

ORDINANCE NO. 1966

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.25 – STREET SURFACE MAINTENANCE PROGRAM, ADOPTING A STREET MAINTENANCE PROGRAM AND REQUIRING PAYMENT OF A STREET MAINTENANCE FEE.

WHEREAS, the purchasing power of revenue received by the City as its share of state gas tax revenues has been decreasing; and

WHEREAS, revenue from other sources, combined with the City's share of gas tax revenues, has been insufficient to allow the City to both develop new transportation infrastructure as needed and maintain existing streets; and

WHEREAS, regular maintenance of streets is cost-effective because deteriorated streets are significantly more expensive to repair and maintain; and

WHEREAS, poorly maintained streets may create safety problems; and

WHEREAS, a properly maintained street system is cost-effective, provides for increased safety, supports property value appreciation, prolongs the life of public and privately owned motor vehicles, and contributes to a more attractive community; and

WHEREAS, the City has prepared a Street Maintenance Program, attached as Exhibit A; and

WHEREAS, the City needs additional revenue streams to properly maintain its street system on a timely basis;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

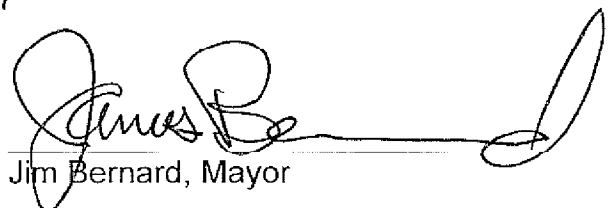
Section 1. The Milwaukie Municipal Code is amended by adding a new Chapter 3.25 – Street Surface Maintenance Program, to read as shown on the attached Exhibit B.

Section 2. This ordinance shall take effect 30 days after passage.

Read the first time on December 19, 2006, and moved to second reading by 4 - 1 vote of the City Council.

Read the second time and adopted by the City Council on 1/2/2007

Signed by the Mayor on 1/2/2007


Jim Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, & Corrigan, LLP

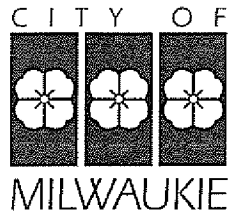


Pat DuVal, City Recorder

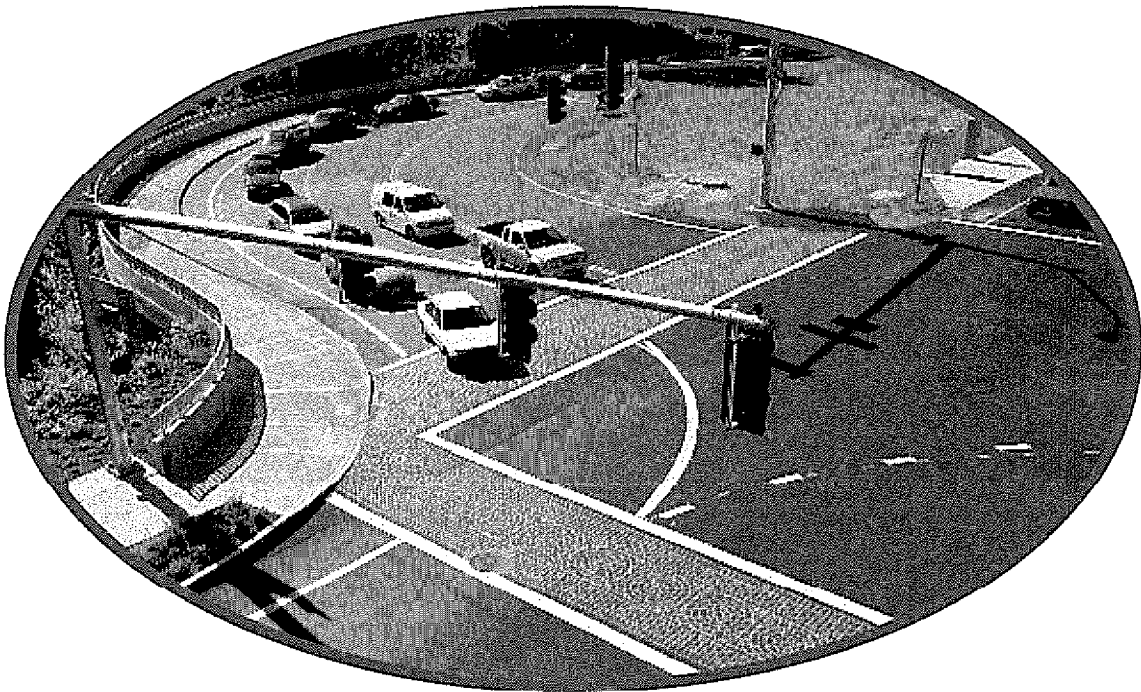


City Attorney

EXHIBIT A



STREET SURFACE MAINTENANCE PROGRAM



December 2006

Authorized per City Council Resolution No. 35-2006
and Ordinances No. _____, _____ & _____

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Appendix A: Transportation Utility Fee: The Oregon Experience, Prepared by Carl D. Springer and John Ghilarducci

Appendix B: Pavement Management Budget Options Report, Prepared by Engineering Information Services, Inc.

1. Problem Definition

Milwaukie's local streets are in a state of rapid decline, some have already failed, and funding is not adequate to turn the situation around. If nothing is done, the roads will worsen and the cost to remedy the situation will skyrocket.

Milwaukie city officials are responsible for maintaining 138 lane miles of paved roadway. The replacement value of Milwaukie's street system was estimated at \$65 million in 2004 – a figure that is rapidly rising with the escalation of construction costs.

