



**CITY OF BLACK DIAMOND  
July 30, 2020 Special Meeting Agenda**

**THIS IS OFFERED AS A ZOOM MEETING ONLY.  
CALL IN AND JOINING INFORMATION FOLLOWS:**

**Zoom link to join meeting:**

<https://zoom.us/j/4454477047?pwd=eGxRY3ZEeU14SVM2cGRBcUxCSjdmZz09>

*(Note: You do not need a web cam to join the meeting, but you will need audio to hear the proceedings.)*

Meeting ID: 445 447 7047

Password: Council

**Telephone dial in options:**

+1 253 215 8782 US (Tacoma)

+1 206 337 9723 US (Seattle)

Meeting ID: 445 447 7047

Password:426953 (phone in only)

**6:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL**

**WORK SESSION:**

**1) Draft School Impact Fee Ordinance and Related Interlocal Agreements**

**ADJOURNMENT:**

## ORDINANCE NO. 20-\_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, ADDING A NEW CHAPTER 3.70 TO THE BLACK DIAMOND MUNICIPAL CODE; ESTABLISHING A SCHOOL IMPACT FEE PROGRAM; REQUIRING THE EXECUTION OF INTERLOCAL AGREEMENTS BETWEEN THE CITY AND PARTICIPATING SCHOOL DISTRICTS; AUTHORIZING THE IMPOSITION AND COLLECTION OF IMPACT FEES BY THE CITY ON BEHALF OF PARTICIPATING SCHOOL DISTRICTS ON NEW DEVELOPMENT IMPACTING SCHOOL FACILITIES; PROVIDING THE FORMULA FOR CALCULATING IMPACT FEES; AND PROVIDING PROCEDURES FOR IMPACT FEE CREDITS, APPEALS, AND REFUNDS; ALL AS AUTHORIZED BY THE GROWTH MANAGEMENT ACT AND RCW 82.02.050 THROUGH 82.02.100; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, the City has authority to adopt impact fees to address the impact on school facilities caused by new development, pursuant to RCW 82.02.050 through 82.02.100; and

**WHEREAS**, the City Council desires to ensure that new residential development in the City bears its fair and proportionate cost of new school facilities necessitated by such development, so as to ensure adequate and appropriate facilities for educating students residing in the City; and

**WHEREAS**, the City Council held a public hearing and considered this Ordinance during its regular City Council meeting of August 6, 2020, and continued its review and deliberations at its regular meeting on August 20, 2020;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, ORDAINS AS FOLLOWS:**

**Section 1. New Municipal Code Chapter.** Title 3 of the Black Diamond Municipal Code is amended to add a new Chapter 3.70, entitled "School Impact Fees," containing the following provisions:

**3.70.010 Authority and purpose.**

- A. This ordinance is enacted pursuant to the City's police powers, the Growth Management Act as codified in chapter 36.70A RCW, the impact fee statutes as codified in RCW 82.02.050 through 82.02.100, chapter 58.17 RCW relating to

planning and subdivisions, and the State Environmental Policy Act (SEPA), chapter 43.21C RCW.

B. The purposes of this chapter are to:

1. Develop a program consistent with the City's Comprehensive Plan for joint public and private financing of school facilities consistent with the District's capital facilities plan, as such public facilities are necessitated in whole or in part by residential development in the City;
2. Ensure adequate levels of service in school facilities;
3. Create a mechanism to charge and collect impact fees to ensure that all new development bears its proportionate share of the capital costs of school facilities reasonably related to new development, in order to ensure the availability of adequate school facilities at the time new development occurs or within the time otherwise allowed by law; and
4. Ensure fair collection and administration of such impact fees.

C. The provisions of this chapter shall be liberally construed to effectively carry out its purposes in the interest of the public health, safety, and welfare.

### **3.70.020 Definitions.**

For purposes of this ordinance, the following terms have the indicated meanings:

- A. "Capacity" means the number of students the District's facilities can accommodate District-wide, based on the District's standard of service, as determined by the District.
- B. "Capital facilities plan" means the District's facilities plan adopted by the school board consisting of:
  1. A forecast of future needs for school facilities based on the District's enrollment projections;
  2. An identification of additional demands placed on existing public facilities by new development;
  3. The long-range construction and capital improvement projects of the District;
  4. The schools under construction or expansion;
  5. The proposed locations and capacities of expanded or new school facilities;

