

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Authorization for City Manager to Execute an Interlocal Agreement with the Shoreline Fire Department for the Collection, Distribution, and Expenditure of Fire Impact Fees
DEPARTMENT:	Shoreline Fire Department in Coordination with the City Manager's Office and City Attorney's Office
PRESENTED BY:	Julie Ainsworth-Taylor, Assistant City Attorney
ACTION:	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

ISSUE STATEMENT:

The Fire Department has requested that the City of Shoreline implement a fire impact fee program on its behalf.

The first step to implementing the fire impact fee was the preparation of a capital facilities plan by the Fire Department and incorporation of that plan into the City's Comprehensive Plan. This was accomplished when the Department's Capital Facilities and Equipment Plan and a Mitigation and Level of Service Policy were incorporated into the City's Comprehensive Plan Capital Facilities Element as part of the 2017 Docket for Comprehensive Plan Amendments on November 13, 2017 via Ordinance No. 802. The staff report for this Council action can be found at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2017/staffreport111317-7c.pdf>.

The second step in implementing the fire impact fee requested by the Fire Department was the adoption of regulations to administer the program. This was accomplished by the establishment of a new chapter, SMC 3.75, within SMC Title 3 Revenue and Finance and a new section to SMC 3.01 Fee Schedules on November 20, 2017 via Ordinance No. 791. The staff report for this Council action can be found at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2017/staffreport112017-8c.pdf>.

The final step in implementing the fire impact fee is the execution of an Interlocal Agreement that will set forth the roles and responsibilities of the Fire Department and the City in regards to the fire impact fee program (Attachment A). The Interlocal Agreement not only sets forth the roles and responsibilities of the parties but includes provisions related to annual reporting, audits, indemnification, and dispute resolution.

Pursuant to RCW 39.34, the Interlocal Cooperation Act, the governing bodies must authorize the Interlocal Agreement. The City Attorney's office drafted the Interlocal Agreement contained in Attachment A and has provided it to the Fire Department for its review and for authorization from the Board of Fire Commissioners for its execution.

No fire impact fees may be collected by the City on behalf of the Fire Department until the Interlocal Agreement is fully executed. The Shoreline Fire Department has reviewed the Interlocal Agreement and does not have any concerns with the proposed agreement.

CITY RESOURCE/FINANCIAL IMPACT:

The implementation of a fire impact fee will not require significant resources from the City of Shoreline. There would likely be a very slight increase in time needed to process a permit application and for staff to administer the necessary accounting functions to manage the transfer of funds. However, there would be some revenue generated by the program based on an administrative fee charged by the City against an applicant.

RECOMMENDATION

City Staff requests authorization from the City Council for execution of an Interlocal Agreement with the Shoreline Fire Department for the collection, distribution, and expenditure of fire impact fees in substantially the same form as set forth in Attachment A.

ATTACHMENTS:

Attachment A – Draft Interlocal Agreement Between the City of Shoreline and the Shoreline Fire Department for the Collection, Distribution, and Expenditure of Fire Impact Fees

Approved By: City Manager **DT** City Attorney **MK**

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF SHORELINE AND THE SHORELINE FIRE DEPARTMENT
FOR THE COLLECTION, DISTRIBUTION, AND EXPENDITURE OF FIRE IMPACT FEES**

This INTERLOCAL AGREEMENT (“Agreement”) is entered into by and between the City of Shoreline (“City”), a Washington municipal corporation organized pursuant to RCW Title 35A, and the Shoreline Fire Department (“Fire Department”), a Washington fire protection district organized pursuant to RCW Title 52.

WHEREAS, the City is required to plan under the Growth Management Act, chapter 36.70A RCW (“GMA”); and

WHEREAS, RCW 82.02.050 gives the City authority to adopt impact fees so that new growth and development will pay a proportionate share of the costs of new public facilities needed to serve new growth and development, including fire protection facilities; and

WHEREAS, the Fire Department requires that the City, on behalf of the Fire Department, implement an impact fee program; and

WHEREAS, the Fire Department prepared a Capital Facilities & Equipment Plan (“CEFP”) and a Mitigation and Level of Service Policy (“LOS Policy”) to document needed capital improvements and the impacts of new development on fire protection facilities; and

