

ORDINANCE NO. 828

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON,
RELATING TO TRANSPORTATION AND PARK IMPACT FEES,
AUTHORIZING THE IMPOSITION OF IMPACT FEES ON NEW
DEVELOPMENT TO PROVIDE FUNDING FOR THE DEVELOPMENT'S
PROPORTIONATE SHARE OF OFF-SITE OR SYSTEM IMPROVEMENTS
REASONABLY RELATED TO THE NEW DEVELOPMENT; DESCRIBING
THE METHOD FOR THE CALCULATION OF THE FEES; REFUNDS OF
THE FEE, AND PROVIDING FOR AN ADMINISTRATIVE APPEAL OF
THE FEE; ADDING A NEW CHAPTER 19.12 TO THE GIG HARBOR
MUNICIPAL CODE.**

WHEREAS, the City Council of the City of Gig Harbor intends that adequate parks and transportation facilities be provided to serve new growth and development, and

WHEREAS, in order that new parks and transportation facilities are available when needed, the Council has determined that the cost of the parks and transportation facilities must be shared by the public and the private sectors, and the proportionate share of the expense of new parks and transportation facilities necessitated by new development shall be borne by developers through the City's imposition of impact fees, and

WHEREAS, such impact fees shall be calculated, imposed and collected by the City pursuant to procedures and criteria set forth in this ordinance, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. Short Title. This ordinance shall be known and may be cited as the "Gig Harbor Impact Fee Ordinance" and shall comprise a new Chapter 19.12 in Title 19 of the Gig Harbor Municipal Code.

Section 2. Authority and Purpose.

A. This ordinance is enacted pursuant to the City's police powers, the Growth Management Act as codified in Chapter 82.02 of the Revised Code of Washington (RCW), Chapter 58.17 RCW relating to platting and subdivisions, and the State Environmental Policy Act (SEPA) Chapter 43.21C RCW.

B. The purpose of this ordinance is to:

1. Develop a program consistent with the Gig Harbor Parks Open Space and Recreation Plan, 6-Year Road Plan and the City's Comprehensive Plan (parks and transportation elements), and Capital Improvement Plan, for joint public and private financing of park and transportation facility improvements necessitated in whole or in part by development in the City;

2. To ensure adequate levels of service within the City;

3. Create a mechanism to charge and collect fees to ensure that all new development bears its proportionate share of the capital costs of off-site parks and transportation facilities reasonably related to new development, in order to maintain adopted levels of park service and maintain adopted levels of service on the City's transportation facilities;

4. Ensure that the City pays its fair share of the capital cost of parks and transportation facilities necessitated by public use of the parks and roadway system; and

5. Ensure fair collection and administration of such impact fees.

C. The provisions of this ordinance shall be liberally construed to effectively carry out its purpose in the interest of the public health, safety and welfare.

Section 3. Applicability.

A. The requirements of this ordinance apply to all development as defined in Ordinance No. 817, Chapter 19.14 of the Gig Harbor Municipal Code.

B. Mitigation of impacts on parks and transportation facilities located in jurisdictions outside the City will be required when:

1. The other affected jurisdiction has reviewed the development's impact under its adopted impact fee/mitigation regulations and has recommended to the City that there be a requirement to mitigate the impact; and
2. There is an interlocal agreement between the City and the affected jurisdiction specifically addressing impact identification and mitigation.

Section 4. Geographic Scope. The boundaries within which impact fees shall be charged and collected are the same as the corporate City limits. All unincorporated areas annexed to the City on and after the effective date of this ordinance shall be subject to the provisions of this ordinance. After the adoption of interlocal agreements with other local and regional governments, the geographic boundaries may be expanded consistent therewith.

Section 5. Definitions. For the purposes of this ordinance, the terms used in this ordinance shall have the meanings as set forth in chapter 19.14, unless the context clearly indicates otherwise.

Section 6. Imposition of Impact Fees.

A. The Approving Authority is hereby authorized to impose impact fees on new Development.

B. Impact fees may be required pursuant to the Impact Fee Schedule adopted through the process described herein, or mitigation may be provided through: 1) the purchase, installation and/or improvement of park and transportation facilities pursuant to Section 9(C) dedication of land pursuant to Section 9(C) of this ordinance.

