

**CITY OF MERCER ISLAND  
ORDINANCE NO. 17-06**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,  
RELATING TO LAND USE AND DEVELOPMENT UNDER THE  
GROWTH MANAGEMENT ACT, ADOPTING AN IMMEDIATE,  
EMERGENCY, SIX-MONTH MORATORIUM ON CERTAIN  
DEVELOPMENT, AND DECLARING AN EMERGENCY  
NECESSITATING IMMEDIATE ADOPTION OF A MORATORIUM AND  
ESTABLISHING AN IMMEDIATE EFFECTIVE DATE**

WHEREAS, in compliance with the Washington State Growth Management Act, Chapter 36.70A RCW ("GMA"), the City of Mercer Island adopted a Comprehensive Plan in 1994 and has amended the plan on several occasions since that time, including the most recent amendment in 2016; and

WHEREAS, the Transportation Element of Mercer Island's Comprehensive Plan includes numerous Transportation goals and policies to guide transportation decisions for Mercer Island; and

WHEREAS, as required by the GMA, Mercer Island's Comprehensive Plan includes a transportation element that specifies level of service ("LOS") standards for locally-owned intersections within the City; and

WHEREAS, under the GMA, specifically RCW 36.70A.070(6)(b), the City is required to adopt and enforce a transportation concurrency ordinance regulating development that causes the level of service on a locally owned transportation facility to decline below the standards adopted in the Transportation Element of the Comprehensive Plan; and

WHEREAS, the City has not adopted a transportation concurrency ordinance consistent with the GMA; and

WHEREAS, as required by the GMA, the City's Comprehensive Plan also includes a process for identifying and siting essential public facilities; and

WHEREAS, the proposed East Link light rail project is considered an essential public facility under the City's Comprehensive Plan; and

WHEREAS, the regulatory provisions enacted pursuant to the GMA provide that a local jurisdiction may impose reasonable permitting requirements and require mitigation of the essential public facility's adverse effects; and

WHEREAS, the City has not adopted development regulations that implement the comprehensive plan's provisions as to identifying, siting, and regulating essential public facilities; and

WHEREAS, as required by the GMA, the City must adopt a transportation concurrency ordinance and is considering adopting development regulations to address the siting and development of essential public facilities, including mitigation measures as appropriate; and

WHEREAS, the City Council may adopt an immediate moratorium for a period of up to six months on development as long as the City Council holds a public hearing on the proposed moratorium within sixty days after adoption, pursuant to RCW 35A.63.220 and RCW 36.70A.390; and

WHEREAS, consistent with the provisions of RCW 35A.63.220 and RCW 36.70A.390, it is appropriate for the City Council to hold a public hearing and/or other means to gather information and adopt findings of fact supporting and justifying the moratorium, and to implement a work plan for review of the issues relating to the adoption of a transportation concurrency ordinance and an essential public facilities ordinance; and

WHEREAS, allowing development to continue before the City Council can adopt new regulations relating to the GMA's concurrency requirements and essential public facilities will result in projects being approved that could cause irreversible damage to the character of the City, violate the City's Comprehensive Plan, and potentially result in the City violating the GMA;

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

**Section 1. Moratorium Established.** The Mercer Island City Council hereby imposes an immediate, six-month moratorium on the acceptance, processing, and/or approval of applications for building permits, short subdivisions and subdivisions, development agreements, and other permits of any type associated with development, with the exception of design review, that: (1) as determined either by the Code Official or the developer, will cause any locally-owned intersection to decline below the LOS standards adopted by the City in the transportation element of its comprehensive plan; or (2) relate to the siting or development of any essential public facility. To the extent any such applications are received by the City, they shall be returned to the applicant.

**Section 2. Term of Moratorium.** This is an emergency ordinance. The moratorium imposed by this ordinance shall become effective immediately, on the date hereof, and shall continue in effect for an initial period of six months, unless repealed, extended, or modified by the City Council after subsequent public hearing(s) and entry of appropriate findings of fact pursuant to RCW 35A.63.220 and RCW 36.70A.390, provided that the moratorium shall automatically expire upon the effective date of land use regulations adopted by the City Council to address both transportation concurrency, as required under RCW 36.70A.070(6)(b), and the siting or development of any essential public facilities, including mitigation measures as appropriate.

