ORDINANCE #548

AN ORDINANCE READOPTING AND GIVING RETROACTIVE EFFECT TO ORDINANCE #444 - IMPOSING IMPACT FEES FOR FIRE PROTECTION, PARK AND RECREATION FACILITIES, AND TRAFFIC FACILITIES; AND AMENDING ORDINANCE #444 TO INCREASE IMPACT FEES FOR FIRE PROTECTION, PARK AND RECREATION FACILITIES, AND TRAFFIC FACILITIES

Whereas, the Town of Yacolt, Washington, (hereafter "*Town*" or "*Yacolt*"), did on March 6, 2006, approve and adopt Ordinance #444, entitled "An Ordinance Imposing Impact Fees for Fire, Parks, and Traffic";

Whereas, the Town's record of Ordinance #444 as signed by the Mayor and certified by the Clerk is not currently available and has not been located in the Town's records and files;

Whereas, the Town Council desires to eliminate any question as to the terms of Ordinance #444, and to resolve any possible doubt regarding the effectiveness and enforceability of Ordinance #444 from and after the date of its original adoption;

Whereas, the Town Council therefore desires to readopt Ordinance #444 and to confirm that Ordinance #444 as identified herein is intended by the Town of Yacolt to be treated as effective and enforceable from the date of such Ordinance's adoption, except as later amended or repealed;

Whereas, the Town Council desires that adequate facilities for fire protection, parks and recreation facilities, and traffic facilities be available to serve new growth and development in the Town, and further desires to promote orderly growth and development with standards by which the Town may require new development to pay a proportionate share of the cost of new facilities needed to serve new growth and development;

Whereas, impact fees for fire protection, parks and recreation facilities, and traffic facilities are authorized by Washington's Growth Management Act;

Whereas, the Town Council has determined that it is in the best interests of the Town to increase its impact fees for fire protection, parks and recreation facilities, and traffic facilities; and,

Whereas, the Town Council of the Town of Yacolt is in regular session this 6th day of September, 2016, and all members of the Town Council have had notice of the time, place, and purpose of said meeting:

NOW THEREFORE, be it Ordained by the Town Council of the Town of Yacolt, Washington:

Section 1 – Re-Adoption of Ordinance #444. Ordinance #444, (attached hereto as Exhibit A), originally approved and adopted on March 6, 2006, and entitled "An Ordinance Imposing Impact Fees for Fire, Parks, and Traffic", is hereby readopted and affirmed. Ordinance #444 is further in all respects ratified and confirmed, and shall be given retroactive effect to its original date of adoption on March 6, 2006, except in so far as the Ordinance may have been or shall later be amended or repealed, and except in so far as the Ordinance is amended by this Ordinance #548. All actions of the Town in furtherance of the Town's business and interests relative to Ordinance #444 from its original adoption on March 6, 2006, are further hereby ratified and approved.

Section 2 – Amendment of Section 7 of Ordinance #444: Section 7 of Ordinance #444 of the Town of Yacolt, adopted March 6, 2006, entitled "An Ordinance Imposing Impact Fees for Fire, Parks, and Traffic", is hereby amended by replacing said Section 7 entirely with the following:

> The fire, park, and traffic impact fee for each development activity on which an impact fee is imposed as provided in this ordinance shall be determined according to the following schedule:

IMPACT FEE	SINGLE FAMILY DETACHED	SINGLE FAMILY ATTACHED (DUPLEX)	MOBILE/ MANUFACTURED HOME	COMMERCIAL
Fire	$ 250	$ 250	$ 250	$ 1,150
Park	$ 2,300	$ 2,300	$ 2,300	$ 0
Traffic	$ 2,750	$ 2,750	$ 2,750	$ 3,850

Section 3 - Savings Clause. All terms of Ordinance #444 shall remain in full force and effect until the effective date of this Ordinance #548. As of and following the effective date of this Ordinance #548, the remaining terms of Ordinance #444 shall remain in full force and effect as amended hereby.