WHEREAS, RCW 82.02.050 permits the collection of impact fees only for public facilities which are addressed by a capital facilities element of a GMA comprehensive land use plan and the City incorporated the CEFP and LOS Policy within its comprehensive plan with the adoption of Ordinance No. 802; and

WHEREAS, the City has adopted Ordinance No. 791 establishing Shoreline Municipal Code (SMC) Chapter 3.75 Impact Fees for Fire Protection Facilities which sets forth regulations to administer the impact fee program and require the execution of an interlocal agreement prior to collection of any fees; and

WHEREAS, the City and the Fire Department enter into this Agreement pursuant to and in accordance with the State Interlocal Cooperation Act, chapter 39.34 RCW, for the purpose of administering the impact fee program and setting forth duties and responsibilities of the parties;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTAL PROMISES HEREIN, IT IS AGREED AS FOLLOWS:

I. AGREEMENT

The purpose of this Agreement is to set forth the roles and responsibilities of the City and the Fire Department (collectively, the “Parties”) with respect to the fire impact fee program established by SMC chapter 3.75. The Parties agree to comply with the terms and conditions of this Agreement which governs the collection, distribution, and expenditure of fire impact fees.

II. RESPONSIBILITIES OF THE PARTIES

A. Shoreline Fire Department Responsibilities:

1. At all times, the Fire Department shall fully comply with the requirements of RCW Chapter 82.02 related to impact fees for fire protection facilities and SMC Chapter 3.75. The Department shall expend, encumber, and refund impact fee funds and any interest earned solely as authorized by law.
2. The Fire Department authorizes the City to collect impact fees on behalf of the Department, to remit such fees to the Department, and to collect and retain for the City an administrative fee for the administration of the fire impact fee program.
3. The Fire Department shall be solely responsible for all costs incurred by the Department related to the administration of the fire impact fee program included, but not limited to, the Fire Department Staff time in reviewing impact fee applications, requests for credits and refunds, and independent fee calculations.
4. No later than January 31 of each year, the Fire Department shall submit to the Shoreline City Council a report on fire impact fees for the previous year as required by RCW 82.02.070(1), as amended. The report shall detail, at a minimum, the amount of impact fees collected, the source of those impacts fees, the capital improvements which were financed, in whole or in part, by the impact fees, credits awarded, and any refunds issued. If, as provided in RCW 82.02.070(3), as amended, the Fire Department has extraordinary and compelling reasons for encumbering or expending impact fees beyond the statutorily-authorized time period, the Department shall identify such findings in writing to the City Council in the annual report.
5. No later than March 31 of each year, the Fire Department shall submit to the City's Planning and Community Development Department an updated capital facilities and equipment plan satisfying the requirements of RCW 36.70A.070(3) and containing a six-year financing plan as required by SMC 3.75.030.
6. No later than September 1 of each year, the Fire Department shall submit to the City's Administrative Services Department any proposed modification to the impact fee rates as required by SMC 3.75.030.
7. The Fire Department shall establish a separate impact fee account into which all fire impact fees distributed to it shall be deposited and from which funds will be expended or encumbered for eligible fire protection facilities pursuant to RCW Chapter 82.02.
8. The Fire Department shall maintain accounts and records necessary to ensure property accounting for all impact fee funds in compliance with this Agreement, RCW Chapter 82.02, and SMC Chapter 3.75.

B. City of Shoreline Responsibilities:

1. The City shall provide to building permit applicants all necessary documents to administer the collection of fire impact fees on behalf of the Fire Department, including a Fire Impact Fee Estimation Form.