6. An inventory of existing school facilities, including permanent, transitional, and relocatable facilities;
  7. At least a six-year financing component, updated as necessary to maintain at least a six-year forecast period, for financing needed for school facilities within projected funding levels, and identifying sources of financing for such purposes, including bond issues authorized by the voters;
  8. An identification of deficiencies in school facilities serving the student populations and the means by which existing deficiencies will be eliminated within a reasonable period of time; and
  9. Any other long-range projects planned by the District.
- C. "City" means the City of Black Diamond.
- D. "Classrooms" mean educational facilities of the District required to house students for its basic educational program. The classrooms are those facilities the District determines are necessary to best serve its student population. Specialized facilities as identified by the District, including but not limited to gymnasiums, cafeterias, libraries, administrative offices, and child care centers, do not count as classrooms.
- E. "Construction cost per student" means the estimated cost of construction of a permanent school facility in the District for the grade span of school to be provided, as a function of the District's design standard per grade span.
- F. "Design standard" means the space required, by grade span and taking into account the requirements of students with special needs, to fulfill the educational goals of the District as identified in the District's capital facilities plan.
- G. "District" means a school district serving the City and eligible to participate in the school impact fee program, which at present means any one of the following: Enumclaw School District No. 216, Tahoma School District No. 409, Kent School District No. 415, and Auburn School District No. 408.
- H. "Developer" means the person or entity that owns, or holds purchase options or other development control over, property on which development activity is proposed.
- I. "Development activity" means any:

1. residential construction or expansion of a residential building, structure, or use;
2. change in use of a residential building or structure; or
3. change in the use of residential land;

that creates additional demand for school facilities.

- J. " Dwelling unit" means a dwelling unit as defined in Section 18.100.270 of the Black Diamond Municipal Code.
- K. "Elderly" means a person aged 62 or older.
- L. "Encumbered" means impact fees identified by the District as being committed as part of the funding for a school facility for which the publicly funded share has been assured or building permits sought or construction contracts let.
- M. "Grade span" means the categories into which the District groups its grade of students; i.e., elementary, middle or junior high school, and high school.
- N. "Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public school facilities needed to serve new growth and development, that is reasonably related to the new development that creates additional demand and need for public school facilities, that is a proportionate share of the cost of the public school facilities, and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.
- O. "Impact fee schedule" means the table of impact fees adopted by City Council resolution indicating the standard amount to be charged per dwelling unit, computed by the formula set forth in BDMC 3.70.140, that shall be paid as a condition of residential development within the City.
- P. "Interlocal agreement" means the agreement between the District and the City, governing the operation of the school impact fee program and describing the relationship, duties, and liabilities of the parties.
- Q. "Permanent facilities" means facilities of the District with a fixed foundation, which are not relocatable facilities.

- R. "Relocatable facilities" means any factory-built structure, transportable in one or more sections, that is designed to be used as an education space and is needed to prevent the overbuilding of school facilities, to meet the needs of service areas within the District, or to cover the gap between the time that families move into new residential developments and the date that construction is completed on permanent facilities.
- S. "Relocatable facilities cost per student" means the estimated cost of purchasing and siting a relocatable facility in the District for the grade span of school to be provided, as a function of the District's design standard per grade span.
- T. "Site cost per student" means the estimated cost of a site in the District for the grade span of school to be provided, as a function of the District's design standard per grade span.
- U. "Standard of service" means the standard adopted by the District which identifies the program year, the class size by grade span and taking into account the requirements of students with special needs, 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 relocatable facilities which are used as transitional facilities or any other specialized facilities housed in relocatable facilities.
- V. "Student factor" means the number derived by the District to describe how many students of each grade span are expected to be generated by a dwelling unit. Student factors shall be based on District records of average actual student generated rates for new developments constructed over a period of not more than five (5) years prior to the date of the fee calculation; provided that, if such information is not available in the District, data from adjacent districts or districts with similar demographics or county wide averages may be used. Student factors must be updated on an annual basis and separately determined for single family and multi-family dwelling units and for grade spans.
- W. "Transitional facilities" means those school facilities that are being used pending the construction of permanent facilities, provided that the necessary financial commitments are in place to construct the permanent facilities.

**3.70.030 Interlocal agreement required.**

As a condition of the City's authorization and adoption of any ordinance or resolution imposing a school impact fee on new development within a particular District, that District shall enter into an interlocal agreement with the City governing the operation of the school impact fee program for that District and describing the relationship and liabilities of the parties thereunder.

**3.70.040 Submission of District capital facilities plan and data.**

- A. On an annual basis, the District shall submit to the City a new or updated capital facilities plan (as defined in BDMC 3.70.020) as adopted by the school board, which includes at least the following:
  - 1. The District's enrollment projections over the next six (6) years, its current enrollment, and the District's enrollment projections and actual enrollment from the previous year;
  - 2. The District's standard of service;
  - 3. The District's overall capacity over the next six (6) years, which shall take into account the available capacity from school facilities planned by the District but not yet built and be a function of the District's standard of service as measured by the number of students that can be housed in District facilities; and
  - 4. An inventory of the District's existing facilities.
- B. To the extent that the District's standard of service identifies a deficiency in its existing facilities, the District's capital facilities plan must identify the sources of funding other than impact fees for building or acquiring the necessary facilities to serve the existing student population in order to eliminate the deficiencies within a reasonable period of time.
- C. Facilities to meet future demand shall be designed to meet the adopted standard of service. If sufficient funding is not projected to be available to fully fund a capital facilities plan that meets the adopted standard of service, the District's capital facilities plan should document the reason for the funding gap and identify all sources of funding that the District plans to use to meet the adopted standard of service.
- D. The District shall also submit an annual report to the City Council showing the capital improvements that were financed in whole or in part by the impact fees.

