

ORDINANCE NO. 1402-17

AN ORDINANCE RELATING TO THE ROAD UTILITY AND AMENDING TUALATIN MUNICIPAL CODE CHAPTER 3-4.

WHEREAS, the City of Tualatin has a road utility dedicated to street maintenance , sidewalks, right-of way landscaping, street tree replacement, and street lighting;

WHEREAS, the Council wishes to update the Road Utility to adopt the 7<sup>th</sup> Edition of the Trip Generation Manual, published by the Institute of Transportation Engineers, to modify the inflationary index, and provide other organizational changes; and

WHEREAS, the City finds it is in the public interest to enact the changes to the TMC as set forth in this Ordinance.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

**Section 1.** Tualatin Municipal Code Chapter 3-4 is amended to read as follows:

**3-4-010 Title.**

This ordinance Chapter shall be known as the Road Utility Fee Ordinance of the City of Tualatin.

**3-4-020 Legislative Findings.**

(1) In 1987/88 the City developed a pavement management plan for purposes of determining the costs of maintaining City streets and thereby preventing their further deterioration. This plan resulted in City Council adoption of the "City of Tualatin Pavement Management Plan," (the "Plan") which concluded in part that over the following 11 years the average annual cost of street maintenance would be \$300,000.

(2) As documented in the Plan, a substantial percentage of streets under City jurisdiction are less than 20 years old, and, therefore, have not deteriorated to the point where reconstruction has become necessary. However, unless funds are allocated for periodic, regular and, where necessary, aggressive maintenance activities on such roads, then deterioration of such roads will ultimately require extensive reconstruction for substantially greater cost.

(3) Historically the City has devoted its road fund revenues to new street and intersection construction and minor maintenance. Since the greatest percentage of roads under City jurisdiction are relatively new, historically revenues have not been budgeted for aggressive road maintenance, as proposed by the Plan. Therefore, although the City considers the maintenance of its streets to be a proprietary function,

the expenditures required for aggressive road maintenance are different than those historically budgeted from General Fund revenues.

(4) The cost of road reconstruction far exceeds the cumulative cost of aggressive road maintenance. Current revenue sources available to the City, such as the Systems Development Charges and the City's share of fuel and weight/mile taxes are addressing the need for expansion of capacity, elimination of certain hazard locations and minor maintenance. No revenue source exists however to adequately fund maintenance of the City's streets. According to the Plan, there exists an average revenue shortfall of \$300,000 annually within the Road Fund for pavement management.

(5) Like road maintenance expenditures, the City has no identified, regular source of funds to cover the cost of electricity and maintenance for its street lights. With a current cost of \$108,000 annually, the City's Road Fund shows an average revenue shortfall of \$50,000 annually for street lighting.

(6) In 1989 the City Council commissioned a study by CH2M Hill to examine the various funding options available to the City for road maintenance, identified in the Plan, and for street lighting, and to analyze the advantages and disadvantages of each. The CH2M Hill report, dated December 1989, and entitled, "City of Tualatin Road Maintenance and Street Lighting Funding Study," ("Study,") recommended the City establish a utility based revenue source so as to best address citizen desires for equity, revenue stability and flexibility. Such a system is deemed most appropriate for apportioning the cost of local road maintenance in relation to the impact of a particular use of property served by the local road system. The benefit obtained by a property from regular local road maintenance is closely related to the use that the property makes of City streets as measured by trip generation of developed properties.

(7) It is anticipated that each City street will receive routine maintenance services every year. In addition, many City streets will receive major maintenance service, such as a chip seal or overlay, within the next eleven years. Unless these activities are funded, budgeted and appropriated, thereby properly maintaining City streets; the public health, safety and welfare will be seriously jeopardized.

(8) The Council finds the following source documents to be generally accepted and reliable for use in implementing the terms of this ordinance.

(a) Trip Generation, 4~~th~~ 7<sup>th</sup> Edition, published by the Institute of Transportation Engineers, ("ITE Manual,") and

(b) The City of Tualatin Pavement Management Plan, dated September 28, 1988, as updated.

