

**CITY OF MERCER ISLAND
ORDINANCE NO. 15C-15**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON
ESTABLISHING A NEW CHAPTER 19.17 OF THE MERCER ISLAND
CITY CODE ENTITLED, "SCHOOL IMPACT FEES".**

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, adoption of an impact fee ordinance is categorically exempt from the State Environmental Policy Act pursuant to WAC-197-11-800(19); and

WHEREAS, the City Planning Commission held a public hearing on July 15, 2015 and recommended adoption of this Ordinance; and

WHEREAS, the City Council held a public meeting and considered this Ordinance during its regular City Council meeting of August 3, 2015;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. **Establish Mercer Island City Code Chapter 19.17, School Impact Fees.** There is hereby added to Title 19 of the Mercer Island City Code ("MICC"), a new chapter 19.17, entitled "School Impact Fees," as follows:

**Chapter 19.17
SCHOOL IMPACT FEES**

Sections:

- 19.17.010 Purpose and Authority
- 19.17.020 Definitions
- 19.17.030 Interlocal Agreement between the City and District
- 19.17.040 Annual Council Review
- 19.17.050 Impact Fee Program Elements
- 19.17.060 Fee Calculations
- 19.17.070 Assessment and Collection of Impact Fees
- 19.17.080 Option for Deferred Payment of Impact Fees
- 19.17.090 Exemptions
- 19.17.100 Determination of the Fee, Adjustments, Exceptions and Appeals
- 19.17.110 Impact Fee Accounts and Refunds

19.17.010 Purpose and Authority

A. This chapter is enacted pursuant to the City's police powers, the Growth Management Act as codified in chapter 36.70A RCW ("the Act") and the impact fee statutes as codified in RCW 82.02.050 through 82.02.100.

B. The purpose of this chapter is to:

1. Develop a program consistent with the City's Comprehensive Plan for joint public and private financing of school facilities consistent with the capital facilities plan of the Mercer Island School District No. 400 ("the District"), 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 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; 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 purpose in the interest of the public health, safety and welfare.

19.17.020 Definitions

A. "Affordable Housing Unit" means (1) an owner-occupied housing unit affordable to households whose household income is less than 80% of the King County median income, adjusted for household size, as determined by the United States Department of Housing and Urban Development (HUD), and no more than 30% of the household income is paid for housing expenses (e.g., mortgage, property taxes, hazard and mortgage insurance and homeowners dues (if applicable), or (2) a renter-occupied housing unit affordable to households whose income is less than 60% of the King County median income, adjusted for household size, as determined by HUD, and no more than 30% of the household income is paid for housing expenses (rent and appropriate utility allowance). In the event that HUD no longer publishes median income figures for King County, the City may use another method as it may choose to determine the King County median income, adjusted for household size. The Code Official will make a determination of sales prices or rents that meet the affordability requirements of this chapter.

B. "Capital Facilities Plan" means the District's Capital 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 Mercer Island.
- D. "District" means the Mercer Island School District No. 400.
- E. "Developer" means the person or entity that owns or holds purchase options or other development control over property for which development activity is proposed.
- F. "Development Activity" means having any residential construction or expansion of a residential building, structure or use, any change in use of a residential building or structure, or any change in the use of residential land that creates additional demand for school facilities.
- G. "Dwelling Unit" means a Dwelling as defined in Section 19.16.010 MICC.
- H. "Elderly" means a person aged 55 or older.
- I. "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.
- J. "Impact Fee" means a payment of money imposed upon development activity as a condition of development approval to pay for 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 facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. "Impact Fee" does not include a reasonable permit or application fee.
- K. "Impact Fee Schedule" means the table of impact fees to be charged per unit of development, computed by the formula contained in the District's Capital Facilities Plan, indicating the standard fee amount per Dwelling Unit that shall be paid as a condition of residential development within the City.
- L. "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.
- M. "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 school facilities.

19.17.030 Interlocal Agreement between the City and District

As a condition of the City's authorization and adoption of school impact fees, the City and District shall enter into an Interlocal Agreement governing the operation of the school impact fee program, and describing the relationship and liabilities of the parties thereunder.

19.17.040 Annual Council Review

On an annual basis, the District shall submit to the City a six-year Capital Facilities Plan or an update of a previously adopted plan which meets the requirements of the Act. The materials submitted by the District shall include proposed impact fee amounts for single family dwelling units and multi-family dwelling units. The City may amend the Permit and Impact Fee Schedule to reflect changes to the Capital Facilities Plan.

