

ORDINANCE NO. 1079

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO IMPACT FEES, CLARIFYING THE FACTORS TO BE USED BY THE CITY IN THE CALCULATION OF IMPACT FEES, CLARIFYING THE PROCEDURES FOR REQUESTING CREDITS FROM IMPACT FEES, ESTABLISHING THE TIME FOR MAKING A CREDIT REQUEST, THE MANNER IN WHICH CREDIT WILL BE GIVEN FOR SYSTEM IMPROVEMENTS THAT HAVE NOT BEEN CONSTRUCTED, CLARIFYING THE METHOD FOR APPEAL OF A REQUESTED CREDIT TOWARD AN IMPACT FEE, DESCRIBING THE EFFECT OF A DEVELOPER'S EARLY PAYMENT OF IMPACT FEES ON THE CALCULATION OF THE FEE AMOUNT; ADDING A NEW SECTION 19.12.083 TO THE GIG HARBOR MUNICIPAL CODE; AMENDING GHMC SECTIONS 19.12.020, 19.12.080, 19.12.100, AND 19.14.010.

WHEREAS, the City has adopted impact fees primarily based on RCW 82.02.050 through 82.02.090; and

WHEREAS, the City has received a number of requests for credit against the impact fees, and chapter 19.12 GHMC is not clear on the procedure to be used for requesting such fees; and

WHEREAS, impact fees do not vest, yet developers have requested to make early payment of impact fees because they believe that they will become vested to the fee paid prior to the time the City calculates the impact fee (the fee is calculated at the time the building permit is ready for issuance, pursuant to GHMC Section 19.12.100); and

WHEREAS, the City Council desires to clarify the fact that developers may make early payment, but such early payment will not relieve the developers from payment of the fee calculated at the time established in GHMC Section 19.12.100; and

WHEREAS, per WAC 197.11.800(19), the proposed action is categorically exempt for a threshold determination and EIS requirements; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of April 9 and April 23, 2007; Now, Therefore,

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

Section 1. Section 19.12.080 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.080 Calculation of impact fees.

A. Director calculates the fees. The director shall calculate the impact fees set forth in Appendices B and C, more specifically described in the Gig Harbor six-year road plan and the parks, open space and recreation plan. The superintendent shall calculate the school impact fees set forth in Appendix D. The city council shall have the final decision on the calculation of the impact fees to be imposed under this chapter as set forth in Appendices B and C. ~~These calculations shall:~~

B. Factors used in impact fee calculations. The calculation of impact fees shall include the factors set forth in RCW 82.02.050 through 82.02.090, and shall:

1. Determine the standard fee for similar types of development, which shall be reasonably related to each development's proportionate share of the costs of the projects described in Appendix A, the City's six-year road plan and for parks shall be calculated as set forth in Appendix C and the parks element of the City's Comprehensive Plan, and for schools shall be as provided in the school district's capital facilities plan.

2. Reduce the proportionate share by applying the benefit factors described in GHMC Section 19.12.083. This section.

C. Proportionate Share. In calculating proportionate share, the following factors will be considered:

1. Identify all park, school and transportation facilities that will be impacted by users from each development;

2. Identify when the capacity of a park, school or transportation facility has been fully utilized;

3. Update the data as often as practicable, but at least annually;

4. Estimate the cost of constructing the projects in Appendix A for roads at the time they are placed on the list, and the

cost of maintaining the city's level of park service as shown on Appendix C, and the costs relating to the construction of school facilities, and then update the cost estimates at least annually, considering the;

(a) availability of other means of funding park, school and transportation facilities;

(b) cost of existing park, school and transportation facility improvements;

(c) methods by which park, school and transportation facility improvements were financed;

5. Update the fee collected against a project which has already been completed, through an advancement of city or school district funds at a rate determined annually, which is equivalent to the City or school district's return on investments.

C. The director, or in the case of school impact fees, the superintendent, shall reduce the calculated proportionate share for a particular development by giving credit for the following benefit factors:

1. The purchase, installation and/or improvement of park, school and transportation facilities, if:

a. The facilities are located on land owned by the City, Pierce County, the school district or a special district; and

b. A designated public owner is responsible for permanent, continuing maintenance and operation of the facilities; and

c. The director or superintendent determines that the facilities correspond to the type(s) of park, school and transportation facilities being impacted by the development as determined pursuant to this chapter; and

d. The director determines, after consultation with the county, school district or special purpose district, as applicable, and an analysis of supply and demand data, the parks, open space and recreation plan, the six year road plan and any the adopted Pierce County park and transportation plan, that the proposed park and transportation facility improvements better meet the City's need for park and transportation facilities than would