(9) Since the Pavement Management Plan identifies a need to generate \$300,000 per year over the next 11 years and the next largest unfunded expense within the Road Fund is the cost of street lighting, the Council determined that the unfunded needs of these two programs would be \$350,000. It was further assumed that these costs would rise gradually as the City street system grows and the City builds and accepts more streets and street lights. The City Council established a goal of funding the entire average annual projected cost of street maintenance, according to the Pavement Management Plan, as well as \$50,000 or approximately one-half of the current cost of street lighting. The ratio of one to seven should be used in the future as a benchmark for allocating revenues from the Road Utility Fee collected under this ordinance to the expenditures for road maintenance and street lighting.

(10) Funds received under this ordinance shall be placed in the City's Road Fund and dedicated and used exclusively for street maintenance, including sidewalk repair, landscape enhancements along the rights-of-way, street tree replacement, and street lighting and for no other purpose, as more specifically out-lined in TMC ~~3-4-060~~ 3-4-100.

(11) The adoption of this ordinance and the levying of charges and fees hereunder are adopted pursuant to the authority contained in the Oregon Constitution, Article XI, Section 2 and the City of Tualatin Charter of 1967, Section 4.

### **3-4-030 Creation of Road Utility and Dedication of Revenue to Road Fund.**

(1) A road utility within the Road Fund is created for the purpose of maintenance of City streets, which includes repairing sidewalks under a sidewalk maintenance program, landscape enhancements along the rights-of-way, street tree replacement, and for paying the operating cost of street lights, ~~as defined in this ordinance.~~

(2) All funds collected pursuant to this Chapter must be allocated to the City's Road Fund. The portion of the Road Fund that represents the fees collected under this chapter during a given year, fees carried over from prior years and investment earnings from the fees shall be used to operate and administer the City's street maintenance program, which includes repairing sidewalks under a sidewalk maintenance program, landscape enhancements along the rights-of-way, replacing street trees, and to pay the cost of lighting City streets. The fees paid and collected must be reasonably related to the cost of providing street maintenance and street lighting, and generate revenues that are required to provide those services pursuant to the Plan. To the extent that road utility fees collected are insufficient to properly maintain local streets, the cost may be paid from such other non-dedicated City funds as may be allocated by the City Council, but the City Council may direct the reimbursement to such fund if additional fees are collected. All amounts on hand in the Road Fund, including those collected pursuant to

this Chapter may be invested by the Finance Director in accordance with State law. Earnings from such investments shall also be dedicated to the Road Fund.

(3) It is not necessary that the operations, administration and maintenance expenditures from the Road Fund for street maintenance and lighting purposes specifically relate to any particular property from which the fees for such purposes were collected. The fees shall not be used for other governmental or proprietary purposes of the City, except to pay for an equitable share of the City's accounting, management and other governing costs, incident to operation of the street maintenance program and the lighting of City streets. Otherwise the fees and charges shall be used solely to pay for the cost of operation, administration, maintenance, repair, improvement, renewal, replacement and reconstruction of City streets and related facilities and the actual costs of electricity and maintenance of City street lights.

(4) Revenues collected under this ordinance will be budgeted within the City Road Fund between expenditures for street maintenance and the operation and maintenance of City street lighting on the basis of approximately 6/7ths for street maintenance and 1/7th for street lighting. Revenues received for future years maintenance under the Plan will be reserved.

### **3-4-040 Definitions.**

As used in this ordinance Chapter, the following means:

~~(1) "City Engineer." The person appointed by the City Manager to perform the functions of City Engineer or the City Engineer's designee acting under his or her direction.~~

"City Manager" means the City Manager, or the City Manager's designee.

~~(2) "City Street" or "Street." means A a public road or right-of-way within the City, which is under the jurisdiction or control of the City.~~

~~(3) "Developed property" or "developed use." A means a lot or parcel, or legal a portion of a lot or parcel, or other 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.~~

~~(4) "Finance Director." The person appointed by the City Manager to perform the functions of Finance Director.~~

~~(5) "Gross square footage." The calculation of the area of all structures, located on a site, measured along the exterior walls of such 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.~~

~~(4)~~ "Improvement" means the development of property, or a portion thereof, and includes, but is not limited to, buildings, parking lots, landscaping, and outside storage.