**Section 3. Preliminary Findings.** The following preliminary findings of fact are hereby adopted:

- A. That the City of Mercer Island desires to maintain and enhance the character of the City.
- B. That the City has not enacted into law a transportation concurrency ordinance that complies with RCW 36.70A.070(6)(b) or development regulations that account for or otherwise provide for the development of essential public facilities.
- C. If a development is not subject to a transportation concurrency ordinance the development may be contrary to the best interests of the residents of Mercer Island. Similarly, if the development of an essential public facility is not subject to an ordinance imposing reasonable permitting and mitigation of the essential public facility's adverse effects, the development may be contrary to the best interests of the residents of Mercer Island.
- D. If a moratorium on development as provided herein is not imposed, the development would likely impact effective long range planning and result in the status quo not being preserved during consideration of necessary regulations.
- E. It is in the best interests of the health, safety, and welfare of the citizens of Mercer Island to suspend temporarily the acceptance of permit applications for development that would cause a decline of the LOS of a locally-owned intersection below the established standard in the City's comprehensive plan, as well as the acceptance of permit applications relating to the siting and development of any essential public facility.
- F. Allowing development to continue before the City Council can fully adopt new or revise existing regulations for such matters, including a transportation concurrency ordinance and an essential public facilities ordinance, could result in irreversible damage to the City and would be contrary to the GMA and state law.
- G. Special care and attention needs to be employed in evaluating, considering, and developing appropriate legislation that satisfactorily addresses the concerns of the City while also conforming to legal requirements. Collecting and compiling information, public testimony, and statements of concerned citizens of the City and of other persons interested in or familiar with the issues of development in the City is appropriate.

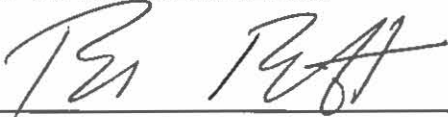
**Section 4. Conclusion.** Based on the above Findings of Fact, the City Council concludes that the City has the authority to establish a moratorium, and that it is necessary to establish a moratorium in order stop the acceptance, processing, and approval of

development applications and/or other development as further identified in this moratorium in order 1) to provide the City with an opportunity to more fully engage the citizens; and 2) to allow the City Manager, the Development Services Group staff, and outside consultants, as needed, to produce revised or new development regulations for City Council consideration as soon as possible.

- Section 5. Public Hearing.** A public hearing shall be scheduled for 7:00 p.m. on March 6, 2017, at Mercer Island City Hall, 9611 SE 36<sup>th</sup> St., during the City Council's regular meeting, or as soon thereafter as the business of the City Council shall permit, in order to hear and consider the comments and testimony of those wishing to speak at such public hearing regarding the moratorium created by this Ordinance and to consider adopting further findings of fact.
- Section 6. Declaration of Emergency.** The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum (RCW 35A.12.130). Without an immediate moratorium on the City's acceptance, processing, and approval of development applications as provided in this Ordinance, the City will continue to be non-compliant with existing State law. Therefore, the moratorium established by this Ordinance must be imposed as an emergency measure to protect the public health, safety, and welfare.
- Section 7. Publication.** This Ordinance shall be published by an approved summary consisting of the title.
- Section 8. 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, or its application held inapplicable to any person, property, or circumstance, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance or its application to any other person, property, or circumstance.
- Section 9. Effective Date.** This Ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, or public peace, shall take effect and be in full force and effect immediately upon its adoption, as long as it is approved by a majority plus one of the entire membership of the City Council as required by RCW 35A.12.130. Pursuant to *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641, 904 P.2d 317 (1995), non-exhaustive underlying facts necessary to support this emergency declaration are included in the "WHEREAS" clauses, above, all of which are adopted by reference as findings of fact as if fully set forth herein.

ADOPTED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 13<sup>th</sup> day of February, 2017, and signed in authentication of its passage.

CITY OF MERCER ISLAND



Bruce Bassett, Mayor

ATTEST:

  
Allison Spietz, City Clerk

Approved as to Form:

  
Kari Sand, City Attorney

Date of Publication: 2/22/2017