

As redlined is effective until July 5, 2016

**Chapter 20.12
TRANSPORTATION IMPACT FEES**

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20.12.010 Purpose.

The purpose of this chapter is to establish and implement a transportation impact fee program to ensure that new land use development within the city funds a proportionate share of the costs for transportation facilities needed to serve such new growth and development. (Ord. 017/2007 § 2)

20.12.020 Authority.

This chapter is adopted pursuant to Chapters [36.70A](#) and [82.02](#) RCW. (Ord. 017/2007 § 2)

20.12.030 Definitions.

A. The following definitions shall apply for purposes of this chapter:

1. “Act” means the sections of the Washington State Growth Management Act codified at Chapters [36.70A](#) and [82.02](#) RCW, as may be hereinafter amended.
2. “Applicant” means a person or entity that has submitted a written application to the city for a building permit.

3. "Building permit" means the city's written authorization to commence development activity, as further defined by Chapter [18.02](#) MMC.
4. "City" means the city of Monroe, Washington.
5. "City engineer" means the Monroe city engineer or his/her designee. Any authority expressly or impliedly granted to the city engineer by this chapter shall supersede conflicting authority granted to the community development director in MMC [21.20.020](#).
6. "Dwelling unit" means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
7. "Development activity" means 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 generates at least one p.m. peak hour trip of additional demand on and/or need for transportation facilities.
8. "Impact fee" means a payment of money imposed by the city upon a building permit or other approval in order to fund system improvements needed to serve new growth and development, that is reasonably related to the new development that creates additional demand and need for transportation facilities, that is a proportionate share of the cost of the transportation facilities, and that is used for facilities that reasonably benefit the new development.
9. "Low-income housing" means a housing unit developed and maintained specifically for rental or ownership occupancy by households with incomes no greater than fifty percent of current median income as determined by reference to the most recently published income data for the Seattle-Bellevue PMSA published by the U.S. Department of Housing and Urban Development.
10. "MMC" means the Monroe Municipal Code.
11. "Owner" means the owner of record of real property; provided, that when real property is purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.
12. "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project, that are necessary for the use and convenience of the occupants or users of the project, and that are not system improvements. No improvement or facility included in the city's adopted capital facilities plan shall be considered a project improvement.
13. "Proportionate share" means that portion of the cost of transportation facility improvements that is reasonably related to the service demands, impacts, and needs of new development.
14. "Public facilities" means transportation facilities that are owned or operated by the city.
15. "System improvements" means transportation facilities that are included in the city's capital facilities plan and that are designed to provide service to the community at large, in contrast to project improvements.

16. “Transportation facilities” means public streets and roads, including all publicly owned streets, roads, alleys, and rights-of-way within the city, and all traffic control devices, curbs, gutters, sidewalks, facilities, and improvements directly associated therewith.

17. “Transportation Impact Fee Rate Study Update” means the study prepared by Fehr & Peers in October 2015.

B. The city engineer is authorized to interpret and resolve questions regarding the definitions set forth in this section. (Ord. 002/2016 § 1*; Ord. 018/2015 § 2; Ord. 024/2009 § 9 (Exh. B); Ord. 017/2007 § 2)

* Code reviser’s note: Ord. 002/2016 § 6 provides that the ordinance “shall remain effective for a period of three months unless renewed as provided in RCW [35A.63.220](#) and RCW [36.70A.390](#), or unless terminated sooner by the City Council.” The ordinance is effective until July 5, 2016.

20.12.040 Applicability.

Unless otherwise exempt from the provisions of this chapter, all applicants seeking approval of development activity within the city on or after the effective date of the ordinance codified in this chapter shall pay transportation impact fees at the time of building permit issuance in the amount and manner set forth in this chapter. (Ord. 017/2007 § 2)

20.12.050 Exemptions.

A. Construction, reconstruction, or remodeling of the following facilities shall be exempt from the payment of eighty percent of the transportation impact fees under this chapter in accordance with RCW [82.02.060](#)(3) and shall be exempt, on a first-come, first-serve basis, from the additional twenty percent of the school impact fees under this chapter to the extent provided for in the annual budget of the city of Monroe in effect at the time of building permit application:

1. Low-income housing. “Low-income housing” is defined as follows: (a) low-income housing projects that are constructed by public housing agencies or private nonprofit housing developments; or (b) low-income residential units, rented or purchased, that are dedicated and constructed by private developers.