- E. In developing the financing plan component of the capital facilities plan, the District shall plan on a six-year horizon and shall demonstrate its best efforts by taking the following steps:
1. Establishing a six-year financing plan and proposing the necessary bond issues and levies required by and consistent with that plan and as approved by the District's school board; and
  2. Applying to the state for funding and complying with state requirements for eligibility to the best of the District's ability.

**3.70.050 Annual council review.**

On at least an annual basis, the City Council shall review the information submitted by the District pursuant to BDMC 3.70.040. This review shall occur in conjunction with any update of the capital facilities plan element of the City's Comprehensive Plan. The City Council may also at this time determine if an adjustment to the amount of the impact fees is necessary and, if so, adjust the amounts in the adopted impact fee schedule by resolution.

**3.70.060 Impact fee program elements.**

- A. The City shall impose impact fees on every development activity in the City for which an impact fee schedule has been established.
- B. Impact fees will be imposed on a district-by-district basis. The City Council shall adopt an impact fee schedule by resolution reflecting the impact fees to be imposed for each participating District based on the formula set forth in BDMC 3.70.140.
- C. Any impact fee imposed shall be reasonably related to the impact caused by the development and shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development.
- C. The impact fee shall be based on the capital facilities plan developed by the District and approved by the school board, and adopted by reference by the City as part of the capital facilities element of the City's comprehensive plan for the purpose of establishing its authority to impose school impact fees.



**3.70.070 Fee calculations.**

- A. The impact fees for each District shall be calculated based on the formula set out in BDMC 3.70.140.
- B. Separate impact fees shall be calculated for single family and multi-family types of dwelling units, and separate student generation rates must be determined by the District for each type of dwelling unit. For the purpose of this ordinance, mobile homes shall be treated as single family dwellings and duplexes shall be treated as multi-family dwellings.
- C. The impact fee shall be calculated on a District-wide basis using the appropriate factors and data to be supplied by the District, as set forth in BDMC 3.70.140. The impact fee calculations shall be made on a District-wide basis to assure maximum utilization of all school facilities in the District which meet District standards for instructional purposes.
- D. The formula in Attachment A provides a credit for the anticipated tax contributions that would be made by the development based on historical levels of voter support for bond issues in the District.
- E. The formula also provides for a credit for school facilities or sites actually provided by a developer which the District finds acceptable.

**3.70.080** Intentionally left blank.

**3.70.090 Assessment of impact fees.**

- A. The City shall assess impact fees from any applicant seeking a building permit from the City, using the impact fee schedules in effect on the date of application, unless payment is deferred pursuant to Section 3.70.100.C, in which case impact fees shall be assessed based on the impact fee schedule in effect at the time of the application for deferral.
- B. Except as may be due to exemptions or credits provided pursuant to Section 3.70.110, or pursuant to an independent fee calculation accepted by the City pursuant to Section 3.70.120, the City shall not issue a building permit(s) unless and until the impact fees set forth in the schedules in this chapter have been paid.

**3.70.100 Collection of impact fees.**

- A. Except as provided in subsection C of this section, the impact fee imposed under this chapter is due and payable at the time of issuance of a building permit.
- B. The impact fee shall be collected by the City on behalf of the District and maintained by the City in separate accounts for transmittal to the District on a monthly basis. The City may also impose an application fee to cover the City's reasonable costs of administration of the impact fee program. Impact fees shall be remitted to the District in accordance with the interlocal agreement governing the relationship between the City and the District.
- C. Impact fee payments may be deferred for single-family detached and attached residential construction until the City conducts a final building inspection as authorized by RCW 82.02.050(3).
  - 1. In order to defer the payment of impact fees, all applicants and/or legal owners of the subject property upon which the development activity is to occur must sign an impact fee deferral agreement in a form acceptable to the city attorney. The applicant must also pay a \$200.00 administrative fee, along with fees necessary for recording the agreement in the office of the King County Recorder. The impact fee deferral agreement shall require the applicant to grant and record an impact fee lien as required by RCW 82.02.050(3)(c) prior to issuance of the building permit. The City shall withhold final building inspection approval, issuance of a certificate of occupancy, and any other equivalent final certification until the deferred impact fees have been paid in full.
  - 2. In no event shall the term of an impact fee deferral exceed 18 months.
  - 3. In the event that the fees are not paid within the time provided in this subsection, the City may commence foreclosure proceedings under the process set forth in Chapter 61.12 RCW, except as may be revised herein. The then-present owner shall also pay the City's reasonable attorney fees and costs incurred in the foreclosure process. Notwithstanding the foregoing, the City shall not commence foreclosure proceedings until 30 calendar days after providing written notification to the then-present owner of the property via certified mail with

return receipt requested advising of its intent to commence foreclosure proceedings. If the then-present owner cures the default within the 30-day cure period, no attorney fees and/or costs will be owed. In addition, the City retains its full authority to withhold inspections and to suspend, revoke, or refuse to issue occupancy and other building permits and to commence enforcement actions due to nonpayment of impact fees.

