

## ORDINANCE NO. 16-1899

AN ORDINANCE OF THE CITY OF MILTON, WASHINGTON, REPEALLING CHAPTER 16.84 OF THE MILTON MUNICIPAL CODE AND ADDING CHAPTER 13.44 AS IT RELATES TO THE COLLECTION OF TRANSPORTATION IMPACT FEES; ENTERING LEGISLATIVE FINDINGS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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WHEREAS, the Milton Municipal Code provides for an annual increase in the peak hour trip impact fee; and

WHEREAS, the Citizens of Milton will be better served if Chapter 16.84 of Milton Municipal Code was moved to Chapter 13; and

WHEREAS, the Washington State Legislature passed a bill requiring the City of Milton to adopt a deferral system for the collection of Transportation Impact Fees: NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF MILTON, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Findings.** The recitals set forth above are hereby adopted as the Milton City Council's findings in support this ordinance.

**Section 2.** Chapter 16.84 of the Milton Municipal Code is hereby repealed, and Chapter 13.44 created as follows:

### Chapter ~~16.84~~ 13.44

#### TRANSPORTATION IMPACT FEE PROGRAM

Sections:

- ~~16.84.010~~ 13.44.010 Transportation impact fee program established.
- ~~16.84.020~~ 13.44.020 Purpose.
- ~~16.84.030~~ 13.44.030 Definitions.
- ~~16.84.040~~ 13.44.040 Establishment of service area.
- ~~16.84.050~~ 13.44.050 Imposition of impact fee on development activity.
- ~~16.84.060~~ 13.44.060 Disposition of impact fee revenues.
- ~~16.84.065~~ 13.44.065 Impact fees – Calculation.
- ~~16.84.070~~ 13.44.070 Refunds.
- ~~16.84.080~~ 13.44.080 Appeals.
- ~~16.84.090~~ 13.44.090 Reimbursement agreements authorized.
- 13.44.100 Deferral of impact fees.

**~~16.84.010~~ 13.44.010 Transportation impact fee program established.**

There is established, subject to provisions of this chapter, a transportation impact fee program. (Ord. 1869 § 1, 2015; Ord. 1521 § 2, 2002).

**~~16.84.020~~ 13.44.020 Purpose.**

It is the purpose of this transportation impact fee ordinance to:

- A. Ensure that adequate transportation facilities are available to serve new growth and development.
- B. Promote orderly growth and development by establishing citywide standards by which new growth and development pay a fair and proportionate share of the cost of citywide transportation facilities necessary to serve new growth and development.
- C. Ensure that impact fees are imposed through established procedures and criteria so that specific development does not pay arbitrary fees or duplicative fees for the same impact. (Ord. 1869 § 1, 2015).

**~~16.84.030~~ 13.44.030 Definitions.**

Unless the context otherwise requires, the terms defined in this section shall, for all purposes of this chapter, have the meanings specified in this section, with words importing the singular number including the plural number and vice versa:

“Act” means the sections of the Washington State Growth Management Act, codified as Chapter 36.70A RCW, as now in existence, or as hereinafter amended.

“Building permit” means any written authorization from the city which authorizes the commencement of development activity.

“Capital facility plan” means the capital facilities plan element of the city’s comprehensive plan, as now in existence or as hereinafter amended.

“City” means the city of Milton, Washington.

“City comprehensive plan” means the city’s comprehensive land use plan, adopted pursuant to the Act.

“Development activity” means any construction or expansion of a building or structure that creates additional demand on and/or the need for public facilities.

“Fair market value” means the price in terms of money that a property will bring in a competitive and open market under all conditions of a fair ~~sale seale~~, the buyer and seller each prudently knowledgeable and assuming the price is not affected by undue stimulus.

“Fund” means, for purposes of this chapter, a group of accounts that maintains information about and accounts for receipt of impact fees and payment of qualifying costs and expenses.

“Impact fee” means a payment of money imposed by the city upon development activity as a condition of development activity approval to pay for public facilities needed to serve new

growth and development, and to mitigate the impacts of the development activity on the transportation facilities of the city, but does not include any permit or application fee.

“LID agreement” means an agreement under RCW 35.43.182 to participate in and not protest formation of a local improvement district for construction of transportation and related improvements.

“Owner” means the owner of record of real property; although real property is being purchased under a real estate contract, the purchaser shall be considered the owner of real property if the contract is recorded.

“Public facilities” refers to public streets, roads, and rights-of-way owned or operated by the city for other governmental entities, including trails, paths, bikeways, other transportation facilities and all attendant improvements.

“Reimbursement contract” or “latecomer agreement” means an agreement under Chapter 35.72 RCW to provide for construction or improvement of street projects which the owner of real estate elects to install as a result of ordinances that require the projects as a prerequisite to further property development.