The granting of an exemption is subject to the recording of a covenant or recorded declaration of restrictions, acceptable to the city of Monroe, and compliant with RCW [82.02.060](#)(3), precluding the use of the property for other than the exempt purpose; provided, that if the property is used for a nonexempt purpose, then the park impact fees then in effect shall be paid. The covenant or recorded declaration shall be an obligation that runs with the land, and shall be recorded against the title of the real property upon which such housing is located in the real property records of Snohomish County.

B. Except as provided below, the following shall be exempt from the payment of impact fees under this chapter:

1. Replacement of an existing single-family residential structure with a new single-family residential structure upon the same site or lot when such replacement occurs within five years of the demolition or destruction of the existing structure;
2. Replacement of an existing non-single-family residential structure with a new non-single-family residential structure of the same size or less and use at the same site or lot when (a) such replacement occurs within five years of the demolition or destruction of the existing structure and (b) the new non-single-family residential structure creates no obligation to pay impact fees as calculated under the change in use provision of MMC [20.12.130](#)(l) as now or hereafter amended;
3. Condominium projects in which existing dwelling units are converted into condominium ownership where no new dwelling units are created; and
4. Previous mitigation, where:
 - a. The development activity 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 (SEPA).

The city engineer is authorized to determine the applicability of any exemption to a particular development activity. All such determinations by the city engineer shall be in writing and shall be subject to appeal pursuant to MMC [20.12.080](#). (Ord. 018/2015 § 3; Ord. 017/2014 § 4; Ord. 024/2009 § 9 (Exh. B); Ord. 017/2007 § 2)

20.12.060 Credits.

- A. An applicant may request a credit against the amount of impact fees otherwise applicable to a development activity for the total value of dedicated land, improvements, or construction provided by the applicant as a condition of development approval. Credits will apply only if and to the extent that the land dedicated, improvements provided, and/or facilities constructed are:
 1. For transportation facilities constituting system improvements that are funded in whole or in part by impact fees; and
 2. Located at suitable sites and constructed at an acceptable quality level as determined by the city.
- B. The city engineer shall determine if a request for credits satisfies the criteria contained in subsection (A) of this section.
- C. The value of credits for structures, facilities or other improvements shall be established by documentation provided to the city engineer by the applicant.
- D. The value of a credit for land, including but not limited to right-of-way and easements, shall be determined on a case-by-case basis by an appraiser selected by, or acceptable to, the city engineer.
- E. The cost of any appraisal under this section shall in the city's discretion either be (1) borne exclusively by the applicant, or (2) deducted from the otherwise-applicable impact fee credit.

F. After receiving the appraisal and/or improvement cost documentation from the applicant, the city engineer shall provide the applicant with a written statement setting forth the dollar amount of the credit, the basis for the credit, the legal description of any dedicated real property, and a description of the development activity to which the credit shall be applied. The applicant shall sign and date a duplicate copy of said statement indicating his/her consent to the terms thereof, and shall return the signed document to the city engineer prior to application of the impact fee credit. The applicant's failure to sign, date, and return said statement within sixty calendar days may nullify the credit.

G. No credit shall be given for dedications for, contributions toward or construction of project improvements.

H. If the amount of the credit is less than the calculated fee amount, the difference remaining shall be chargeable as an impact fee and paid at the time of application for the building permit. In the event the amount of the credit is calculated to be greater than the amount of the impact fee due, the applicant shall forfeit such excess credit.

I. In the event that the city adopts impact fees that are less than the amount determined in the rate study, and provided that the amount of the reduction is achieved by a discount or similar policy determination to reduce the fee without revising the underlying studies, data, or assumptions, then credits shall be given only in an amount by which the value of the credit exceeds the value of the discount used to adopt the impact fees.

J. Any request for a credit must be submitted in writing to the city engineer within sixty calendar days of the city's receipt of the building permit application for the underlying development activity. An applicant's failure to timely file a request by said deadline shall conclusively waive the applicant's entitlement to any such credit.

K. Determinations made by the city engineer pursuant to this section shall be subject to appeal pursuant to MMC [20.12.080](#). (Ord. 017/2007 § 2)

20.12.070 Transportation service area.

The boundaries within which transportation impact fees shall be imposed, collected and expended pursuant to this chapter are co-extensive with the city's corporate limits and shall include all areas annexed to the city on and after the effective date of the ordinance codified in this chapter. For purposes of this chapter, the entire city shall be considered a single transportation service area. (Ord. 017/2007 § 2)

20.12.080 Appeals.

A. Payment Under Protest. An applicant may pay the impact fees imposed by this chapter under protest in order to obtain a building permit. No appeal shall be permitted unless and until the impact fees at issue have been fully remitted to the city.