A July 2004 report by the consulting firm EIS Inc. rated Milwaukie's overall street network condition as a 67 (out of 100), which placed the City's street network in the upper range of the "satisfactory" condition. However, EIS Inc. also concluded that the cost of the city's deferred street maintenance was growing rapidly and that the City was not allocating sufficient funds to address street maintenance needs. EIS projected that by 2006, absent a new maintenance effort, the overall street network condition would fall to 63. Because maintaining streets is much more cost-effective than rebuilding them after they have failed, deferred maintenance costs can build up very quickly as streets pass the point at which they can be rehabilitated.

The City of Milwaukie is not alone in this predicament. The 2004 Regional Transportation Plan describes the problem this way:

... revenues from the State Highway Trust Fund, which is funded from the state gas tax revenues and related truck fees and vehicle registration fees, has become the primary source of transportation funding for many jurisdictions in the region. The problem the region is facing by relying primarily on this revenue source is that it is subject to two factors that reduce its purchasing power over time: inflation and increasing fuel efficiency. Therefore, the gas tax cost per mile driven in Oregon (in current \$) has decreased from 2.6 cents per mile in 1970 to 1.3 cents per mile today.¹

2. Existing Conditions

A. Street Network

Based on a 2004 visual inspection by EIS Inc., 60% of Milwaukie's streets were in good condition, 17% were in satisfactory condition; and 22% were in fair to poor condition. That 2004 data was combined with a 2006 staff score and the results of an earlier study to arrive at a "composite" condition score. (The earlier study, conducted in 1995, tested sub-surface conditions, which were not reflected in the 2004 assessment.)

¹ Regional Transportation Plan, Chapter 5: Growth and the Priority System, page 5-34.

Pavement conditions were ranked again, based on the composite score, and then divided into four groups, from poor to good. This ranking placed 55% of the street system in good condition, 18% in satisfactory condition, and 27% in the fair and poor categories.

Good condition streets require the least costly preventive maintenance (crack sealing) in order to extend the useful life of the pavement surface. At the opposite extreme, many of the 27% of the streets in the fair to poor category require full or partial reconstruction, which typically involves rebuilding the base and adding all new pavement. The 18% in satisfactory condition require rehabilitation, which typically involves grinding off the deteriorated top layer, adding a layer of "fabric," and a pavement overlay.

B. Street Fund

The Oregon State Gas Tax, which is assessed per gallon on motor vehicle fuel sold statewide, is the Street Fund's primary revenue source for flexible funding. The tax has not been increased since 1993. In 1995-1996, the City's share of Gas Tax revenues was \$906,065; the projection for 2006-2007 is \$959,646. The second source of flexible revenues for the Street Fund is franchise fees, collected from other City utilities (water, storm and wastewater). Franchise fees total about half of Gas Tax revenues (\$490,198 in 2004-2005; \$546,650 projected for 2006-2007).

While Street Fund revenues have remained largely flat, the cost of road construction and maintenance has increased substantially, particularly in recent years. According to the Federal Highway Administration's surfacing price index, \$128 worth of surfacing projects in 1995 would cost \$215 today.² Milwaukie's share of state gas tax proceeds are down nearly 40% over the past decade when adjusted for this inflation in costs. Clackamas County's 2006 construction bids are coming in at approximately 30% higher than just one year ago.

In recent years, the City has enjoyed success competing for grants and loans for specific capital projects. In the 2006-2007 budget, these accounted for just over \$1 million in revenue. Such funds are dedicated to specific projects and cannot be expended on maintenance.

Street expenditures in 2004-2005 totaled \$2.2 million. These expenditures broke down as follows:

- 32% to capital expenditures;

² "Price Trends for Federal-Aid Highway Construction," Third Quarter 2005, U.S. Department of Transportation, Federal Highway Administration. Available on-line at: <http://www.fhwa.dot.gov/programadmin/pt2005q3.pdf>.

- 20% to contributions to support or administrative functions (transfers to Engineering and Community Development Administration, and General Administrative Services Charge);
- 17% to maintenance;
- 13% to street light electricity costs;
- 9% to overhead (the vast majority for vehicle fuel, maintenance, and replacement fee); and
- 8% to reserves for future capital projects.

The Street Department maintains multiple aspects of the street system. Based on FTE assignments and allocable materials and services costs, staff estimates that in 2004-2005, out of a total maintenance budget of \$378,000: 24% went to right-of-way maintenance (mowing, removing branches, etc.); 23% was devoted to emergency street repairs (i.e., filling potholes and patching); 16% was spent on sign and signal maintenance; 15% went to street sweeping; 13% went to street marking and striping; and 8% was devoted to preventive surface maintenance (crack sealing as needed).

The preventive surface maintenance expenditures do not include any rehabilitation or reconstruction projects, which the city cannot currently afford. In recent years, the city's CIP has included an "unfunded" \$200,000 line item for overlay (rehabilitation) projects in the unfunded category. Though the \$200,000 figure has been somewhat arbitrary, these past CIP's are a record of the City's ongoing recognition of the street network's unmet maintenance need.

3. Authority

City Ordinance No. ____ establishes the Street Surface Maintenance Program ("SSMP") and a Street Maintenance Fee. City Ordinance No. ____ establishes a one and one-half percent (1.5%) PGE Privilege Tax. Ordinance No. ____ establishes a local gasoline tax of two (2) cents per gallon. (Details on the operation of these revenues are below in Section 10, 11, and 12, respectively.) The ordinances dedicate all revenues from these sources to street surface maintenance and repair and those activities necessary to carry out the program, such as condition assessment and inspection.

