

Legislature Adopts Changes to Washington's Impact Fee Law

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After several years of discussion and debate, the 2015 Legislature has enacted changes to how impact fees are to be collected by Washington counties, cities, and towns. [ESB 5923](#) requires counties, cities, and towns to adopt a deferral system for the collection of impact fees for new single-family detached and attached residential construction, a change that developers contended would address the financial burden of paying fees at the early stages of the process, before a development project is generating

any revenues. While many counties and cities were worried that a deferral system would make it harder to collect impact fees and stymie planning for new infrastructure, the lengthy deliberations and revisions over several legislative sessions resulted in a final product that addresses many, if not all, of their concerns.

The deadline for most of the new law's provisions is more than one year away ([September 1, 2016](#)), so local governments have time to develop a deferral system that best meets statutory requirements and local objectives.

Description of New Law

Under the new law, counties, cities, and towns must adopt a deferral system for the collection of impact fees that, upon developer request, delays payment until the time of:

1. Final inspection;
2. Issuance of the certificate of occupancy or equivalent certification; or
3. The closing of the first sale of the property.

For the first two options, cities are authorized to delay issuance of the certification until the impact fees have been paid. For the third option, the new law states that the seller has strict liability for payment of impact fees and that such payment must be made from the seller's proceeds (unless there is an agreement to the contrary between the seller and the buyer). It is up to each municipality, however, to choose one or more of the three options it wants to use.

Other highlights of the new law include:

- The term of deferral is 18 months from issuance of the building permit.
- The amount of impact fees that may be deferred is determined by the fees in effect at the time the applicant applies for a deferral.
- Deferral of impact fees can be limited to the first 20 single-family residential building permits, annually, per applicant.
- An applicant seeking a deferral must grant and record a lien against the property in favor of the municipality in the amount of the deferred impact fee.
- Municipalities may collect reasonable administrative fees from applicants seeking a deferral.
- To limit the “spin-off LLC” issue, “applicant” is defined to include “an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.”
- Limited grandfathering is authorized for an existing deferral system (in effect on or before April 1, 2015), even if it does not fully match the new state requirements, as long as all impact fees are deferred.
- Municipalities and school districts are authorized to institute foreclosure proceedings if impact fees are not paid.
- The Department of Commerce must develop an annual report, beginning December 1, 2018, on the payment and collection of impact fees from school districts, counties, and cities for single-family residential construction.

The new law also contains provisions where local choices should be made, including but not limited to: (a) at what juncture impact fees are collected; (b) whether to impose a reasonable administrative fee; and (c) whether to limit the deferral to the first 20 building permits or to a greater number of building permits.

The timing of impact fee collection under a deferral system will be the key decision to be made by counties, cities and towns. Presumably, most builders would prefer the “time of sale” option, since it extends out the time when payment would be due. However, local governments have direct involvement with final inspections and certificate of occupancy issuance (the first two options), so choosing either of those points would allow them to know exactly when the deferred payment is due. In addition, under the “time of sale” option, there is the possibility that a newly constructed single-family residence could be rented out and not sold, resulting in no impact fee payment. In the end, the final decision on when to require payment of impact fees is a local one.

Tips and Suggested Actions

- Be proactive in preparing your local codes, procedures, and staff for this new change. Take the time necessary to develop and adopt an impact fee deferral system before the statutory deadline of September 1, 2016.
- Decide which local options are best for you, such as:
 - Timing of payment of the deferred impact fee(s).
 - Imposition of an administrative fee.
 - Expansion of deferrals beyond the first 20 building permits (with a decision on expansion to be made only after consultation with any affected school district).
- For those municipalities that already have an impact fee deferral process - Review it carefully for consistency with the new law’s requirements and amend the existing process if needed.

Of course, no action is required for those counties, cities, and towns that don't impose impact fees.

Finally, it should be noted that, while a municipality must adopt and administer an impact fee deferral system, it is up to the applicant to decide whether or not to use that process.

Photo courtesy of [*Dwight Burdette*](#)



About Steve Butler

Steve joined MRSC in February 2015. He has been involved in most aspects of community planning for over 30 years, both in the public and private sectors. Steve has served as president of statewide planning associations in both Washington and Maine, and was elected to the American Institute of Certified Planner's College of Fellows in 2008.

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