2. The City shall, upon submittal of a building permit application, determine whether an application is exempt from the payment of fire impact fees. If an application is not exempt, the City will transmit the Fire Impact Fee Estimation Form that has been completed by the applicant to the Fire Department.
3. The Fire Department and/or applicant shall return the complete Fire Impact Fee Estimation Form to the City denoting the total fee that should be collected by the City. If an independent fee calculation has been done pursuant to SMC 3.75.060, the Fire Department shall provide, in writing, the amount that shall be collected by the City. In both situations, the City will charge an administrative fee based on the rate set forth in SMC 3.01.017. The City is under no obligation to verify the calculation of the total impact fee due.
4. The City shall collect the impact fee from an applicant prior to building permit issuance except for those building permit applications eligible for deferral pursuant to SMC 3.75.060(F).
5. The City shall establish a separate impact fee account into which all fire impact fees collected on behalf of the Fire Department shall be deposited.
6. The City shall remit to the Fire Department, on a quarterly basis, all fire impact fees collected on behalf of the Fire Department, and any interest earned, accompanied by a report of the impact fee paid by date, amount, application, and development location. Administrative fees shall be retained by the City.
7. The City shall review the Fire Department's capital facilities and equipment plan for possible adoption in conjunction with the City's comprehensive plan docket. The City shall have no obligation to review the plan if not received by the deadline established in this Agreement and SMC 3.75.030.
8. The City shall review any proposed modifications to the impact fee rates submitted by the Fire Department in conjunction with the City's budget. The City shall have no obligation to review rate modifications if not received by the deadline established in this Agreement and SMC 3.75.030.
9. The City shall in no event be responsible for the payment of any funds to the Fire Department except for impact fees collected on behalf of the Fire Department pursuant to SMC Chapter 3.75 Impacts Fees for Fire Protection Facilities.

III. AUDIT

- A. The Fire Department's records and documents with respect to all matter covered by this Agreement shall be subject to inspection, review, or audit by the City or an appropriate state agency.
- B. The Fire Department shall fully cooperate in any such inspection, review, and/or audit. The Fire Department further agrees to fully cooperate with any monitoring or evaluation activities conducted by the City that pertain to the subject of this Agreement.
- C. The Fire Department shall fully cooperate with any monitoring or evaluation activities conducted by the City that pertain to the subject of the Agreement. The Fire Department will allow the City, or appropriate state agencies and/or any of their employees, agents, or representatives to have full access to and the right to examine during normal business hours, all of the Fire Department's records with respect to all matters covered by this Agreement. The City and or any of its employees, agents, or representatives shall be

permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all invoices, material, payrolls, and records of matters covered by the Agreement. The City will give fourteen days advance notice to the Fire Department of fiscal audits to be conducted.

IV. HOLD HARMLESS AND INDEMNIFICATION

- A. The Fire Department shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the City, its officers, employees, agents, and representatives from any and all costs, claims, judgments, or awards of damages arising out of or in any way resulting from the acts, errors, or omissions of the Fire Department, its officers, employees, agents, or representatives relating in any way to the fire impact fee program, performance of the Fire Department's responsibilities set forth in this Agreement, failure for any reason to comply with the terms of this Agreement, any liability arising from an audit of the Fire Department's impact fee account, or compliance with the terms of SMC Chapter 3.75 or RCW Chapter 82.02, both as amended from time to time.

- B. The Fire Department further agrees that it shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the City, its officers, employees, agents, and representatives from any and all costs, claims, judgments, or awards of damages arising out of or in any way resulting from the Fire Department's failure to comply with RCW Chapter 82.02, as amended. This indemnification by the Fire Department shall include, but not be limited to:
 - 1. The Fire Department's responsibility to refund any impact fees, with interest, which are determined to have been improperly paid, regardless of whether the City erroneously required the impact fee prior to permit issuance;
 - 2. The Fire Department's responsibility to refund any impact fees with interest pursuant to the procedures set forth in RCW 82.02.080, as amended, which have not been expended or encumbered within any time period established by RCW Chapter 82.02, as amended, or if the impact fee program has been terminated, in whole or in part.
 - 3. The Fire Department's responsibility to refund any impact fees, with interest, when an applicant does not proceed with the development activity and no impact has resulted, or when a development activity was not completed and impact fee funds were expended or encumbered by the Fire Department, regardless of whether the Fire Department's determination was made in good faith.

- C. Except as provided in Paragraphs A and B of this section, the City shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the Fire Department, its officers, employees, agents, and representatives from that portion of any costs, claims, judgments, or awards of damages that exceed the amount of impact fees the City has collected on behalf of the Fire Department resulting from the City, its officers, employees, agents, or representatives negligent acts or omissions; intentional acts or omissions; or failure for any reason to comply with the terms of this Agreement, Chapter 82.02, or the terms of SMC Chapter 3.75 Shoreline Municipal Code, all as may be amended from time to time. It is the intent of this Section (C) that any liability created

by the City's performance of its duties under this Agreement be satisfied first out of any impact fees attributable to the activity out of which the liability arises that have been collected by the City on behalf of the Fire Department for the particular development activity at issue, and only in the event that such impact fees collected for the particular development activity at issue are insufficient, shall the City be liable to satisfy the liability.