“Service area” means the boundaries within which transportation impact fees shall be imposed, collected and expended pursuant to this chapter and is coextensive with the city’s corporate limits and shall include all areas annexed to the city after the effective date of the ordinance codified in this section as provided in MMC ~~16.84.040~~ 13.44.040.

“System improvements” means public facilities that are included in the city’s capital facilities plan.

“Transportation facilities” means and refers to streets and roads, but includes all publicly owned streets, roads, alleys, and rights-of-way within the city and street services, traffic control devices, curbs, gutters, sidewalks, and related facilities and improvements.

“Transportation impact fee study” means the 2015 transportation impact fee study that identifies the transportation impact fee cost per trip to implement the comprehensive plan and to address city transportation needs.

“Transportation plan” means the transportation plan element of the city’s comprehensive plan, the city’s six-year transportation improvement program (six-year transportation improvement plan), 2015 transportation impact fee study, and such other transportation programs, plans and studies adopted by the city. (Ord. 1869 § 1, 2015; Ord. 1521 § 2, 2002. Formerly 16.84.020).

**~~16.84.040~~ 13.44.040 Establishment of service area.**

The city establishes as the service area for development impact fees the city of Milton, including all property located within the corporate limits of the city. The scope of the service area is hereby found to be reasonable and established on the basis of sound planning and engineering principles. (Ord. 1869 § 1, 2015; Ord. 1521 § 2, 2002. Formerly 16.84.030).

~~16.84.050~~ **13.44.050 Imposition of impact fee on development activity.**

- A. The city authorizes the assessment and collection of impact fees on development activity within the city, at the rate established in MMC ~~16.84.065~~ **13.44.065**. It is declared that such impact fees shall:
1. Only be imposed for transportation system improvements that are reasonably related to new development;
  2. Not exceed a proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, reasonably related to new development;
  3. Be used for system improvements that will reasonably benefit new development;
  4. Not be imposed to make up for deficiencies in any previously constructed system improvements. Such impact fee schedule is based upon the formula for calculating the proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, necessitated by new development to be borne by impact fees. The formula is described in the 2015 transportation impact fee study, which is adopted herein by this reference.
- B. The impact fee imposed pursuant to this chapter shall be paid in whole as a condition of approval of future residential developments and binding site plans; and, for all other development activities, at the time of issuance of the building permit **unless a deferral is granted pursuant to MMC 13.44.100**. Impact fees shall be assessed and paid at those rates in effect at the time of payment, and not at time of development activity application.
- C. **Unless a deferral is granted pursuant to MMC 13.44.100** Failure to pay the impact fees for a given development activity at the time of assessment shall result in denial of the development activity approval and/or building permit for which the owner has applied.
- D. If, as a condition of approval of development activity, the owner dedicates land, or constructs system improvements, in excess of the proportionate share of system improvements attributable to the owner's development activity as set out in the city's development regulations, the developer shall be eligible for a credit towards the transportation impact fees otherwise payable under this chapter. The amount of such credit shall be calculated based on the predevelopment fair market value of such land or improvements required in excess of the owner's share and shall be deducted from the transportation impact fees charged under this chapter. Credits that are granted may not exceed the total amount of the fee due.
- E. The public works director may adjust the amount of the impact fee otherwise imposed in this chapter with respect to specific development activity upon determining that:
1. Unusual circumstances require such adjustments to ensure that such impact fees are imposed fairly; and
  2. Studies and data submitted by the owner regarding the impacts of such owner's proposed development activity require such adjustment to ensure that such impact's fees are imposed fairly. Impact fees shall not be deemed unfair unless such unusual circumstances and studies

and data support a finding that the impact fees otherwise imposed in this chapter allocate to the specific project in question vehicle trips and resulting share of the cost of the systems improvements reasonably related to new development activities that are greater than or substantially less than such development activity's allocable proportionate share of such trips and resulting costs. (Ord. 1869 § 1, 2015; Ord. 1545 § 1, 2002; Ord. 1521 § 2, 2002. Formerly 16.84.040).

**16.84.060 13.44.060 Disposition of impact fee revenues.**

- A. A fund is hereby created for receipt of impact fees.
- B. The impact fees collected pursuant to the provisions of this chapter shall be deposited into the fund. Pending application as provided in this chapter, the moneys deposited in the accounts of the fund shall be invested in any investment authorized for the investment of city funds. All interest and profits derived from the investments of moneys in each account in the impact fee fund shall be retained in such account.
- C. The impact fees deposited in the fund, and the interest and profit received from the investments therefrom, shall be expended only for public facilities of the type for which such impact fees were collected, in conformity with the city's comprehensive plan, capital facilities plan element, and 2015 transportation impact fee study and expended or encumbered within 10 years of receipt by the city, unless written findings by the city council identify an extraordinary and compelling reason for the city to hold the fees for a longer time. The city shall account for annual expenditures and shall comply with this section in successive comprehensive plans, transportation plans and capital facilities plans as appropriate.
- D. The city shall prepare an annual report on the fund which shows the source and amount of all moneys collected, earned or received and the public facilities that were financed in whole or in part by impact fees. (Ord. 1869 § 1, 2015; Ord. 1865 § 3, 2015; Ord. 1521 § 2, 2002. Formerly 16.84.050).