**3.70.110 Exemptions.**

The following development activities do not create any additional school impacts and are exempt from the requirements of this ordinance:

- A. Reconstruction, remodeling, or construction of the following facilities, subject to the recording of a covenant or recorded declaration of restrictions precluding use of the property for other than the exempt purpose. If the property is used for a non-exempt purpose, then the school impact fees then in effect shall be paid.
  - 1. Construction, remodeling, or siting of shelters or dwelling units for temporary placement, which provide housing to persons on a temporary basis for not more than four weeks;
  - 2. Construction or remodeling of transitional housing facilities or dwelling units that provide housing to persons on a temporary basis for not more than twenty-four (24) months, in connection with job training, self-sufficiency training, and human services counseling, the purpose of which is to help persons make the transition from homelessness to placement in permanent housing; and
  - 3. Any form of housing for the elderly, including nursing homes and retirement centers, and any type of housing units that have recorded covenants or a recorded declaration of restrictions precluding school-aged children as residents in those units.
  
- B. Rebuilding of legally established dwelling unit(s) destroyed or damaged by fire, flood, explosion, act of God, or other accident or catastrophe, or remodeling of existing legally established dwelling unit(s), provided that such rebuilding takes place within a period of one (1) year after such damage or destruction, and so long as no additional dwelling units are created.

- C. Condominium projects in which existing dwelling units are converted into condominium ownership and where no new dwelling units are created.
- D. Any development activity that is exempt from the payment of an impact fee pursuant to RCW 82.02.100, due to mitigation of the same system improvement or improvements under the State Environmental Policy Act.
- E. Any development activity for which school impacts have been mitigated pursuant to a condition of plat approval to pay fees, dedicate land, or construct or improve school facilities, unless the condition of the plat approval provides otherwise; provided that the condition of the plat approval (or corresponding master planned development approval, if applicable) predates the effective date of impact fee imposition.
- F. Any development activity for which school impacts have been mitigated pursuant to a voluntary agreement entered into with the District to pay fees, dedicate land, or construct or improve school facilities, unless the terms of the voluntary agreement provide otherwise; provided that the agreement predates the effective date of fee imposition.
- G. [DOES THE CITY WANT TO INCLUDE AN EXEMPTION FOR LOW-INCOME HOUSING PER 82.02.060(3)?]

**3.70.120 Determination of the fee, adjustments, credits, exceptions, and appeals.**

- A. The City shall determine a developer's impact fee, according to the impact fee schedule adopted by the City pursuant to BDMC 3.70.050 and 3.70.070.
- B. The fee amount established in the impact fee schedule shall be reduced by the amount of any payment previously made for the lot or development activity in question, either as a condition of approval or pursuant to a voluntary agreement.
- C. Whenever a developer is granted approval subject to a condition that the developer actually provide a school facility acceptable to the District, the developer shall be entitled to a credit for the actual cost of providing the facility, against the impact fee that would be chargeable under the formula provided by this ordinance. The cost of construction shall be

estimated at the time of approval, but must be documented, and the documentation confirmed after the construction is completed to assure that an accurate credit amount is provided. If construction costs are less than the calculated fee amount, the difference remaining shall be chargeable as a school impact fee.

- D. The standard impact fees imposed under the impact fee schedule may be adjusted if:
  - 1. The developer demonstrates that an impact fee assessment was improperly calculated; or
  - 2. Unusual circumstances identified by the developer demonstrate that if the standard impact fee amount were applied to the development, it would be unfair or unjust.
- E. In cases where a developer requests an independent fee calculation, adjustment exception, or a credit pursuant to RCW 82.02.060(4), the City shall consult with the District and the District shall advise the City prior to the City making the final impact fee determination.
- F. In seeking an adjustment or exception to the standard impact fee, a developer may provide studies and data to demonstrate that the standard impact fee may not be appropriately applied to the development proposal. The District's data is presumed valid, and the burden of proof lies on the party seeking an adjustment to demonstrate that the District's data is clearly erroneous.
- G. Any appeal of the decision of the City with regard to impact fee amounts shall follow the process for the appeal of the underlying development application, as set forth in the Black Diamond Municipal Code.
- H. Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.

**3.70.130 Impact fee accounts and refunds.**

- A. Impact fee receipts shall be earmarked specifically and retained in a special interest-bearing account established by the District solely for the District's school impact fees. All interest shall be retained in the account and expended for the purpose or purposes for which impact fees were imposed. Annually, the District, based in part on its report prepared

pursuant to BDMC 3.70.040, shall prepare a report on the impact fee account showing the source and amount of all moneys collected, earned or received, and capital or system improvements that were financed in whole or in part by impact fees. The District shall submit a copy of this report to the City.