~~payment of funds to mitigate the park and transportation impacts of the development.~~

~~2. The credit against the impact fee shall be equal to the fair market value of the purchase, installation and/or improvement.~~

~~3. Any applicable benefit factors, as described in RCW 82.02.060, that are demonstrated by the applicant not to be included in the calculation of the impact fee.~~

~~4. A developer of a planned residential development or a mobile home park may receive credit only for park, school and transportation facilities provided in addition to those normally required under SEPA for such developments pursuant to Chapter 18.04 GHMC.~~

~~5. When the director or superintendent has agreed to a developer's proposal to satisfy some or all of the impact fee through the purchase, installation and/or improvement of park, school and/or transportation facilities, the developer shall prepare and submit a facility improvement plan to the director, and if applicable, to the superintendent for approval prior to recordation of a plat or short plat for subdivisions, and prior to issuance of a building permit for all other developments.~~

~~6. In the determination of credit toward the impact fee, the director or superintendent shall also consider the extent to which the proposed dedication or conveyance meets the following criteria:~~

~~a. The land should result in an integral element of the Gig Harbor park/road system;~~

~~b. The land is suitable for future park, school and/or transportation facilities;~~

~~c. The land is of appropriate size and of an acceptable configuration;~~

~~d. The land has public access via a public street or an easement of an equivalent width and accessibility;~~

~~e. The land is located in or near areas designated by the city or county on land use plans for park, trail or recreational purposes, or, in the case of schools, is appropriately located for school facilities;~~

- _____ f. The land provides linkage between Pierce County and/or other publicly owned recreation and transportation properties;
- _____ g. The land has been surveyed or adequately marked with survey monuments, or is otherwise readily distinguishable from adjacent privately owned property;
- _____ h. The land has no known physical problems associated with it, such as the presence of hazardous waste, drainage, erosion or flooding problems which the director or superintendent determines would cause inordinate demands on public resources for maintenance and operation;
- _____ i. The land has no known safety hazards;
- _____ j. The developer is able to provide documentation, as nearly as practicable, of the land's compliance with the criteria of this subsection, and of clear title;
- _____ k. The developer is able to provide and fund a long-term method, acceptable to the director or superintendent, for the management and maintenance of the land, if applicable.

7. The amount of credit determined pursuant to this subsection shall be credited proportionately among all of the units in the development, and the impact fee for each unit for which a permit or approval is applied shall be reduced accordingly.

8. Applicants may not request that an impact fee credit be provided for a proposed development based on taxes, user fees, assessments, improvements, payments or other benefit factors applicable to property that is not included within the proposed development.

9. Applicants shall receive credit against the impact fee equal to the amount of an LID assessment paid for transportation-related facilities identified by the director as increasing transportation system capacity.

Section 2. A new Section 19.12.083 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

19.12.083 Credits.

A. Credit allowed. The director, or in the case of school impact fees, the superintendent, shall reduce the calculated proportionate share for a particular development by giving credit for the benefit factors described in this Section.

B. Procedure for obtaining credit, time to request credit.

Requests for credits against impact fees will not be considered unless the developer makes the request in writing, concurrent with submission of the application for the underlying development permit triggering the impact fee. For example, credit for impact fees relating to a preliminary plat must be submitted concurrent with submission of the application for the preliminary plat application, not the final plat or building permits for development in the plat.

C. Benefit Factors. The director will consider the following benefit factors when determining whether an impact fee credit is appropriate:

1. *Developer's dedication of land and/or construction of system improvements.* The value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities required by the city that are identified in the capital facilities plan and that are required by the city as a condition of approving the development activity, as long as the following conditions are satisfied. For school impact fees, the superintendent shall consider the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer to facilities identified in the school district's capital facilities plan, as long as the following conditions are satisfied.

a. The system improvements are located on land owned by the City, Pierce County, the school district or a special purpose district; and

b. A designated public owner is responsible for permanent, continuing maintenance and operation of the system improvements; and

c. The director or superintendent determines that the system improvements correspond to the type(s) of park, school and transportation system improvements that are reasonably related to the development as determined pursuant to this chapter; and

d. The director determines, after consultation with the county, school district or special purpose district, as applicable, and an analysis of supply and demand data, the parks, open space and recreation plan, the six year road plan and the adopted Pierce County park and transportation plan, that the proposed park and transportation system improvements better meet the City's need for park and transportation system improvements than would payment of funds to mitigate the park and transportation impacts of the development.

e. In the determination of credit toward the impact fee, the director or superintendent shall also consider the extent to which the proposed dedication or conveyance meets the following criteria:

