

Ordinance _____

An ordinance creating chapter 15.70 Missoula Municipal Code entitled “ Sxwtpqyen Area Transportation Special Impact Fee” to establish impact fees for new development in accordance with the results of an official impact fee study commissioned by the City of Missoula for the Mullan BUILD Project.

Be it ordained that chapter 15.70 of the Missoula Municipal Code be created by adoption of new sections 15.70.010 through 15.70.090 as follows:

CHAPTER 15.70

SXWTPQYEN AREA TRANSPORTATION SPECIAL IMPACT FEE

15.70.010	Purpose and Intent
15.70.020	Definitions
15.70.030	Applicability
15.70.040	Procedures for Imposition, Calculation and Collection of Transportation Special Impact Fees
15.70.050	Establishment of Transportation Special Impact Fee Accounts; Appropriation of Transportation Special Impact Fee Funds; Refunds; and Reimbursements
15.70.060	Appeals
15.70.070	Annual Review and Adjustment
15.70.080	Impact Fee Schedules
15.70.090	Impact Fee Advisory Committee

15.70.010 PURPOSE AND INTENT.

The purpose of this Chapter is to create a special impact fee attributable to new development in the Sxwtpqyen (Soo-tup-kane) Area to support construction of the Mullan BUILD Project, shown in Exhibit A attached to this Ordinance and made part hereof by this reference, and intent of these impact fee procedures are:

1. To establish uniform procedures for the imposition, calculation, collection, expenditure, and administration of special impact fees imposed on new development in the Sxwtpqyen Area;
2. To assure that new development contributes its fair and proportionate share towards the costs of public facilities reasonably necessitated by such new development;
3. To ensure that new development benefits from the provision of the public facilities provided with the proceeds of these special impact fees;
4. To ensure that special impact fees collected pursuant to this Chapter are expended only on public facilities the demand for which is generated by the new development against which the fees are assessed;
5. To ensure that the special impact fees assessed pursuant to this Chapter are proportionate in amount to the degree of impact new development has on public facilities; and
6. To ensure that all applicable legal standards and criteria are properly incorporated in these procedures

15.70.020 DEFINITIONS.

In this Chapter, unless otherwise indicated below, words and terms shall have the meaning prescribed in Chapter 15.66 and Title 20, MMC:

1. **Director:** the Director of the Community Planning, Development, and Innovation Department within the City of Missoula, or their designee.
2. **Methodology Report:** a report prepared in support of this Chapter titled " Sxwtpqyen Area Transportation Special Impact FeeStudy" by Tischler Bise, Inc., dated January 26, 2021, which

sets forth the methodology and rational basis for the calculation of the impact of new development and the proper and proportional amount of the transportation special impact fee to be assessed against new development.

3. **Sxwtpqyen Area:** the area shown on the attached Exhibit A, benefiting from transportation infrastructure being constructed by the City and Missoula County using a combination of local funding sources along with a federal BUILD grant.
4. **New Development:** any new construction, reconstruction, redevelopment, rehabilitation, structural alteration, structural enlargement, structural extension, or new use within the City that requires a building permit, including any damage in use of an existing building, structure, or lot, which increases the demand for one (1) or more public facilities; except as otherwise provided in subsection 15.70.030.
5. **Mixed Use Development:** any new development zoned according to the adopted Sxwtpqyen Area Master Plan Form Based Code that includes a mix of at least two of the following land uses: retail, restaurant, office, residential, hotel, and cinema/entertainment, where each land use has a gross floor area of at least 2,400 square feet.
6. **Offset:** a waiver of a portion or all of certain required transportation special impact fees, pursuant to subsection 15.70.040(E) of this Chapter.
7. **Public Transportation Facility(ies):** public capital improvements, land acquisitions, and facilities with a useful life of ten (10) years or more, that increase or improve the service capacity of the public transportation facility or related infrastructure, including complete streets, intersection improvements, commuter trails, stormwater management associated with transportation infrastructure, and stream restoration and flood mitigation associated with the transportation improvements associated with the Mullan BUILD Project included in the calculation of the transportation special impact fees in the methodology report, as generally shown on the attached Exhibit B (Mullan BUILD Project Priority Map and Project Costs for Surface Improvements).
8. **Residential:** any building, structure, use or development designed, intended or used as a dwelling unit or its accessory buildings, or that results in the expansion of a dwelling unit or units.
9. **Shopping Center:** a retail business area comprised of one or more adjacent or adjoining commercial establishments on a parcel planned, constructed and managed as a unit in one or more buildings. A Shopping Center contains a building or buildings with a total gross floor area of thirty thousand square feet or more, with adjoining or adjacent off-street parking. Shopping centers consist primarily of commercial retail establishments; however they also may contain non-merchandizing facilities such as offices, movie theaters, restaurants, post offices, banks, health clubs, and recreational facilities.
10. **Transportation Special Impact Fee:** an impact fee imposed on new residential and non-residential development to fund the proportionate share of the cost generated by new development for public transportation facilities.

