department heads, and based on the specific characteristics of the development activity, and/or principles of fairness. The impact fees or alternative impact fees and the calculations shall be set forth in writing and shall be mailed to the fee payer.

C. Any fee payer submitting an independent fee calculation will be required to pay the city of Mount Vernon a fee to cover the cost of reviewing the independent fee calculation. The fee shall be $500.00 plus the actual cost of any additional staff time in excess of $500.00 spent in the review, and the cost of consultant services if the city deems these services to be necessary; provided, however, for independent fee calculations for single residential lots where, in the sole discretion of the community and economic development director, the issues involved are easily handled and the fee is clearly excessive, the $500.00 fee may be reduced. The city shall require the fee payer to post a cash deposit of $500.00 prior to initiating the review.

D. While there is a presumption that the calculations set forth in the city's capital facilities plan are valid, the community and economic development director shall consider the documentation submitted by the fee payer and the analysis prepared by the appropriate department heads, but is not required to accept such documentation or analysis which the community and economic development director reasonably deems to be inaccurate or not reliable, and may, in the alternative, require the fee payer to submit additional or different documentation for consideration. The community and economic development director is authorized to adjust the impact fees on a case-by-case basis based on the independent fee calculation, the specific characteristics of the development activity, and/or principles of fairness. The impact fees or alternative impact fees and the calculations shall be set forth in writing and shall be mailed to the fee payer.

E. Determinations made by the community and economic development director pursuant to this section may be appealed to the hearing examiner subject to the procedures set forth in MVMC 3.40.080.

SECTION TWENTY. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

SECTION TWENTY-ONE. City staff are hereby directed to complete preparation of the final ordinance, including correction of any typographical or editorial edits.

SECTION TWENTY-TWO. This ordinance shall be in full force and effect five days after its passage, approval and publication as provided by law.

PASSED AND ADOPTED this 10th day of August, 2016.

SIGNED AND APPROVED this ____ day of _____, 2016

_____
Alicia D. Huschka, Finance Director

_____
Jill Boudreau, Mayor

Approved as to form:

_____
Kevin Rogerson, City Attorney

Published _____

APPENDIX A TO MVMC 3.36

A. MOUNT VERNON SCHOOL DISTRICT NO. 320 SCHOOL IMPACT FEES

The school impact fees set forth in this appendix are generated from the formula for calculating impact fees set forth in the Sedro-Woolley District No. 320's Capital Facilities Plan. Except as otherwise provided in MVMC 3.36.050, 3.36.060, or 3.36.150, all residential development in the City of Mount Vernon within the boundaries of the Mount Vernon School District will be charged the following school impact fees:

Impact fee per Single-family Dwelling Unit: $6,658.00
Impact fee per Multi-family Dwelling Unit with 2 or more bedrooms: $875.00

B. SEDRO-WOOLLEY SCHOOL DISTRICT NO. 101 SCHOOL IMPACT FEES

The school impact fees set forth in this appendix are generated from the formula for calculating impact fees set forth in the Sedro-Woolley District No. 101's Capital Facilities Plan. Except as otherwise provided in MVMC 3.36.050, 3.36.060, or 3.36.150, all residential development in the City of Mount Vernon within the boundaries of the Sedro-Woolley School District will be charged the following school impact fees:

Impact fee per Single-family Dwelling Unit: $5,239.00
Impact fee per Multi-family Dwelling Unit: $5,254.00