Section 4 - Inconsistent Ordinances. All general ordinances of the Town that are inconsistent with this Ordinance #548 are hereby superseded, rather than repealed, and in the event any portion of this Ordinance #548 is for any reason found or held to be invalid, the applicable portions of the superseded ordinance shall be revitalized and shall prevail.

Section 5 – Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by a court of competent jurisdiction, or its application to any Person or circumstances is held invalid, the remaining portion of this Ordinance shall remain in full force and effect, and the application of the provision to other Persons or circumstances shall not be affected.

Section 6 - Effective Date. This Ordinance shall take effect immediately upon adoption and publication of the following summary, according to law.

Town of Yacolt - Summary of Ordinance #548

The Town Council of the Town of Yacolt adopted Ordinance #548 at its regularly scheduled Town Council meeting held on September 6, 2016. The content of the Ordinance is summarized in its title as follows:

AN ORDINANCE READOPTING AND GIVING RETROACTIVE EFFECT TO ORDINANCE #444 - IMPOSING IMPACT FEES FOR FIRE PROTECTION, PARK AND RECREATION FACILITIES, AND TRAFFIC FACILITIES; AND AMENDING ORDINANCE #444 TO INCREASE IMPACT FEES FOR FIRE PROTECTION, PARK AND RECREATION FACILITIES, AND TRAFFIC FACILITIES. The effective date of the Ordinance is September 14, 2016.

A copy of the full text of the Ordinance will be mailed upon request to the undersigned at the Town of Yacolt Town Hall, P.O. Box 160, Yacolt, WA 98675: (360) 686-3922.

Published this 14th day of September, 2016.
Cindy Marbut, Town Clerk/Treasurer

PASSED by the Town Council of the Town of Yacolt, Washington, at a regular meeting thereof this 6th day of September, 2016.

TOWN OF YACOLT

Jeff Carothers, Mayor

Attest:

Cindy Marbut, Town Clerk/Treasurer

Approved as to Form:

David W. Ridenour, Town Attorney

Ayes: Hancock, Myers, Listek, Walloway, Tester
Nays: 0
Absent: 0
Abstain: 0

TOWN CLERK'S CERTIFICATION

I hereby certify that the foregoing Ordinance is a true and correct copy of Ordinance #548 of the Town of Yacolt, Washington, entitled "AN ORDINANCE READOPTING AND GIVING RETROACTIVE EFFECT TO ORDINANCE #444 - IMPOSING IMPACT FEES FOR FIRE PROTECTION, PARK AND RECREATION FACILITIES, AND TRAFFIC FACILITIES; AND AMENDING ORDINANCE #444 TO INCREASE IMPACT FEES FOR FIRE PROTECTION, PARK AND RECREATION FACILITIES, AND TRAFFIC FACILITIES", as approved according to law by the Town Council on the date therein mentioned. The Ordinance has been published or posted according to law.

Attest:

Cindy Marbut

Cindy Marbut, Town Clerk/Treasurer

Published: 9-14-16
Effective Date: 9-14-16
Ordinance Number: 548

EXHIBIT A TO ORDINANCE #548

ORDINANCE #444

AN ORDINANCE IMPOSING IMPACT FEES FOR FIRE, PARKS, AND TRAFFIC.

WHEREAS: The Town Council of Yacolt, Washington, is in regular session this 6th day of March, 2006; and

WHEREAS: All members of the Town Council have had notice of time, place, and purpose of said meeting; and

WHEREAS: The Town Council of Yacolt, Washington intends that adequate fire protection facilities, parks and recreation facilities, and traffic facilities be provided to serve new growth and development; and

WHEREAS: Impact fees for fire, park, and traffic are authorized by the Growth Management Act as a tool for towns to use in order to ensure that growth pays for growth; and

WHEREAS: The Town Council has determined to enact fire, park, and traffic impact fees; and

NOW THEREFORE: BE IT ORDAINED BY THE TOWN COUNCIL OF YACOLT, WASHINGTON, as follows:

SECTION 1: FINDINGS AND AUTHORITY

The demand for fire, parks and recreation, and traffic facilities is proportionate to the size of a user population. The larger a population grows the greater the demand for Town fire, parks and recreation, and traffic facilities. In order to offset the impacts of new residential development on the Town's fire protection, park, and traffic systems, the Town has determined to levy fire, park, and traffic impact fees consistent with Town standards as new development occurs. Impact fees are authorized under the State Environmental Policy Act (SEPA) and the Growth Management Act (GMA) to help offset the cost of capital facilities brought about by new growth and development. Impact fees imposed under this ordinance will be used to acquire and/or develop fire protection, parks and recreation, and traffic facilities that are consistent with the capital facilities element of the Yacolt Comprehensive Growth Management Plan.