C. Impact Fees:

1. Shall only be imposed for park and transportation facilities that are reasonably related to the impacts of Development;
2. Shall not exceed a proportionate share of the costs of park and transportation facilities that are reasonably related to new Development;
3. Shall be used for park and transportation facilities that will reasonably benefit the new Development;
4. Shall not be used to correct existing deficiencies;
5. Shall not be imposed to mitigate the same off-site park and transportation facility impacts that are being mitigated pursuant to any other law;
6. Shall not be collected for improvements to state/county park and transportation facilities unless the state/county requests such improvements and an agreement to collect such fees has been executed between the state/county and the City;
7. Shall not be collected for improvements to park and transportation facilities in other municipalities unless the affected municipality requests such improvement

and an interlocal agreement has been executed between the City and the affected municipality for collection of such fees;

8. Shall not be collected for any Development approved prior to the date of adoption of this ordinance unless changes or modifications in the Development requiring City approval are subsequently proposed which result in greater direct impacts on park and transportation facilities than were considered when the Development was first approved;

9. Shall be collected only once for each Development, unless changes or modifications to the Development are proposed which result in greater direct impacts on park and transportation facilities than were considered when the Development was first permitted;

10. May be imposed for system improvement costs previously incurred by the City, to the extent that new growth and development will be served by the previously constructed improvements, and provided that such fee shall not be imposed to make up for any system improvement deficiencies; and

11. Shall only be imposed for park facilities on residential Development.

Section 7. Approval of Development. Prior to approving or permitting a Development, an Approving Authority shall consult with the Director concerning mitigation of a Development's impacts.

Section 8. Fee Schedules and Establishment of Service Area.

A. Impact Fee Schedules setting forth the amount of the Impact Fees to be paid by Development are listed in Appendix 'B' for Roads and Appendix 'C' for parks, attached hereto and incorporated herein by this reference.

B. For the purpose of this ordinance, the entire City shall be considered one Service Area.

Section 9. Calculation of Impact Fees.

A. The Director shall calculate the Impact Fees set forth in Appendix B and C, more specifically described in the Gig Harbor 6-Year Road Plan and the Parks Open Space and Recreation Plan, which:

1. Determines the standard fee for similar types of Development, which shall be reasonably related to each Development's proportionate share of the cost of the Projects described in Appendix 'A', and for parks shall be calculated as set forth in Appendix 'C'.

2. Reduces the proportionate share by applying the benefit factors described in this section.

B. In calculating proportionate share, the Director shall:

1. Identify all park and transportation facilities that will be impacted by users from each Development.

2. Identify when the capacity of a park 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 as of the time they are placed on the List, and the cost of maintaining the City's level of park service as shown on Appendix 'D' and then update the cost estimates at least annually, considering the:

- a. Availability of other means of funding park and transportation facility improvements;
- b. Cost of existing park and transportation facility improvements; and
- c. Methods by which park and transportation facility improvements were financed;

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

C. The Director shall reduce the calculated proportionate share by giving credit for the following benefit factors:

- 1. The purchase, installation and/or improvement of park and transportation facilities, if:
 - a. the facilities are located on land owned by the City, Pierce County, a 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 determines that the facilities correspond to the type(s) of park and transportation facilities being impacted by the Development as determined pursuant to this ordinance; 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 6-Year Road Plan and any applicable 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 have been included in the calculation of the impact fee.

4. A developer of a planned residential development or mobile home park may receive credit only for park 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 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 and transportation facilities, the developer shall prepare and submit a facility improvement plan to the Director 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 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 and/or transportation facilities;
- c. The land is of an 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 for park, trail or land use plans for recreation purposes;
- f. The land provides linkage between Pierce County and/or other publicly-owned recreation or transportation properties;
- g. The land has been surveyed or adequately marked with survey monuments, or 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 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; and
- k. The developer is able to provide and fund a long-term method, acceptable to the Director, for the management and maintenance of the land, if applicable.

7. The amount of credit determined pursuant to this subsection C shall be credited proportionately among all 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 upon 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 10. Variation from Impact Fee Schedule. If a developer submits information demonstrating a significant difference between the age, social, activity or interest characteristics of the population of a proposed subdivision or Development and the data used to calculate the Impact Fee Schedule, the Director may allow a special calculation of the Impact Fee requirements for the subdivision or Development to be prepared by the Developer's consultant; at the Developer's cost; provided, however, that the Director shall have prior approval of the qualifications and methodology of the Developer's consultant in making such calculation, and any time period mandated by statute or ordinance for the Approving Authority's decision on the subdivision or Development shall not include the time spent in preparing the special calculation. Whether the Director accepts the data provided by the special calculation shall be at the Director's discretion.

