ORDINANCE NO. 15-XXX

AN ORDINANCE OF THE CITY COUNCIL OF PORT ORCHARD, WASHINGTON, RELATING TO IMPACT FEES FOR NEW DEVELOPMENT, REPEALING THE CURRENT IMPACT FEE CHAPTER 16.70 POMC AND ADOPTING A NEW CHAPTER IDENTIFYING A SERVICE AREA, DESCRIBING THE MANNER IN WHICH TRANSPORTATION, SCHOOL AND PARK IMPACT FEES ARE CALCULATED, THE PROCEDURE FOR OBTAINING CREDITS, VARIATIONS FROM THE IMPACT FEE SCHEDULES, EXPLAINING THE PURPOSE OF THE PROJECT LIST, ESTABLISHING AN APPEAL PROCESS AND ADOPTING THE TRANSPORTATION AND PARKS IMPACT FEE SCHEDULES, ADOPTING A NEW CHAPTER 16.70 TO THE PORT ORCHARD MUNICIPAL CODE.

WHEREAS, the City desires to adopt a new impact fee ordinance to be consistent with State Law; and

WHEREAS, the City SEPA Responsible Official made a threshold determination that this ordinance was exempt under WAC 197-11-800(19);

WHEREAS, the City Council considered this Ordinance during its regular meeting of __________, 2015; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Chapter 16.70 of the Port Orchard Municipal Code is hereby repealed.

Section 2. A new Chapter 16.70 is hereby added, which shall read as follows:

Chapter 16.70
IMPACT FEES

Sections:

16.70.010 Authority and purpose.
16.70.020 Applicability.
16.70.030 Geographic scope.
16.70.040 Imposition of impact fees.
16.70.050 Approval of development.
16.70.010 Authority and purpose.

A. This chapter is enacted pursuant to the City’s police powers, the Growth Management Act (chapter 36.70A RCW), the impact fee statutes (RCW 82.02.050 through 82.02.100), the State Subdivision Act (chapter 58.17 RCW) and the State Environmental Policy Act (SEPA, chapter 43.21C RCW).

B. The purpose of this chapter is to:

1. Develop a program consistent with the City’s parks, open space and recreation plan, six-year road plan and the City’s comprehensive plan (parks and transportation elements) and capital improvement plan, for joint public and private financing of park and transportation facility improvements necessitated in whole or in part by development in the City;

2. Develop a program for joint public and private financing of school facilities consistent with the capital improvement plan of the school district, as such public facilities are necessitated in whole or in part by development in the City;

3. Ensure adequate levels of service in public facilities within the City and school district;

4. Create a mechanism to charge and collect fees to ensure that all new development bears its proportionate share of the capital costs of off-site park, school and
transportation facilities reasonably related to new development, in order to maintain adopted levels of park service, maintain adopted levels of service in the City’s transportation facilities, and to ensure the availability of adequate school facilities at the time of new development;

5. Ensure that the City pays its fair share of the capital costs of parks and transportation facilities necessitated by public use of the parks and roadway system, and ensure that the school district pays its fair share of the capital costs of school facilities; and

6. Ensure fair collection and administration of such impact fees.

16.70.020 Applicability and Definitions.

A. Chapter 16.69 of the Port Orchard Municipal Code includes the definitions for this chapter and chapter 16.71 on concurrency management. The requirements of this Chapter apply to all development in the City as “development” or “development activity” is defined in Section 16.69.010 POMC.

B. Mitigation of impacts on parks and transportation facilities located in jurisdictions outside the City will be required when:

1. The other affected jurisdiction has reviewed the development’s impact under its adopted impact fee/mitigation regulations and has recommended to the City that there be a requirement to mitigate that impact; and

2. There is an interlocal agreement between the City and the affected jurisdiction specifically addressing impact identification and mitigation.