SECTION 2: PURPOSE

A. The purpose of this ordinance is to implement the capital facilities element of the Yacolt Comprehensive Growth Management Plan by:
   1. Ensuring that adequate fire protection; park, open space, and recreation; and traffic facilities are available to serve new development;

2. Maintaining the high quality of life in Yacolt by ensuring that growth pays for growth and that existing service levels for existing residents and businesses are not adversely impacted by growth and new development activity; and
3. Establishing standards and procedures whereby new development pays its proportionate share of the cost of fire protection; park, open space, and recreation; and traffic facilities that are reasonably related to the new development, and whereby fire protection; park, open space, and recreation; and traffic facilities are jointly financed by public and private interests.

B. 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: DEFINITIONS

As used in this ordinance, the following terms have the meanings set forth below:

A. "Building permit" means a permit issued by the Town of Yacolt and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure. As the term relates to fire, park, and traffic impact fees, "building permit" includes a permit issued for the siting or location of a mobile or manufactured home.

B. "Capital facilities" means those fire protection; park, open space, and recreation; and traffic facilities or improvements addressed in the capital facilities element of the Yacolt Comprehensive Growth Management Plan, as the same now exists or may be hereafter amended. Capital facilities costs include the cost of fire protection, park, and traffic planning, land acquisition, site improvements, buildings, and equipment, but exclude the cost of maintenance and operation.

C. "Capital facilities program (CFP)" means a six-year plan that is approved by the Town Council in order to finance the development of capital facilities necessary to support the projected population of Yacolt over the six-year period. The Town's CFP is found in the capital facilities element of the Yacolt Comprehensive Growth Management Plan, as the same now exists or may be hereafter amended.

D. "Town" means the Town of Yacolt, Washington.

E. "Developer" means an individual, a group of individuals, a partnership, a corporation, an association, a municipal corporation, a state agency, or other person proposing or undertaking development activity within the Town.

F. "Development activity" as the term relates to fire, park, and traffic impact fees, means any construction or expansion of a building, structure, or use, any changes in the use of a building or structure, or any changes in the use of land, that creates additional demand and need for public fire protection; park, open space, and recreation; or traffic facilities.

G. "Development approval" means any written authorization from the Town that authorizes commencement of a development activity.

H. "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 fire protection; park, open space, and recreation; or traffic capital facilities. Impact fees shall be considered encumbered on a first in, first out basis.

I. "Existing development" means that development which physically exists or for which the developer holds a valid building permit as of the effective date of this ordinance.

J. "Impact fee" means a payment of money imposed upon new growth or development as a condition of development approval in order to pay for fire protection; park, open space, and recreation; and traffic facilities needed to serve such new growth or development. "Impact fee" does not include any permit or application fee.

K. "Level-of-service – Existing/Proposed (ELOS/PLOS)" means the ratio of fire protection; park, open space, and recreation; and traffic facility units (acres, fields, square feet, etc.) to the number of persons in the Town's population (expressed as unit per 1,000 persons).

L. "New development" means any and all development for which a permit is issued after the effective date of this ordinance.

M. "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 to be the owner of the real property if the contract is recorded.

N. "Previously incurred system improvements" means system improvements that were accomplished in order to serve new growth and development.

O. "Prior system improvement deficiencies" means deficiencies in public facilities serving existing development and that do not meet the proposed level of service.

P. "Private recreational facility" means any recreational facility not owned or dedicated to the public or a government agency.