~~(5)~~ "ITE Manual" means the manual entitled Trip Generation, published by the Institute of Transportation Engineers, 7th Edition.

~~(6)~~ "Mixed uses" means a single lot or parcel or property with more than one distinct use, and where, if located on separate lots or parcels without any shared amenities, such as walkways, driveways or parking areas, the uses would be assigned to distinct Use Categories. Mixed uses may include retail shopping centers with more than one tenant in either shared or separate leasable spaces and shared or common areas such as walkways, on site traffic areas, and parking. Mixed uses will generally contain a single water meter and sewer utility service.

~~(6)~~ ~~(7)~~ "Multi-family Residential Property-" means residential Residential property consisting of more than three separate living units or spaces.

~~(7)~~ ~~(8)~~ "Non-residential." A use of property which is primarily not for personal, domestic accommodation;. The term non-residential includes, including but is not limited to, industrial and commercial uses of property.

~~(8)~~ ~~(9)~~ "Operations Director." The person appointed by the City Manager to perform the functions of Operations Director. "Related Properties" means more than one lot or parcel or property with at least one common boundary, where the uses on such properties would be assigned to distinct Use Categories if the uses did not share common driveways, walkways or parking areas, and whose orientation is designed to reduce the number of trip destinations. Related properties may have more than a single water meter and sewer utility service.

~~(9)~~ ~~(10)~~ "Residential Property-" A means a use of property which is primarily for personal, domestic accommodation, including single family, multi-family residential property and group homes, but not including hotels and motels.

~~(10)~~ ~~(11)~~ "Single family residential-" means residential property consisting of single family detached dwellings, duplexes, and triplexes.

~~(11)~~ ~~(12)~~ "Trip generation-" means the The "average rate" number of weekday vehicle trips, as determined by reference to the ITE Manual, entitled, Trip Generation, published by the Institute of Transportation Engineers (ITE) 4th Edition 7<sup>th</sup> Edition, ("ITE Manual")

~~(12)~~ ~~(13)~~ "Use Category or Category of Use-" The means the Code number and resulting trip generation estimate determined with reference to the ITE Manual, and applicable to a particular developed or improved property.

(14) "Vacant" means that an entire building or billing unit has become vacant or continuously unoccupied for at least 30 days, not that a portion of a developed property without separate water meters has become vacant or unoccupied.

**3-4-050 Administration Officers designated.**

~~(1) Except as provided in subsections (2) and (3) of this section, the The City Engineer City Manager shall be is responsible for the administration of this ordinance Chapter, - The City Engineer shall be responsible including for developing administrative procedures, and for the ordinance, administration the for collecting the fees established by Council, and consideration and assignment of categories of use, subject to appeal to the City Council.~~

~~(2) The Operations Director City Manager is shall be responsible for developing and maintaining street maintenance programs for the maintenance of City streets and, subject to City Budget Committee review and City Council approval, allocation and expenditure of budget resources for street maintenance and street lighting in accordance with this ordinance Chapter.~~

~~(3) The Finance Director shall be responsible for the collection of fees under this ordinance. The City Manager is authorized and responsible to interpret all terms, provisions, and requirements of this Chapter, to adopt administrative policies, and to determine the appropriate fees, consistent with this Chapter and the Council fee resolution. The City Manager is also authorized and directed to review the operation of this Chapter and where appropriate recommend changes to Council.~~

**~~3-4-060 Road Utility Fees Allocated to Road Fund.~~**

~~(1) All funds collected pursuant to this ordinance shall be allocated to the City's Road Fund. The portion of the Road Fund that represents the fees collected under this chapter during a given year, fees carried over from prior years and investment earnings from the fees shall be used to operate and administer the City's street maintenance program, which includes repairing sidewalks under a sidewalk maintenance program, landscape enhancements along the rights-of-way, replacing street trees, and to pay the cost of lighting City streets. The fees paid and collected shall be reasonably related to the cost of providing street maintenance and street lighting, and shall generate revenues that are required to provide those services pursuant to the Plan. To the extent that road utility fees collected are insufficient to properly maintain local streets, the cost may be paid from such other non-dedicated City funds as may be allocated by the City Council, but the City Council may direct the reimbursement to such fund if additional fees are collected. All amounts on hand in the Road Fund, including those collected~~

