

ORDINANCE NO. 1091

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO TRANSPORTATION CONCURRENCY, CLARIFYING THE EFFECT OF A TRANSPORTATION CRC, AND CHANGING THE DEFINITION OF AN "OWNER" and "CAPACITY" FOR PURPOSES OF THE CHAPTERS RELATING TO CONCURRENCY AND IMPACT FEES IN CHAPTERS 19.10 AND 19.12 TO INCLUDE A LESSEE WITH A LEASE MORE THAN TWENTY-FIVE YEARS, AMENDING GIG HARBOR MUNICIPAL CODE SECTIONS 19.10.014 AND 19.14.010.

WHEREAS, the City is currently reviewing a trip transfer procedure, to be effective until August 1, 2007; and

WHEREAS, City staff has contacted other jurisdictions to learn more about how trip transfers are performed elsewhere; and

WHEREAS, at least one jurisdiction noted that the City's ordinance should clarify the fact that once a Capacity Reservation Certificate (CRC) issues, the property owner or developer does not "own" the trips, and the transfer of the trips (if a transfer is allowed) must take place according to procedures adopted by the City; and

WHEREAS, the definition of "owner" for purposes of the concurrency and impact fee programs identified in Chapter 19.10 and 19.12 of the Gig Harbor Municipal Code includes a contract purchaser but not a lessee; and

WHEREAS, the definition of "capacity" defined in Chapter 19.14 is further defined to mean, "or "peak PM Trips"; and

WHEREAS, the City's SEPA responsible official determined that adoption of this Ordinance is categorically exempt under WAC 197-11-800(19) as an Ordinance relating to procedures only; and

WHEREAS, the City Council held a public hearing and considered this Ordinance during its regular City Council meeting of June 11th 2007; and

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Section 19.10.014 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.10.014 Purpose of capacity reservation certificate.

A. A transportation CRC is a determination by the director that: (1) the proposed development identified in the CRC application does not cause the level of service on a city-owned road facility to decline below the standards adopted in the transportation element of the city's comprehensive plan, or (2) that a financial commitment (embodied in a development agreement) is in place to complete the necessary improvements or strategies within six years. Upon issuance of a transportation CRC, the director will reserve transportation facility capacity for this application until the expiration of the underlying development permit or as otherwise provided in GHMC 19.10.020. Although the CRC may identify the number of projected trips associated with the proposed development, nothing in this chapter (including the trip transfer procedures) shall imply that the applicant "owns" or has any ownership interest in the projected trips.

B. A water CRC is a determination by the director that: (1) the proposed development identified in the CRC application does not exceed the city's existing water rights or the limits of any state issued permit, or (2) that a financial commitment (embodied in a development agreement) is in place to complete the necessary improvements or strategies within six years. Upon issuance of a water CRC, the director will reserve water capacity for the application until the expiration of the underlying development permit or as otherwise provided in GHMC 19.10.020, or as set forth in the outside city limits utility extension agreement.

C. A sewer CRC is a determination by the director that: (1) the proposed development identified in the CRC application does not exceed the city's existing NPDES permit limits or the existing capacity in the city's wastewater treatment plant, or (2) that a financial commitment (embodied in a development agreement) is in place to complete the necessary improvements or strategies within six years. Upon issuance of a sewer CRC, the director will reserve sewer capacity for the application until the expiration of the underlying development permit or as otherwise provided in GHMC 19.10.020 or as set forth in the outside city limits utility extension agreement.

D. The factors affecting available water or sewer capacity or availability may, in some instances, lie outside of the city's control. The city's adoption of this chapter relating to the manner in which the city will make its best attempt to allocate water or sewer capacity or availability does not create a duty in the city to provide

water or sewer service to the public or any individual, regardless of whether a water or sewer CRC has issued. Every water availability certificate and water or sewer CRC shall state on its face that it is not a guarantee that water and/or sewer will be available to serve the proposed project.

Section 2. Section 19.14.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.14.010 Definitions.