15.70.030 APPLICABILITY.

1. **Affected Area.** transportation special impact fees shall be imposed on new development proposed within the Sxwtpqyen Area, in addition to other development fees already in place.
2. **Type of Development Affected.** Except as described below, this Chapter shall apply to all new development within the Sxwtpqyen Area.
3. **Type of Development Not Affected.** This Chapter shall not apply to:
 - a. **No Net Increase in Square Footage.** No transportation special impact fee shall be imposed on any new development that does not result in the creation of new square footage.
 - b. **Other Uses.** No transportation special impact fee shall be imposed on new development, whether or not a building permit is required, which does not result in an increase in the demand

for public transportation facilities. Such development may include, but is not limited to, fences, signs, retaining walls, and residential storage sheds associated with an existing residential use.

- c. **Development Agreements.** No transportation special impact fee shall be imposed on development projects that are the subject of a duly executed and lawful development agreement entered into by an applicant and the City prior to the effective date of this Chapter, which agreement contains provisions in conflict or inconsistent with this Chapter, but only to the extent of the conflict or inconsistency.

4. Effect of Payment of Transportation Special Impact Fees on Other Applicable City Land Use, Zoning, Platting, Subdivision, or Development Regulations.

- a. The payment of transportation special impact fees shall not entitle the applicant to a building permit unless all applicable land use, zoning, planning, dedication, platting, subdivision, or other related requirements, standards, and conditions of applicable Montana law and City of Missoula ordinances and resolutions have been met. Such other requirements, standards, and conditions are independent of the requirement for payment of the transportation special impact fee.
- b. This Chapter shall not affect, in any manner, the permissible use of property, density/intensity of development, design and improvement standards, or other applicable standards or requirements of the Buildings and Construction Code and the Missoula City Zoning Ordinance, which shall be operative and remain in full force and effect without limitation.

15.70.040 PROCEDURES FOR IMPOSITION, CALCULATION AND COLLECTION OF TRANSPORTATION SPECIAL IMPACT FEES.

1. **In General.** An applicant shall be notified by the City of the applicable transportation special impact fee requirements, including applicable service charges, at the time of application for a building permit on a form provided by the City for such purposes. Preliminary transportation special impact fees shall be calculated by the Building Official at the time of application for a Building permit. The final transportation special impact fee shall be paid by the applicant prior to the issuance of a building permit. In lieu of payment prior to building permit issuance, an applicant may provide a Certificate of Deposit payable to the City, Letter of Credit issued by a financial institution in favor of the City, or other reasonable security in an amount equal to the transportation special impact fee calculated to be due, in a form satisfactory to the City Attorney and the Chief Financial Officer, and redeemed or paid in full upon completion of the final inspection by the Building official.

2. Calculation.

- a. Upon receipt of an application for a building permit, the Development Services staff shall refer to the fee schedule adopted pursuant to this Chapter and determine (a) whether it is a residential or non-residential use, including whether it is a mixed use development; (b) the specific category of residential or non-residential development, if applicable; and (c) additional square feet of gross floor area of the proposed use.
- b. Upon receipt of an application for a building permit, the Development Services staff shall determine whether the development proposed involves a change in use. In such cases, the transportation special impact fees due shall be based only on the incremental increase in the fee for the increase in the public transportation facility capacity created by the proposed change in square footage.
- c. After making these determinations, the Building Official shall calculate the applicable transportation special impact fees by multiplying the amount of the applicable transportation special impact fee per unit of development or gross floor area, according to the adopted fee schedule, incorporating any applicable offset as discussed in subsection (5) below.
- d. If the type of land use proposed for new development is not expressly listed in this ordinance and fee schedule, the Building Official, in consultation with the Zoning Officer, as necessary, shall:

- i. identify the most similar land use type listed and calculate the transportation special impact fee based on the transportation special impact fee for the land use identified;
 - ii. identify the broader land use category within which the specified land use would apply and calculate the transportation special impact fee based on the transportation special impact fee for that land use category; or
 - iii. as appropriate, determine the basis used to calculate the fee pursuant to an independent impact analysis pursuant to subsection 3 below.
- e. The calculation of transportation special impact fee due from a phased new development shall be based upon the demand generated by each specific land use within the phase of development for which a separate building permit is requested.
- f. Transportation special impact fee shall be calculated based on the fee amount in effect at the time of submittal of a complete application for a building permit.