4. Program Goals

A. PCI Index Goals

Pavement Condition Index, or PCI, is a measure of the status of street surface, ranging from 0 to 100. A newly constructed street would have a PCI of 100 and failed street would have a PCI of 25 or less. The "Good" range is from 70 to 100. An ideal (the most

cost-effective) maintenance program is possible with a network average in the low 80's. The goal of the City of Milwaukie Street Surface Maintenance Program is to bring all major streets to a point where the cost-efficiencies of good preventive maintenance are enjoyed, approximately 75 or above, and maintain them at that level. Progress towards this goal will be assessed in the annual program report.

B. Deferred Maintenance Goals

The goal of the SSMP is to reduce the deferred maintenance backlog and, ultimately, to eliminate it. This requires both reconstruction projects and rehabilitation projects (overlays). Eliminating deferred maintenance on larger streets will be prioritized. Reconstructions on local streets would be addressed only after all Preventive Maintenance needs have been addressed and after larger streets are brought up to the "good" range.

C. Maintenance Goals

The SSMP's maintenance goal is to prevent any street from deteriorating to the point of requiring reconstruction. (Many Milwaukie streets that require reconstruction were not constructed with adequate bases). This requires an aggressive program of crack sealing and rehabilitation as required. These activities will be prioritized over reconstructions of already failed streets.

D. Stopgap Goals

"Stopgap" refers to emergency repairs to keep streets in a serviceable condition (e.g., pothole patching). These are temporary and do not extend the pavement life. Current Street Fund revenues are adequate to perform needed stopgap repairs. The SSMP stopgap goal is to continue to adequately fund and repair trouble spots throughout the City, with the expectation that this need will diminish as the network is improved.

E. Program Cost Goals

The overall revenue goal is \$1.2 million per year for the first ten years, or \$12 million total (2006 dollars). The annual cost of maintaining only major streets thereafter could be achieved at roughly half that budget. A continuation of the higher level of funding would allow the City to address local streets as well. The program progress report will allow Council to reassess the level of revenue and activity annually.

5. Responsibilities

By ordinance, the following responsibilities are established within the city government:

The Engineering Director and the Streets Supervisor are jointly responsible for annually developing and updating a cost-effective 5-year SSMP project schedule. The Engineering Director is responsible for ensuring that the schedule is properly integrated into the CIP and that the schedule is coordinated with other City capital projects. The Engineering Director is responsible for sharing the CIP with non-city utilities and coordinating all City capital projects with the various private utilities to the extent possible.

The Engineering Director is responsible for the contracting of services to complete projects funded by the Program.

The Engineering Director is responsible for assigning non-residential utility customers to Trip Generation Categories, using his or her best professional judgment and the criteria provided for in the ordinance, and for ruling on requests for category adjustments. (See Sections 10 B and 10 C for more detail.)

The Engineering Director is responsible for implementation and enforcement of steps to minimize utility cut damage to streets, including a five-year moratorium on capital projects on recently reconstructed, rehabilitated, or newly built City streets. The Public Works Operations Director is responsible for City utility compliance with street cut repair policy

The Community Development and Public Works Director is required to provide an annual report on the Street Surface Maintenance Program to City Council and the public each spring. See Section 7 for the elements of that report.

The Finance Director is responsible for billing, collection, and dedicated allocation of Street Surface Maintenance Program revenues.

6. Project Selection

As part of the annual Capital Improvement Plan development process, the Public Works and Engineering departments update the SSMP project schedule for the coming five years. In addition, a more detailed schedule of crack sealing and similar preventive maintenance projects for the up-coming summer is developed. The project list development begins with the recommended maintenance program produced by a Pavement Management System (PMS) software application. The Engineering Director and Street Operations Supervisor select a package of treatments that best match the

recommendations generated by the PMS software with local knowledge of street condition, the cost benefits of grouping multiple projects (both coordinating with other utility projects and tackling adjacent streets where possible to minimize mobilization costs), and other project needs (for instance, recently built new projects that require overlays to match grades).

In allocating resources among projects, staff prioritizes projects with the greatest return (i.e., street life extension versus cost). Remaining funds are dedicated to reconstruction projects on significant routes. These routes are prioritized according to their functional classification within the City Transportation System Plan, with adjustments made by the project selection team based on school routes, freight routes, emergency routes, safety considerations, traffic patterns, and cost-effective contracting practices.

Table 1 (below) provides a model for the first two 5-year SSMP project schedules. Staff anticipates refining and adjusting this plan based on continued research on best practices, unpredictable weather events, and shifting patterns of traffic.

By tracking and recording completed repair and maintenance projects in the PMS database, the Engineering Department maintains the quality of the data used to inform the project selection process. In addition, the entire database is updated every 3 to 5 years with the results of a complete visual inspection of the street network condition. Finally, on an occasional basis (every 10 –15 years) the City contracts for “deflection” testing to assess the sub-surface condition of streets.

Table1. Model SSMP Project Schedule, Years 1 - 5.