The following words and terms shall have the following meanings for the purpose of Chapters 19.10 and 19.12 GHMC, the concurrency and impact fee chapters, unless the context clearly appears otherwise. Terms otherwise not defined herein shall be given the meaning set forth in RCW 82.02.090, or given their usual and customary meaning:

1. "Act" means the Growth Management Act, Chapter 36.70A RCW, or as hereinafter amended.
2. "Adequate public facilities" means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.
3. "Approving authority" means the city employee, agency or official having authority to issue the approval or permit for the development activity involved.
4. "Annual capacity availability report" means the report prepared each year to include available and reserved capacity for each public facility, and identifying those proposed and planned capital improvements for each public facility that will correct deficiencies or improve levels of service; a summary of development activity; a summary of current levels of service and recommendations.
5. Available Public Facilities. Facilities are in place, or a financial commitment has been made to provide the facilities, within six years.
6. "Capacity" means the ability of a public facility to accommodate users, expressed in an appropriate unit of measure, such as average daily trip ends, "or peak PM trips," within the LOS standards for the facility.
7. "Capacity, available" means capacity in excess of current demand ("used capacity") for a specific public facility which can be encumbered, reserved, or committed or the difference between capacity and current demand ("used capacity").
8. "Capacity, reserved" means capacity which has been reserved through use of the capacity reservation certificate process in Chapter 19.10 GHMC.

9. “Capacity, encumbered” means a reduction in the available capacity resulting from issuance of a capacity reservation certificate or that portion of the available capacity.
10. “Capacity evaluation” means the evaluation by the director based on adopted LOS standards to ensure that public facilities and services needed to support development are available concurrent with the impacts of such development, as defined in Chapter 19.10 GHMC.
11. “Capacity reservation certificate” means a determination made by the director that: (a) a proposed development activity or development phase will be concurrent with the applicable facilities at the time the CRC is issued; and (b) the director has reserved road capacity for an application for a period that corresponds to the respective developmental permit.
12. “Capital facilities” means the facilities or improvements included in a capital facilities plan.
13. “Capital facilities plan” means the capital facilities plan element of the city’s comprehensive plan adopted pursuant to Chapter 36.70A RCW and RCW 36.70A.070, and any amendments to the plan.
14. “Change of use” means, for the purposes of this title, any change, redevelopment or modification of use of an existing building or site which meets the definition of “development activity” herein.
15. “City” means the city of Gig Harbor, Washington.
16. “Comprehensive land use plan” or “comprehensive plan” means a generalized coordinated land use policy statement of the city council, adopted pursuant to Chapter 36.70A RCW.
17. “Concurrent with development” means that strategies or improvements are in place at the time of development or that a financial commitment is in place to complete the improvements or strategies within six years. See RCW 36.70A.090(6).
18. “Council” means the city council of the city of Gig Harbor.
19. “County” means Pierce County, Washington.
20. “Dedication” means conveyance of land to the city for public facility purposes, by deed, other instrument of conveyance or by dedication, on a duly filed and recorded plat or short plat.
21. “Demand management strategies” means strategies aimed at changing travel behavior rather than at expanding or improving the transportation network to meet travel demand. Such strategies can include the promotion of work hour changes, ride-sharing options, parking policies and telecommuting.
22. “Department” means the Public Works Department of the City of Gig Harbor.

23. "Developer" means any person or entity who makes application or receives a development permit or approval for any development activity as defined herein.

24. "Development activity" or "development" means any construction or expansion of a building, structure, or use; any change in the use of a building or structure; or any changes in the use of the land that creates additional demand for public facilities (such as a change which results in an increase in the number of vehicle trips to and from the property, building or structure) and requires a development permit from the city.

25. "Development agreement" means the agreements authorized in RCW 36.70B.210 and concurrency resolution agreements, as described in Chapter 19.10 GHMC.

26. "Development permit" or "project permit" means any land use permit required by the city for a project action, including but not limited to building permits, subdivisions, short plats, binding site plans, planned unit developments, conditional uses, shoreline substantial developments, site plan reviews, or site specific rezones, and, for purposes of the city's concurrency ordinance, shall include applications for amendments to the city's comprehensive plan which request an increase in the extent or density of development on the subject property.

27. "Director" means the director of the Gig Harbor Public Works Department or his/her authorized designee.

28. "Existing use" means development which physically exists or for which the owner holds a valid building permit as of the effective date of the ordinance codified in this chapter.

29. "Encumbered" means to reserve, set aside or otherwise earmark the impact fees in order to pay for commitments, contractual obligations or other liabilities incurred for public facilities.

30. "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, the buyer and seller each being prudently knowledgeable, and assuming the price is not affected by undue stimulus.

