

# ORDINANCE 1680

**AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, AMENDING THE NAME OF NORTH BEND MUNICIPAL CODE TITLE 17; ADOPTING A NEW CHAPTER 17.42 OF THE NORTH BEND MUNICIPAL CODE RELATING TO A BICYCLE AND PEDESTRIAN MITIGATION FEE; AMENDING THE TAXES, RATES AND FEES SCHEDULE; PROVIDING FOR SEVERABILITY AND SETTING AN EFFECTIVE DATE**

**WHEREAS**, the City of North Bend (“City”) has an active and growing bicycle and pedestrian trail system; and

**WHEREAS**, with the continued development of residential neighborhoods with nearly 1,000 residential units currently being added to the City, there is a need to continue to plan and build additional recreational and multi-modal bicycle and pedestrian trails to interconnect destinations in and near North Bend; and

**WHEREAS**, on April 17, 2018, the City Council approved a contract with Fehr & Peers, transportation consultants, to conduct a bike and pedestrian trail mitigation fee study (“Study”); and

**WHEREAS**, through adoption of Ordinance No. 1619, the City Council adopted amendments to the Parks Element of the City’s Comprehensive Plan; and

**WHEREAS**, Figure 8-4 of the Comprehensive Plan sets forth the On-Street Bicycle Routes Map and Figure 8.2 sets forth the Trail Plan Map, identifying various bike and pedestrian trails throughout the City, which will be used by new residents as more particularly described in the Study; and

**WHEREAS**, the proposed amendments in this Ordinance were discussed with the Master Buildings Association of King County; and

**WHEREAS**, the City Council finds it appropriate to amend the Taxes, Rates & Fees Schedule, last amended by Ordinance No. 1663, to include a bicycle and pedestrian mitigation fees; and

**WHEREAS**, in adopting this ordinance the Council has relied upon the "City of North Bend Bicycle and Pedestrian Facilities Mitigation Fees Study," dated September 2018, as prepared by Fehr & Peers and attached hereto and incorporated herein as Exhibit A; and

**WHEREAS**, the City Council wishes to promote affordable housing and work force housing, and considering that the lack of work force housing is one of the largest impediments to either locating a new business within the City or expanding an existing business within the City; and

**WHEREAS**, the City wishes to promote diversity of design in housing stock and wishes to incentivize construction of individual homes that are not a part of a larger plat or development; and

**WHEREAS**, revenues from commercial businesses within the City comprise approximately 70% of the City's general fund revenues and therefore City Council has a strong interest in retaining the City's existing businesses and recruiting new commercial businesses; and

**WHEREAS**, the City Council desires to fill vacant storefronts of underused buildings in order to encourage economic development and a vibrant downtown; and

**WHEREAS**, a public hearing was held on December 4, 2018 and Council fully considered all public oral and written testimony prior to adoption of this Ordinance; and

**WHEREAS**, the notice for the public hearing was properly advertised in the City's legal newspaper;

**WHEREAS**, notice of the proposed amendments was provided to local and regional developers, real estate brokers, and the general public, and were discussed at a public meeting on December 4, 2018; and

**WHEREAS**, environmental review of the proposed amendments was performed and a Determination of Nonsignificance for a non-project action was issued and advertised on November 16, 2018;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1. Name of North Bend Municipal Code Title 17, Amended.** Title 17 of the North Bend Municipal Code contains chapters covering both land division and fees. Accordingly, for clarity and ease of reference, the name of Title 17 of the North Bend Municipal Code shall be amended to read as follow: "Title 17 LAND SEGREGATION, IMPACT FEES & MITIGATION."

**Section 2. New NBMC Chapter 17.42, Methods to Mitigate Development Impacts, Adopted.** A new North Bend Municipal Code Chapter 17.42 (Methods to Mitigate Development Impacts, is hereby adopted to read as follows:

**Chapter 17.42**  
**METHODS TO MITIGATE DEVELOPMENT IMPACTS**

**17.42.010 Purpose.**

It is the purpose of this chapter to provide alternatives for prospective developers of land within the City to mitigate the direct impacts that have been specifically identified by the City as a consequence of proposed development, and to make provisions for, including without limitation, bicycle and pedestrian facilities. The provisions of this chapter shall be considered in conjunction with the provisions of Chapters 17.32 (School Impact Fees), 17.34 (Fire Impact Fees), 17.36 (Park Impact Fees), and/or 17.38 (Transportation Impact Fees). No development shall be required to provide duplicate mitigation for the same impacts.

**17.42.020 Determination of Direct Impact.**

Before any development is given the required approval or is permitted to proceed, the Director shall determine direct impacts, if any, that are a direct consequence of the proposed development and which require mitigation. The Director shall consider the following factors:

- A. Predevelopment versus postdevelopment need for services, such as: City streets, bicycle, and pedestrian facilities and other similar municipal facilities or services;
- B. Likelihood that a direct impact of a proposed development would require mitigation due to the cumulative effect of such impact when aggregated with the similar impacts of future development in the immediate vicinity of the proposed development;
- C. Size, number, condition, and proximity of existing facilities to be affected by the proposed development;
- D. Nature and quantity of capital improvements reasonably necessary to mitigate specific direct impacts identified as a consequence of the proposed development;
- E. Likelihood that the users of the proposed development will benefit from any mitigating capital improvements or programs; and
- F. Any significant adverse environmental impacts of the proposed development identified in the process of complying with the Washington State Environmental Policy Act.

**17.42.030 Costs.**

The cost of any investigations, analysis, and/or reports necessary for a determination of direct impact shall be borne by the applicant.