**16.84.065 13.44.065 Impact fees – Calculation.**

- A. The impact fee for each p.m. peak hour trip, as set forth in the 2015 transportation impact fee study **and adjusted in accordance with Section 13.44.B, is \$3,980 \$3,941**. Each development activity shall be subject to and pay an impact fee based on the p.m. peak hour trips attributable to the development activity.
- B. The fees provided in the transportation impact study are based on 2015 cost estimates. The fees are to be adjusted annually by applying the Engineering News Record annual construction cost index to the cost per trip fee amount. Calculation of the construction cost index adjustment shall be included with the annual transportation improvement program update and adopted by resolution.
- C. Development traffic volumes shall be calculated by the forecast method set out in the ITE Trip Generation Manual. A development will provide a traffic trip generation study that identifies weekday total volumes and p.m. peak hour volumes. The development traffic study shall be provided by a practicing Washington traffic engineer.

D. The impact fees will be calculated by multiplying the p.m. peak hour volume times the transportation impact fee cost per trip. (Ord. 1869 § 1, 2015; Ord. 1521 § 2, 2002. Formerly 16.84.055).

**~~16.84.070~~ 13.44.070 Refunds.**

- A. The city shall refund, to the current owners of property on which an impact fee has been paid, any impact fees paid with respect to such property that have not been expended or encumbered for public facilities of the type of which such impact fees were collected within 10 years from the date of receipt or such longer period of time as is established in the event that the city council finds that an extraordinary or compelling reason exists to hold the fees longer than 10 years as provided in MMC ~~16.84.060~~ 13.44.060. Impact fees shall be considered encumbered on a first-in, first-out basis. The city shall notify potential refund claimants by first class mail deposited within the United States Postal Service at the last known address of the claimants.
- B. The city shall also refund to the current owner of property on which an impact fee has been paid all impact fees paid with respect to such property if the development activity for which the impact fee was imposed did not occur within 10 years from the date of receipt or such longer period of time as is established and no impact has resulted; provided, that if some, but not all, of the development activity for which the impact fee was imposed occurred, the impact will be deemed to have occurred, and no refund shall be available under this section.
- C. Owners seeking a refund of impact fees must submit a written request for a refund of impact fees to the city clerk or designee within one year of the date of the right to claim the refund arises, which, for purposes of refund claims authorized pursuant to subsection B of this section only, shall be the date of voluntary or involuntary abandonment of the building permit, or the date that notice is given as provided in subsection A of this section, whichever occurs later. Refunds of impact fees shall include interest and any profits earned on the impact fees from the date of their receipt to the date of refund, as a percentage of the interest/profits earned by the fund on an annual basis. Any impact fees not expended within the time limitations described in MMC ~~16.84.060~~ 13.44.060 and for which no application for a refund has been made within the one-year claim period shall be retained by the city and expended on public facilities of the type for which such impact fees were initially collected, without further limitation as to the time of expenditure.
- D. In the event a refund is made by the city pursuant to this section, the city may, but is not required to, review the original approval or authorization for which the impact fees had been paid under this chapter. Refund of the impact fees shall be deemed to be a change in conditions which allows for review of the development activity for which approval was previously given. Review of such development activity shall be governed by the provisions of local and state law. (Ord. 1869 § 1, 2015; Ord. 1865 § 4, 2015; Ord. 1521 § 2, 2002. Formerly 16.84.060).

**~~16.84.080~~ 13.44.080 Appeals.**

- A. An owner may pay an impact fee imposed pursuant to this chapter under protest in order to obtain development activity approval and after such payment may file an appeal regarding the amount of such impact fee in accordance with this section. Pending the completion of the appeal process as set forth herein, no building permits shall be issued for any development

activity for which the impact fees about which appeal is being sought were imposed **unless a deferral is granted pursuant to MMC 13.44.100.**