<u>Year</u>	<u>Activity</u>	<u>2006 PCI</u>	<u>Activity Type</u>	<u>Cost Estimate</u>
Year 1	Billing & Program Setup		SSMP Program Expense	\$25,000
	Pavement Assessment (Deflection)		SSMP Program Expense	\$80,000
	Oak Street (224 to Monroe)	55	Overlay/Rehab	\$85,802
	37th Ave. (Lake to Wister)	53	Overlay/Rehab	\$72,162
	Washington St (McLoughlin to Oak)	69	Overlay/Rehab	\$181,098
	42nd (Harvey to JCB)	55	Overlay/Rehab	\$137,283
	Logus (Stanley to 51st)	60	Overlay/Rehab	\$55,019
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$125,000
Total				\$761,364
Revenue Est (+ prev bal)				\$800,000
Balance				\$38,636
Year 2	King Road (43rd to Hollywood)	40	Reconstruct	\$770,816
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$125,000
	Total			\$895,816
Revenue Est (+ prev bal)				\$1,038,636
Balance				\$142,820
Year 3	Linwood Ave. (Railroad to Monroe)	79	Overlay/Rehab	\$334,423
	Lake Road (Shell Ln to Kuehn)	53	Overlay/Rehab	\$311,491
	Roswell (32nd to 42nd)	52	Reconstruct	\$252,165
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$150,000
Total				\$1,048,079
Revenue Est (+ prev bal)				\$1,142,820
Balance				\$94,740
Year 4	Washington Street (37th to 40th)	66	Overlay/Rehab	\$27,878
	27th (Lake to Washington)	72	Overlay/Rehab	\$103,545
	Harrison Phase 1 (McLoughlin to 42nd)	44	Reconstruct	\$740,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$150,000
Total				\$1,021,423
Revenue Est (+ prev bal)				\$1,094,740
Balance				\$73,318
Year 5	Pavement Assessment (Visual)		SSMP Program Expense	\$20,000
	Harrison Phase 2 (McLoughlin to 42nd)	44	Reconstruct	\$200,000
	Railroad Ave Phase 1 (Harrison to Harmony)	44	Reconstruct	\$531,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$175,000
Total				\$926,000
Revenue Est (+ prev bal)				\$1,073,318
Balance				\$147,318

Table 1 Continued. Years 6 -10

<u>Year</u>	<u>Activity</u>	<u>2006 PCI</u>	<u>Activity Type</u>	<u>Cost Estimate</u>
Year 6	43rd (King to Howe) and Howe (to 42 nd)	73	Overlay/Rehab	\$121,074
	River Road (McLoughlin to Lark)	76	Overlay/Rehab	\$95,129
	Railroad Ave Phase 2 (Harrison to Harmony)	44	Reconstruct	\$150,000
	Monroe Street Phase 1 (224 to City limit)	41	Reconstruct	\$431,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$175,000
	<i>Total</i>			<i>\$972,203</i>
	<i>Revenue Est (+ prev bal)</i>			<i>\$1,147,318</i>
	<i>Balance</i>			<i>\$175,115</i>
Year 7	International Way (37th to Harmony)	70	Overlay/Rehab	\$373,000
	Monroe Street Phase 2 (224 to City limit)	41	Reconstruct	\$300,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$200,000
	<i>Total</i>			<i>\$873,000</i>
	<i>Revenue Est (+ prev bal)</i>			<i>\$1,175,115</i>
	<i>Balance</i>			<i>\$302,115</i>
Year 8	Harvey Street (32nd Ave past 42nd Ave)	26	Reconstruct	\$303,000
	Home and Wood Avenues	48	Reconstruct	\$688,351
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$200,000
	<i>Total</i>			<i>\$1,191,351</i>
	<i>Revenue Est (+ prev bal)</i>			<i>\$1,302,115</i>
	<i>Balance</i>			<i>\$110,764</i>
Year 9	Pavement Assessment (Visual)		SSMP Program Expense	\$30,000
	McBrod Avenue (17th to Ochoco)	27	Reconstruct	\$370,000
	Major Route Overlays TBD		Overlay/Rehab	\$400,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$225,000
	<i>Total</i>			<i>\$1,025,000</i>
	<i>Revenue Est (+ prev bal)</i>			<i>\$1,110,764</i>
	<i>Balance</i>			<i>\$85,764</i>
Year 10	Major Route Overlays TBD		Overlay/Rehab	\$400,000
	Mailwell Avenue (Main St. to Commerce Park)	28	Reconstruct	\$190,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$225,000
	<i>Total</i>			<i>\$815,000</i>
	<i>Revenue Est (+ prev bal)</i>			<i>\$1,085,764</i>
	<i>Balance</i>			<i>\$270,764</i>

Cost estimates include 4.2% inflation in construction costs per year. All reconstruction and rehabilitation costs include a 25% contingency and a 2% inspection cost.

7. Annual Reporting

The Public Works and Community Development Director provides an annual report to City Council. The report includes a narrative description of the overall condition of the street network, findings from new condition assessments, a detailed project schedule for the upcoming year, an updated 5-year project schedule, the project selection criteria, and a report on the previous years projects, projects underway, and the overall program's progress. The Public Works and Community Development Director is required to update Council on the feasibility of the program given trends in revenues and costs.

A summary of the report to Council will be distributed to the community through the website, the Pilot, and Neighborhood Associations.

8. Project Implementation

"In-house" preventive maintenance by City of Milwaukie street crews addresses scattered, relatively small-scale crack sealing needs. Larger projects, such as a street seal or reconstruction project, are contracted through a competitive bid process, as per City and State rules and regulations. Contract work is overseen and managed by Engineering and Streets department staff. Project inspection, including inspection of asphalt mixes, is carried out by City staff or independent, third party contractors. City staff provide contracting guidelines to ensure that requirements are clear, procedures for documenting and correcting unacceptable work are in place, and all performance requirements are reflected in contracts. Forthcoming City of Milwaukie Public Works Standards include a written policy specifying asphalt composition, proportions of mixtures, and required compaction. Adequate funds for contingency, engineering, and inspection are included in the cost estimates used to develop the five-year project schedule.