- D. The Fire Department's duties to the City and the City's duties to the Fire Department shall not be diminished or extinguished by the termination of this Agreement pursuant to Section VI Term.

V. NONDISCRIMINATION

There shall be no discrimination against any employee or independent contractor paid by any funds which are the subject of this Agreement or against any applicant for such employment because of race, religion, color, sex, age, sexual orientation, handicap, or national origin.

VI. TERM

- A. The term of this Agreement shall commence upon the Effective Date.
- B. This Agreement may be terminated by the mutual consent of both Parties.
- C. The City's obligation to collect impact fees under this Agreement may be terminated with or without cause by the City, at any time.
- D. Upon termination of this Agreement, all other obligations under this Agreement shall remain in effect so long as the City or the Fire Department retain unexpended, unencumbered, or unrefunded funds.
- E. Upon termination of this Agreement, the Party holding any impact fees collected under this Agreement shall ensure that any remaining impact fees and interest earned thereon are either properly expended or refunded pursuant to chapter 82.02 RCW, as amended.
- F. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or by law that either Party may have in the event that the obligations, terms, and/or conditions set forth in this Agreement are breached by the other party. The obligations under.

VII. ADMINISTRATION AND NOTICES

- A. This Agreement will be administered by the representatives named below:

The Shoreline Fire Department's representative is:

Fire Chief
17525 Aurora Avenue N.
Shoreline, WA 98133-4905
206-533-6510

The City of Shoreline's representative is:

Administrative Services Director
17500 Midvale Avenue N.
Shoreline, WA 98133-4905
206-801-2301

- B. Any notice required by this Agreement shall be in writing and addressed to the appropriate designated representative at the address which appears above (as modified in writing from time to time by such party), and given personally; by registered or certified mail, return receipt requested; by facsimile or electronic mail; or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

VIII. DISPUTE RESOLUTION

The Parties agree to use their best efforts to resolve any disputes arising out of or related to this Agreement using good faith negotiations. The City's Administrative Services Director, or designee, and the Fire Department's Fire Chief, or designee, will attempt to mutually resolve any disputes or questions of interpretation of this Agreement or the performance of either Party under this Agreement. If the disputes or questions are not resolved by these individuals, then the Parties agree that they are free to file suit, seek any available legal remedy, or agree to alternative dispute resolution methods such as mediation. However, at all times prior to resolution of the dispute, the Parties shall continue to perform any undisputed obligations and make any undisputed required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute. Notwithstanding anything in this Agreement to the contrary, neither Party has an obligation to agree to refer the dispute to mediation or other form of dispute resolution.

IX. GENERAL PROVISIONS

- A. **Public Records.** Both Parties acknowledge that they are a public agency subject to Washington's Public Records Act, chapter 42.56 RCW, and that all documents produced in connection with this Agreement may be deemed a public record as defined in the Public Records Act and that if either Party receives a public record request, unless a statute exempts disclosure, the Party must disclose the record to the requestor.
- B. **Assignment and Third Party Beneficiaries.** This Agreement is specific to the Parties and no Party shall assign, transfer, or encumber any rights, duties, or interests accruing from this Agreement without the written consent of the other. The Parties do not intend to create any third-party beneficiaries to this Agreement and no other person will have any right of action based upon any provision of This Agreement.
- C. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the Parties hereto. Either Party may request changes in this Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendment to this Agreement.

- D. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Any reference to the RCW and/or SMC shall mean those laws as amended from time to time. Venue of any suit between the parties arising out of this Agreement shall be King County Superior Court.
- E. **Severability.** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- F. **Headings and Construction.** Section headings are intended as information only, and shall not be construed with the substance of the section they caption. In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.
- G. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- H. **Effective Date.** This Agreement shall be effective when fully executed by both Parties.
- I. **No separate entity.** No separate legal or administrative entity is created under this Agreement.

Each person whose signature appears below represents, warrants, and guarantees that he/she has been duly authorized and has full authority to execute this Agreement on behalf of the party for which he/she is signing this Agreement.

City of Shoreline

Shoreline Fire Department

By: _____
Debbie Tarry, City Manager

By: _____
Matt Cowan, Fire Chief

Date: _____

Date: _____

Approved as to Form:

Approved as to Form:

City Attorney, City of Shoreline

Attorney, Shoreline Fire Department