19.17.050 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. 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. The impact fee formula shall account in the fee calculation for future revenues the District will receive from the 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 the fee program.

19.17.060 Fee Calculations.

A. The fee shall be calculated based on the formula set forth in the District's Capital Facilities Plan.

B. Any impact fee imposed shall be reasonably related to the impact caused by the development and shall not exceed a proportionate share of the cost of system improvements that are reasonably related to the new development. The impact fee formula shall take into account the future revenues the District will receive from the development, along with system costs related to serving the new development.

C. Separate 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 chapter, mobile homes shall be treated as single family dwellings and duplexes shall be treated as multi-family dwellings.

D. The fee shall be calculated on a District-wide basis using the appropriate factors and data to be supplied by the District. The 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.

E. The formula shall provide 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.

F. The formula shall also provide for a credit for school facilities or sites actually provided by a developer which the District finds acceptable.

19.17.070 Assessment and Collection of Impact Fees.

A. The City shall collect impact fees, based on the City's Permit and Impact Fee Schedule, from any applicant seeking a residential building permit from the City:

B. All impact fees shall be collected from the applicant prior to issuance of the building permit unless the use of an independent fee calculation has been approved or unless the applicant applies for deferred payment of impact fees pursuant to Section 19.17.080. The fee shall be calculated based on the Impact Fee Schedule in effect at the time the building permit is issued unless otherwise required pursuant to Section 19.17.080.

C. For building permits for mixed use developments, impact fees shall be imposed on the residential component of the development found on the City's Permit and Impact Fee Schedule.

D. For building permits within new subdivisions approved under Chapter 19.08 (Subdivisions), a credit shall be applied for any dwelling unit that exists on the land within the

subdivision prior to the subdivision if the dwelling unit is demolished. The credit shall apply to the first complete building permit application submitted to the City subsequent to demolition of the existing dwelling unit, unless otherwise allocated by the applicant of the subdivision as part of approval of the subdivision.

E. The City shall not issue the required building permit unless and until the impact fees set forth in the Impact Fee Schedule have been paid.

F. The City may impose an application fee, as provided for in the City's adopted Permit and Impact Fee Schedule, per dwelling unit which is subject to and not otherwise exempt from this chapter to cover the reasonable cost of administration of the impact fee program. The fee is not refundable and is collected from the applicant of the development activity permit at the time of permit issuance.

G. The City shall collect the impact fee on behalf of the District and maintain separate accounts for transmittal to the District on a monthly basis.

19.17.080 Option for Deferred Payment of Impact Fees.

An applicant may request, at any time prior to building permit issuance, and consistent with the requirements of this section, to defer to final inspection the payment of an impact fee for a residential development unit. The following shall apply to any request to defer payment of an impact fee:

A. The applicant shall submit to the City a written request to defer the payment of an impact fee for a specifically identified building permit. The applicant's request shall identify, as applicable, the applicant's corporate identity and contractor registration number, the full names of all legal owners of the property upon which the development activity allowed by the building permit is to occur, the legal description of the property upon which the development activity allowed by the building permit is to occur, the tax parcel identification number of the property upon which the development activity allowed by the building permit is to occur, and the address of the property upon which the development activity allowed by the building permit is to occur. All applications shall be accompanied by an administrative fee as provided for in the City's adopted Permit and Impact Fee Schedule.

B. The impact fee amount due under any request to defer payment of impact fees shall be based on the schedule in effect at the time the applicant provides the City with the information required in subsection A of this section.

C. Prior to the issuance of a building permit that is the subject of a request for a deferred payment of impact fee, all applicants and/or legal owners of the property upon which the development activity allowed by the building permit is to occur must sign a deferred impact fee payment lien in a form acceptable to the City Attorney. The deferred impact fee payment lien shall be recorded against the property subject to the building permit and be granted in favor of the City in the amount of the deferred impact fee. Any such lien shall be junior and subordinate only to one mortgage for the purpose of construction upon the same real property subject to the building permit. In addition to the administrative fee required in subsection A of this section, the applicant shall pay to the City the fees necessary for recording the lien agreement with the King County Recorder.

D. The City shall not approve a final inspection until the school impact fees identified in the deferred impact fee payment lien are paid in full.

E. In no case shall payment of the impact fee be deferred for a period of more than eighteen (18) months from the date of building permit issuance.

F. Upon receipt of final payment of the deferred impact fee as identified in the deferred impact fee payment lien, the City shall execute a release of lien for the property. The property owner may, at his or her own expense, record the lien release.