Section 11. Payment of Fees.

A. All developers shall pay an Impact Fee in accordance with the provisions of this ordinance at the time that the applicable development permit is ready for issuance.

1. Vested Permits. The Fee paid shall be the amount in effect as of the date that the City determines that the applicable development permit is complete, as long as at least one development permit for the project is of the type that vests under the City=s ordinances or state law.

2. Non-Vested Permits. If a developer submits an application for a development permit that does not vest under the City=s ordinances or state law, then the Fee paid shall be the amount in effect as of the date of permit issuance.

3. Plats. The amount of the impact fee shall be the amount established at the time the preliminary plat or short plat applications are determined to be complete by the City only if: (1) the approval of the preliminary plat has not expired; or (2) at the very latest, the developer has submitted a complete building permit application for all construction in the plat within five years of the anniversary date of the short plat or final plat..

B. The Impact Fee, as initially calculated for a development permit, shall be recalculated at the time of issuance if the Development is modified or conditioned in such a way as to alter park and transportation impacts for the Development.

C. A developer may obtain a preliminary determination of the Impact Fee before application for a development permit by providing the Director with the information needed for processing.

Section 12. Time of Payment of Impact Fees.

A. Payment of any required Impact Fees calculated as set forth in Section 11(A)(3) shall be made prior to the issuance of a building permit. If the impact fee is not at final approval, this shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the final plat.

B. When a subdivision or Development is conditioned upon the dedication of land, or the purchase, installation or improvement of park and transportation facilities, a final plat or short plat shall not be recorded, and a building permit shall not be issued for other development until:

1. The Director has determined in writing that any land to be dedicated is shown on the face of the final plat or short plat, or a deed conveying the land to the City,

Pierce County, a school district or special purpose district, as appropriate, has been recorded with the Pierce County Auditor; and

2. The Director has determined in writing, after consultation with the designated public owner responsible for permanent, continuing maintenance and operation of the facilities, that the developer has satisfactorily undertaken, or guaranteed to undertake in a manner acceptable to the Director, any required purchase, installation or improvement of park and transportation facilities.

Section 13. Project List.

A. The Director shall annually review the City's Parks Open Space and Recreation Plan, the Six-Year Parks Improvement Plan, the Six-Year Road Plan and the Projects listed in Appendix A and B and shall:

1. Identify each Project in the Comprehensive Plan that is Growth-Related and the proportion of each such Project that is Growth-Related;

2. Forecast the total monies available from taxes and other public sources for park and transportation improvements for the next six (6) years;

3. Update the population, building activity and demand and supply data for park and transportation facilities and the Impact Fee Schedule for the next six (6) year period.

4. Calculate the amount of Impact Fees already paid; and

5. Identify those Comprehensive Plan projects that have been or are being built but whose performance capacity has not been fully utilized.

B. The Director shall use this information to prepare an annual Draft Amendment to the fee schedule. A draft amendment to Exhibits A and D, which shall comprise:

1. The Projects on the Comprehensive Plan that are Growth-Related and that should be funded with forecast public monies and the Impact Fees already paid; and
2. The Projects already built or funded pursuant to this ordinance whose performance capacity has not been fully utilized.

C. The Council, at the same time that it adopts the annual budget and appropriates funds for capital improvement projects, shall by separate ordinance establish the annual Project List by adopting, with or without modification, the Director's Draft Amendment.

D. Once a Project is placed on Appendix A, or the City amends its level of park service in Appendix 'D' a fee shall be imposed on every Development that impacts the Project until the Project is removed from the List by one of the following means:

1. The Council by ordinance removes the Project from Appendix A and/or D, in which case the fees already collected will be refunded if necessary to ensure that Impact Fees remain reasonably related to the park and transportation impacts of Development that have paid an Impact Fee; provided that a refund shall not be necessary if the Council transfers the Fees to the budget of another Project that the Council determines will mitigate essentially the same park and transportation impacts; or
2. The capacity created by the Project has been fully utilized, in which case the Director shall administratively remove the Project from the Project List.