B. Standing. Only the applicant for the proposed development activity shall have standing to file an appeal under this section.

C. Request for Review. An applicant seeking to appeal the imposition, allowed credit against, or amount of impact fees pursuant to this chapter shall first file a request for review with the city engineer.

1. The request for review shall be submitted to the city engineer using a form provided by the city. The request for review shall be filed within twenty-one calendar days of payment of the impact fees at issue. Failure to timely file such a request shall conclusively waive the applicant's appeal.

2. No administrative fee will be imposed for the request for review by the city engineer.

3. The city engineer shall issue his/her determination in writing regarding a request for review within thirty calendar days after receiving the request for review.

D. Determinations of the city engineer pursuant to subsection (C) of this section may be appealed by the applicant to the hearing examiner. All appeals of a city engineer determination shall proceed as follows:

1. Within fourteen calendar days of the city engineer's determination, the applicant shall file a written notice of appeal with the city clerk. Failure to timely file such notice of appeal shall conclusively waive the applicant's appeal. The notice of appeal shall be signed by the applicant, shall include a copy of the city engineer determination challenged by the applicant, and shall contain the following information:

a. The applicant's name and address;

b. A description of the development activity at issue;

c. The amount of impact fees imposed by the city upon the development activity; and

d. A brief explanation as to why the applicant believes the city engineer's determination was erroneous.

2. The city clerk shall transmit the notice of appeal to the hearing examiner, together with all documents constituting the record for the city engineer's determination.

3. The hearing examiner shall schedule a hearing to be conducted within sixty calendar days of the city clerk's receipt of the notice of appeal. Prior to the hearing date, the applicant and the city may submit evidence and/or briefing pursuant to a schedule issued by the hearing examiner.

4. Within ten calendar days after the close of the hearing, the hearing examiner shall enter written findings, conclusions, and a final decision with respect to the appeal. The hearing examiner may affirm, reverse, modify or remand, in whole or in part, the city engineer's determination; provided, that the hearing examiner shall affirm the city engineer's determination unless the applicant demonstrates that said determination is clearly erroneous; and provided further, that, pursuant to RCW [82.02.070](#), the hearing examiner may modify the impact fee amount based upon principles of fairness.

5. The decision of the hearing examiner shall be final unless appealed to the city council in accordance with Chapter [21.60](#) MMC. (Ord. 003/2008 (Exh. E); Ord. 017/2007 § 2)

20.12.090 Transportation impact fee fund – Expenditure and encumbrance.

A. Impact fees collected pursuant to this chapter shall be deposited in a transportation impact fee fund and shall be earmarked and utilized exclusively for system improvements.

B. Impact fees shall be expended or encumbered within ten years of receipt, unless the city council identifies in written findings extraordinary and compelling reasons for the city to hold the fees beyond the ten-year period. Under such circumstances, the city council shall establish the period of time within which the impact fees shall be expended or encumbered. (Ord. 018/2015 § 4; Ord. 017/2007 § 2)

20.12.100 Use of funds.

A. Impact fees collected pursuant to this chapter:

1. Shall be used for existing and new system improvements that will reasonably benefit new development;
2. Shall not be used to make up for pre-existing system improvement deficiencies that do not benefit new development; and
3. Shall not be used for maintenance or operation of system improvements.

B. Impact fees shall be used for system improvements in conformance with the capital facilities element of the comprehensive plan, including, but not limited to, planning, land acquisition, right-of-way acquisition, site improvements, necessary and related off-site improvements, construction, engineering, architectural, permitting, financing, and administrative expenses, applicable impact fees or mitigation costs, and other associated expenses capable of capitalization.

C. Impact fees may be used to recoup system improvement costs previously incurred by the city to the extent that new growth and development will be served by the previously constructed improvements or incurred costs.

D. In the event that bonds or similar debt instruments are or have been issued for the advanced provision of system improvements for which impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent permissible under state law and to the extent that the system improvements provided are consistent with the requirements of this section and serve new growth or development. (Ord. 017/2007 § 2)

20.12.110 Time of payment.

A. Impact fees shall be calculated and assessed for each development activity at the time of building permit issuance for each unit within the development, pursuant to the impact fee rates then in effect; provided, that if no building permit is required for the development activity in question, impact fees shall be calculated and assessed for each development activity at the time an occupancy permit or other permit authorizing the underlying use is issued.