G. In the event that the deferred impact fee is not paid within the time provided in this subsection, the City shall institute foreclosure proceedings under the process set forth in Chapter 61.12 RCW. The District may also institute foreclosure proceedings as set forth in RCW 82.02.050(3).

H. An applicant is entitled to defer impact fees pursuant to this section for no more than twenty (20) single family dwelling unit building permits per year in the City. For purposes of this section, an "applicant" includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.

19.17.090 Exemptions.

The following development activities are exempt or partially exempt from the payment of school impact fees:

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. Provided, that if the property is used for a non-exempt purpose, then the school impact fees then in effect shall be paid.

1. 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, retirement centers, and any type of housing units for persons age 55 and over, which have recorded covenants or recorded declaration of restrictions precluding school-aged children as residents in those units.

4. Any form of affordable (low-income) housing units, as defined in this chapter, may request an exemption of eighty percent (80%) of the required impact fee. Any claim for an exemption for affordable housing units must be made prior to payment of the impact fee, and any claim not so made shall be deemed waived. Prior to any development approval, the owner shall execute and record against the property in the King County real property title records a City-prepared covenant that shall guarantee that the affordable housing shall continue, which covenant shall run with the land, address annual reporting requirements to the City, price restrictions and household income limits and be consistent with the provisions of RCW 82.02.060(3) as now adopted or hereafter amended. In the event that the exempt housing unit is no longer used for affordable (low-income) housing as defined in this chapter, the current owner shall pay the applicable impact fees in effect at the time of conversion.

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), or replacing demolished legally established dwelling unit(s), provided that a complete building permit for construction or reconstruction is submitted to the city within 12 months of the date of the loss or demolition, as the case may be, 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 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; and further provided that the condition of the plat approval predates the effective date of 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; and further provided that the agreement predates the effective date of fee imposition.

G. Any building permit for a legal accessory dwelling unit approved under MICC 19.02.030.

19.17.100 Determination of the Fee, Adjustments, Exceptions and Appeals

A. The City shall determine a developer's impact fee, according to the schedule provided by the District.

B. Arrangement may be made for later payment of the impact fee with the approval of the District only if the District determines that it will be unable to use or will not need the payment until a later time, provided that sufficient security, as defined by the District, is provided to assure payment. Security shall be made to and held by the District, which will be responsible for tracking and documenting the security interest.

C. The fee amount established in the 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.

D. Whenever a developer is granted approval subject to a condition that the developer 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 fee that would be chargeable under the formula provided by this chapter. 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.

E. The standard impact fees may be adjusted, if one of the following circumstances exist, provided that any discount set forth in the fee formula fails to adjust for the error in the calculation or fails to ameliorate for the unfairness of the fee:

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 was applied to the development, it would be unfair or unjust.

F. In cases where a developer requests an independent fee calculation, adjustment exception or a credit pursuant to RCW 82.02.060(3), the City shall consult with the District and the District shall advise the City prior to the City making the final impact fee determination.

G. A developer may provide studies and data to demonstrate that any particular factor used by the District may not be appropriately applied to the development proposal.

H. Any appeal of the decision of the City with regard to fee amounts shall follow the process for the appeal of the underlying development application, as set forth in the Mercer Island City Code. Any errors in the formula identified as a result of the appeal should be referred to the Council for possible modification.

I. Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.

19.17.110 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 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 be used to recoup costs for system improvements previously incurred by the District to the extent that new growth and development will be served by the previously constructed 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 identify the District's extraordinary and compelling reasons for the fees to be held longer than ten (10) years in the Council's 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 impact fees have not been expended or encumbered within ten (10) years of receipt of the funds by the District 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 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 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 City Code including the International Building Code; and

2. No impact on the District has resulted. "Impact" shall be deemed to include 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 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 Section 19.17.100.

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.

Section 2. **Severability.** If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 3. **Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

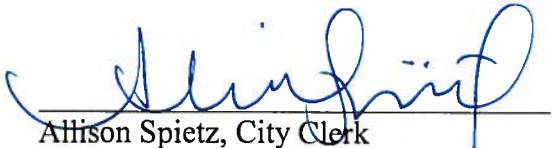
Section 4. **Effective Date.** This Ordinance shall take effect and be in force within 30 days after passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 8th day of September 2015 and signed in authentication of its passage.

CITY OF MERCER ISLAND


Bruce Bassett, Mayor

ATTEST:


Allison Spietz, City Clerk

Approved as to Form:


Kari Sand, City Attorney

Date of Publication: 09/16/2015