~~pursuant to this ordinance may be invested by the Finance Director in accordance with State law. Earnings from such investments shall also be dedicated to the Road Fund.~~

~~(2) It shall not be necessary that the operations, administration and maintenance expenditures from the Road Fund for street maintenance and lighting purposes specifically relate to any particular property from which the fees for such purposes were collected. The fees shall not be used for other governmental or proprietary purposes of the City, except to pay for an equitable share of the City's accounting, management and other governing costs, incident to operation of the street maintenance program and the lighting of City streets. Otherwise the fees and charges shall be used solely to pay for the cost of operation, administration, maintenance, repair, improvement, renewal, replacement and reconstruction of City streets and related facilities and the actual costs of electricity and maintenance of City street lights.~~

~~(3) Revenues collected under this ordinance shall be budgeted within the City Road Fund between expenditures for street maintenance and the operation and maintenance of City street lighting on the basis of approximately 6/7ths for street maintenance and 1/7th for street lighting. Revenues received for future years maintenance under the Plan shall be reserved.~~

### **3-4-070 3-4-100 Road Utility Fee Established.**

(1) A Road Utility Fee is imposed and levied upon the owner, tenant, agent, or other authorized representative responsible for occupancy of an improved or of all developed property within the City.

(2) The Road Utility Fee will be established annually by resolution of the Council. The fee shall be based on the benefit that an owner, occupant, tenant, agent, or other authorized representative responsible for occupancy of a property receives from the direct and indirect use of or benefit derived from the use of public streets, sidewalk maintenance, street tree replacement, landscape enhancements along the rights-of-way, street lights and related facilities, generated by the developed property, as set forth in this Chapter.

(3) ~~The Road Utility Fee imposed under subsection (1) of this section may be paid by the owner, occupant, tenant, agent, or other authorized representative responsible for occupancy of a property. or anyone designated by the owner or occupant however if the Road Utility Fee is not paid promptly, when due, the City shall collect such Fee from the property owner or the property itself.~~

**3-4-080 3-4-110 Determination of Road Utility Fee Rates.**

(1) The Road Utility Fee shall rates established annually by resolution of the Council based on the following factors: will be based upon the trip generation impacts and the base rate maintenance cost for each Customer Group. The Customer Groups are:

(a) Single Family Residential Customer Group;

(b) Multi-Family Residential Customer Group; and

(c) Non-Residential Customer Group. The Non-Residential Customer Group Consists of multiple subgroups based upon vehicle trips generated by the property's uses, as determined by the ITE Manual. The Non-Residential Customer Groups are, as follows:

(i) Group 1: 7 or fewer average daily vehicle trips per thousand square feet of developed area;

(ii) Group 2: more than 7 but less than 21 average daily vehicle trips per thousand square feet of developed area;

(iii) Group 3: 21 or more but less than 53 average daily vehicle trips per thousand square feet of developed area;

(iv) Group 4: 53 or more but less than 151 average daily vehicle trips per thousand square feet of developed area;

(v) Group 5: 151 or more but less than 400 average daily vehicle trips per thousand square feet of developed area;

(vi) Group 6: 400 or more average daily vehicle trips per thousand square feet of developed area; and

(vii) Group 7: specially assigned trip generation figures.

(2) On or before July 1, 2018, and each July 1 thereafter, the Council will adjust the Road Utility Fee based upon the rolling five-year average of the following inflationary indices:

(a) the National Highway Construction Cost Index reflecting the cost of materials, weighted at 50%;

(b) The U.S. Bureau of Labor Statistics Employment Cost Index for Private Industry Workers, By Occupational Group and Industry, Construction Group reflecting the cost of labor, weighted at 30%; and



(c) The average annual change in total real market value of Washington County real property as estimated from data published by the Washington County Department of Assessment and Taxation reflecting the cost of right-of-way, weighted at 20%.