3. Independent Impact Analysis. The following provisions shall apply to any independent impact analysis:

- a. The applicant shall be responsible, at its sole expense, for preparing the independent impact analysis, which shall be reviewed for approval by the Director, and, as appropriate, other City staff or officials, prior to payment of the fee.
- b. The independent impact analysis shall measure the impact that the proposed new development will have, shall be based on the same methodologies used in the methodology report, and shall be supported by professionally acceptable data and assumptions.
- c. Within thirty (30) days of submittal of the independent impact fee analysis, the Director shall provide written notice to the applicant as to whether the independent impact analysis is accepted or rejected based on the provisions of this section. If the independent impact analysis is rejected, the written notice shall provide an explanation of the insufficiencies of the analysis.
- d. The final decision of the Director may be appealed pursuant to Section 15.70.060 of this Chapter.

4. Transportation Special Impact Fee Estimates.

- a. **Non-binding Estimate.** An applicant may request a non-binding estimate of transportation special impact fees due for a particular new development at any time by filing a request on a form provided for such purpose by the City; provided, however, that such estimate may be subject to change when a final application for a building permit for new development is made. Such non-binding estimate is solely for the benefit of the prospective applicant and shall in no way bind the City nor preclude it from making amendments or revisions to any provisions of this Chapter.
- b. **Binding Pre-Determination.** An applicant may request a pre-determination of transportation special impact fees due for a particular new development at any time by filing a request on a form provided for such purpose by the City. The pre-determination shall be binding for a period not to exceed ninety (90) days provided, however, that no change has occurred: a) in the square footage and use of the proposed development as presented in a final application for a building permit for the new development; or b) in the schedule of fees adopted pursuant to this Chapter and modified by annual adjustments. Such binding pre-determination shall not preclude the City from making amendments or revisions to any provisions of this Chapter.

5. Offsets.

- a. Offsets against the amount of a transportation special impact fee due from a new development shall be provided for contributions made or to be made in the future by the affected property owner in cash, or by actual construction of all or part of a public transportation facility or facilities identified in the Methodology Report or shown on Exhibit B and meeting or exceeding the demand generated by the new development. The contribution must be a reasonable substitute

for the cost and level of service of the public transportation facilities included in the Methodology Report or shown on Exhibit B, as determined by the Director, the Chief Financial Officer, and representatives of potentially affected departments.

- b. The amount of any excess contribution shall be determined by the Director and the Chief Financial Officer upon receipt of an application form requesting an offset; provided, however, that (a) the City will make no reimbursement for excess contributions unless and until the transportation special impact fee account has sufficient revenue to make the reimbursement without overdrawing the account or jeopardizing the continuity of the City's Capital Improvements Program; and (b) the excess contribution may not be transferred or credited to any other types of development impact fees calculated to be due from that development for other types of public facilities. The determination of the eligibility for and the amount of the offset shall be made by the Director and the Chief Financial Officer, based on the fair market value of the proposed dedication, construction, or contribution, as established by appraisals and construction receipts or construction bids, as applicable. If the applicant contends that any aspect of the City's decision constitutes an abuse of discretion, the applicant shall be entitled to appeal pursuant to Section 15.70.060 of this Chapter.
 - c. No offset shall be allowed unless the City has clearly documented the need for the dedication or construction, pursuant to Montana Code Annotated Section 7-6-1602, has approved the contribution or expenditure before it is made, in accordance with the provisions of this subsection, and has determined that any proposed land dedication is appropriate for the proposed use by the City.
 - d. Offsets for provision of public transportation facilities shall be applicable only as to transportation special impact fees imposed for the same types of public transportation facilities that are proposed to be dedicated or provided, which must be within the Sxwtpqyen Area. Even if the value of the provision of a public transportation facility exceeds the transportation special impact fees due for the type of public transportation facility, the excess value may not be transferred to development impact fees calculated to be due from the applicant for other types of public facilities for which development impact fees may be imposed. Offsets for excess capacity may, however, be transferred to the same applicant or to other applicants for new development that creates a demand for the same type of public transportation facility within the Sxwtpqyen Area and which development impact fees are due pursuant to this Chapter or Chapter 15.66.
 - e. Any offset or reimbursement shall be pursuant to a duly executed development agreement.
 - f. No offsets shall be given for the construction of local on-site facilities, structures, improvements, or other project improvements required by zoning, subdivision, or other city regulations unless the improvement is identified in the Capital Improvement Program, or Methodology Report/Exhibit B, or there is a finding that the proposed improvements meet the same need as improvements identified in the Capital Improvements Program or Methodology Report/Exhibit B.
- 6. Collection.** The City shall collect the transportation special impact fees and service charges in the amounts set forth in this Chapter and shall issue a receipt to the applicant for such payment unless:
- a. the applicant is entitled to a full offset;
 - b. the applicant is not otherwise subject to the payment of the transportation special impact fee; or the applicant has filed an appeal as required by Section 15.70.060 and has filed a bond or other surety in the amount of the transportation special impact fee as calculated by the City and approved by file City Attorney and Finance Director/Treasurer.

