

TOWN OF GIBRALTAR

ORDINANCE 2022-34

ADOPTING A TRANSPORTATION UTILITY

TRANSPORTATION UTILITY

1 – Purpose and Intent.

- (a) The Town of Gibraltar Board finds that the timely maintenance and reconstruction of the Town's transportation system to ensure safe and efficient travel throughout the Town is a fundamental Town responsibility. A structurally sound and well-maintained transportation system enhances livability, property values, and the economic vitality of the entire Town. Further, the Town Board finds that a community-wide Transportation Utility District applicable to all developed properties, paid monthly to a specially designated account for transportation system maintenance and improvement, is an equitable and less burdensome approach to financing transportation system maintenance and improvements in the Town.
- (b) To protect the health, safety, and welfare of the public, the Town Board is exercising its authority to establish a Transportation Utility District and implement a transportation utility fee. The Town is acting under authority granted by Chapter 62 and 66 of the Wisconsin Statutes, including but not limited to Sections 62.11(5) and 66.0621.
- (c) The provisions of this chapter shall apply to all developed property located within the Town of Gibraltar, including, without limitation, all property owned by local, state, and federal governments, nonprofit organizations, and all other property whether subject to real property taxes or exempt therefrom.
- (d) The Town Board shall review the Transportation Utility at least every five years to evaluate the success of the activities funded and the appropriateness of the rate structure.

2 – Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

Administrator means the Town Administrator or his or her designee. The Administrator shall oversee the implementation of this Article.

Developed Property means a property 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, outside storage, and other uses that impact the transportation system. A property shall be considered developed for purposes of this section as soon as there is evidence of any improvement being constructed on the Property.

ITE Manual means Trip Generation Manual published by the Institute of Transportation Engineers, 8th or more recent edition.

Responsible Party means the record owner of the property shall be the responsible party for the payment of the transportation utility fee.

Transportation System means the public streets, infrastructure within the right of way, bike paths and trails, sidewalks, traffic control and signalization, signage, street lighting and all accessories compatible and necessary to support transportation within the Town of Gibraltar.

Trip means a single one-direction person or vehicle movement with either the origin or destination inside a study area. A trip has an origin and a destination at its respective ends.

Trip Generation Rate means the number of vehicle trips on an average weekday, as determined by reference to the ITE Manual.

Vacant means a residential building that is not occupied by any inhabitants, or a commercial building that is completely empty, unoccupied, and/or unused continuously for at least 3 months.

Undeveloped Property means an unimproved property, having no assessed improvements or built infrastructure.

Utility Account means the entity to which the Transportation User Fee will be charged.

Utility Account Customer means the entity in whose name a water, sanitary sewer, and/or electricity account exists and who is responsible for payment of charges for said account.

3 – Transportation utility fund.

- (a) Revenue generated by the Transportation Utility shall not be used for storm sewer, water or sanitary sewer facilities, and shall only be used only for the following: 1) related administration costs (e.g. billing, collection, utility updates, review of fee structure, internal staff or external consultant costs); 2) pavement preservation activities (e.g., grind/inlay, patch, slurry seal, crack seal, chip seal, or other generally accepted means of maintenance); 3) street construction and/or reconstruction activities on Town streets; 4) sidewalk maintenance, construction, or reconstruction; 5) street lighting and appurtenances; 6) traffic control and

signalization maintenance, construction, or reconstruction; 7) pedestrian and bicycle facilities.

- (b) All fees collected pursuant to this chapter shall be deposited in the Town's Transportation User Fund.

4 – Transportation user fee.

- (a) Every Developed Property except those owned by the Town shall pay a Transportation User Fee.
- (b) The fee shall be based on the Developed Property's direct and indirect uses of, or benefits derived from the use of the transportation system.
- (c) The fee imposed under this chapter shall become due and payable from and after the effective date of this chapter, and for property developed after the effective date of this chapter, from and after the date the property becomes developed.
- (d) The Transportation User Fee imposed under subsection (a) of this section may be paid by the owner, occupant, business, or anyone designated by the owner; however, if the Transportation User Fee is not paid promptly, when due, the Town shall proceed to collect such charges from the Utility Account Customer in any manner provided by law, or seek imposition of the charges on the property tax bill for the benefitted property through Door County.
- (e) The fee imposed under this chapter shall begin with utility bills issued on or after the effective date of the adoption of this ordinance.

5 – Exceptions to the transportation user fee.

- (a) The following shall not be subject to the Transportation User Fee:
 - (1) Publicly owned parkland, open spaces, and greenways, unless public off-street parking designed to accommodate the use of such areas is provided.
 - (2) Undeveloped properties.

6 – Determination of transportation user fee.

- (a) The Transportation User Fee shall be comprised of a Base Fee and a Usage Fee.
 - (1) *Base Fee.* A fee that is equal for all utility accounts that recognizes that each utility account is receiving a uniform benefit of access to the transportation system and includes administrative costs and those fixed capital, operating and maintenance costs of the transportation system that are not recoverable by the usage fee or other confirmed revenue source. The base fee is determined by dividing the total amount of fixed base costs by the total number of utility accounts.
 - (2) *Usage Fee.* A fee on each utility account that is determined by multiplying the number of trips assigned to the utility account by the per-trip rate. The per-trip rate is determined by dividing the target budget (not including the fixed-based costs budget) by the total number of trips generated by all utility accounts. The number of trips assigned to each utility account is calculated by using land-use Trip Generation Rates from the ITE Manual, latest edition, multiplied by a scale factor and adjusted where appropriate by a

deduction factor (e.g., seasonal land uses, K-12 school year, seasonal park properties,).