Q. "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project and are not system improvements. No fire protection; park, open space, and recreation; or traffic improvement or facility included in the capital facilities plan shall be considered a project improvement.

R. "Proportionate share" means that portion of the cost of fire protection; park, open space, and recreation; and traffic improvements that are reasonably related to the service demands and needs of new development.

S. "Service area" means a geographic area defined by the Town or, in the case of facilities providing service to areas outside the Town, by interlocal agreement, as being that area in which a defined set of fire protection; park, open space, and recreation; and traffic facilities provide service to development within the area.

T. "System improvements" means fire protection; park, open space, and recreation; and traffic facilities that are included in the capital facilities plan and are designed to provide service-to-service areas within the community at large, in contrast to project improvements.

SECTION 4: SERVICE AREAS

The fire protection; park; and traffic service area for the existing and proposed fire protection; park, open space, and recreation; and traffic facilities of the Town of Yacolt is hereby defined as that area which is coextensive with the corporate boundaries of the Town, as they now exist or as they may be amended through annexation or other means from time to time.

SECTION 5: LEVEL OF SERVICE

The level of service for each type of fire protection, park, and traffic facility for which an impact fee is imposed under the provisions of this ordinance is established by the capital facilities element of the Yacolt Comprehensive Growth Management Plan.

SECTION 6: IMPOSITION OF FIRE, PARK, AND TRAFFIC IMPACT FEES

A. Any person or entity who, after the effective date of this ordinance, seeks to develop land within Yacolt by applying for a building permit for a commercial building, a building permit for a residential building, or a permit for a residential mobile or manufactured home installation, is hereby required to pay a fire, park, and traffic impact fee in the manner and the amount set forth in this ordinance.

B. No commercial building permit, residential building permit, or permit for residential mobile or manufactured home installation shall be approved or issued unless and until the fire, park, and traffic impact fee has been paid as provided in this ordinance.

SECTION 7: COMPUTATION OF THE FIRE, PARK, AND TRAFFIC IMPACT FEE AMOUNT – FEE SCHEDULE

The fire, park, and traffic impact fee for each development activity on which an impact fee is imposed as provided in this ordinance shall be determined as according to the following schedule:

IMPACT FEE	SINGLE FAMILY DETACHED	SINGLE FAMILY ATTACHED (DUPLEX)	MOBILE/MANUFACTURED HOME	COMMERCIAL
Fire	$ 150	$ 150	$ 150	$1,050
Park	$1,800	$1,800	$1,800	$ 0
Traffic	$2,050	$2,050	$2,050	$2,950

SECTION 8: ALTERNATIVE METHOD OF COMPUTATION

A. As an alternative to calculation of the fire, park, and traffic impact fee according to the schedule set forth in Section 7, a developer may opt to prepare and submit an independent fee calculation study for the requested

development activity to the Town Council. Any such study shall be prepared at the developer's sole cost and expense.

B. The independent fee calculation study shall comply with the following standards:
   1. The study shall follow accepted impact fee assessment practices and methodologies.
   2. The study shall use acceptable data sources and the data shall be comparable with the uses and intensities proposed for the proposed development activity.
   3. The study shall comply with the applicable state laws governing fire, park, and traffic impact fees.
   4. The study, including any data collection and analysis, shall be prepared and documented by professionals qualified in their respective fields.
   5. The study shall show the basis upon which the independent fee calculation was made.

C. The Town Council shall consider the independent fee calculation study submitted by the developer but is not required to accept such study if the Town Council decides that the study is not accurate or reliable. The Town Council may, in the alternative, require the person submitting the study to submit additional or different documentation for consideration. If the Town Council decides that outside experts are needed to review the study, the developer shall be responsible for paying the cost of review by outside experts.

D. If an acceptable independent fee calculation study is not presented, the developer shall pay the impact fees based upon the process and schedule set forth in Section 6. If an acceptable independent fee calculation study is presented, the Town Council may adjust the fee to that appropriate to the particular development activity.