In order to extend the life of overlay and street reconstruction projects, the City is updating policies on utility cuts and other cuts in the right-of-way. The SSMP ordinance directs the Engineering Director to establish and enforce a moratorium of five years on utility capital projects beneath streets that have been rehabilitated, reconstructed, or newly built. The ordinance also makes clear that the Engineering Director is responsible for sharing the City's Capital Improvement Plan with private utilities on an annual basis. The following practices are under review, to be presented to Council in 2007 with the Public Works Standards and/or the fee schedule update:

- Utility cut permit applicants currently provide a deposit to guarantee patch quality for one year. The City will establish a policy making clear at what point such a deposit will be forfeit and used by the City to repair faulty patches. The amount and duration of the deposit will be reviewed and corrected as part of

the annual fee schedule update. A sliding fee based on cut size will be considered.

- The new Public Works Standards will include a higher standard of repair for any patch made to City streets in the moratorium period.

9. Dedication of Funds

As per the implementing ordinances, all new revenues are dedicated exclusively to street surface maintenance and repair. All new Program revenues will be accounted for in a new fund dedicated exclusively to street surface maintenance. PGE makes its franchise fee payments to the City on an annual (calendar year) basis, the first payment is due by April 2008 and will only include one-half of a year of revenue.

The ordinance requires a reduction of local SSMP fees and/or taxes to balance any new revenue streams dedicated to street maintenance created at the state, county, regional or any other governmental level.

Dedicated street surface maintenance and repair funds are available to pay for contracted services to maintain or improve street surface condition (such as street maintenance, rehabilitation and repair activities, including seal, overlay and reconstruction projects); services in support of that mission (including inspection of contracted work and utility cuts; regular street condition inspections; and training and other services necessary to make the most efficient use of available funds); and additional costs involved in setting up revenue mechanisms such as additional programming necessary to include the street maintenance fee on the City utility bill.

10. Street Maintenance Fee

A. Residential Street Maintenance Fee

By Ordinance No. ____, the street maintenance fee is fixed for single family residences (\$3.35 per month) and multi-family apartments (\$2.10 per month per dwelling unit).

Table 2. Residential Street Maintenance Fee Categories

<i>Category</i>	<i>Typical customer</i>	<i>Unit</i>	<i>Trips Per Unit</i>	<i>Monthly Bill Per Unit</i>
Single Family Residential	Detached house	dwelling units	9.57	\$3.35
Multi-Family Residential	Apartment or condo	dwelling units	6.00	\$2.10
Elderly Housing	Retirement community	dwelling units	4.00	\$1.40
Congregate Care	Long term care facility	dwelling units	2.00	\$0.70

B. Non-Residential Street Maintenance Fee

By Ordinance No. ____, the non-residential street maintenance fee is calculated based on the number of square feet of building area (or alternative unit, such as gas pumps, or members) and a charge per thousand square feet. Each non-residential customer is assigned a category based on the type of business or organization. The fee is based on building size and the number of trips that such an operation typically generates, based on the widely-used figures reported in the most recent edition of the International Traffic Engineers (ITE) manual Trip Generation. See Table 3 below.

The monthly non-residential fee is capped at \$250 per property, adjusted annually for inflation.

Table 3. Non-Residential Street Maintenance Fee Categories

Category	Typical customer	Unit	Trips Per Unit	Monthly Bill Per Unit
1	Elem/Middle School; Lodge	students	0.75	\$0.26
		members	0.75	\$0.26
2	Heavy Industrial; High School	k sq feet	2.00	\$0.70
		students	2.00	\$0.70
3	Manufacturing; Warehouse; Religious Institution	k sq feet	4.00	\$1.40
4	Light Industrial; Office	k sq feet	8.00	\$2.80
5	Hospital; Business Park; Auto Care	k sq feet	16.00	\$5.60
6	Recreation Facility; Special Retail; Supermarket	k sq feet	32.00	\$11.20
7	Govt Office; Restaurant; Gas Station	k sq feet	64.00	\$22.40
8	Fast Food; Convenience Store; Bank	k sq feet	128.00	\$44.80
9	Multipurpose recreational facility	acres	200.00	\$70.00
10	Movie theater	screens	400.00	\$140.00

k sq feet: thousand of square feet of building area

C. Street Maintenance Fee Review Process

After a preliminary trip category assignment is made using the ITE standards, a letter is mailed to the utility customer notifying them of the category assigned. Customers are notified that if they believe their categorization overstates actual trip generation, they can request a review of their account. The Engineering Director will conduct the review, considering all relevant evidence presented by the customer related to their actual trip generation patterns. Such evidence may include business records, parking lot usage, or traffic studies. The Engineering Department leads the fee review process, with assistance from Planning and Community Development. The Engineering Director makes the final determination based on the evidence provided.

Any customer that is not satisfied with the fee review outcome may appeal the categorization to Council, as provided for in the ordinance.

D. Street Maintenance Fee Billing

The Finance Department is responsible for including the street maintenance fee within the City utility billing system. It is included as a line item on each City utility bill, calculated based on building square feet and a per square foot charge (based on the category structure described above) or fixed according to the residential user rates. The fee goes into effect July 2007.

E. Low Income Exemption

The SSMP includes a complete exemption from the street maintenance fee for those households qualifying for the previously established "Low Income Utility Program".

11. PGE Privilege Tax

By Ordinance No. ____, PGE begins collecting the additional 1.5% Privilege Tax in July 2007. To allow local businesses an adequate planning horizon, advance notice is to be provided upon adoption of the ordinance. Privilege Tax revenues are included in PGE's annual franchise fee payment to the City, due prior to April 1 of the calendar year following collection.

12. Local Gas Tax

City ordinance No. ____ establishes a \$.02 per gallon tax on gasoline sold within the City. The Oregon Department of Transportation Fuels Tax Group collects the tax from local dealers on behalf of the City of Milwaukie. ODOT collects the additional tax from distributors making bulk deliveries of fuel to service stations and other wholesale customers of motor vehicle fuel in the City. Payments are made to the City on a quarterly basis with a reduction for ODOT administrative costs.