- B. The determination of the public works director or designee regarding the applicability of the impact fee to a given development activity within the service area shall be final. The hearing examiner shall have the power to hear and decide appeals where it is alleged that there is an error in the public works director or designee's determination of the impact fee imposed upon a development activity pursuant to this chapter.
- C. Appeal to the hearing examiner regarding the amount of the impact fee imposed on any development activity may only be taken by the owner of the property where such development activity shall occur. No appeal shall be permitted unless and until the impact fee at issue has been paid. Such appeals shall be taken within a reasonable time, not exceeding 10 days after the date the impact fee was paid, and in the case of subdivisions or short plats, prior to the recording of the final plat. An appeal shall be commenced on filing with the city clerk or designee a notice of appeal specifying the grounds thereof and depositing an appeal filing fee of \$250.00. The city clerk or designee shall forthwith transfer to the city council all papers constituting the record upon which the amount of the impact fee was determined.
- D. The hearing examiner shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties of interest, and decide the same within a reasonable time of the hearing. Any party may appear in person or by agent or through his/her attorney.
- E. In exercising the above-mentioned powers, the hearing examiner may, so long as such action is in conformity with the terms of this chapter, reverse or affirm, wholly or partially, or may modify the determination of the amount of the impact fee appealed from only upon a determination that it is proper to do so based on principle of fairness, and may make such order, requirements, decisions or determination as ought to be made, and to that end shall have the powers with respect to the determination of the impact fees as they are granted to the city pursuant to this chapter.
- F. Any person or persons, or any board, taxpayer or department or division of the city, aggrieved by any decision of the hearing examiner may seek review by a court of record of such decisions, in the manner provided by the laws of the state of Washington. (Ord. 1869 § 1, 2015; Ord. 1521 § 2, 2002. Formerly 16.84.070).

**16.84.090 13.44.090 Reimbursement agreements authorized.**

- A. In the event public facilities are inadequate to support a proposed development activity, the city may deny approval of such activity. Alternatively, the city is authorized to enter into reimbursement agreements under Chapter 35.72 RCW.
- B. The city is authorized to enter into agreements with owners, consistent with RCW 35.43.184, to provide for LID preformation activity. (Ord. 1869 § 1, 2015; Ord. 1521 § 2, 2002).

**13.44.100 Deferral of impact fees.**

**In accordance with ESB 5923(2015), an applicant may request, at any time prior to building permit issuance, and consistent with the requirements of this section, to defer 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. For each single family residence for which any impact fee deferral is applied for, an administrative fee set in the fee schedule must simultaneously be paid to the city due to the increased burden placed on city staff for processing and monitoring such deferral.
- B. A separate application must be submitted for each single-family residence being constructed. Only the first twenty (20) applications per calendar year by each applicant for impact fee deferral are eligible for impact fee deferral under this chapter.
- C. The period of deferral expires at the earliest of:
  1. The time of final inspection by the city; or
  2. Eighteen months after the building permit is issued by the city.
- D. The applicant must grant and record in favor of the City of Milton an impact fee lien in the amount of the deferred impact fee. The lien must be in a form signed, dated and approved by the city attorney, and signed by all owners of the property and persons or entities holding any interest in the property, with all signatures acknowledged as required for a deed, and recorded among the appropriate land records of the County. Proof of such recording shall be submitted to the City before a building permit may be issued. The lien must specify that it is binding on all successors in title after the recordation. The lien may specify that it is subordinate to one mortgage for the purpose of construction upon the same real property granted by the applicant. A mortgage, Deed of Trust or other financing mechanism shall be limited to the property upon which construction on one single family residence will occur. A lien not paid when due shall bear interest at the statutory rate. A lien shall become due at the expiration of the deferral date.
- E. If impact fees are not paid in accordance with ESB 5923(2015), the city may institute foreclosure proceedings in accordance with RCW Chapter 61.12.
- F. After full payment of impact fees, and upon written request of the person paying said fees containing the name and address of the requester together with a copy of a proposed lien release form, the City, upon approval by the City Attorney, shall sign a lien release and deliver it to the person paying said fee either in person or by first class mail.

### **END OF CODE REVISION**

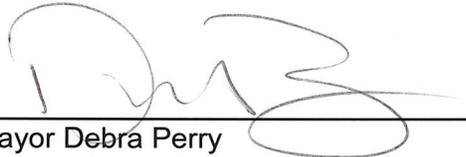
**Section 3. Severability.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

**Section 4. Publication.** This ordinance shall be published by an approved summary consisting of the title.

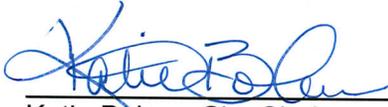
**Section 5. Effective Date.** This ordinance shall become effective and be in full force five (5) days after passage, approval, and publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Milton, this 8<sup>th</sup> day of August, 2016.

CITY OF MILTON

  
\_\_\_\_\_  
Mayor Debra Perry

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Katie Bolam, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Greg Rubstello, City Attorney

Published:  
Effective Date: