

**CITY OF MERCER ISLAND  
ORDINANCE NO. 16C-01**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON  
ESTABLISHING A NEW CHAPTER 19.19 OF THE MERCER ISLAND  
CITY CODE ENTITLED, "TRANSPORTATION IMPACT FEES".**

WHEREAS, the City has authority to adopt impact fees to address the impact on public streets and roads 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, community engagement processes held in 2015 supported the need for more retail uses and restaurants to serve Mercer Island residents; and

WHEREAS, in order to address the increasing difficulty that Islanders face in accessing retail and restaurant uses outside the City, it is necessary to encourage such uses within the City; and

WHEREAS, the City has already seen a loss of restaurant and retail uses that the Council desires to avoid perpetuating; and

WHEREAS, the City Planning Commission held a public hearing on November 4, 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 meetings of November 16 and December 7, 2015 and January 4, 2016;

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

**Section 1.     Establish Mercer Island City Code Chapter 19.19, Transportation Impact Fees.** There is hereby added to Title 19 of the Mercer Island City Code ("MICC"), a new chapter 19.19, entitled "Transportation Impact Fees", as follows:

**Chapter 19.19  
TRANSPORTATION IMPACT FEES**

**Sections:**

- 19.19.010 Purpose and Authority
- 19.19.020 Definitions
- 19.19.030 Impact Fee Program Elements
- 19.19.040 Fee Calculations
- 19.19.050 Assessment and Collection of Impact Fees
- 19.19.060 Option for Deferred Payment of Impact Fees

- 19.19.070 Exemptions
- 19.19.080 Determination of the Fee, Adjustments, Exceptions and Appeals
- 19.19.090 Impact Fee Accounts and Refunds
- 19.19.100 Fee Schedule and Updates

**19.19.010 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 public streets and roads ("transportation facilities") consistent with the capital facilities plan of the City of Mercer Island Comprehensive Plan, as such transportation facilities are necessitated in whole or in part by development in the City;
2. Ensure adequate levels of service in transportation 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 transportation facilities reasonably related to new development, in order to ensure the availability of adequate transportation 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.

**19.19.020 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 Capital Facilities element of the City of Mercer Island's Comprehensive Plan.

C. "City" means the City of Mercer Island.

D. "Developer" means the person or entity that owns or holds purchase options or other development control over property for which Development Activity is proposed.

E. "Development Activity" means having any construction or expansion of a building, structure or use, any change in use of a building or structure, or any change in the use of land that creates additional demand for transportation facilities.

F. " Dwelling Unit" means a Dwelling as defined in Section 19.16.010. For purposes of this chapter, an accessory dwelling unit as regulated in 19.02.030 MICC is considered an adjunct to the associated primary structure and is not charged a separate impact fee.

G. "Encumbered" means impact fees identified by the City as being committed as part of the funding for a transportation facility for which the publicly funded share has been assured or building permits sought or construction contracts let.

H. "Impact Fee" means a payment of money imposed upon Development Activity as a condition of development approval to pay for transportation 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.

I. "Impact Fee Schedule" means the table of impact fees to be charged per unit of development, computed by the formula contained in the Transportation Impact Fee Rate Study, indicating the standard fee amount per unit of development that shall be paid as a condition of such development within the City.

#### **19.19.030 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 City will receive from the development.

C. The impact fee shall be based on the Capital Facilities element adopted by the City as part of the City's Comprehensive Plan and on the City's Six-Year Transportation Improvement Program.

#### **19.19.040 Fee Calculations.**

A. The fee shall be calculated based on the methodology set forth in the Transportation Impact Fee Rate Study.

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 City will receive from the development, along with system costs related to serving the new development.

C. 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 methodology shall provide for a credit for transportation facilities or sites actually provided by a developer which the City finds acceptable.

#### **19.19.050 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 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 19.19.060. 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 19.19.060.

C. 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.

D. 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.

E. The City may impose an application fee, as provided for in the City's adopted Permit and Impact Fee Schedule, 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.

#### **19.19.060 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 transportation 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.

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.

#### **19.19.070 Exemptions.**

The following development activity is exempt or partially exempt from the payment of transportation impact fees:

A. Reconstruction, remodeling or construction of 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 building(s) destroyed or damaged by fire, flood, explosion, act of God or other accident or catastrophe, or remodeling of existing legally established building(s), or replacing demolished legally established building(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 or change of use from one category on the Impact Fee Schedule to another category on the Impact Fee Schedule occurs. If such change of use occurs, the impact fee will be calculated based on the impact fee of the new use minus the impact fee of the prior use, based on the rates in the Impact Fee Schedule pursuant to Section 19.19.050.

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 transportation impacts have been mitigated pursuant to a condition of plat approval to pay fees, dedicate land or construct or improve transportation 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 transportation impacts have been mitigated pursuant to a voluntary agreement entered into with the City to pay fees, dedicate land or construct or improve transportation facilities, unless the terms of the voluntary agreement provide otherwise; and further provided that the agreement predates the effective date of fee imposition.