~~(a) The developed use of the property which includes the amount of vehicular traffic generated by the property, as determined by the City Engineer Manager.~~

~~(b) For nonresidential uses the developed square footage on the property or parcel.~~

~~(c) The traffic generation factor for each use category of developed property.~~

~~(d) The base rate maintenance cost for each Customer Group, based on use category of the developed property.~~

~~(2) The City Engineer shall determine the category of use from the ITE Manual that shall apply to each developed lot or parcel within the City. In the absence of a specific use category from within the ITE Manual for a particular developed use, the City Engineer shall determine the appropriate category by interpreting the ITE Manual and assigning the category which most accurately reflects the traffic generated by the particular developed use. After determining the appropriate use category for a developed parcel, the City Engineer shall use the estimated vehicle trip generation figures for the assigned use category from the ITE Manual and designate the developed property to a particular Customer Group. For nonresidential developed uses the applicable Road Utility fee shall be based on the area of developed use measured in thousands of square feet or fractions of thousand square feet. The Customer Groups are as follows:~~

~~(a) Single family residential;~~

~~(b) Multi-family residential; and~~

~~(c) Non-residential uses. Trip generation rates per thousand square feet of developed area shall be assigned to one of the following four non-residential groups:~~

~~(i) Group 1 with 7 or fewer average daily vehicle trips per thousand square feet of developed area;~~

~~(ii) Group 2 with more than 7 but less than 21 average daily vehicle trips per thousand square feet of developed area;~~

- ~~(iii) Group 3 with 21 or more but less than 53 average daily vehicle trips per thousand square feet of developed area;~~
- ~~(iv) Group 4 with 53 or more but less than 151 average daily vehicle trips per thousand square feet of developed area;~~
- ~~(v) Group 5 with 151 or more but less than 400 average daily vehicle trips per thousand square feet of developed area;~~
- ~~(vi) Group 6 with 400 or more average daily vehicle trips per thousand square feet of developed area; and~~
- ~~(vii) Group 7 for specially assigned trip generation figures.~~

~~(3) For purposes of examining uses not explicitly listed in the ITE manual and thereby determining the appropriate Category of Use, the City Engineer shall consider at least the following factors as well as any other relevant information:~~

- ~~(a) the size of the site and the building;~~
- ~~(b) the number of employees;~~
- ~~(c) other developed sites operated by the same or an affiliated owner for a use generating comparable amounts of traffic;~~
- ~~(d) other developed sites operated by a different owner for a use generating comparable amounts of traffic;~~
- ~~(e) the number of work shifts;~~
- ~~(f) the number of hours of operation; and~~
- ~~(g) the planning district designation.~~

~~The City Engineer Manager may require and consider the results of a traffic study, provided such study shall be conducted in conformance with the methodology outlined in the ITE Manual, and provided further such study shall include on site traffic counts not less than twice nor more than four times during the year immediately following the beginning of operation on site. In furtherance of this rule the City Engineer Manager may assign a Use Category and Customer Group on an interim basis, provided it is not less than the lowest Customer Group among available residential or nonresidential groups. The determination of Use Category shall not be considered a land use decision as that term is defined in ORS 197.015.~~

~~(4) The monthly fee for each customer group is as follows:~~

- ~~(a) Single-family residential, \$3.99 per unit;~~
- ~~(b) Multifamily residential, \$3.40 per unit;~~
- ~~(c) Non-residential Group 1, \$0.79 per thousand square feet; plus an additional \$2.50 flat fee;~~
- ~~(d) Non-residential Group 2, \$1.74 per thousand square feet; plus an additional \$2.50 flat fee;~~
- ~~(e) Non-residential Group 3, \$4.60 per thousand square feet; plus an additional \$2.50 flat fee;~~
- ~~(f) Non-residential Group 4, \$11.61 per thousand square feet; plus an additional \$2.50 flat fee;~~
- ~~(g) Non-residential Group 5, \$30.93 per thousand square feet; plus an additional \$2.50 flat fee;~~
- ~~(h) Non-residential Group 6, \$76.24 per thousand square feet; plus an additional \$2.50 flat fee; and~~
- ~~(i) Non-residential Group 7, \$6.84 per thousand square feet, plus an additional \$2.50 flat fee.~~