SECTION 9: CREDITS

A. Pursuant to RCW 82.02.060(3), a reasonable credit shall be allowed for the conveyance of land for, improvements to, or new construction of any fire, park, or traffic improvements provided by a developer, to fire protection; park, open space, and recreation; and traffic facilities identified in the capital facilities element of the Yacolt Comprehensive Growth Management Plan and that are the subject of impact fees to be paid by the developer under this ordinance. Any request for a credit against impact fees shall be made and decided no later than the approval of the permit triggering the imposition of impact fees.

B. All land proposed to be conveyed to the Town in exchange for a credit against impact fee shall meet all of the following requirements:
   1. The land must be conveyed free and clear of all liens and encumbrances;
   2. The land must be readily accessible to the general public;
   3. The land must have a site, size, and location consistent with a fire, park, or traffic improvement described in the Yacolt Comprehensive Growth Management Plan; and

4. The land must be suitable for the proposed fire, park, and traffic uses and for inclusion in the Town's fire protection, park, and traffic facilities as determined by the Town Council.

The Town may decide to accept land which does not meet all of these standards in unusual circumstances where the land to be conveyed provides a unique benefit, such as location, access, or condition.

C. The amount of the credit shall be the value of the land and improvements conveyed to the Town, provided, that in no case shall the amount of the credit exceed the amount of the impact fee imposed on the development activity. If the value of the land and improvements exceed the total fire, park, and traffic impact fees to be paid by the development, no impact fees shall be due. If the value of the land and improvements is less than the impact fees due, the developer will be required to pay the difference.

D. Credits shall not be transferable from one property, project, or development activity to another.

SECTION 10: ADJUSTMENTS

The Town Council is authorized to adjust the impact fees to be calculated under this ordinance where the developer demonstrates that unusual circumstances make the standard impact fees applied to such development unfair or unjust. The circumstances that form the basis for the adjustment shall not be circumstances that are generally applicable to similar land uses or to all development activity in the vicinity. Unusual circumstances may include that the development activity will have substantially less impact on the system improvements that other development activities in the same land use category. Any request for an adjustment shall be made no later than the time of the application triggering imposition of impact fees. Adjustments granted under this section shall not be transferable from one property, project, or development activity to another.

SECTION 11: PAYMENT OF FEES

A. Impact fees shall be imposed upon development activity in the Town, based upon the schedule set forth in this ordinance, and shall be collected by the Town from any applicant where such development activity requires issuance of a residential building permit, issuance of a commercial building permit, or issuance of a mobile or manufactured home permit and the fee for the lot or unit has not been previously paid.

B. Arrangement may be made for later payment of the impact fee with the approval of the Town only if the Town determines that it will be unable to use or will not need the payment until a later time, provided that sufficient security, as defined by the Town, is provided to assure payment. Security shall be made to and held by the Town, which will be responsible for tracking and documenting the security interest.

SECTION 12: APPEALS – PAYMENT UNDER PROTEST

A. Determinations made by the Town pursuant to this ordinance may be appealed in writing within 60 days to the Town Council.

B. Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.

SECTION 13: IMPACT FEE ACCOUNTS

A. Fire, park, and traffic impact fee accounts are hereby established for the purpose of depositing and maintaining the funds received under this ordinance. Separate fire, park, and traffic impact fee accounts shall be maintained for fire protection; park, open space, and recreation; and traffic facilities.

B. The Town Clerk/Treasurer shall earmark all funds collected under this ordinance as to the person paying, the date paid, and the development or property for which paid. The account shall be separate from all other accounts of the Town and shall be interest-bearing. All interest paid shall be retained in the account and expended for the purposes for which the impact fee was imposed.

SECTION 14: USE OF IMPACT FEES

A. Impact fees shall be expended solely for fire protection; park, open space, and recreation; and traffic facilities under the jurisdiction of Yacolt described in and in conformance with the capital facilities program. Impact fees may be expended for facility planning, land acquisition, site improvements, application fees, necessary off-site improvements, required mitigation, construction, engineering, architectural, permitting, financing, and administrative expenses, relocatable facilities, capital equipment, repayment of system improvement costs previously incurred to the extent that new growth and development will be served by such system improvements, and any other expenses which could be capitalized and which are consistent with the capital facilities program. Impact fees shall not be used for maintenance or operations.