16.70.030 Geographic Scope. The boundaries within which transportation and park impact fees shall be charged and collected are the same as the corporate city limits. The boundaries within which school impact fees shall be charged and collected are the same as the boundaries of the South Kitsap School District No. 402 lying within the corporate city limits. All unincorporated areas annexed to the City on and after the effective date of the ordinance codified in this Chapter shall be subject to the provisions of this Chapter. After the adoption of interlocal agreements with other local and regional governments, the geographic boundaries may be expanded consistent therewith.

16.70.040 Imposition of Impact Fees.

A. The City is hereby authorized to impose impact fees on new development.

B. Impact fees may be required pursuant to the impact fee schedule adopted
through the process described herein, or mitigation may be provided through:

1. the purchase, installation and/or improvement of park, school and transportation facilities pursuant to Section 16.70.080; or

2. The dedication of land pursuant to Section 16.70.080.

C. Impact fees:

1. Shall only be imposed for park, school and transportation facilities that are reasonably related to new development;

2. Shall not exceed a proportionate share of the costs of park, school and transportation facilities that are reasonably related to new development;

3. Shall be used for park, school and transportation facilities that will reasonably benefit the new development;

4. Shall not be used to correct existing deficiencies;

5. Shall not be imposed to mitigate the same off-site park, school and transportation facility impacts that are being mitigated pursuant to any other law;

6. Shall not be collected for improvements to state/county park and transportation facilities unless the state/county requests such improvements and an interlocal agreement to collect such fees has been executed between the state/county and the City;

7. Shall not be collected for improvements to park and transportation facilities in other municipalities unless the affected municipality requests that such impact fees be collected on behalf of the affected municipality, and an interlocal agreement has been executed between the City and the affected municipality for the collection of such fees;

8. Shall be collected only once for each development, unless changes or modifications to the development are proposed which result in greater direct impacts on park, school and/or transportation facilities than were considered when the development were first permitted;

10. May be imposed for system improvement costs previously incurred by the City, to the extent that new growth and development will be served by previously constructed improvements; and provided, that such fee shall not be imposed to make up for any system improvement deficiencies; and

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11. Shall only be imposed for park and school facilities on residential development.

16.70.050 Approval of development. Prior to approving or permitting a development or development permit, the Approving Authority shall consult with the Director concerning mitigation of a development’s impacts and impact fees.

16.70.060 Fee schedules and establishment of service area.

A. Impact fee schedules setting forth the amount of the impact fees to be paid by developers are listed in the Appendices attached to the ordinance adopting this Chapter, and incorporated herein by this reference. The Road or transportation impact fee schedule is in Appendix A, Park impact fees are in Appendix B and school impact fees are in Appendix C.

B. For the purpose of Road and Park impact fees, the entire City shall be considered one service area.

16.70.070 Calculation of impact fees.

A. Director calculates the fees. The Director shall calculate the impact fees set forth in Appendices A and B. The superintendent of the school district shall calculate the school impact fees set forth in Appendix C. The City Council shall have the final decision on the calculation of the impact fees to be imposed under this chapter as set forth in Appendices A and B.

B. Factors used in impact fee calculations. The calculation of impact fees shall include the factors identified in RCW 82.02.040 through RCW 82.02.070 and shall:

1. Determine the standard fee for similar types of development, which shall be reasonably related to each development’s proportionate share of the cost of projects described in the Project List for each type of impact fee.

2. Reduce the proportionate share by applying the benefit factors described in 16.70.080.

C. Proportionate share. In calculating proportionate share, the following factors shall be considered:

1. Identification of all park, school and transportation facilities that will be impacted by users from each development;

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2. Identification of the point at which the capacity of a park, school or transportation facility has been fully utilized;

3. Updating of the data as often as practicable, but at least annually;

4. Estimation of the cost of construction the projects in the Project List (see, Section 16.70.120 of this Chapter) for roads at the time they are placed on the list; the cost of maintaining the City’s level of park service as shown on Appendix B; and the costs relating to the construction of school facilities, and to then update the cost estimates at least annually, considering the:

   (a) Availability of other means of funding park, school and transportation facilities;
   (b) Cost of existing park, school and transportation facility improvements;
   (c) Methods by which park, school and transportation facility improvements were financed;

5. Updating the fee collected against a project which has already been completed, through an advancement of City of school district funds, at a rate determined annually, which is equivalent to the City or school district’s return on investments.