EXHIBIT B

Chapter 3.25

STREET SURFACE MAINTENANCE PROGRAM

Sections:

3.25.010	Definitions
3.25.020	Administrative Officers
3.25.030	Dedication of Revenues
3.25.040	Annual Street Surface Maintenance Program Report
3.25.050	Street Maintenance Fee
3.25.060	Determination of Street Maintenance Fee
3.25.070	Administration of Street Maintenance Fee
3.25.080	Waiver of Street Maintenance Fee in Case of Vacancy
3.25.090	Relief for Low Income Residential Customers from Street Maintenance Fee
3.25.100	Street Maintenance Fee Appeal Procedure
3.25.110	Exceptions to Street Maintenance Fee
3.25.120	Street Maintenance Project Selection
3.25.130	Street Maintenance Project Schedule and Narrative
3.25.140	Severability

3.25.010 Definitions.

As used in this Chapter, unless the context requires otherwise:

- (A) "Developed Property." A parcel or 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.
- (B) "Dwelling Unit." As defined in Section 19.103.
- (C) "Gross Square Footage." The area of all structures, located on a developed property, measured along the exterior walls of the structures, and including but not limited to enclosed courtyards and stairwells, but not including fences and parking areas which are not enclosed within a building.
- (D) "Multi-unit Residential Property." Residential property consisting of two or more dwelling units. For the purposes of this ordinance, condominiums and individual mobile home units are also classified as multi-unit residential properties.
- (E) "Non-Residential Property." Any property that is not residential property.

- (F) "Residential Property." A property that is primarily for personal, domestic accommodation, including single single-family, multi-unit residential property and group homes, but not including hotels and motels.
- (G) "Responsible Party." 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 and/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 person if a copy of the writing is filed with the City.
- (H) "Single Family Residential." Residential property that has only detached dwelling units.
- (I) "Street". A public street or right-of-way within the City that is under the jurisdiction or control of the City. For purposes of this ordinance, county, state and federal roads are excluded.
- (J) "Street Surface Maintenance Program." Program established by this chapter to maintain, repair and reconstruct City of Milwaukie streets. Activities include the administration of the Street Maintenance Fee; preventive maintenance, rehabilitation and reconstruction projects; design and inspection of such projects; street condition monitoring and assessment, including inspection of street repairs; and staff training and consultant services in support of the above activities.
- (K) "Trip Generation." The average number of vehicle trips, as determined by reference to the Manual entitled, Trip Generation, published by the Institute of Transportation Engineers (ITE) ("ITE Manual"), 7th edition.
- (L) "Use Category or Category of Use." The Code number and resulting trip generation estimate determined with reference to the ITE Manual, and applicable to a particular developed property.

3.25.020 Administrative Officers

(A) Except as provided in subsections (2) and (3) of this section, the Engineering Director shall be responsible for the administration of this ordinance. The Engineering Director shall be responsible for developing administrative procedures for the ordinance, and consideration and assignment of categories of use subject to appeal to the City Council.

(B) The Engineering Director and the Streets Supervisor shall be jointly responsible for annually developing and updating a five-year Street Surface Maintenance Program project schedule. The Engineering Director is responsible for ensuring that the schedule is properly integrated into the CIP and that the schedule is coordinated with other City capital projects.

(C) The Community Development and Public Works Director shall provide an annual report on the Street Surface Maintenance Program to City Council.

(D) The Engineering Director shall be responsible for implementation and enforcement of steps to minimize utility cut damage to streets, including a five-year moratorium on capital projects on recently reconstructed, rehabilitated, or newly built City streets. The Public Works Operations Director is responsible for City compliance with street cut repair policy.

(E) The Finance Director shall be responsible for the administration and collection of fees under this ordinance.

3.25.030 Dedication of Revenues

(A) All funds and all proceeds from funds collected pursuant to this chapter shall be used for the Street Surface Maintenance Program.

(B) Upon the establishment of County, regional, State or other programs providing monies to the City for street maintenance at rates or annual amounts greater than those in effect at the time of adoption of this ordinance, local fees or taxes shall be reduced in an equal amount to the additional monies made available to the City for street maintenance. The dollar-for-dollar reductions shall be made first in the local fee or tax most similar to the newly established fee or tax. If the City share of the new fee or tax exceeds the annual revenue of the reduced local fee or tax, the City shall reduce another fee by the excess amount. The selection of the second fee to reduce shall be at the discretion of Council. Revenues from the Motor Vehicle Fuel Tax established under Chapter 3.40 and any utility privilege tax, including the Electric Utility Privilege Tax under Chapter 3.30 shall not be considered additional monies or new revenue. Annual variations in the City share of State Gas Tax revenues absent a change in the allocation method or tax rate shall not be considered additional monies or new revenue. Any reduction in the Street Maintenance Fee shall be shared proportionally across all billing categories, residential and non-residential. The fee per trip

charge shall be reduced for all non-residential bills and the residential bills shall be reduced by the same percentage.

3.25.040 Annual Street Surface Maintenance Program Report

(A) Each spring the Community Development and Public Works Director shall prepare and present to Council the "Annual Street Surface Maintenance Program Report."

(B) The report shall include a narrative description of the overall condition of the street network, the findings of any new condition assessments, a detailed project schedule for the upcoming year, an updated 5-year project schedule, the project selection criteria employed, and a report on the previous year projects, workload impacts, and overall program progress. The report shall include revenues received relative to revenue projections, project cost inflation trends, and any other new developments that impact the adequacy of the program funds to meet program goals.

