

**Exhibit A**  
**ORDINANCE No. \_\_\_\_**

**Chapter 3.30**  
**TRANSPORTATION UTILITY FEE**

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**3.30.010 Creation and Purpose.**

A transportation utility fee is created and imposed for the purpose of maintaining the City of Garibaldi's streets. The transportation utility fee shall be paid by the Responsible Party for each Occupied Unit of real property. The purposes of the transportation utility fee are to charge users for the service the City provides in maintaining public streets and to ensure that maintenance occurs in a timely fashion, thereby reducing increased costs that result when maintenance is deferred.

**3.30.020 Definitions.**

As used in this chapter, the following shall mean:

- A. "City" means the City of Garibaldi.
- B. "City Manager" means the City's Manager or the City Manager's designee.
- C. "Developed Property" means a parcel or legal portion of real property, on which an improvement exists or has been constructed. Improvement on Developed Property includes, but is not limited to buildings, parking lots, landscaping and outside storage.
- D. "Finance Director" means the City Finance Director or the Finance Director's designee.
- E. "Nonresidential Property" means property that is not primarily used for personal domestic accommodation. Nonresidential Property includes industrial, commercial, institutional, hotel and motel, and other nonresidential uses.

F. "Occupied Unit" means any structure or any portion of any structure occupied for residential, commercial, industrial, or other purposes. For example, in a multi-family residential development, each dwelling unit shall be considered a separate Occupied Unit when occupied, and each retail outlet in a shopping mall shall be considered a separate Occupied Unit. An Occupied Unit may include more than one structure if all structures are part of the same dwelling unit or commercial or industrial operation. For example, an industrial site with several structures that form an integrated manufacturing process operated by a single manufacturer constitutes one Occupied Unit. Property that is undeveloped or, if developed, is not in current use is not considered an Occupied Unit.

G. "Parking Space Requirement" means the minimum off-street vehicle parking requirement as stated in the Off-Street Parking Requirements within the Garibaldi Land Development Code.

H. "Public Works Director" means the City Public Works Director or the Public Works Director's designee.

I. "Residential Property" means property that is used primarily for personal domestic accommodation, including single-family, multi-family Residential Property and group homes, but not including hotels and motels.

J. "Responsible Party" means the person or persons who by occupancy or contractual arrangement are responsible to pay for utility and other services provided to an Occupied Unit. Unless another party has agreed in writing to pay and a copy of the writing is filed with the City, the person(s) paying the City's water or sewer bill for an Occupied Unit shall be deemed the Responsible Party as to that Occupied Unit. For any Occupied Unit not otherwise required to pay a City utility bill, "Responsible Party" shall mean the person or persons legally entitled to occupancy of the Occupied Unit, unless another Responsible Party has agreed in writing to pay and a copy of the writing is filed with the City. Any person who has agreed in writing to pay is considered the Responsible Party if a copy of the writing is filed with the City.

K. "Street Maintenance" means any action to maintain City streets, including repair, renewal, resurfacing, replacement and reconstruction. Street Maintenance does not include the construction of new streets or street lighting. Street Maintenance shall include resurfacing of existing streets, repair or replacement of curb and gutter where they exist, repair or replacement of the entire existing street structural section, repair or replacement of existing street shoulders, pavement markers, striping and other street markings, repair or replacement of existing channelization devices, adjustment of existing utilities to match finish grades, and any other related work within the existing streets.

### **3.30.030 Administrative Officers Designated.**

A. Except as provided in subsections (B) and (C) of this section, the City Manager shall be responsible for the administration of this chapter. The City Manager shall be responsible for developing administrative procedures for this chapter, administration of fees, and for the purposes of establishing the fee for a specific Occupied Unit, the consideration and assignment of categories of use, and Parking Space Requirements subject to appeal in accordance with this chapter.

B. The Public Works Director shall be responsible for developing and maintaining Street Maintenance programs for the maintenance of City streets and, subject to City Budget Committee review and City Council approval, allocation and expenditure of budget resources for street system maintenance in accordance with this chapter.

C. The Finance Director shall be responsible for the collection and calculation of fees.

### **3.30.040 Transportation Utility Fees Allocated to the Transportation Utility Fee Fund.**

A. All transportation utility fees received shall be deposited into the transportation utility fee fund or other fund dedicated to the operation and maintenance of the City street system. The transportation utility fee fund shall be used solely for Street Maintenance of streets identified in the Plan. Other revenue sources may also be used for Street Maintenance. Amounts in the transportation utility fee fund may be invested by the Finance Director in accordance with State law. Earnings from such investments shall be dedicated to the transportation utility fee fund.