**15.70.050 ESTABLISHMENT OF TRANSPORTATION SPECIAL IMPACT FEE ACCOUNTS;
APPROPRIATION OF TRANSPORTATION SPECIAL IMPACT FEE FUNDS; REFUNDS;
AND REIMBURSEMENTS.**

- 1. Transportation Special Impact Fee Accounts.** The City shall establish a transportation special impact fee account for the Sxwtpqyen Area indicated in the Methodology Report for which

transportation special impact fees are imposed. Such account shall clearly identify the service area, account, or fund for which the transportation special impact fee has been imposed. All transportation special impact fees collected by the City shall be deposited into the transportation special impact fee account. Unless otherwise prohibited by law, all interest earned on monies deposited to such account shall be credited to and shall be considered funds of the account. The funds of the transportation special impact fee shall be capable of being accounted for separately from all other City funds. The City shall establish and implement necessary accounting controls to ensure that the transportation special impact fee funds are properly deposited, accounted for, and appropriated in accordance with this Chapter and any other applicable legal requirements.

2. Appropriation of Transportation Special Impact Fee Funds.

- a. **Use of Funds.** All appropriations from the transportation special impact fee account shall be detailed on a form provided for such purpose and filed in the City Finance Department. Transportation special impact fees may be used only for:
 - i. expenditures related to planning, design, and construction of the public transportation facilities within the Mullan BUILD Project identified in the Methodology Report or shown on Exhibit B;
 - ii. the payment of principal, interest, and other financing costs on contracts bonds, notes, or other obligations issued by or on behalf of the City to finance the design and construction of public transportation facilities within the Mullan BUILD Project identified in the Methodology Report or shown on Exhibit B;
 - iii. financing of offsets as set forth in Section 15.70.040 (5); or
 - iv. financing the costs of updating this Chapter or updated the Methodology Report.
- b. **Restrictions on Use.** Transportation special impact fee appropriations shall not be appropriated for repair or maintenance of public transportation facilities, for operational or personnel expenses associated with the provision of public transportation facilities, or to correct an existing deficiency unless identified in the Methodology Report. Transportation special impact fees shall be appropriated within six (6) years of the beginning of the City's fiscal year immediately succeeding the date of collection, unless such time period is extended as provided herein.
- c. **Appropriation of Transportation Special Impact Fee Funds beyond Six (6) Years of Collection.** Notwithstanding the provisions of subsection (2)(b) above, transportation special impact fee funds may be appropriated beyond six (6) years from the beginning of the City's fiscal year immediately succeeding the date of collection, if the appropriation is for a public transportation facility that requires more than six (6) years to plan, design, finance and construct. Funds held over must be specifically identified and described in the impact fee annual financial report. The City shall document compliance with the provisions of this paragraph.

3. Procedure for Appropriation of Transportation Special Impact Fee Funds.

- a. Each year the City shall identify public transportation facility projects anticipated to be funded in whole or in part with transportation special impact fees. Public transportation facility expenditures shall be based upon the transportation special impact fee annual review set forth in Section 15.66.070 of this Chapter, the methodology report, the City Capital Improvement Program and such other information as may be relevant, and shall be part of the City's annual budget and capital improvements programming process.
- b. The recommendations shall be consistent with the provisions of this Chapter, the methodology report, and any guidelines adopted by the City Council.
- c. The City Council may include public transportation facilities funded with transportation special impact fees in the City's annual budget and capital improvements program. If included, the description of the public transportation facility shall specify the nature of the public transportation

facility, the location of the public transportation facility, the capacity to be added by the public transportation facility, the service area of the public transportation facility, the need/demand for the public transportation facility and the anticipated timing of completion of the public transportation facility.