- B. Impact fees for the district's system improvements shall be expended by the District for capital improvements including but not limited to school planning, land acquisition, site improvements, necessary off-site improvements, construction, engineering, architectural, permitting, financing, and administrative expenses, relocatable facilities, capital equipment pertaining to educational facilities, and any other expenses which could be capitalized, and which are consistent with the District's capital facilities plan.
- C. Impact fees may also be used to recoup system improvement costs previously incurred by the District to the extent that new growth and development activity will be served by the previously constructed improvements or incurred costs, provided that impact fees shall not be used to make up for any preexisting deficiencies in system improvements.
- D. In the event that bonds or similar debt instruments are issued for the advanced provision of capital facilities for which impact fees may be expended and where consistent with the bond covenants, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this section.
- E. Impact fees shall be expended or encumbered by the District for a permissible use within ten (10) years of receipt by the District, unless there exists an extraordinary or compelling reason for fees to be held longer than ten (10) years. Such extraordinary or compelling reasons shall be identified to the City by the District in a written report. The City Council shall consider the District's extraordinary and compelling reasons for the fees to be held longer than ten (10) years when making its own independent determination and may adopt, reject, or modify the District's extraordinary and compelling reasons when issuing its own written findings.
- F. The current owner of property on which an impact fee has been paid may receive a refund of such fees if the District fails to expend or encumber the impact fees within ten (10) years of when the funds were paid on school 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 District shall notify potential claimants by first-class mail deposited with the United States postal service addressed to the current owner of the property as shown in the County tax records.

- G. An owner's request for a refund must be submitted to the District in writing within one (1) year of the date the right to claim the refund arises or the date that notice is given, whichever date is later. Any impact fees that are not expended or encumbered by the District in conformance with the capital facilities plan within these time limitations, and for which no application for a refund has been made within this one (1) year period, shall be retained and expended consistent with the provisions of this section. Refunds of impact fees shall include any interest earned on the impact fees.
- H. Should the City seek to terminate any or all school impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded to the current owner of the property for which a school impact fee was paid. Upon the finding that any or all fee requirements are to be terminated, the City shall place notice of such termination and the availability of the refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first-class mail addressed to the current owner of the property as shown in the County tax records. All funds available for refund shall be retained for a period of one (1) year. At the end of one (1) year, any remaining funds shall be retained by the District, but must be expended by the District, consistent with the provisions of this section. The notice requirement set forth above shall not apply if there are no unexpended or unencumbered balances within the account or accounts being terminated.
- I. A developer may request and shall receive a refund, including interest earned on the impact fees, when:
  - 1. The developer has not received final plat approval, the building permit, the mobile home permit, the site plan approval, nor final approval for the development activity as required by statute or Black Diamond Municipal Code, including the Uniform Building Code; and

2. No impact on the District has resulted. "Impact" includes cases where the District has expended or encumbered the impact fees in good faith prior to the application for a refund. In the event that the District has expended or encumbered the fees in good faith, no refund shall be forthcoming. However, if within a period of three (3) years, the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner shall be eligible for a credit. The owner must petition the District and provide receipts of impact fees paid by the same or previous owner for a development of the same or substantially similar nature on the same property or some portion thereof. The District shall determine whether to grant a credit, and such determinations may be appealed by following the procedures set forth in BDMC 3.70.120(G), above.

J. Interest due upon the refund of impact fees required by this section shall be calculated according to the average rate received by the District on invested funds throughout the period during which the fees were retained.

### 3.70.140 Impact fee formula.

The following formula shall be used to calculate school impact fees for each District, based on information and data provided by each District:

#### FORMULA FOR DETERMINING SCHOOL IMPACT FEES

IE:

A = Student Factor for Dwelling Unit Type and grade span X site cost per student for sites for facilities in that grade span = Full Cost Fee for site acquisition cost

B = Student Factor for Dwelling Unit Type and grade span X school construction cost per student for facilities in that grade span X ratio of District's square footage of permanent facilities to total square footage of facilities = Full Cost Fee for school construction

C = Student Factor for Dwelling Unit Type and grade span X relocatable facilities cost per student for facilities in that grade span X ratio of District's square footage of relocatable facilities to total square footage of facilities = Full Cost Fee for relocatable facilities



D = Student Factor for Dwelling Unit Type and grade span "Boeckh Index" X  
SPI Square Ft per student factor X state match % = State Match Credit,  
and

A1, B1, C1, D1 = A, B, C, D for Elementary grade spans

A2, B2, C2, D2 = A, B, C, D for Middle/Junior High grade  
spans

A3, B3, C3, D3 = A, B, C, D for High School grade spans

TC = Tax Payment Credit = The net present value of the Average Assessed Value  
in the District for Unit Type X Current School District Capital Property Tax Levy  
Rate, using a 10-year discount period and current interest rate (based on the Bond  
Buyer Twenty Bond General Obligation Bond Index)

FC = Facilities Credit = The per-dwelling-unit value of any site or facilities provided  
directly by the development

THEN the unfunded need = UN = A1+...+C3 - (D1-D2-D3)-TC

AND the developer fee obligation = F = UN/2

AND the net fee obligation = NF = F - FC

Notes:

1. Student Factors are to be provided by the District based on District records of average actual student generation rates for new developments constructed over a period of not more than five (5) years prior to the date of the fee calculation; if such information is not available in the District, data from adjacent districts, districts with similar demographics, or countywide averages must be used. Student factors must be separately determined for single family and multi-family dwelling units, and for grade spans.
2. The "Construction Cost Allocation" or "CCA" is the maximum cost per square foot of construction that the state will recognize. This amount is established by the legislature in the biennium budget.
3. The District is to provide its own site and facilities standards and projected costs to be used in the formula, consistent with the requirements of this Ordinance.
4. The formula can be applied by using the following table.]