B. The transportation utility fee fund shall not be used for other governmental or proprietary purposes of the City, except to pay for an equitable share of the City's overhead costs including accounting, management and other costs related to management and operation of the Street Maintenance program. Engineering design, pavement evaluation, construction management, and other related costs, including project advertisements for bid, in the implementation of the Street Maintenance projects shall also be considered as being used for Street Maintenance.

### **3.30.050 Determination of Transportation Utility Fee.**

A. The transportation utility fee shall be established based on the following:

1. The City's Plan for corrective and preventative maintenance of the City's street infrastructure.
2. For Residential Property, the fee shall be charged on a per unit basis.
3. For Nonresidential Property, the fee shall be charged on a per unit basis.

- B. The transportation utility fee rates shall be established by Council resolution.
- C. The transportation utility fee will be adjusted annually according to the Engineering News Record 20-City Construction Cost index ("Index") average based on a two-year rolling average of the indices.
- D. The transportation utility fee program shall be reviewed annually as part of the City's budget process.
- E. Following each review of the program, the Finance Director shall review the revenue received from the new rates after a full year of collection to determine if the annual revenues meet the annual funding level set by the Plan. The Finance Director shall report the findings of that review to City Council and may make recommendations on any potential fee increases or decreases based on that review. Any unspent funds will be placed in a reserve fund.

### **3.30.060 Billing and Collection of Fee.**

- A. The per unit transportation utility fee shall be billed to and collected from the Responsible Party for each Occupied Unit. Billings shall be included as part of the water and sewer bill for Occupied Units utilizing either or both of these City services. All such bills shall be rendered regularly by the Finance Director and shall become due and payable upon receipt.
- B. Collections from utility customers will be applied first to interest and penalties, then to the transportation utility fee, then to sewer, then water utility fees.
- C. An account is delinquent if the transportation utility fee is not paid by the due date shown on the utility bill. The City may follow the procedures for collection of delinquent accounts, including termination of water *and/or* sanitary sewer service. Transportation utility fee delinquencies will not be included within amounts lien to properties in the event of non-payment.
- D. For newly developed properties, the fees imposed under this chapter shall become due and payable from and after the date when the Developed Property is occupied and connected to the public water or sanitary sewer system.
- E. If an Occupied Unit of Nonresidential Property is used for more than one use with different minimum parking requirements, the transportation utility fee shall be based on the required parking for the total of the various uses.
- F. The determination or assignment of a use category and minimum number of parking spaces under the provisions of this chapter are strictly for the purpose of establishing a fee and are not statutory land use decisions.

### **3.30.070 Exemption.**

Transportation utility fees imposed under this chapter shall apply to all Occupied Units, including property which may be entitled to exemption from or deferral of ad valorem property taxation. Occupied Units owned by local, state and federal governments and Occupied Units occupied by local, state and federal governments are exempt from the transportation utility fee.

### **3.30.080 Waiver of Fees in Case of Vacancy.**

A. When any Developed Property within the City becomes vacant as described in subsection (F) of this section, upon written application by the Responsible Party and approval by the Finance Director, the transportation utility fee shall thereafter not be billed until such time as the property is no longer vacant.

B. The Finance Director is authorized to cause an investigation of any property for which an application for determination of vacancy is submitted to verify any of the information contained in the application. The Finance Director is further authorized to develop and use a standard form of application, provided it shall contain a space for verification of the information and the person signing such form affirms under penalty for false swearing the accuracy of the information provided therein.

C. When any Developed Property within the City has the utilities shut-off due to vacancy, the transportation utility fee shall be waived for the duration of the vacancy as described in subsection (F) of this section.

D. When any multi-occupied Developed Property within the City has one or more vacancies as described in subsection (F) of this section, the Responsible Party may request, in writing, a waiver of a portion of the transportation utility fee applicable to the vacant units.

E. When a change of use occurs, a vacancy has been filled, or a property is developed, it is the Responsible Party's responsibility to inform the City of any change so the proper transportation utility fees may be assessed. If the Responsible Party does not inform the City of any change, the City shall cancel the vacancy waiver and charge the Responsible Party as per subsection (F) of this section.