16.70.080 Credits.

   A. Credit Allowed. The Director, or, in the case of school impact fees, the superintendent, shall reduce the calculated proportionate share for a particular development by giving credit for the benefit factors described in this section.

   B. Procedure for Obtaining Credit, Time to Request Credit. Requests for credits against impact fees will not be considered unless the developer makes the request in writing, concurrent with the submission of the application for the underlying development permit triggering the impact fee.

   C. Benefit Factors. The Director and/or superintendent will consider the following benefit factors when determining whether an impact fee credit is appropriate:

      1. Developer’s dedication of land and/or construction of system improvements. The value of any dedication of land for, improvement to, or new construction
of any system improvements provided by the developer, to facilities required by the City that are identified in the capital facilities plan and that are required by the City as a condition of approving the development activity, as long as the following conditions are satisfied. For school impact fees, the superintendent shall consider the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer to facilities identified in the school district’s capital facilities plan, as long as the following conditions are satisfied:

(a) The system improvements are located on land owned by the City, County, the school district or a special purpose district; and

(b) A designated public owner is responsible for permanent, continuing maintenance and operation of the system improvements; and

(c) The Director or superintendent determines that the system improvements correspond to the type(s) of park, school and transportation system improvements that are reasonably related to the development as determined pursuant to this Chapter;

(d) The Director determines, after consultation with the County, school district or special purpose district, as applicable, and after an analysis of supply and demand data, the parks, open space and recreation plan, the six-year road plan and the adopted County park and transportation plan, that the proposed park and transportation system improvements better meet the City’s need for park and transportation system improvements than would payment of funds to mitigate the park and transportation impacts of the development;

(e) In the determination of credit toward the impact fee, the Director or the superintendent shall also consider the extent to which the proposed dedication or conveyance meets the following criteria:

   i. The land should result in an integral element of the City park/road system;

   ii. The land is suitable for future park, school and/or transportation facilities;

   iii. The land is of appropriate size and of an acceptable configuration;

   iv. The land has public access via a public street or an easement of an equivalent width and accessibility;

   v. The land is located in or near areas designated by the City or County on land use plans for park, trail or recreational purposes, or, in the case of
schools, is appropriate located for school facilities;

vi. The land provides linkage between County and/or other publicly-owned recreation and transportation properties;

vii. The land has been surveyed or adequately marked with survey monuments, or is otherwise readily distinguishable from adjacent privately-owned property;

viii. The land has no known physical problems associated with it, such as the presence of hazardous waste, drainage erosion or flooding problems which the Director or Superintendent determines would cause inordinate demands on public resources for maintenance and operation;

ix. The land has no known safety hazards;

x. The developer is able to provide documentation, as nearly as practicable, of the land’s compliance with the criteria of this subsection, and of clear title;

xi. The developer is able to provide and fund a long-term method, acceptable to the Director or Superintendent, for the management and maintenance of the land, if applicable.

D. Requirement for System Improvement Plan. When the Director or Superintendent has agreed to a developer’s proposal to satisfy some or all of the impact fee through the purchase, installation and/or improvement of park, school and/or transportation facilities, the developer shall prepare and submit a system improvement plan to the Director, and if applicable, to the Superintendent, for approval prior to recordation of a plat or short plat for subdivisions, and prior to issuance of a building permit for all other developments.

E. Statutory Benefit Factors. The Director or Superintendent may consider any applicable benefit factors, as described in RCW 82.02.060 (as it now exists or may hereafter be amended), that are demonstrated by the applicant not to be included in the calculation of the impact fee.