3.25.050 Street Maintenance Fee

(A) A Street Maintenance Fee is imposed and levied upon the responsible party for all developed property within the City. The fee shall be based on the direct and indirect use of or benefit derived from the use of public streets generated by the developed property, to be calculated as described in Section 3.25.050.

(B) The Street Maintenance Fee is also imposed and levied on the property owner of the developed property in the event of non-payment by the responsible party.

3.25.060 Determination of Street Maintenance Fee

(A) Residential Fees.

1. Single Family Residences shall be charged \$3.35 per month.
2. Multi-Family Residences, except for Elderly Housing, mobile home parks, and Congregate Care, shall be charged \$2.10 per month for each dwelling unit.
3. Elderly Housing and mobile homes parks will be charged \$1.40 per month for each dwelling unit.
4. Congregate Care facilities will be charged \$.70 per month for each dwelling unit.

(B) Non-residential fees.

1. Category Assignment. Each Non-Residential Developed Property in the City shall be assigned to a Category of Use according to the land use type listed in sub-section C.
2. Upon request of the customer, the Engineering Director shall review the Category of Use assignment. The Engineering Director shall consider evidence provided by the customer that relates to the actual trip generation patterns of the property in question. The determination of Category of Use shall not be considered a land use decision as that term is defined in ORS 197.015.
3. Fee calculation. The Street Maintenance Fee shall be calculated by multiplying the number of Units (listed in subsection C) by the trip rate per unit for that assigned Category of Use and then by the monthly per trip charge of \$0.35 to establish the monthly fee to be billed.
4. Fee maximum. The maximum monthly Street Maintenance Fee for non-residential accounts shall be \$250 per property. The maximum shall be adjusted for inflation annually according to the Consumer Price Index published by the Bureau of Labor Statistics. The adjustment for inflation shall be included in the annual fee schedule update beginning in 2008.
5. Fee minimum. The minimum monthly Street Maintenance Fee for non-residential accounts shall be \$3.35.

(C) Category of Use.

1. Category 1 shall be estimated at 0.75 trips per Unit. Land Uses include elementary and middle schools, private schools (K-12), and lodge/fraternal organizations. ITE Codes 520, 521, 522 and 591.
2. Category 2 shall be estimated at 2 trips per Unit. Land Uses include general heavy industrial, mini-warehouses, city parks, high schools, colleges, and furniture stores. ITE Codes 120, 151, 411, 530, 540, 550 and 890.
3. Category 3 shall be estimated at 4 trips per Unit. Land Uses include manufacturing, warehouses, utilities, county parks, religious institutions, and nursing homes. ITE Codes 140, 150, 170, 412, 560, and 620.
4. Category 4 shall be estimated at 8 trips per Unit. Land Uses include general light industrial, industrial park, motels, golf courses, general office, single tenant office buildings, office parks, research and development centers, and drinking places. ITE Codes 110, 130, 320, 430, 710, 715, 750, 760, and 836.

5. Category 5 shall be estimated at 16 trips per Unit. Land Uses are hotels, cemeteries, hospitals, business parks, wholesale nurseries, automobile care centers, self-service car washes, tire stores, discount clubs, and apparel stores. ITE Codes 310, 432, 566, 610, 770, 818, 840, 847, 848, 849, 861, and 870.
6. Category 6 shall be estimated at 32 trips per Unit. Land Uses include marinas, tennis courts, racquet clubs, health clubs, bowling alleys, recreational community centers, day care, libraries, clinics, medical-dental office buildings, building materials and lumber, discount stores, specialty retail, hardware/paint stores, nursery/garden centers, shopping centers, high turnover sit-down restaurants, quick lubrication vehicle stops, new car sales, gas stations with convenience market, supermarkets, home improvement superstores, and electronics superstores. ITE Codes 420, 491, 492, 493, 494, 495, 565, 590, 630, 720, 812, 813, 814, 815, 816, 817, 820, 832, 837, 841, 844A, 845, 850, 862, and 863.
7. Category 7 shall be estimated at 64 trips per Unit. Land Uses include government office buildings, quality restaurants, and gas stations. ITE Codes 730, 831, 844, 846, and 854.
8. Category 8 shall be estimated at 128 trips per Unit. Land Uses include US Post Offices, fast food restaurants, convenience markets, and banks. ITE Codes 732, 833, 834, 851, 911, and 912.
9. Category 9 shall be estimated at 200 trips per Unit. Land Use is a multipurpose recreational facility. ITE Code 435.
10. Category 10 shall be estimated at 440 trips per Unit. Land Use is a movie theater. ITE Code 444.

(D) Units. The Unit used in calculating the Non-Residential Street Maintenance Fee shall be one (1) thousand square gross square feet of building area, with the following exceptions. The Unit for parks, golf courses, cemeteries, marinas, and multi-purpose recreational facilities shall be one (1) acre. The Unit for schools and colleges shall be one (1) student. The Unit for lodges shall be one (1) member. The Unit for hotels or motels shall be one (1) room. The Unit for self-service car washes shall be one (1) wash stall. The Unit for tennis courts or racquet clubs shall be one (1) court. The Unit for quick lubrication vehicle stops or gas stations shall be one (1) fueling or service position. The Unit for movie theaters shall be one (1) screen.

(E) Unlisted uses. In the event that a property is occupied by a use that is not expressly listed in any of the above categories, the Director of Engineering shall determine which category the property should be placed in, based on similarity in expected trip generation. If no category is appropriate, the Director

of Engineering shall determine the trips per unit shall be based on a transportation study, the Trip Generation Manual, or any other method of determining trips. Any determination by the Director of Engineering under this section may be reviewed under the procedure described in section 3.25.100, sub-section (B). The result of the review may be appealed to the City Council by filing a notice of appeal within 10 days of the date notice of the result of the review is mailed to the property owner.