~~(5) Beginning on July 1, 2017 and each July 1 thereafter, the monthly fee for each customer group identified in subsection 4 of this Section will automatically increase by the most recently available rolling twelve month average change in the Engineering News-Record Construction Cost Index for Seattle, Washington.~~

~~(6) (3) Notwithstanding subsection (2), the Council may revise the monthly fee Road Utility Fee to reflect actual revenues, anticipated maintenance and lighting requirements, improvements in the methods of calculating revenues or requirements and changes in conditions which the Council finds should be taken into consideration in rates.~~

**TMC 3-4-120 Determination and Application of Rates.**

~~(1) To determine the Road Utility Fee for each owner, occupant, tenant, agent, or other authorized representative responsible for occupancy of a property, the City Manager must determine the appropriate Customer Group, use category, number of trips generated, and Gross Floor Area for each property and apply the rates set by Council.~~

(2) The City Manager must determine the appropriate Customer Group based on the use of the property and the trips generated per thousand square feet of development with reference to the ITE Manual.

(3) The City manager must determine the appropriate use category of each developed property as follows:

(a) Apply the use category from the ITE Manual that best represents the use of the property.

(b) In the absence of a specific use category from within the ITE Manual for a particular developed use, the City Manager must determine the appropriate category by interpreting the ITE Manual and assigning the category which most accurately reflects the use of the particular property based upon the following factors:

(i) the size of the site and the building;

(ii) the number of employees;

(iii) other developed sites operated by the same or an affiliated owner for a use generating comparable amounts of traffic;

(iv) other developed sites operated by a different owner for a use generating comparable amounts of traffic;

(v) the number of work shifts;

(vi) the number of hours of operation; and

(vii) the planning district designation.

(c) In lieu of, or in addition to, the factors in subsection (b) for determining the use category, the City Manager may require and consider the results of a traffic study conducted in accordance with the methodology outlined in the ITE Manual, and provided the study includes on site traffic counts not less than twice nor more than four times during the year immediately following the beginning of operation on site.

(d) In furtherance of this rule, the City Manager may assign a use category on an interim basis, provided it is not less than the lowest use category among available residential or nonresidential groups.

(e) The determination of use category is not a land use decision as that term is defined in ORS 197.015.

(4) For Non-Residential Customer Groups, after determining the appropriate use category for a developed property, the City Manager must use the estimated vehicle trip generation figures for the assigned use category from the ITE Manual and designate the developed property to a particular Customer Group based on the estimated number of vehicle trips in the ITE Manual for that use category.

(5) For each Non-Residential Customer Group, the City Manager must determine the Gross Floor Area measured in thousands of square feet or fractions of thousand square feet as follows:

(a) the sum in square feet of the area of each floor level in the building, including cellars, basements, mezzanines, penthouses, corridors, lobbies, stores, and offices, that are within the principal outside faces of exterior walls, not including architectural setbacks or projections. Included are all areas that have floor surfaces with clear standing head room (6 feet, 6 inches minimum) regardless of their use.

(b) If a ground-level area, or part thereof, within the principal outside faces of the exterior walls is not enclosed, this Gross Floor Area is considered part of the overall square footage of the building.

(c) Unroofed areas and unenclosed roofed-over spaces, except those contained within the principle outside faces of exterior walls, are excluded from the Gross Floor Area calculations.

(d) Parking garages within the building are excluded from the Gross Floor Area calculations.

(6) For the Non-Residential Customer Group, when uses of property under the ITE Manual are analyzed according to acreage rather than square footage, the City Manager must convert the ITE Manual trip generation rates to a square footage calculation and calculate the Road Utility Fee based on the square footage calculation. If conversion to a square footage calculation is not practical, then the City Manager may assign a special trip generation rate for an individual parcel.