F. Amount of Credit. The credit against the impact fee shall be equal to the fair market value of the purchased/dedicated property or equal to the cost of the completed system improvements. In those situations in which a developer has not yet installed or constructed system improvements and requests a credit for the system improvement(s), the City engineer (or Superintendent for school facilities) shall estimate the cost of the system improvements, which shall be the credit allowed to the developer in the decision on the amount of the impact fee. If a credit is granted for a system improvement that has not been constructed, the developer shall pay the full impact fee without the credit, at the time established in Section 16.70.110. After construction and/or installation of the system improvement, the developer may request the credit granted by the engineer under this subsection, and the City shall refund the difference of the impact fee to reflect the credit, provided, that if the City and the property
owner have entered into a development agreement on or before the effective date of the ordinance codified in this section, and the agreement requires the construction of such improvements, the City may allow a credit to be subtracted from the impact fee paid at the time established in Section 16.70.110.

G. PRDs, PUD’s and Mobile Home Parks. A developer of a planned residential development, a planned unit development, or a mobile home park may receive credit only for park, school and transportation facilities provided in addition to those normally required under SEPA for such developments, pursuant to the City’s SEPA Ordinance (chapter 14.04 POMC).

H. Credit to Apply Proportionately to Units. The amount of credit determined pursuant to this subsection shall be credited proportionately among all the units in the development, and the impact fee for each unit for which a permit or approval is applied shall be reduced accordingly.

I. Limits on Credit Requests. Applicants may not request that an impact fee credit be provided for a proposed development based on taxes, user fees, assessments, improvements, payments or other benefit factors applicable to property that is not included within the proposed development. Credit to be paid back by the City or the District to a developer under this subsection shall not exceed the total amount of the impact fees paid by the developer.

J. Local Improvement Districts. Applicants shall receive credit against the impact fee equal to the amount of an LID assessment paid for transportation-related system improvements identified by the Director as increasing transportation system capacity.

K. Appeals of Credits. The Director or Superintendent shall issue a written decision on the developer’s request for a credit of the impact fee calculation, which shall explain why the credit was granted or denied. The developer may request reconsideration and appeal the impact fee amount and credit pursuant to Section 16.70.160. If the procedures in Section 16.70.160 are not timely followed to request an appeal of the credit, the Director or Superintendent’s decision on the impact fee credit shall be final.

16.70.090 Variation from Impact Fee Schedule. If a developer submits information demonstrating a significant difference between the age, social activity or interest characteristics of the population of a proposed subdivision or development and the data used to calculate the impact fee schedule, the Director or Superintendent may allow a special calculation of the impact fee requirements for the subdivision or development to be prepared by the developer’s consultant, at the developer’s cost, provided that: the Director or Superintendent shall have prior approval of the qualifications and methodology of the developer’s consultant in making such calculation, and any time period mandated by statute

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or ordinance for the Approving Authority’s final decision on the development shall not include the time spent in preparing the special calculation. Whether the Director or Superintendent accepts the data provided by the special calculation shall be at the discretion of the Director or Superintendent.

16.70.100 Payment of Fees.

A. All applicants for development shall pay an impact fee in accordance with the provisions of this Chapter which shall be calculated by the City or District at the time that the building permit is ready for issuance. Applicants/developers may choose to pay impact fees or a portion thereof prior to the City’s issuance of a building permit, but if the early payment is less than the fee calculated at the time the building permit is ready for issuance, the applicant/developer shall pay the difference. If the early payment is more than the fee calculated at the time the building permit is ready for issuance, the City or District shall refund the difference.

B. The impact fee shall be recalculated if the development is modified or conditioned in such a way as to alter park, school or transportation impacts for the development.

C. A developer may obtain a preliminary determination of the impact fee before submitting an application for the development permit by providing the Director or Superintendent with the information needed for processing together with the Director or Superintendent with the information needed for processing together with the applicable fee. Such determinations are provided to the developer as estimates only, and they are not binding on the City, given the limited information needed to calculate the preliminary impact fee amount and the fact that the City regularly updates the Project List and Impact Fee Schedule. In addition, impact fees are not subject to the vested rights doctrine, and the fee actually paid by the developer will be the impact fee in effect at the time of building permit issuance, regardless of any preliminary determinations.

