



CITY OF MILWAUKIE

"Dogwood City of the West"

Ordinance No. 2147

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 3.25 OF THE MUNICIPAL CODE.

WHEREAS, the City Council, by Ordinance number 1966, adopted a Street Surface Maintenance Program effective July 1, 2007; and

WHEREAS, the City Council amended the Street Surface Maintenance Program, by Ordinance 2135, effective November 17, 2016; and

WHEREAS, the City Council is aware that the cost of maintenance rises each year, that the original program lacked indexing to inflation, and desires to remedy that deficiency; and

WHEREAS, the City Council finds that the proposed amendments are in the public interest of the City of Milwaukie; and

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. The Milwaukie Municipal Code 3.25 is amended to read as shown on the attached Exhibit A

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

Read the first time on **April 4, 2017**, and moved to second reading by **5:0** vote of the City Council.

Read the second time and adopted by the City Council on **April 4, 2017**.


Signed by the Mayor on **April 4, 2017**.

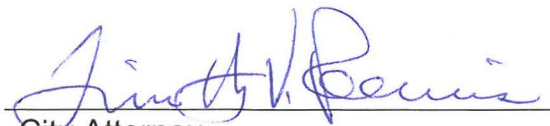


Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Scott Stauffer, City Recorder

City Attorney

Underline/Strikeout Amendments

CHAPTER 3.25

STREET SURFACE MAINTENANCE PROGRAM

3.25.010 DEFINITIONS

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

“Developed property” means 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.

“Dwelling Unit” As defined in Section 19.201.

“Gross square footage” means 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.

“Multiunit residential property” means residential property consisting of two (2) or more dwelling units. For the purposes of this chapter, condominiums and individual mobile home units are also classified as multiunit residential properties.

“Nonresidential property” means any property that is not residential property.

“Reconstruction Project” means to replace, widen, improve or other construction of Milwaukie streets. Activities include Right-of-way acquisition, widening roadways to City standard, and construction of other elements within the Right-of-way as necessary to complete the project.

“Residential property” means a property that is primarily for personal, domestic accommodation, including single-family, multiunit residential property, and group homes, but not including hotels and motels.

“Responsible party” means the person or persons who by occupancy or contractual arrangement are responsible to pay for utility and other services provided to an occupied unit. Unless another party has agreed in writing to pay and a copy of the writing is filed with the City, the person(s) paying the City’s water 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.

“Single-family residential” means residential property that has only detached dwelling units.

“Street” means a public street or right-of-way within the City that is under the jurisdiction or control of the City. For purposes of this chapter, County, State and federal roads are excluded.

“Street surface maintenance program” means the 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.

“Trip generation” means the average number of vehicle trips, as determined by reference to the most recent manual entitled, Trip Generation, published by the Institute of Transportation Engineers (ITE) (“ITE Manual”).

“Use category or category of use” means 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 B and C of this section, the Engineering Director shall be responsible for the administration of this chapter. The Engineering Director shall be responsible for developing administrative procedures for the chapter, 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 (5)-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 (5)-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 chapter.

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.

3.25.040 ANNUAL STREET SURFACE MAINTENANCE PROGRAM REPORT

- A. Each spring the Engineering 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 schedule of projects for the upcoming year, an updated five (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 3.25.060.
- B. The street maintenance fee is also imposed and levied on the property owner of the developed property in the event of nonpayment by the responsible party.

3.25.060 DETERMINATION OF STREET MAINTENANCE FEE

A. Residential Fees

- 1. Single-family residences shall be charged three dollars and thirty-five cents (\$3.35) per month, or as determined by resolution of the City Council.
- 2. Multifamily residences, except for elderly housing, mobile home parks, assisted living and congregate care, shall be charged two dollars and ten cents (\$2.10) per month for each dwelling unit, or as determined by resolution of the City Council.
- 3. Elderly housing and mobile homes parks will be charged one dollar and forty cents (\$1.40) per month for each dwelling unit, or as determined by resolution of the City Council.
- 4. Congregate care and assisted living facilities will be charged seventy cents (\$0.70) per month for each dwelling unit, or as determined by resolution of the City Council.

B. Nonresidential Fees

1. Category Assignment

- 1. Each nonresidential developed property in the City shall be assigned to a category of use according to the land use type listed in subsection C of this section.
- 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 thirty-five cents (\$0.35) to establish the monthly fee to be billed, or as determined by resolution of the City Council.

4. Fee Maximum

The maximum monthly street maintenance fee for nonresidential accounts shall be two hundred and fifty dollars (\$250.00) 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, or as determined by resolution of the City Council.

5. Fee Minimum

The minimum monthly street maintenance fee shall be equal to the single family residential fee, except for multi-family residential units being billed separately which will be billed at the Multi-Family residential rate.

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 (K12), and lodge/fraternal organizations (ITE Codes 520, 521, 522 and 591).
2. Category 2 shall be estimated at two (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 four (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 eight (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 sixteen (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 thirty-two (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 sixty-four (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 one hundred twenty-eight (128) trips per unit. Land uses include U.S. 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 two hundred (200) trips per unit. Land use is a multipurpose recreational facility (ITE Code 435).
10. Category 10 shall be estimated at four hundred forty (440) trips per unit. Land use is a movie theater (ITE Code 444).

- D. Units. The unit used in calculating the nonresidential street maintenance fee shall be one thousand (1,000) gross square feet of building area, with the following exceptions:

USE	UNIT
Parks, golf courses, cemeteries, marinas, multipurpose recreational facilities	One (1) acre
Schools and colleges	One (1) student
Lodges	One (1) member
Hotels and motels	One (1) room
Self-service car washes	One (1) wash stall
Tennis courts and racquet clubs	One (1) court
Quick lubrication vehicle stops and gas stations	One (1) fueling or service position
Movie theaters	One (1) screen
Assisted Living facilities	One (1) bed
Residential uses, except assisted living	One (1) dwelling unit

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 Engineering Director shall determine which category the property should be placed in, based on similarity in expected trip generation. If no category is appropriate, the Engineering Director 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 Engineering Director under this section may be reviewed under the procedure described in Section 3.25.100.B. The result of the review may be appealed to the City Council by filing a notice of appeal within ten (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 nonpayment, 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, streets, bicycle and pedestrian fees, credit shall be given to the bicycle and pedestrian fee, street maintenance fee, sanitary sewer service charges, storm sewer service charges, and water service charges proportionately.
- C. Notwithstanding any provision herein to the contrary, the City may institute any necessary legal proceedings to enforce the provisions of this chapter, 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, street maintenance, and bicycle and pedestrian charges.
- B. For purposes of this section, "vacant" means that an entire building or utility billing unit has become vacant or continuously unoccupied for at least thirty (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 five (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 chapter 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 chapter 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 chapter 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 to the customer.
- C. An owner who disputes an interpretation made by the Engineering Director as to the assigned category of use under this chapter shall submit a written appeal to the City Manager within ten (10) days from the date of notice of the Engineering Director's determination under subsection B of this section, together with a filing fee in the amount determined by resolution. 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 ten (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 refunded. 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, nonrolling storage areas, and areas used for the transfer of rail-transported goods to nonrail 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 (5) year schedule of street maintenance projects and include that schedule in the City Capital Improvement Plan.

3.25.130 FEE INDEXED

All fees will 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, or as determined by resolution of the City Council.

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.