F. For purposes of this section, a unit of property is vacant when it has been continuously unoccupied and unused for at least thirty (30) days. Fees shall be waived in accordance with this section only while the property remains vacant. The waiver duration is for six (6) months. After six (6) months, the Responsible Party must re-apply for the waiver if the property continues to be unoccupied and unused. The Responsible Party has thirty (30) days to re-apply for the vacancy waiver after the expiration of the six (6) month waiver. Any occupancy or use of the property terminates the waiver. As a penalty for not reporting a change in property vacancy, the City may charge any property two times the appropriate transportation utility fee that would have been due

without the vacancy waiver for prior billing periods, upon determining, in City's sole discretion, that the property did not qualify for waiver of charges during the relevant time. The decision of the Finance Director under subsections (A), (B), and (F) of this Section is final.

### **3.30.090 Reduction of Fees for Low Income Households.**

Upon written application by the Responsible Party, and approval by the Finance Director, Occupied Units receiving a reduction in water and sewer base fees per the City's low-income eligibility policy shall receive a commensurate reduction in the transportation utility fee charged. The Finance Director's decision under this Section is final.

### **3.30.100 Appeals.**

A. The City Manager shall have the initial authority and responsibility to interpret all terms, provisions and requirements of this chapter and to determine the appropriate charges thereunder. The Responsible Party for an Occupied Unit may request reconsideration of the Public Work Director's determination of the amount of the fee by submission of a written application to the City Manager. The application shall be supported with sufficient factual details to enable the City Manager to render a decision.

B. Within thirty (30) days of the submission of a complete application requesting reconsideration of the amount of the transportation utility fee to be charged to an Occupied Unit, the City Manager shall render a decision on the application. The decision shall be written and shall include findings of fact and conclusions for the particular aspects of the decision, based upon applicable criteria, which may include a land use decision following appropriate procedures that modifies the minimum required vehicle parking for an Occupied Unit. A copy of the decision shall be mailed to the person submitting the request.

C. For the purpose of reviewing the fee, the City Manager may determine that the land use category is proper and that the fee charged is appropriate. However, if the decision of the City Manager results in a change in the category of land use, the City Manager shall, for the purpose of establishing the fee, assign a new use category, determine the appropriate fee for the category, and notify the Finance Director so that the appropriate change may be made in the applicable fee to be charged in the future. No back charges or refunds are required.

D. The Responsible Party may appeal the City Manager's determination to the Council. The notice of appeal must be filed in writing within ten (10) days of the date notice of change of category of land use and determination of fee is sent and must be filed with the office of the City Manager in writing, stating:

1. The name and address of the appellant.

2. The address of the affected premises.
3. The nature of the determination being appealed.
4. The reason the determination is incorrect.
5. What the correct determination of the appeal should be.

A Responsible Party who fails to file such a statement within the time permitted waives his or her objections and the appeal shall be dismissed. If notice of appeal is properly filed, except in an emergency, the City shall take no enforcement action regarding the Responsible Party's failure to pay the transportation utility fee until the Council renders a final determination on the appeal.

At its next available meeting, the Council shall hear and determine the appeal on the basis of the written statement and such additional evidence as the Council deems appropriate. The appellant shall be allowed at least ten (10) days' written notice of the hearing on appeal. At the hearing the appellant may present testimony and oral argument personally or by counsel, and additional evidence. The rules of evidence as used by courts of law do not apply. The decision of the Council shall be in writing and shall contain findings of fact that substantiate the Council's decision. The decision shall be mailed to the appellant within ten (10) days of the completion of the appeal hearing. The decision of the Council shall be final.

### **3.30.110 Penalty.**

In addition to any other remedy, violation of any provision of this chapter shall, upon conviction, constitute a violation punishable by a maximum fine of \$50. Each day of delinquency in paying the transportation utility fee constitutes a separate violation.

### **3.30.120 Severability.**

A. In the event any section, subsection, paragraph, sentence or phrase of this chapter or any administrative policy adopted herein is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of the chapter shall continue to be effective. If a court of competent jurisdiction determines that this chapter imposes a tax or charge, which is therefore unlawful as to certain but not all affected parties, then as to those certain properties, an exception or exceptions from the imposition of the transportation utility fee shall thereby be created and the remainder of the chapter and the fees imposed thereunder shall continue to apply to the remaining properties without interruption.

B. Nothing contained herein shall be construed as limiting the City's authority to levy special assessments in connection with public improvements pursuant to applicable law.