16.70.110 Time of payment of impact fees.

A. Payment of any required impact fees shall be made as a condition of the issuance of a building permit. School impact fees shall be paid to the school district, and the developer shall present the receipt or proof of payment from the school district to the City for issuance of the building permit.

B. Impact fees may be paid under protest in order to obtain the necessary permits/approvals until an appeal of the fee amount is finally resolved.

C. When a subdivision or development is conditioned upon the dedication of land,
or the purchase, installation or improvement of park, school and/or transportation facilities, a final plat or short plat shall not be recorded, and a building permit within such plat or development shall not be issued until:

1. The Director has determined in writing that the land to be dedicated is shown on the face of the final plat or short plat, or a deed conveying the land to the City, the County, school district or special purpose district, as appropriate, has been recorded with the County Auditor; and

2. The Director has determined in writing, after consultation with the designated public owner responsible for permanent, continuing maintenance and operation of the facilities that the developer has satisfactorily undertaken or guaranteed to undertake in a manner acceptable to the Director or Superintendent, any required purchase, installation or improvement of school, park or transportation facilities.

16.70.120 Project List.

A. The Director shall annually review the City’s parks, open space and recreation plan, the six-year road plan and the projects listed in Appendices A and B, and shall:

1. Identify each project in the comprehensive plan that is growth-related and the proportion of each such project that is growth-related;

2. Forecast the total money available from taxes and other public sources for park and transportation improvements for the next six years;

3. Update the population, building activity and demand and supply data for park and transportation facilities and the impact fee schedule for the next six-year period;

4. Calculate the amount of impact fees already paid:

5. Identify those comprehensive plan projects that have been or are being built but whose performance capacity has not been fully utilized;

B. The Director shall use this information to prepare an annual draft amendment to the fee schedule in Appendices A and B, which shall comprise:

1. The projects in the comprehensive plan that are growth-related and that should be funded with forecast public monies and the impact fees already paid; and

2. The projects already built or funded pursuant to this Chapter whose
performance capacity has not been fully utilized.

C. The City Council, at the same time that it adopts the annual budget and appropriates funds for capital improvement projects, shall, by separate ordinance, establish the annual project list by adopting, with or without modification, the Director’s draft amendment.

D. Once a project is integrated into the Fee Schedule in Appendices A and B, a fee shall be imposed on every development until the project is removed from the Project List by one of the following means:

   1. The City Council by ordinance removes the project from the Project List and Appendix A and/or B, in which case the fees already collected will be refunded if necessary to ensure that impact fees remain reasonably related to the park and transportation impacts of development that have paid an impact fee; provided, that a refund shall not be necessary if the Council transfers the fees to the budget of another project that the Council determines will mitigate essentially the same park and transportation impacts; or

   2. The capacity created by the project has been fully utilized, in which case the Director shall remove the project from the Project List.

E. The School District shall annually review and update its capital facilities portion of the City’s comprehensive plan and submit such updated plan to the City by April 1st of each year. The School District’s updated capital facilities plan shall identify projects that are growth-related, include the amount of school impact fees paid, calculate the impact fees as required by chapter 82.02.050 through 82.020.90, and may include a proposed school impact fee schedule adjustment to Appendix C, for adoption by the City Council.

16.70.130 Funding of Projects.

A. An impact fee trust and agency fund is hereby created for parks and transportation fees. Separate accounts shall be established for each fee type. The school district shall be responsible for the creation of its own impact fee fund and shall be solely responsible for the deposit of fees in such fund, and the calculation/use/refund of such fees. The Director shall be the manager of the City’s fund. The City shall place park and transportation impact fees in appropriate deposit accounts within the impact fee fund.