**Table 3.70.140 – 1  
Table for Calculating School Impact Fee Obligations for Residential Dwelling Units  
(to be separately calculated for single-family and multi-family units)**

A1=	Elementary School site cost per student X student factor	= _____
A2=	Middle/Junior High School site cost per student X student factor	= _____
A3=	High School site cost per student X student factor	= _____
A=	A1+A2+A3	= _____
B1=	Elementary School construction cost per student X student factor	= _____
B2=	Middle/Junior High School construction cost per student X student factor	= _____
B3=	High School construction cost per student X student factor	= _____
B=	(B1+B2+B3) x <u>square footage of permanent facilities</u> total square footage of facilities	= _____
C1=	Elementary School relocatable facility cost per student X student factor	= _____
C2=	Middle/Junior High School relocatable facility cost per student X student factor	= _____
C3=	High School relocatable facility cost per student X student factor	= _____
C=	(C1+C2+C3) x <u>square footage of relocatable facilities</u> total square footage of facilities	= _____
D1=	CCA X SPI Square footage per student for elementary school X state match % X student factor	= _____
D2=	CCA X SPI Square footage per student for middle/junior high school X state match % X student factor	= _____
D3=	CCA X SPI Square footage per student for high school X state match % X student factor	= _____
D=	D1+D2+D3	= _____

TC=  $\frac{((1+i)^{10})-1}{i(1+i)^{10}}$  \*X average assessed value for the dwelling unit type in the district

X current school district capital property tax levy rate where i = the current interest rate as stated in the Bond Buyer Twenty Bond General Obligation Bond Index

Total Unfunded Need = A+B+C-D-TC =

\_\_\_\_\_ A

+ \_\_\_\_\_ B

	+ _____ C
Subtotal	
	- _____ D
	- _____ TC
TOTAL UNFUNDED NEED = _____	
divided by 2 = _____ = DEVELOPER FEE OBLIGATION	
- _____ Less FC (if applicable)	
_____ NET FEE OBLIGATION	

**Section 2. Severability.** If any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, is declared unconstitutional or otherwise invalid for any reason, or if any portion of this ordinance is held to be pre-empted by state or federal law or regulation, such invalidity or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 3. Effective Date.** This ordinance or a summary thereof shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after the date of its publication. Being an exercise of a power specifically delegated to the City legislative body, this ordinance is not subject to referendum.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND AT A REGULAR MEETING THEREOF ON THE 20TH DAY OF AUGUST, 2020.**

CITY OF BLACK DIAMOND

\_\_\_\_\_  
Carol Benson, Mayor

Attest:

\_\_\_\_\_  
Brenda Martinez, City Clerk

Approved as to form:

\_\_\_\_\_  
David A. Linehan, City Attorney

FILED WITH THE CITY CLERK:      - - -  
PASSED BY THE CITY COUNCIL:   - - -  
PUBLISHED:                       - - -  
EFFECTIVE DATE:                 - - -  
ORDINANCE NO. \_\_\_\_\_

**INTERLOCAL AGREEMENT  
BY AND BETWEEN  
THE CITY OF BLACK DIAMOND, WASHINGTON  
AND  
THE ENUMCLAW SCHOOL DISTRICT**

THIS AGREEMENT is entered into this \_\_\_ day of August, 2020, by and between the City of Black Diamond (hereinafter "City") and the Enumclaw School District (hereinafter "District").

WHEREAS, the Washington State Legislature passed the Growth Management Act, Chapter 36.70A RCW, and Chapter 82.02 RCW (hereinafter "Act"), which authorizes the imposition of impact fees on development activity as part of the financing for public facilities, which financing must provide for a balance between impact fees and other sources of public funds; and

WHEREAS, the Act permits the collection and expenditure of impact fees only for public facilities which are addressed by a capital facilities element of a comprehensive land use plan adopted under the Act; and

WHEREAS, the District has prepared a Capital Facilities Plan, and authorization to collect and expend fees is contingent upon the City adopting the District's Capital Facilities Plan as part of the City's Comprehensive Plan, all as required by RCW 36.70A.070, and on the Plan's adherence with the statutory requirements of the Act; and

WHEREAS, the City has adopted Ordinance No. \_\_\_\_\_ (the "school impact fee ordinance"), which describes the features of the school impact fee program, and allows the District to receive and expend school impact fees in conformance with the Act; and

WHEREAS, the City and the District enter into this Interlocal Agreement pursuant to Chapter 39.34 RCW, for the purposes of setting forth the duties and responsibilities of the parties with regard to the school impact fee program;

NOW, THEREFORE, in consideration of the mutual promises herein, the parties agree as follows:

**I. RESPONSIBILITIES OF THE DISTRICT**

The District, by and through its officials, employees, agents, and representatives, agrees to:

A. On or before July 1st of each calendar year, submit to the City a six (6) year Capital Facilities Plan, or an update of the previously adopted Plan, together with an impact fee schedule which meets the requirements of the Act and the school impact fee ordinance.