3.25.070 Administration of Street Maintenance Fee.

(A) Under the supervision of the Finance Director, the "Street Maintenance Fee" shall be billed and collected with and as part of the monthly water and sewer bill for those lots or parcels utilizing City water and sewer, as provided for in Section 13.04.100, and billed and collected separately for those Developed Properties not utilizing City water and sewer. In the event of non-payment, the City may bill the property owner or take other action as authorized by law to collect from the responsible party.

(B) In the event funds received from City utility billings are inadequate to satisfy in full all of the water, sanitary sewer, storm sewer and Street Maintenance fees, credit shall be given first to the Street Maintenance fee, second to the sanitary and storm sewer service charges and third to the charges for water service.

(C) Notwithstanding any provision herein to the contrary, the City may institute any necessary legal proceedings to enforce the provisions of this ordinance, including, but not limited to injunctive relief and collection of charges owing. The City's enforcement rights shall be cumulative.

3.25.080 Waiver of Street Maintenance Fee in Case of Vacancy

(A) When any property within the City becomes vacant and water service is discontinued, a waiver of the Street Maintenance Fee may be granted by the Finance Director upon written application of the person responsible, including a signed statement, affirming under penalty of perjury that the property is vacant, and upon payment of all outstanding water, sanitary sewer, storm sewer and street maintenance charges.

(B) For purposes of this section, "vacant" shall mean that an entire building or utility billing unit has become vacant or continuously unoccupied for at least 30 days. "Vacant" shall not mean that only a portion of a property without a separate water meter has become vacant or unoccupied.

(C) Fees shall be waived in accordance with this section only while the property remains vacant. The person responsible shall notify the City within 5 days of the premises being occupied, partially occupied or used, regardless of whether water service is restored.

3.25.090 Relief for Low Income Residential Customers from Street Maintenance Fee

The Street Maintenance Fee shall not be billed to those households included in the "Low Income Utility Program."

3.25.100 Street Maintenance Fee Appeal Procedure

(A) Any owner who disputes any interpretation given by the City as to the Category of Use assigned to such owner's property pursuant to this ordinance may request a review and appeal such interpretation, but only in accordance with this section. The dispute must first be presented to the Engineering Director for review and thereafter may be appealed to the City Council in accordance with this section. Failure to appeal an interpretation made under this ordinance within the time and in the manner provided shall be sufficient cause to deny the relief requested. Except in cases of hardship as determined by the Council, disputes which result in changes in the Street Maintenance Fee charged under this ordinance shall become effective with the next billing cycle.

(B) A utility customer may request a review of the Category of Use assigned. The Engineering Director shall conduct the review, considering all relevant evidence presented by the customer related to their actual trip generation patterns. Such evidence may include business records, parking lot usage, or traffic studies. The Engineering Director shall make a determination based on the evidence provided and provide notice the customer.

(C) An owner who disputes an interpretation made by the Engineering Director as to the assigned Category of Use under this ordinance, shall submit a written appeal to the City Manager within 10 days from the date of notice of the City Engineer's determination under subsection B of this section, together with a filing fee in the amount of \$300. The application for appeal shall specify the reasons therefore and include an engineering study prepared by a licensed professional engineer in conformance with the methodology outlined in the ITE Manual. Appeals shall be limited to the issue of whether the appropriate Category of Use has been assigned to the property.

(D) The City Manager shall schedule the matter for City Council review and notify the appellant not less than 10 days prior to the date of such Council review. The Council shall conduct a hearing during a public meeting and determine whether there is substantial evidence in the record to support the interpretation given by the Engineering Director. The Council may continue the hearing for purposes of gathering additional information bearing on the issue. The Council shall make a tentative oral decision and shall adopt a final written decision together with appropriate findings in support. The decision of the Council with respect to the Category of Use shall be limited to whether the appellant has been assigned to the appropriate Category of Use. If the Council

should determine that a different Category of Use should be assigned, it shall so order, provided no refund of prior Street Maintenance Fees shall be given. Only where the Council decision results in a change in Category of Use will the filing fee on the appeal be re-funded. The Council decision shall be final.

3.25.110 Exceptions to Street Maintenance Fee

The following shall not be subject to the Street Maintenance Fee:

- (A) City-owned parking lots.
- (B) Publicly owned parkland, open spaces, and greenways, unless public off-street parking designed to accommodate the use of such areas is provided.
- (C) Areas encompassed by railroad and public rights-of-way, except for developed railroad property such as maintenance areas, non-rolling storage areas and areas used for the transfer of rail-transported goods to non-rail transport, which areas shall be subject to Street Maintenance Fees.

3.25.120 Street Maintenance Project Selection

The Engineering Director and Public Works Operations Director shall annually update a five year schedule of street maintenance projects and include that schedule in the City Capital Improvement Plan.

3.25.130 Street Maintenance Project Schedule and Narrative

The street maintenance project schedule shall include a narrative description of street conditions, the project selection criteria, and a history of projects completed as part of the Street Surface Maintenance Program. The street maintenance project schedule and narrative is a public record. The street maintenance project schedule and narrative shall be prepared annually and presented to City Council as part of the Community Development and Public Works Director's annual report on the program.

3.25.140 Severability

In the event any section, subsection, paragraph, sentence or phrase of this chapter 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 ordinance imposes a tax or charge, which is therefore unlawful as to certain but not all affected properties, then as to those certain properties, an exception or exceptions from the imposition of the Street Maintenance Fee shall be created and the remainder of the ordinance and the fees imposed thereunder shall continue to apply to the remaining properties without interruption. 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.