Section 14. Funding of Projects.

A. An Impact Fee trust and agency fund is hereby created. The Director shall be the fund manager. Impact fees shall be placed in appropriate deposit accounts within the Impact Fee fund.

B. The Impact Fees paid to the City shall be held and disbursed as follows:

1. The Fees collected for each Project shall be placed in a deposit account within the Impact Fee fund;

2. When the Council appropriates Capital Improvement Project (CIP) funds for a Project on the Project List, the Fees held in the Impact Fee fund shall be transferred to the CIP fund. The non-Impact Fee monies appropriated for the Project shall comprise both the public share of the Project cost and an advancement of that portion of the private share that has not yet been collected in Impact Fees;

3. The first money spent by the Director on a Project after a Council appropriation shall be deemed to be the Fees from the Impact Fee fund;

4. Fees collected after a Project has been fully funded by means of one or more Council appropriations shall constitute reimbursement to the City of the funds advanced for the private share of the Project. The public monies made available by such reimbursement shall be used to pay the public share of other Projects.

5. All interest earned on Impact Fees paid shall be retained in the account and expended for the purpose or purposes for which the Impact Fees were imposed.

C. Projects shall be funded by a balance between Impact Fees and public funds, and shall not be funded solely by Impact Fees.

D. Impact Fees shall be expended or encumbered for a permissible use within six (6) years of receipt, unless there exists an extraordinary or compelling reason for Fees to be held longer than six (6) years. The Director may recommend to the Council that the City hold Fees beyond six (6) years in cases where extraordinary or compelling reasons exist. Such reasons shall be identified in written findings by the Council.

E. The Director shall prepare an annual report on the Impact Fee account showing the source and amount of all monies collected, earned or received and projects that were financed in whole or in part by Impact Fees.

Section 15. Use and Disposition of Dedicated Land. All land dedicated or conveyed pursuant to this ordinance shall be set aside for development of park and transportation facilities. The City and Pierce County, any school district or special purpose district to which land is dedicated or conveyed pursuant to this ordinance, shall make every effort to use, develop and maintain land dedicated or conveyed for park and transportation facilities.

In the event that use of any such dedicated land is determined by the Director or Pierce County, any school district or special purpose district to be infeasible for development of park and transportation facilities, the dedicated land may be sold or traded for another parcel of land in the City, subject to the requirements of state law and City ordinances. The proceeds from such a sale shall be used to acquire land or develop park and transportation facilities in the City.

Section 16. Refunds.

A. A developer may request and shall receive a refund when the developer does not proceed with the development activity for which Impact Fees were paid, and the developer shows that no impact has resulted.

B. In the event that Impact Fees must be refunded for any reason, they shall be refunded with interest earned to the Owners as they appear of record with the Pierce County Assessor at the time of refund.

C. When the City seeks to terminate any or all Impact Fee requirements, all unexpended or unencumbered funds shall be refunded pursuant to this section. Upon the finding that any or all fee requirements are to be terminated, the City shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two (2) times and shall notify all potential claimants by first class mail to the last known address of claimants. All funds available for refund shall be retained for a period of one (1) year. At the end of one (1) year, any remaining funds shall be retained by the City, but must be expended on Projects on the City's adopted plans. This notice requirement shall not apply if there are no unexpended or unencumbered balances within an account or accounts being terminated.

Section 17. Exemption or Reduction for Low-Income Housing.

A. Public housing agencies or private non-profit housing developers participating in publicly-sponsored or subsidized housing programs may apply for exemptions from the Impact Fee requirements. The Director shall review proposed developments of low-income housing by such public or non-profit developers pursuant to criteria and procedures adopted by administrative rule. If the Director determines that a proposed Development of low-income housing satisfies the adopted criteria, such Development shall be exempted from the requirement to pay an Impact Fee.

B. Private developers who dedicate residential units for occupancy by low-income households may apply to the Director for reductions in Impact Fees. If the Director determines that the developer's program for low-income occupancy of housing units satisfy the

adopted criteria, the Director shall reduce the calculated Impact Fee for the Development so that the developer does not pay an impact fee for those units dedicated for low-income household occupancy.

C. The amount of the Impact Fee not collected from low-income Development shall be paid from public funds other than Impact Fee accounts.