B. Applicants who have been awarded credits pursuant to MMC [20.12.060](#) shall prior to building permit issuance submit a copy of the statement prepared by the city engineer setting forth the monetary value of the credit awarded. Impact fees, as determined after

the application of appropriate credits, shall be collected from the applicant at the time the building permit is issued for each unit in the proposed development.

C. The city shall not issue a building, occupancy or other use permit unless and until the impact fees required pursuant to this chapter have been paid. (Ord. 017/2007 § 2)

20.12.120 Refunds.

A. If the city fails to expend or encumber the impact fees within the time period established pursuant to MMC [20.12.090](#)(B), the current owner of the property for which impact fees have been paid may obtain a refund of such fees. In determining whether impact fees have been expended or encumbered, fees shall be considered expended or encumbered on a first in, first out basis.

B. The city shall notify potential claimants by first class mail, deposited with the United States Postal Service, at the last known address of such claimants. A potential claimant or claimant must be the owner of the property for which the impact fees in question have been paid.

C. Owners seeking a refund of impact fees must submit a written refund request to the city engineer within one year of the date the right to claim the refund arises or the date that notice by the city is provided, whichever is later.

D. Any impact fees for which no application for a refund has been made within this one-year period shall be retained by the city and expended upon appropriate system improvements.

E. Refunds of impact fees under this section shall include any interest earned on the impact fees by the city.

F. When and if the city seeks to terminate any or all components of the impact fee program, all unexpended or unencumbered funds from any terminated component or components, including interest earned, shall be refunded pursuant to this section. 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 refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first class mail at the last known address of the claimants. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the city, but must be expended for the appropriate system improvements. This notice requirement shall not apply if there are no unexpended or unencumbered balances within the account or accounts being terminated.

G. The city shall also refund to the current owner of property for which impact fees have been paid, including interest earned on the impact fees, if the development for which the transportation impact fees were imposed did not occur; however, any associated administrative fee shall not be refunded. (Ord. 017/2007 § 2)

20.12.130 Calculation of impact fees.

A. The transportation impact fee assessed against a development activity shall be based upon the calculation methodology set forth in the Transportation Impact Fee Rate Study Update, Fehr & Peers (October 2015). This study includes the list of eligible impact fee projects enumerated in the transportation element of the city's

comprehensive plan, a calculation of the share of cost related to new growth and development, the determination of an impact fee rate, and the development of an impact fee schedule.

B. Each applicant for development shall pay its share in accordance with the following:

Land Use	Unit of Measure	Impact Fee Rate
Single Family (1 or 2 dwelling units)	Dwelling Unit	\$3,449
Multifamily (3 or more dwelling units)	Dwelling Unit	\$1,966
Senior Housing	Dwelling Unit	\$931
Commercial Services	SF GFA	\$13.73
School	Student	\$448
Institutional	SF GFA	\$2.55
Light Industry/Industrial Park	SF GFA	\$3.14
Warehousing/Storage	SF GFA	\$1.55
Restaurant	SF GFA	\$17.42
General Retail	SF GFA	\$8.45
Supermarket	SF GFA	\$20.93
Administrative Office	SF GFA	\$5.14
Medical Office/Dental Clinic	SF GFA	\$12.31

Exception: Permitted accessory dwelling units (as defined in MMC Title [18](#)) contained within the structure of the primary dwelling unit or detached from the primary dwelling unit shall be exempt from transportation impact fees.

C. For uses that are not identified in the fees established by subsection (B) of this section, the city engineer shall calculate the impact fee amount using the methodology employed in the Transportation Impact Fee Rate Study Update.

~~D. For a change in use of an existing building or dwelling unit, including any alteration, expansion, replacement, or new accessory building, the impact fee shall be the applicable impact fee for the land use category of the new use, less the impact fee under the current rate schedule of the prior use. If no impact fee was required for the prior use, the impact fee for the new use shall be reduced by an amount equal to the current impact fee rate for the prior use. The "prior use" shall be construed as the last use of the property, excluding any intervening periods of vacancy except as further provided herein. Properties that have been vacant for five years or more shall be considered vacant for purposes of a change in use impact fee calculation if any improvements are made to the property that exceed fifty percent of the value of existing improvements. Where (1) a certificate of occupancy has been issued for a use, and (2) the impact fees for said use have been paid, and (3) the land use category is subsequently changed before the underlying space is occupied, the applicant shall further remit payment for the impact fee amount that applies to the new land use category, less the amount of impact fee already paid.~~

E. The city engineer may in his/her sole discretion adjust the standard impact fee at the time the fee is imposed in consideration of unusual circumstances, in specific cases, to ensure that impact fees are imposed fairly.