(i) The land should result in an integral element of the Gig Harbor park/road system;

(ii) The land is suitable for future park, school and/or transportation facilities;

(iii) The land is of appropriate size and of an acceptable configuration;

(iv) The land has public access via a public street or an easement of an equivalent width and accessibility;

(v) The land is located in or near areas designated by the city or county on land use plans for park, trail or recreational purposes, or, in the case of schools, is appropriately located for school facilities;

(vi) The land provides linkage between Pierce County and/or other publicly owned recreation and transportation properties;

(vii) The land has been surveyed or adequately marked with survey monuments, or is otherwise readily distinguishable from adjacent privately owned property;

(viii) The land has no known physical problems associated with it, such as the presence of hazardous waste, drainage, erosion or flooding problems which the director or

superintendent determines would cause inordinate demands on public resources for maintenance and operation;

(ix) The land has no known safety hazards;

(x) The developer is able to provide documentation, as nearly as practicable, of the land's compliance with the criteria of this subsection, and of clear title;

(xi) The developer is able to provide and fund a long-term method, acceptable to the director or superintendent, for the management and maintenance of the land, if applicable.

D. Requirement for System Improvement Plan. When the director or superintendent has agreed to a developer's proposal to satisfy some or all of the impact fee through the purchase, installation and/or improvement of park, school and/or transportation facilities, the developer shall prepare and submit a system improvement plan to the director, and if applicable, to the superintendent for approval prior to recordation of a plat or short plat for subdivisions, and prior to issuance of a building permit for all other developments.

E. Statutory Benefit Factors. The director may consider any applicable benefit factors, as described in RCW 82.02.060 (as it now exists or may hereafter be amended), that are demonstrated by the applicant not to be included in the calculation of the impact fee.

F. Amount of Credit. The credit against the impact fee shall be equal to the fair market value of the purchased/ dedicated property or equal to the cost of the completed system improvements. In those situations in which a developer has not yet installed or constructed system improvements and requests a credit for the system improvement(s), the City Engineer (or superintendent for school facilities) shall estimate the cost of the system improvements, which shall be the credit allowed to the developer in the decision on the amount of the impact fee. If a credit is granted for a system improvement that has not been constructed, the developer shall pay the full impact fee without the credit, at the time established in GHMC Section 19.12.110. After construction and/or installation of the system improvement, the developer may request the credit granted by the Engineer under this subsection, and the City shall refund the difference of the

impact fee to reflect the credit, PROVIDED THAT: if the City and the property owner have entered into a development agreement on or before the effective date of this Ordinance, and the agreement requires the construction of such improvements, the City may allow a credit to be subtracted from the impact fee paid at the time established in GHMC 19.12.100.

G. PRD's, PUD's and Mobile Home Parks. A developer of a planned residential development, a planned unit development or a mobile home park may receive credit only for park, school and transportation facilities provided in addition to those normally required under SEPA for such developments pursuant to Chapter 18.04 GHMC.

H. Credit to apply proportionately to units. The amount of credit determined pursuant to this subsection shall be credited proportionately among all of the units in the development, and the impact fee for each unit for which a permit or approval is applied shall be reduced accordingly.

I. Limits on credit requests. Applicants may not request that an impact fee credit be provided for a proposed development based on taxes, user fees, assessments, improvements, payments or other benefit factors applicable to property that is not included within the proposed development.

J. Local improvement districts. Applicants shall receive credit against the impact fee equal to the amount of an LID assessment paid for transportation-related system improvements identified by the director as increasing transportation system capacity.

K. Appeals of credits. The director or superintendent shall issue a written decision on the developer's request for a credit of the impact fee calculation, which shall explain why the credit was granted or denied. The developer may request reconsideration and appeal the impact fee amount and credit pursuant to GHMC Section 19.12.170. If the procedures in GHMC Section 19.12.170 are not timely followed to request an appeal of the credit, the director or superintendent's decision on the impact fee credit shall be final.

Section 3. Section 19.12.100 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.100 Payment of fees.

A. All developers shall pay an impact fee in accordance with the provisions of this chapter which shall be calculated by the city at the time that the building permit is ready for issuance. Developers may choose to pay impact fees or a portion thereof prior to the city's issuance of a building permit, but if the early payment is less than the fee calculated at the time the building permit is ready for issuance, the developer shall pay the difference. If the early payment is more than the fee calculated at the time the building permit is ready for issuance, the City shall refund the difference.

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Section 4. 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 5. 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 23rd day of April, 2007.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

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: 04/04/07
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