31. "Feepayer" means a person, corporation, partnership, an incorporated association, or department or bureau of any governmental entity, or any other similar entity, commencing a land development activity. "Feepayer" includes applicants for an impact fee credit.

32. "Financial commitment" means those sources of public or private funds or combinations thereof that have been identified as sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

33. "Growth-related" means a development activity as defined herein that increases the level of service of a public facility.

34. "Impact fee" means the amount of money determined necessary by the city and imposed upon new development activity as a condition of development approval or permitting to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates the additional demand and need for public facilities proportionate to the development's share of the cost of the public facilities and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

35. "Impact fee account(s)" or "account(s)" means the account(s) established for each type of public facilities for which impact fees are collected. The accounts shall be established pursuant to this title, and comply with the requirements of RCW 82.02.070.

36. "Impact fee schedule" means the table of impact fees per unit of development, which is to be used by the director in computing impact fees.

37. "Interest" means the interest rate earned by the city for the impact fee account, if not otherwise defined.

38. "Interlocal agreement" or "agreement" means the transportation impact fee interlocal agreement by and between the city and the county, and the transportation impact fee interlocal agreement by and between the city and the state, concerning the collection and allocation of road impact fees, or any other interlocal agreement entered by and between the city and another municipality, public agency or governmental body to implement an impact fee program.

39. "Level of service" or "LOS" means an established minimum functional level of public facilities that must be provided per unit of demand or other appropriate measure of need.

40. "Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded. In addition, the lessee of the real property shall be considered the owner, if the lease of the real property exceeds twenty-five years, and the lessee is the developer of the real property.

41. "Previous use" means: (a) the use existing on the site when a capacity evaluation is sought; or (b) the most recent use on the site, within the five year period prior to the date of application.

42. "Project" means a system improvement, selected by the Gig Harbor city council for joint private and public funding and which appears on the project list.

43. "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the council shall be considered a project improvement.

44. "Project list" means the list of projects described in the city's annual and six-year capital improvement program and as developed pursuant to an impact fee ordinance.

45. "Proportionate share" means that portion of the cost of public facility improvements that is reasonably related to demands and needs of new development.

46. "Road" means a right-of-way which affords the principal means of access to abutting property, including an avenue, place, way, drive, lane, boulevard, highway, street, and other thoroughfare, except an alley.

47. "Road facilities" includes public facilities related to land transportation.

48. "School district" means the Peninsula School District.

49. "School district service area" means the boundaries of the Peninsula School District.

50. "School facilities" means capital facilities owned or operated by the Peninsula School District.

51. "Service area" means a geographic area defined by the city or interlocal agreement, in which a defined set of public facilities provide service to development in the area.

52. "State" means the state of Washington.

53. "Subdivision" means all subdivisions as defined in GHMC Title 16, and all short subdivisions as defined in GHMC Title 16, which are subject to SEPA, Chapter 43.21C RCW and the Gig Harbor SEPA ordinance, GHMC Title 18.

54. "Superintendent" means the school district superintendent or his/her designee.

55. "System improvements" means public facilities that are included in Gig Harbor's capital facilities plan and are designed to provide service to areas within the city and community at large, in contrast to project or on-site improvements.

56. "Traffic analysis zone" means the minimum geographic unit used for traffic analysis.

57. "Transportation primary impact area" means a geographically determined area that delineates the impacted area of a deficient roadway link.

58. "Transportation level of service standards" means a measure which describes the operational condition of the travel stream and acceptable adequacy requirement.

59. "Transportation management area" means a geographically determined area that contains compact urban development patterns where a dense roadway network and extensive mass transit services are in place. The performance of these areas shall be based on the percentage of lane miles meeting the adopted LOS standards as described in this chapter.

60. "Traffic demand model" describes the simulation through computer modeling of vehicle trip ends assigned on the roadway network.

61. "Trip allocation program" means the program established to meter trip ends to new development annually by service area and traffic analysis zone to ensure that the city is maintaining adopted LOS standards.

62. "Trip end" means a single or one-directional vehicle movement.

63. "Unit" or "dwelling unit" means a dwelling unit as defined in GHMC 17.04.320.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance is 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, clause or phrase of this Ordinance.

Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this 11th day of June, 2007.

CITY OF GIG HARBOR

STEVEN K. EKBERG, MAYOR PRO TEM

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 05/23/07
PASSED BY THE CITY COUNCIL: 06/11/07
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