D. The Director is hereby instructed and authorized to adopt administrative rules to implement this section. Such rules shall provide for the administration of this program and shall:

1. Encourage the construction of housing for low-income households by public housing agencies or private non-profit housing developers participating in publicly-sponsored or subsidized housing programs;

2. Encourage the construction in private developments of housing units for low-income households that are in addition to units required by another housing program or development condition;

3. Ensure that housing that qualifies as "low income" meets appropriate standards regarding household income, rent levels or sale prices, location, number of units and development size;

4. Ensure that developers who obtain an exemption from or reduction from Impact Fees will in fact build the proposed low income housing and make it available to low income households for a minimum of fifteen (15) years;

5. Implement an exemption plan whereby payment of the Impact Fee is deferred for low income housing and forgiven over a fifteen (15) year period.

Section 18. Appeals.

A. Decision by Director. The Director shall issue a written decision on the Impact Fee amount as described in this ordinance.

B. Reconsideration by Director. In order to appeal the Director=s decision, the developer shall:

1. Make a written request to the Director for a meeting to review the fee amount, together with a written request for reconsideration. The request for reconsideration shall state in detail the grounds for the request.

2. The Director shall consider any studies and data submitted by the developer seeking to adjust the amount of the fee. The Director shall issue a decision on reconsideration within ten (10) working days of the Director=s receipt of the request for reconsideration or the meeting with the developer, whichever is later.

C. Appeal of Decision on Reconsideration to Hearing Examiner. A developer may appeal the amount of the Impact Fee established in the Director=s decision on reconsideration to the Hearing Examiner, who shall conduct a public hearing on the appeal.

1. An appeal of the Impact Fee as established by the Directors= decision on reconsideration may be filed without appealing the underlying permit. If the developer files an appeal of the underlying permit and the impact fee, the appeals shall be consolidated.

2. The developer shall bear the burden of proving:

a. That the Director committed error in calculating the developer's proportionate share, as determined by an individual fee calculation, or, if relevant, as set forth in the Impact Fee Schedule, or in granting credit for the benefit factors; or

b. That the Director based his determination upon incorrect data.

3. An appeal of the Director=s decision on reconsideration must be filed with the Planning Department within fourteen (14) calendar days of that decision.

D. Appeal of Hearing Examiner=s Decision. Appeals from the decision of the Hearing Examiner shall be to the City Council, pursuant to the provisions of Gig Harbor Municipal Code Chapter19.05 GHMC.

Section 19. Relationship to SEPA.

A. As provided in RCW 82.02.100, a person required to pay a fee pursuant to RCW 43.21C.060 for system improvements shall not be required to pay an impact fee under this ordinance for those same system improvements.

B. Nothing in this ordinance shall be construed to limit the City's authority to deny development permits when a proposal would result in probable significant adverse impacts identified in an environmental impact statement and reasonable mitigation measures are insufficient to mitigate the identified impact.

Section 20. Park and Transportation Facility Requirements in Adjoining Municipalities/Districts. Level of service requirements and demand standards different than those provided in the Gig Harbor Comprehensive Park Plan shall be applied to park and recreation facility impacts in adjoining municipalities/districts if such different standards are provided in an interlocal agreement between the City and the affected municipality. Otherwise, the standards contained in the Gig Harbor Comprehensive Plan shall apply to park and transportation impacts in adjoining jurisdictions.

Section 21. Necessity of Compliance. A development permit issued after the effective date of this ordinance shall be null and void if issued without substantial compliance with this ordinance by the Director, the Department and the Approving Authority.

Section 22. Severability. If any part of this ordinance is found to be invalid, that finding shall not affect the validity of any remaining part of this ordinance.

Section 23. Effective Date. Pursuant to Gig Harbor Municipal Code Section 1.08.020(B), the City Council passed this ordinance on the day of its introduction, upon the affirmative vote of a majority plus one of the whole membership of the Council. The vote was unanimous. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force on December 15, 1999.

APPROVED:

MAYOR PRO TEM

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY TOWSLEE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:
BY _____

FILED WITH THE CITY CLERK: 9/22/99
PASSED BY THE CITY COUNCIL: 11/8/99
PUBLISHED: 11/18/99
EFFECTIVE DATE: 12/15/99
ORDINANCE NO. 828