- (b) The base fee and per-trip rate shall be in an amount set forth and updated from time to time by resolution of the Town Board. Staff shall present the Town Board with a draft resolution proposing an adjustment based on the proposed transportation-system improvements budget for the projected improvement program timeframe. Any adjustment of the charge shall be effective on the date determined in the resolution.
- (c) For each Utility Account, the Administrator shall determine the category of use from the ITE Manual, latest edition, that shall apply to each developed Utility Account within the Town. In the absence of a specific-use category from the ITE Manual, latest edition, for a particular developed use, the Administrator shall determine the appropriate use category that most accurately reflects the traffic generated by the particular developed use. After determining the appropriate use category for a Developed Property, the Administrator shall use the trip-generation figures for the assigned use category from the ITE Manual, latest edition, to calculate the usage fee using the per-trip rate in the most current resolution. The Administrator may require and consider the results of a traffic study, provided that such study shall be conducted by a registered professional engineer in conformance with the methodology outlined in the WisDOT Bureau of Traffic Operations Traffic Impact Analysis Guidelines, latest edition, Chapter 3, part B, titled "Traffic Volumes." The determination of a use category shall be considered confirmed by the administrator for the existing land-use or the purpose of land-use planning.
- (d) If the use of a property changes such that its impact on the transportation system either increases or decreases, the Utility Account Customer for the property must notify the Administrator within 30 days to obtain a new determination regarding the Transportation User Fee for that property. The request shall be made on forms provided by the Town that the property owner must complete and submit with information pertinent to the request. The new fee will be applied with the next Town services billing. If the Utility Account Customer neglects to notify the Town, and the charge would result in a lower monthly Transportation User Fee, no refund will be made for the time between when the change was made and when the Town became aware of the change. If the change would result in a higher monthly Transportation User Fee, the Town will calculate the amount owed back to the time the change was made and apply that to the next Town services billing.

7 – Billing and collection of fees.

- (a) The Transportation User Fee shall be billed and collected annually or semiannually.
- (b) In the event payments received from the Town's billings, described in subsection (a) above, do not suffice to satisfy in full all the Town's fees, credit shall be given first to penalty fee and interest, and then divided evenly between the funds.
- (c) If the Transportation User Fee is not paid when due, the Town shall proceed to collect such charges in any manner provided by law, or seek imposition of the charges in the property tax bill for the benefitted property through Door County.

8 – Waiver of fee in case of vacancy.

- (a) When any property within the Town becomes vacant, a waiver of the Usage Fee may be granted if the Utility Account Customer notifies the Town Clerk in writing 30 days prior to the anticipated date of vacancy. All outstanding water, wastewater, electricity, and Transportation User Fee charges must be paid before a waiver will be granted. The minimum vacancy to qualify for a usage fee reduction shall be eight (8) months. No waiver will be granted for the base fee.
- (b) Fees shall be waived according to this section only while the property remains vacant. The Utility Account Customer shall notify the Town Clerk within 5 days of the premises being re-occupied, partially occupied or used, regardless of whether water service is restored.

9– Appeal.

- (a) Any Utility Account Customer may appeal the usage fee by filing a written appeal to the Town Clerk. The written appeal shall specify the grounds for the challenge to the amount of the fee and shall state the amount of fee that the appellant considers appropriate.
- (b) Such petition shall be made in writing and be filed with the Town Clerk within 30 days of the date on the utility bill.
- (c) The appeal must specify the basis for the appeal and may include a traffic study as prepared as noted in Section 102-416(c) above and shall be limited to the facts related to the Developed Property improvements, Trip Generation Rates, category of use, and other factors material to the calculation of the usage fee.
- (d) The Administrator shall review the petition and determine if there is an error in any order, decision, or determination made pertaining to the classification of the property or calculation of the usage fee. If the Trip Generation Rate is within 10 percent of the rate used to generate the usage fee, no adjustments in the usage fee shall be made because this result falls within the expected margin for day-to-day variation. Once a determination has been made on a reclassification and/or fee, no additional request may be filed for the same property unless there has been a significant material change from the prior determination. The decision of the Administrator shall be provided in writing to the applicant. A Utility Account Customer may appeal the decision of the Administrator to the Town Board. The appeal must be filed in writing to the Town Clerk within 30 calendar days from the date that the decision of the Administrator was mailed to the Utility Account Customer.
- (e) The Town Board shall hear and decide appeals on the basis other than an alleged error in the determination of the classification of the property or calculation of the Transportation User Fee. The Town Board shall determine whether the Transportation User Fee is fair and reasonable according to the terms of this ordinance, and, in the event the appeal is granted, whether a refund is due the appellant and the amount of the refund. The Town Board shall conduct a hearing and provide notice to the appellant at least five business days prior to the hearing. The Town Board shall obtain sufficient facts upon which to make a determination, and the decision shall be based upon the evidence presented.

10 – Inspection of premises.

Upon presenting credentials, a representative of the Town shall have the right to request entry at any reasonable time to examine any property for purposes of conducting any studies or collecting information bearing upon the determination of the appropriate use category or Transportation User Fee according to this Article. If entry is refused, such representative may obtain a special inspection warrant under Wisconsin Statutes 66.01119; however, if such access is not permitted by the property owner or occupant, the existing fee shall be presumed correct unless substantial material evidence is presented to the contrary.

11 – Severability.

If any provision, paragraph, word, section, or article of this chapter is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

Dated this 23rd day of June, 2022.

TOWN BOARD FOR THE TOWN OF GIBRALTAR

Steve Sohns, Town Chairperson

Tim Luetzgen, Town Supervisor

Bill Johnson, Town Supervisor

Jayson Merkel, Town Supervisor

Brian Merkel, Town Supervisor

Attest:

Kelly Murre, Town Clerk