B. The parks and transportation impact fees paid to the City shall be held and disbursed as follows:

   1. The fees collected for each project shall be placed in a deposit account
within the impact fee fund, with the exception of school impact fees, which shall be collected by the school district;

2. When the Council appropriates capital improvement project (CIP) funds for a park or transportation project on the Project List, the park or transportation fees held in the impact fee fund shall be transferred to the CIP fund. The non-impact fee monies appropriated for the project shall comprise both the public share of the project cost and an advancement of that portion of the private share that has not yet been collected in park or transportation impact fees;

3. The first money spent by the Director on a project after a council appropriation shall be deemed to be the fees from the impact fee fund;

4. Fees collected after a project has been fully funded by means of one or more council appropriations shall constitute reimbursement to the City of the funds advanced for the private share of the project. The public monies made available by such reimbursement shall be used to pay the public share of other projects;

5. All interest earned on impact fees paid shall be retained in the account and expended for the purpose or purposes for which the impact fees were imposed.

C. Projects shall be funded by a balance between impact fees and public funds, and shall not be funded solely by impact fees.

D. Impact fees shall be expended or encumbered for a permissible use for ten (10) years after receipt, unless there exists an extraordinary or compelling reason for fees to be held longer than ten (10) years. The Director may recommend to the Council that the City hold park or transportation fees beyond ten (10) years in cases where extraordinary or compelling reasons exist. Such reasons shall be identified in written findings by the Council.

E. The School District and the Director shall prepare an annual report on the impact fee accounts showing the source and amount of all monies collected, earned or received and system improvements that were financed in whole or in part by impact fees. The School District shall be responsible for compliance with RCW 82.02.070.

16.70.140 Use and Disposition of Dedicated Land. All land dedicated or conveyed pursuant to this Chapter shall be set aside for development of park, school and transportation facilities. The City and County, and any school district or special purpose district to which land is dedicated or conveyed pursuant to this Chapter shall make every effort to use, develop and maintain land dedicated or conveyed for park, school and transportation facilities. In the event that use of any such dedicated land is determined by the Director, Superintendent, or the
County to be infeasible for development of park, school or transportation facilities, the dedicated land may be sold or traded for another parcel of land. The proceeds from such a sale shall be used to acquire land or develop park, school or transportation facilities.

**16.70.150 Refunds.**

A. A developer may request and shall receive a refund from either the City (for parks and transportation impact fees) or the school district (for school impact fees) when the developer does not proceed with the development activity for which impact fees were paid, and the developer shows that no impact has resulted.

B. If the City fails to expend or encumber the impact fees within ten (10) years of the date the fees were paid or the date established by the findings adopted under 16.70.140(D) on public facilities intended to benefit the development activity for which the impact fees were paid. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. The City shall notify potential claimants by first class mail, deposited with the U.S. Postal Service at the last known address of claimants. The request for a refund must be submitted to the City in writing within one (1) year of the date the right to claim the refund arises or the date notice is given, whichever is later. Any impact fees that are not expended within these time limitations and for which no application for refund has been made within the one (1) year period shall be retained and expended on the indicated capital facilities. Refunds of impact fees under this Section shall include interest earned on the impact fees. The School District shall be responsible for compliance with RCW 82.02.080 for school impact fees.

C. In the event that impact fees are refunded for any reason, they shall be refunded by the City with respect to park and transportation fees (and the school district with respect to school impact fees) and shall be returned with interest earned to the owners as they appear of record with the County Assessor at the time of the refund.

D. When the City seeks to terminate any or all impact fee requirements, all unexpended or unencumbered funds 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 to the last known address of the claimants. 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 City, or, if applicable, the school district, but must be expended on project on the adopted plans of the City or school district. This notice requirement shall not apply if there are no unexpended or unencumbered balances within an account or accounts being terminated. The School District shall be responsible for compliance with this section for school impact fees under RCW 82.02.080.
A. Decision on impact fee. The Director shall issue a written decision on the parks and/or transportation impact fee amount as described in this Chapter. The Superintendent shall issue a written decision on the school impact fee amount as described in this Chapter.