B. Establish and maintain impact fee accounts as required by RCW 82.02.070.

C. Properly expend and account for impact fees as required in RCW 82.02.050(4) and (5), and 82.02.070(2) and (3).

D. Prepare and submit to the City on or before July 1 of each calendar year a report showing the source and amount of all moneys collected, earned or received, and all system improvements that were financed in whole or in part by impact fees during the preceding calendar year, together with all information necessary to allow the City to meet all of the requirements of RCW 82.02.070(1).

E. Encumber and expend impact fees as provided in RCW 82.02.070(3), and where the District has extraordinary and compelling reasons for holding school impact fees for longer than ten years after receipt, the District shall identify such reasons in written findings to the City Council.

F. On behalf of the City, notify property owners of refunds available under RCW 82.02.080.

I. Make timely payments of refunds due under RCW 82.02.080, together with any interest which may be due thereon.

G. Review all covenants and declarations of restrictions for form, as these documents are required to maintain exemptions from payment of impact fees.

H. Maintain all accounts and records necessary to ensure compliance with this Agreement, the school impact fee ordinance, and all other applicable law.

## **II. RESPONSIBILITIES OF THE CITY**

The City, by and through its officers, officials, employees, agents and representatives, agrees to:

A. Timely review and determine what, if any, action to take on the District's annually updated Capital Facilities Plan and revised impact fee schedule.

B. Be responsible for the following aspects of the impact fee program:

1. Determine, pursuant to the school impact fee ordinance, whether or not a specific residential development activity in the City is exempt from payment of fees;
2. Notify residential development applicants of the requirement to pay school impact fees based on the impact fee schedule adopted by the City pursuant to the school impact fee ordinance;

3. Calculate and assess the fee amount for any non-exempt residential development activity, based upon the schedule of fees adopted by the City pursuant to the school impact fee ordinance;
4. Require school certificates indicating payment of fees from the developer prior to approving or permitting non-exempt residential development activity; and
5. Establish and maintain school impact fee accounts pursuant to RCW 82.02.070 so that impact fees can be transferred to the District on a monthly basis.

C. Amend, update, and maintain its Comprehensive Plan and development regulations and the school impact fee ordinance at all times as the City determines is necessary to permit the District to continue collecting school impact fees.

D. When City applications for development activity have been submitted, enforce covenants or declaration of covenants and restrictions, where the same have been executed as a condition of exemption from school impact fees. When such applications have not been submitted, the City shall advise the District of any potential enforcement action, and the District shall determine whether to request that the City take enforcement action. If the District requests that the City take enforcement action, the District shall reimburse the City for the City's cost of enforcement.

E. Provide a consolidated appeal process, consistent with RCW 82.02.070(5), by which an aggrieved party may appeal or otherwise contest the impact fee or independent fee calculation.

### **III. AUDIT**

A. The District's records and documents with respect to all matters covered by the school impact fee ordinance or this Agreement are subject to inspection, review or audit by the City or an appropriate state agency.

B. The District agrees to cooperate with any monitoring or evaluation activities conducted by the City that pertain to the subject of this Agreement. The District agrees to allow the City or appropriate state agencies and/or any of their authorized officers, employees, agents or representatives to have full access to and the right to examine, audit, and make excerpts or transcripts of, during normal business hours, all of the District's records with respect to all matters covered by the school impact fee ordinance or this Agreement. The City shall provide fifteen (15) days' advance written notice of fiscal audits to be conducted.

### **IV. INDEMNIFICATION AND HOLD HARMLESS**

A. The District shall, at its own cost and expense, protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents, from any and all costs, claims, suits,

judgments or awards of damages, including attorney fees, arising out of or in any way resulting from the acts or omissions of the District, its officers, employees or agents, relating to the District's implementation of the school impact fee program, performance of the duties set forth in Section I of this Agreement, or compliance with the terms of the school impact fee ordinance, as currently in effect or subsequently amended. By way of example, and not of limitation, the District shall protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents, from any and all costs, claims, suits, judgments, or awards of damages arising out of or in any way resulting from the District's (by its officers, employees, agents, or representatives) negligent or intentional acts or omissions; any liability arising from an audit of the District's impact fee account; or any failure for any reason to comply with the terms of this Agreement, the terms of the school impact fee ordinance, or applicable law, all as may be amended from time to time.

B. The District further agrees that the District shall, at its own costs and expense, protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents from any and all costs, claims, suits, judgments, or awards of damages, including attorney fees, arising out of or in any way resulting from the District's failure to refund impact fees, or interest on such impact fees, including but not limited to a determination that impact fees from development activity that was not completed are not refundable because the funds were expended or encumbered by the District, whether or not the District's determination was made in good faith; provided, however, that if the District offers to defend, the District shall not be liable for any of the City's attorney's fees or costs incurred after such offer to defend is made.