- d. The City Council may authorize public transportation facilities funded by transportation special impact fees at such other times, as they deem necessary and appropriate by a majority vote of the City Council.
- e. The City Council shall verify that adequate transportation special impact fee funds are or will be available from the transportation special impact fee.
- f. Transportation special impact fee funds shall be spent on a first in/first out basis.

4. Refunds; Eligibility. The provisions for impact fee refunds and eligibility for such refunds found in Chapter 15.66.050 shall apply to and govern refunds under this Chapter.

5. Reimbursements. The City plans to continue to seek state and federal grant funds to help pay for the transportation infrastructure identified in the Methodology Report. In the event that the City receives additional grant funds in any amount over \$2,000,000, which represents roughly 10% of the outstanding costs of the transportation infrastructure identified in the Methodology Report, the City will recalculate the transportation special impact fee necessary to pay for the costs of such transportation infrastructure. Owners of properties that paid the transportation special impact fee within the 60 months prior to the recalculation are eligible for reimbursement of the difference between the amount paid and the recalculated amount, minus a five percent administrative fee not to exceed \$200. Applications by the current owners of such properties for reimbursements under this provision shall be made on a form provided by the City for such purposes. Upon receipt of a complete application for a reimbursement, the Director shall review the application and documentary evidence submitted by the applicant as well as such other information and evidence as may be deemed relevant, and make a determination as to whether a refund is due. Refunds by direct payment shall be made following an affirmative determination by the Director.

Section 15.70.060 APPEALS.

1. Initiation.

- a. An appeal from any decision of a City officer pursuant to this Chapter shall be made within fifteen (15) working days of notice of the decision being sent by certified mail, to the Chief Financial Officer who shall refer it immediately to an Appeals Committee consisting of the Chief Administrative Officer, Chief Financial Officer, Director, and City Attorney. When filing an appeal, the fee payer shall submit a letter providing a full explanation of the request, the reason for the appeal, as well as all supporting documentation and an administrative fee of five percent (5%) of the impact fee, not to exceed two-hundred dollars (\$200). In the event the appeal is successful, the City Council may refund all or a portion of the administrative fee to the payer.
- b. Upon review and consideration of information presented by the appellant, the Appeals Committee shall formulate a recommended action and forward it for consideration to the City Council pursuant to Title 20 of the, Missoula Municipal Code. Such appeal shall be based on the record and on other such written argument which appellant has filed with the appeal and the staff response to such argument.
- c. The filing of an appeal shall not stay the imposition or the collection of the transportation special impact fee as calculated by the City unless a Certificate of Deposit payable to the City, Letter of Credit issued by a financial institution in favor of the City, or other sufficient surety has been provided.
- d. If the notice of appeal is accompanied by a cash bond or letter of credit in a form satisfactory to the City Attorney and the Chief Financial Officer in an amount equal to the transportation special

impact fee calculated to be due, a building permit may be issued to the new development.

2. **Contents.** The notice of appeal shall detail the specific grounds therefore and all other relevant information and shall be filed with the Finance Office on a form provided by the City for such purposes.

15.70.70 ANNUAL REVIEW AND ADJUSTMENT.

The provisions Chapter 15.66.070 shall apply to the annual review and adjustment of the transportation special impact fee.

15.70.080 IMPACT FEE SCHEDULES

The City Council shall establish and amend the transportation special impact fee by resolution after conducting a public hearing.

15.70.090 IMPACT FEE ADVISORY COMMITTEE

The Impact Fee Advisory Committee, created by Chapter 15.66, shall review and monitor the process of calculating, assessing and spending the transportation special impact fee and advise the City of Missoula governing body with respect to these impact fee revenues as provided by Montana state law.

Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

First reading and preliminary adoption on the ____ day of _____, 2021, by a vote of AYES: (____): Alderperson Anderson, Alderperson Becerra, Alderperson Contos, Alderperson Harp, Alderperson Hess, Alderperson Jones, Alderperson Merritt, Alderperson Ramos, Alderperson Sherrill, Alderperson Vasecka, Alderperson von Lossberg, and Alderperson West; NAYS (____); ABSTENTIONS (____); ABSENT (____).

Second and final reading and on the ____ day of _____, 2021, by a vote of AYES: (____): Alderperson Anderson, Alderperson Becerra, Alderperson Contos, Alderperson Harp, Alderperson Hess, Alderperson Jones, Alderperson Merritt, Alderperson Ramos, Alderperson Sherrill, Alderperson Vasecka, Alderperson von Lossberg, and Alderperson West; NAYS: (____); ABSENT: (____); ABSTENTIONS (____).

ATTEST:

APPROVED:

Martha L. Rehbein, CMC
City Clerk

John Engen
Mayor

(S E A L)