B. Reconsideration by Superintendent:

1. In order to request reconsideration of the superintendent’s decision, the developer shall make a written request to the superintendent for a meeting to review the fee amount, together with a written request for reconsideration. The request for reconsideration shall state in detail the grounds for the request and shall be filed with the superintendent within fifteen (15) days after the superintendent’s decision on the school impact fees.

2. The superintendent shall consider any studies and data submitted by the developer seeking to adjust the amount of the fee. The superintendent shall issue a written decision on reconsideration within thirty (30) days of the superintendent’s receipt of the request for reconsideration or the meeting with the developer, whichever is later.

C. Reconsideration by Director:

1. In order to request reconsideration of the Director’s decision, the developer shall make a written request to the Director for a meeting to review the fee amount, together with a written request for reconsideration. The request for reconsideration shall state in detail the grounds for the request, and shall be filed with the Director within fifteen (15) days after issuance of the Director’s decision on the impact fees.

2. The Director shall consider any studies and data submitted by the developer seeking to adjust the amount of the fee. The Director shall issue a written decision on reconsideration within ten (10) working days of the Director’s receipt of the request for reconsideration or the meeting with the developer, whichever is later.

D. Appeal of Decision on Reconsideration to Hearing Examiner. A developer may appeal the amount of the impact fee established in the decision on reconsideration of the Director or Superintendent to the hearing examiner. An appeal of the decision of the Director or Superintendent on reconsideration must be filed with the City planning department within fourteen (14) days of issuance of that decision. The hearing examiner shall conduct a public hearing on the appeal. In the case of school impact fees, the school district shall provide for a hearing examiner to hear the appeal.
1. An appeal of the impact fee after reconsideration may be filed without appealing the underlying permit. This procedure is exempt from the permit processing requirements in Chapters 16.06 through 16.07 POMC [To be changed] (pursuant to RCW 36.70B.140). If the developer files an appeal of the underlying permit and the park or transportation impact fee, the City may consolidate the appeals.

2. The developer shall bear the burden of proving:

(a) That the Director or superintendent committed error in calculating the developer’s proportionate share, as determined by an individual fee calculation, or if relevant, as set forth in the impact fee schedule, or in granting credit for the benefit factors; or

(b) That the Director or superintendent based his determination upon incorrect data.

E. Appeals of Hearing Examiner’s decision. Appeals from the decision of the school district’s hearing examiner’s decision or the City’s hearing examiner shall be to superior court as provided in chapter 36.70C RCW.

16.70.170 Relationship to SEPA.

A. As provided in RCW 82.02.100, a person required to pay a fee pursuant to RCW 43.21C.060 for system improvements shall not be required to pay an impact fee under this Chapter for the same system improvements.

B. Nothing in this Chapter shall be construed to limit the City’s authority to deny development permits when a proposal would result in probable significant adverse impacts identified in an environmental impact statement and reasonable mitigation measures are insufficient to mitigate the identified impact.

16.70.180 Park and transportation facility requirements in adjoining municipalities/districts. Level of service requirements and demand standards different than those provided in the City’s comprehensive park plan shall be applied to park and recreation facility impacts in adjoining municipalities/districts if such different standards are provided in an interlocal agreement between the City and the affected municipality. Otherwise, the standards contained in the City’s comprehensive plan shall apply to park and transportation impacts in adjoining jurisdictions.

16.70.190 Necessity of compliance. A development permit issued after the effective
date codified in this chapter shall be null and void if issued without substantial compliance with this Chapter by the Director, the department and the Approving Authority.

Section 10. Effective Date. This ordinance shall be in full force and effect five (5) days after posting and publication as required by law. A summary of this Ordinance may be published in lieu of the entire ordinance, as authorized by State Law.

Section 11. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof provided the intent of this Ordinance can still be furthered without the invalid provision.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this __th day of ______ 2015.

________________________
Timothy C. Matthes, Mayor

ATTEST:

________________________
Brandy Rinearson, CMC, City Clerk

APPROVED AS TO FORM

________________________
Carol A. Morris, Interim City Attorney

Published: ___________________
Posted: ___________________
Effective Date:_______________

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