**17.42.040 Mitigation of Direct Impacts.**

The Director shall review an applicant's proposal to mitigate any identified direct impacts and determine whether such proposal is a reasonable and acceptable mitigation measure considering the cost and land requirements of the required improvement and the extent to which the necessity of the improvement is attributable to the direct impacts of the proposed development. No official or body shall approve a development unless reasonable provisions have been made to mitigate identified direct impacts that are direct consequences of such development.

**17.42.050 Methods of Mitigation.**

A. The methods to mitigate identified direct impacts required as a condition of any development approval may include, but are not limited to: dedication of land to any public body, off-site improvements; on-site improvements; and other capital or noncapital methods that may effectively reduce direct impacts.

B. In lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, the City may approve a voluntary payment agreement with the developer, which shall be subject to the following provisions:

1. The Director must find that the money offered will mitigate or is a satisfactory alternative to mitigate the identified direct impact. Bicycle and pedestrian facilities mitigation shall be assessed based on the mitigation fee study dated September 2018, for Bicycle and Pedestrian Facilities, prepared by Fehr and Peers on file with the City Clerk and as listed in the City Taxes, Rates and Fees Schedule.
2. The Administration shall review the bicycle and pedestrian facilities mitigation fee rates annually to determine when new rate studies should be prepared. An inflationary adjustment should be made in the City Taxes, Rates & Fees Schedule at the beginning of each calendar year in the same percentage as the change in the Engineering News Record (ENR) Construction Cost Index (CCI) for the Seattle area from the prior year's rate.
3. Mitigation rates may be adjusted by the Director, if one of the following circumstances exist:
  - a. The applicant demonstrates that a mitigation fee assessment was improperly calculated; or
  - b. Studies and data provided by the applicant demonstrate that one or more of the factors used to calculate the mitigate fee may not be appropriate.

4. Payment of any mitigation fee shall be held in a reserve account and may only be expended to fund a capital improvements or program to mitigate the identified direct impact.

5. No building permit shall be issued until the voluntary payment has been paid in full by the applicant; provided, that payment of mitigation fees may be phased if the building permit for the development is also phased.

C. The following types of development shall be exempted from the mitigation required under this Chapter: development of commercial uses, attached senior housing, and the construction of one (1) single family home outside of a plat or any other larger development.

**17.42.060 Appeals.**

Determinations made by the Director pursuant to this chapter may be appealed as set forth below:

A. Any feepayer may pay the voluntary payment imposed by this chapter under protest in order to obtain a building permit. No appeal shall be permitted, and no building permit issued, until the voluntary payment at issue has been paid.

B. Appeals regarding the voluntary payment imposed on any development activity may be filed only by the payor and owner of the property where such development activity will occur.

C. Before a payor may appeal, the payor must first file a request for review regarding the voluntary payment with the Director, as provided herein:

1. The request shall be in writing on the form provided by the city;
2. The request for review by the Director shall be filed within 14 calendar days of the payor's payment of the voluntary payment at issue. Failure to timely file such a request shall constitute a final bar to any review or appeal;
3. No administrative fee will be imposed for the request for review by the Director; and
4. The Director shall issue his/her determination in writing.

D. Determinations of the Director with respect to the applicability of the voluntary payment to a given development activity, or the director's decision concerning the independent voluntary payment calculation, or the voluntary payment imposed by the Director, or any other determination which the Director is authorized to make pursuant to this chapter, may be appealed to the hearing examiner only as provided below.

E. An appeal must be filed no later than 14 calendar days after the Director’s issuance of a written determination, by filing with the department a notice of appeal specifying the grounds thereof, and depositing the necessary fee, which is set forth in the existing fee schedules for appeals of such decisions. The Director shall transmit to the office of the hearing examiner all papers constituting the record for the determination, including, where appropriate, the independent voluntary payment calculation.

F. The hearing examiner shall fix a time for the hearing of the appeal, give notice to the parties in interest, and decide the same as provided in the North Bend Municipal Code. At the hearing, any party may appear in person or by agent or attorney.

G. The hearing examiner is authorized to make findings of fact regarding the applicability of the voluntary payment to a given development activity, or the accuracy or applicability of an independent voluntary payment calculation. The decision of the hearing examiner shall be final.

H. The hearing examiner may, so long as such action is in conformance with the provisions of this chapter, reverse or affirm, in whole or in part, or may modify the determinations of the Director with respect to the amount of the voluntary payment imposed.

**Section 3. Amendment of Taxes, Rates and Fees Schedule.** The Taxes, Rates and Fees Schedule of the City shall be amended to include the mitigation fees set forth below:

17.42

Bicycle & Pedestrian Mitigation Fee	Amount*
Single Family Residential	\$1,148
Multi-Family Residential	\$695
Cottages & other Single Family Residential under 1,200 SF	\$443
Mobile Homes	\$443

\*The charges in this table will be automatically increased each year on January 1st, compared to the prior year, by the percentage reflected in the Seattle ENR Construction Cost Index (CCI).

**Section 4. Severability.** Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 5. Effective Date.** This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND,  
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 4<sup>TH</sup> DAY OF  
DECEMBER, 2018.**

**CITY OF NORTH BEND:**

**APPROVED AS TO FORM:**

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**Kenneth G. Hearing, Mayor**

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**Michael R. Kenyon, City Attorney**

**ATTEST/AUTHENTICATED:**

Published: December 14, 2018

Effective: December 19, 2018

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**Susie Oppedal, City Clerk**