G. Retail and restaurant uses as defined in MICC 19.16.

#### **19.19.080 Determination of the Fee, Adjustments, Exceptions and Appeals.**

A. The City shall determine a developer's impact fee, according to the Impact Fee Schedule.

B. 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.

C. Whenever a developer is granted approval subject to a condition that the developer provide a transportation facility acceptable to the City, 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 transportation impact fee.

D. 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.

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

F. 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.

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

#### **19.19.090 Impact Fee Accounts and Refunds.**

A. Impact fee receipts shall be earmarked specifically and retained in a special interest-bearing account established by the City solely for the City's transportation 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 City 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.

B. Impact fees for transportation system improvements shall be expended by the City for capital improvements including but not limited to transportation planning, land surveys, land acquisition, site improvements, necessary off-site improvements, construction, engineering,

architectural, permitting, financing, and administrative expenses, and any other expenses which could be capitalized, and which are consistent with the City's capital facilities element of its Comprehensive Plan or the City's Six-Year Transportation Improvement Program.

C. Impact fees may be used to recoup costs for system improvements previously incurred by the City 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 City for a permissible use within ten (10) years of receipt by the City, unless there exists an extraordinary or compelling reason for fees to be held longer than ten (10) years.

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 City on transportation 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 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 City 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 City in conformance with the capital facilities element 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 transportation impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded to the current owner of the property for which a transportation 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 City, but must be expended by the City, 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 City has resulted. "Impact" shall be deemed to include cases where the City has expended or encumbered the impact fees in good faith prior to the application for a

refund. In the event that the City 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 City 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 City shall determine whether to grant a credit, and such determinations may be appealed by following the procedures set forth in Section 19.19.080.

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

**19.19.100 Fee Schedule, Review of Schedule and Updates.**

A. The impact fees on Exhibit A are based on the City's 2015 rate study.

B. Transportation impact fee rates shall be updated annually using the following procedures:

1. The Code Official shall use the Construction Cost Index for Seattle (June-June) published by the Engineering News Record to calculate annual inflation adjustments in the impact fee rates. The transportation impact fees shall not be adjusted for inflation should the index remain unchanged.

2. The indexed impact fee rates shall be effective January 1. A copy of the indexed impact fee rates shall be provided to the City Council but the indexed rates shall become effective without further Council review.

C. The Code Official shall review the transportation impact fee rates annually to determine when a new transportation impact fee rate study should be prepared and recommend to the City Council when a new study should be prepared.

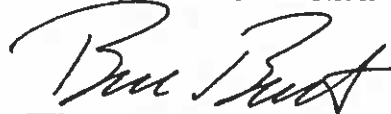
**Section 2. Severability.** If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause 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 30 days after passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 4th day of January 2016 and signed in authentication of its passage.


CITY OF MERCER ISLAND



Bruce Bassett, Mayor



ATTEST:

  
Allison Spietz, City Clerk

Date of Publication: 1/13/2016

Approved as to Form:

  
Kari Sand, City Attorney

**Exhibit A**  
**Mercer Island Proposed Traffic Impact Fee Rate Schedule**  
**Based on a PM peak hour cost per trip of \$3,882**

<i>Land Uses</i>	<i>Unit of Measure (1)</i>	<i>Basic Rate PM Peak Trips/Unit (2)</i>	<i>New Trips % (3)</i>	<i>New Trip Rate (4)</i>	<i>Fee Per Unit of Measure (5)</i>
Single Family (1 or 2 dwellings)	dwelling	1.00	100%	1.00	\$3,882
Multi Family (3 or more dwellings)	dwelling	0.57	100%	0.57	\$2,213
Senior Housing	dwelling	0.27	100%	0.27	\$1,048
Lodging	room	0.60	100%	0.60	\$2,329
Commercial Services	SF GFA	3.98	100%	3.98	\$15.45
School	student	0.13	100%	0.13	\$505
Institutional	SF GFA	0.74	100%	0.74	\$2.87
Light Industry/ Industrial Park	SF GFA	0.91	100%	0.91	\$3.53
Warehousing/Storage	SF GFA	0.45	100%	0.45	\$1.75
Gas Station	pump	13.51	44%	5.94	\$23.08
Administrative Office	SF GFA	1.49	100%	1.49	\$5.78
Medical Office/Dental Clinic	SF GFA	3.57	100%	3.57	\$13.86

**Notes:**

<sup>1</sup>"SF GFA" = Square Foot Gross Floor Area

<sup>2</sup> Institute of Transportation Engineers (ITE) Trip Generation (9th Edition): 4-6 PM Peak Hour Trip Ends

<sup>3</sup> Excludes pass-by trips: see "Trip Generation Handbook: An ITE Proposed Recommended Practice" (2014)

<sup>4</sup>For uses with unit of measure in "SF GFA" the trip rate is given as trips per 1000 sq ft

<sup>5</sup>For uses with unit of measure in "SF GFA" the impact fee is dollars per square foot