F. Determinations made by the city engineer pursuant to this section may be appealed to the office of the hearing examiner as set forth in MMC [20.12.080](#).

G. The transportation impact fees computed in this section will be adjusted annually in accordance with a five-year rolling average of the Washington State Department of Transportation Construction Cost Index ("CCI"), coinciding with the city's annual adoption of its six-year street plan.

H. Pursuant to and consistent with the requirements of RCW [82.02.060](#), impact fee schedules have been adjusted for future taxes and other revenue sources to be paid by the new development which are earmarked or proratable to the same new public facilities which will serve the new development. (Ord. 002/2016 § 2*; Ord. 018/2015 § 5; Ord. 027/2008 § 1; Ord. 017/2007 § 2)

* Code reviser's note: Ord. 002/2016 § 6 provides that the ordinance "shall remain effective for a period of three months unless renewed as provided in RCW [35A.63.220](#) and RCW [36.70A.390](#), or unless terminated sooner by the City Council." The ordinance is effective until July 5, 2016.

20.12.135 Independent fee calculations.

A. City-Initiated Independent Fee Calculations. If, in the judgment of the city engineer, the fee calculation methodology set forth in MMC [20.12.130](#) does not accurately or fairly describe or capture the impacts of a development activity upon the city's transportation system, the city engineer may conduct an independent fee calculation and may impose an alternative fee amount based upon that calculation. The alternative fee and calculation shall be set forth in writing and shall be mailed to the permit applicant.

B. Applicant-Initiated Independent Fee Calculations. If an applicant believes that the trip impact fee amounts set forth in MMC [20.12.130](#) do not accurately or fairly describe or capture the impacts of a development activity upon the city's transportation system,

the applicant may prepare and submit to the city engineer an independent fee calculation for the development activity at issue. The independent fee calculation submitted shall demonstrate the basis upon which it is made; provided, independent fee calculations shall use the same methodology used to establish impact fees set forth in MMC [20.12.130](#), shall be limited to adjustments in trip generation rates and trip lengths used in the rate study, and shall not include travel demand forecasts, trip distribution, transportation service areas, costs of road projects, or cost allocation procedures.

1. The city engineer shall consider the independent fee calculation submitted by the applicant, but is not required to accept such documentation or analysis which the city engineer reasonably deems to be inaccurate or unreliable, and may, alternatively, require the applicant to submit additional or different documentation for consideration. The city engineer is authorized, but in no manner obligated, to adjust the impact fee on a case-by-case basis based upon an independent fee calculation, specific characteristics of the development, and/or the demonstrated impact of the development upon the city's transportation system. Any alternative fee calculation approved by the city engineer shall be set forth in writing and mailed to the applicant.

C. Determinations made by the city engineer pursuant to this section may be appealed to the hearing examiner as set forth in MMC [20.12.080](#). (Ord. 017/2007 § 2)

20.12.140 Review.

A. The fee calculations set forth in MMC [20.12.130](#) and fee rates established under this chapter may periodically be reviewed and adjusted by the city council.

B. The cost of administering the impact fee program for traffic impact fees shall be reimbursed through the imposition of administrative fees as set by council resolution. The resolution may set separate charges for different review processes specified in this chapter, including but not limited to the imposition of an impact fee, a request for modification of an impact fee, a request for a credit and an appeal of a determination made pursuant to this chapter. The administrative fee shall be deposited into an administrative fee account within the transportation impact fee fund.

C. The administrative fee, in addition to the actual impact fees, shall be paid by the applicant to the city at the same time as the impact fee is paid or at the time a request for an impact fee review or appeal is filed, if a request thereof occurs after payment of the impact fee. No request for review pursuant to this chapter shall be processed until the applicable administrative fee has been paid. (Ord. 017/2007 § 2)

20.12.150 Impact mitigation authority preserved.

Nothing in this chapter shall preclude the city from requiring the mitigation of adverse impacts with respect to a particular development activity pursuant to applicable state and local regulations. (Ord. 017/2007 § 2)

20.12.160 Transportation impact fee fund.

A. There is hereby established the transportation impact fee fund as a repository for the transportation impact fees collected pursuant to this chapter. Interest earned on the fees shall be allocated to the transportation impact fee fund and expended in furtherance of the purposes for which the impact fees were collected.

B. The city engineer shall annually provide a report to the city council regarding the transportation impact fee fund indicating the source and amount of all monies collected, earned or received, the fund balance, and the system improvements which were financed in whole or in part by impact fees. (Ord. 017/2007 § 2)