B. In the event that bonds or similar debt instruments are issued for the advanced provision of system improvements for which impact fees may be expended and where consistent with provisions of the bond covenants, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities are consistent with the requirements of this section.

C. Impact fees collected under this ordinance shall be expended or encumbered for a permissible use within six years of the date they are received by the Town, unless the Town Council finds that there exists an extraordinary and compelling reason for the fees to be held longer than six years. Such a finding shall be made in writing.

D. Funds may be used to provide refunds as described in Section 15.

E. Yacolt shall be entitled to retain not more than six percent of the funds collected as compensation for the expense of collecting the fees and administering this ordinance.

SECTION 15: IMPACT FEE REFUNDS

A. If a development approval for which an impact fee has been paid under this ordinance expires without commencement of construction, then the developer shall be entitled to a refund, with interest, of the impact fee paid, except that Yacolt shall retain a percentage of the fee to offset a portion of the costs of collection and refund.

B. The current owner of property on which impact fees have been paid may receive a refund of such fees, or any portion thereof if the Town has failed to expend or encumber the impact fees, or any applicable portion, within the time period specified in Section 14.

C. The Town shall notify potential claimants for impact fee refunds by first class mail deposited with the United States Postal Service at the last known address of the said claimants.

D. A request for a refund must be submitted to the Town Council in writing within one year of the date that the right to claim the refund arises or the date that the notice is given, whichever is later. Any impact fees that are not expended or encumbered and for which no application for refund has been made within the one-year period shall be retained and expended on the indicated capital facilities. Refunds under this subsection shall include interest earned on the impact fees, provided, that if the Town's failure to expend or encumber the fee within the time period set forth in Section 14 is due to delay attributable to the developer of the project for which the fee was collected, the refund shall be without interest.

E. If the Town should terminate the impact fee requirements of this ordinance, all unexpended or unencumbered funds, including interest earned, shall be refunded pursuant to this section. Upon a determination to terminate such impact fee requirements, the Town shall publish a notice of such termination and the availability of refunds in the Town's official newspaper at least two times and shall notify all potential claimants by first class mail at the last known address of claimants. A request for a refund must be submitted to the Town Council in writing within one year of the date that the notice is given. Any impact fees for which no application for refund has been made within the one-year period shall be retained and expended on the indicated capital facilities. No notice shall be required if there are no unexpended or unencumbered balances within the account at the time of termination.

SECTION 16: EXEMPTIONS

The following development activities shall be exempted from payment of impact fees:

A. Rebuilding or replacement of an existing legally established dwelling unit where no additional dwelling unit is created.

B. Alteration or expansion:
   1. Of an existing building where no additional residential units are created and where the use is not changed; and/or
   2. The construction of accessory buildings or structures.

C. Mobile or manufactured homes where the installation of a replacement mobile or manufactured home on a lot or other such site when impact fees for such mobile or manufactured home have previously been paid pursuant to this ordinance or where a mobile or manufactured home legally existed on such site on or prior to the effective date of this ordinance.

SECTION 17: ANNUAL REPORT

The Town Clerk/Treasurer shall prepare an annual report to the Town Council showing the source and amount of all monies collected, earned, or received and the fire protection, park, and traffic system improvements that were financed in whole or in part by impact fees imposed under this ordinance. The report may be part of an existing annual report or may be a separate report.

SECTION 18: SEVERABILITY

If any section, sentence, clause or phrase of this ordinance should be 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, sentence, clause or phrase of this ordinance.

The Ordinance shall take effect immediately upon adoption and publication according to law.

Passed by the Town Council of the Town of Yacolt, Washington on this 6th day of March, 2006.

AYES _____

NAYS _____

ABSENT _____

MAYOR _____ ATTEST _____

I hereby certify that this is a true and correct copy of Ordinance #444 as read before the Council and passed on the date herein mentioned and passed according to law.

ATTEST _____
Brenda Finnegan, Clerk/Treasurer