C. The District's duties to the City under this Section shall not be diminished or extinguished by the prior termination of this Agreement pursuant to Section V.

D. Except as provided in paragraphs A, B and C, the City shall, at its own cost and expense, protect, defend, indemnify and hold harmless the District, its officers, employees, or agents, from any and all costs, claims, suits, judgments or awards of damages, including attorney fees, arising out of or in any way resulting from the acts or omissions of the City, its officers, employees or agents, relating to the City's implementation of the school impact fee program or performance of the duties set forth in Section II of this Agreement; provided, however, that if the City offers to defend, the City shall not be liable for any of the District's attorney's fees or costs incurred after such offer to defend is made; and provided further, however, that the District shall promptly refund any fees as required by a final court order including payment of any pre- or post-judgment interest. The parties agree that the City shall bear no liability for any costs, claims, suits, judgments or awards of damages, including attorney fees, arising out of or in any way relating to information provided by the District and relied upon by the City in the adoption of a school impact fee ordinance or any subsequent revision to the fee schedule, and the City shall not be required to defend any appeal or challenge to the District's information, data, use of school impact fees, calculation or formula for calculation of fees, or decisions on reconsideration/appeal.

E. The City's duties to the District under this Section shall not be diminished or extinguished by prior termination of this Agreement pursuant to Section V.



## **V. TERMINATION**

A. The District's authorization to receive and collect school impact fees under this Agreement may be terminated without cause by the City, in whole or in part, at any time, but only upon the repeal or invalidation of the school impact fee ordinance. If the City repeals and does not replace the school impact fee ordinance, or if the school impact fee ordinance is invalidated by a final, nonappealable decision of a court of competent jurisdiction, all other obligations under this Agreement remain in effect until both of the following conditions have been satisfied:

1. The City or the District provides written notice that this Agreement is being terminated; and
2. The District no longer retains unexpended or unencumbered impact fees and interest earned thereon.

The obligations under Section IV, Indemnification, are continuing and shall not be diminished or extinguished by the termination of this Agreement.

B. The District shall, upon the repeal of the school impact fee ordinance and/or termination of this Agreement, either properly expend or refund any remaining unexpended or unencumbered impact fees together with interest earned thereon pursuant to Chapter 82.02 RCW.

C. Nothing herein limits, waives or extinguishes any right or remedy provided by this Agreement or by law that either party may have in the event that any obligations, terms and conditions set forth in this Agreement are breached by the other party.

## **VI. MODIFICATION**

No changes or modifications of this Agreement are valid or binding upon either party unless such changes or modifications are in writing and executed by both parties.

## **VII. INTEGRATION**

This Agreement, together with the school impact fee ordinance, contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement bind either party.

## **VIII. SEVERABILITY**

In the event that any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement, which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

**IX. RIGHTS OF OTHER PARTIES**

It is understood that this Agreement is solely for the benefit of the parties hereto and conveys no right to any other party.

**X. DISPUTES**

Venue and jurisdiction for any dispute concerning the interpretation, performance, or breach of this Agreement lie exclusively in King County Superior Court, and the substantially prevailing party is entitled to recover its costs and reasonable attorney fees.

**XI. GOVERNING LAW AND FILING**

This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Washington. This Agreement shall be filed with the Secretary of the District's Board of Directors, the Clerk of the City of Black Diamond, and the King County Recorder.

**XII. ADMINISTRATION**

A. The City's representative for purposes of administering this Agreement is the Mayor or his/her designee.

B. The District's representative for purposes of administering this Agreement is the Superintendent or his/her designee.

**XIII. WAIVER OF DEFAULT**

Waiver of any default in the performance of this Agreement is not a waiver of any subsequent default. Waiver or breach of any provision of the Agreement is not a waiver of any other or subsequent breach and does not constitute a modification of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date and year set forth below.

THE CITY OF BLACK DIAMOND  By _____ Carol Benson Its <u>Mayor</u>	ENUMCLAW SCHOOL DISTRICT  By _____ Its _____
APPROVED AS TO FORM:  OFFICE OF THE CITY ATTORNEY  _____	APPROVED AS TO FORM:  SCHOOL DISTRICT ATTORNEY  _____
ATTEST/AUTHENTICATED:  _____  City Clerk	

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that (he/she) signed this  
instrument, on oath stated that (he/she) was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of the City of Black Diamond to be the free and  
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My Commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that (he/she) signed this  
instrument, on oath stated that (he/she) was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of the Enumclaw School District to be the free and  
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My Commission expires \_\_\_\_\_

## PROPOSED SCHOOL IMPACT FEES

(applies to residential development only)

Housing Type	Enumclaw SD	Kent SD	Tahoma SD	Auburn
Single-Family	\$8,972	5,692	5,748	6,456.31
Multi-Family	\$6,282	2,403.63	4,366	16,325**

\*\* Auburn City Council has adopted a sliding scale of discounts to the multi-family school impact fee, with actual fees ranging from \$6,325 for a studio apartment to a maximum of \$16,325 for 4BR townhomes and larger.