### **3-4-140 ~~3-4-130~~ Mixed Uses and Related Properties.**

~~(1) The purpose of this section is to provide standards for determining the appropriate Use Category, and Customer Group in cases where distinct uses share or utilize common facilities, such as walkways, driveways or parking areas and thereby reduce the number of trip destinations for traffic which is generated, and apportioning road utility bills. Except as provided in this section, no road utility bill will be apportioned among mixed uses or related properties or combinations of mixed uses and related~~

properties. Mixed uses within a single building and Related Properties shall are not be entitled to apportionment of the Road Utility Fee bill, except where and to the extent the building or buildings unless the separate uses contain separate water meters and sewer services for the separate uses. Although these standards will generally apply to nonresidential uses, they may be used to determine the appropriate Use Category or Customer Group for mixed uses which consist of residential and nonresidential uses.

(2) The following definitions apply to this section:

(a) "Mixed uses" means a single parcel or property with more than one distinct use, and where, if located on separate parcels without any shared amenities, such as walkways, driveways or parking areas the uses would be assigned to distinct Use Categories. Mixed uses will generally consist of retail shopping centers with more than one tenant in either shared or separate leasable spaces and shared or common areas such as walkways, on-site traffic areas and parking. Mixed uses will generally contain a single water meter and sewer utility service.

(b) "Related Properties" means more than one parcel or property with at least one common boundary, where the uses on such properties would be assigned to distinct Use Categories if the uses did not share common driveways, walkways or parking areas, and whose orientation is designed to reduce the number of trip destinations. Related properties may have more than a single water meter and sewer utility service.

(3) The method of apportioning a Road Utility Fee bill for mixed uses and related properties shall be determined as follows:

(a) The total area of all buildings, measured at exterior walls will first be calculated.

(b) Based on the total area calculation, the appropriate Use Category or trip generation rate shall then be determined.

(c) The Customer Group and Road Utility Fee will then be determined based on the total area.

(d) The total area of each building, measured at exterior walls shall be calculated.

(e) Each building will be assigned a percentage rate based on the size of such building relative to the total area of all buildings.

~~(f) The percentage rate calculation determined in paragraph (e) of this subsection will then be multiplied by the total Road Utility Fee determined under paragraph (c) of this sub-section.~~

(2) For each separate use, the City Manager will determine the appropriate Customer Group, use category, number of trips generated, and Gross Floor Area, as set forth in TMC 3-4-120 (Determination and Application of Rates).

(3) The City Manager will then apply the rates set by Council, as appropriate for each separate use. The Road Utility Fee for each separate use will then be billed with the water and sewer services account related to the separate use.

(4) Although these standards will generally apply to nonresidential uses, they may be used to determine the appropriate Use Category or Customer Group for mixed uses which consist of residential and nonresidential uses.

**3-4-150 3-4-140 Administrative Policies Application of Road Utility Fee to Certain Properties.**

(4) The application of the Road Utility Fee under of this Chapter to certain properties is as follows:

~~(a) (1) City-owned parking lots, which are not associated with public services other than parking, shall are not be subject to the Road Utility Fee as they do not generate traffic in and of themselves.~~

~~(b) (2) Parking lots owned and operated by Tri-Met for mass transit passengers, such as "Park and Ride", shall are not be subject to the Road Utility Fee as they serve a purpose of reducing overall trip generation through the use of public transportation.~~

~~(c) (3) Publicly owned Park land, Open spaces and Greenways shall are not be subject to the Road Utility Fee unless public off-street parking designed to accommodate the use of such areas is provided.~~

~~(d) (4) Areas used for commercial farming or forestry operations shall will be billed according to the predominant use of any structures on the site. Where a site is used exclusively for farming or forestry and not for residential or commercial uses, the site shall not be subject to the Road Utility Fee. Where there is more than one developed use on the site, the Use Category shall be determined by examining the predominant use which shall be the use which is made on the property for the longest portion of the year. Where more than one use is made of a farming or forestry site and two or more uses predominate, then each use shall must be examined separately, as set forth in TMC 3-4-130 (Mixed Uses and Related Properties), and a combination of use categories shall will be used to determine the Road Utility Fee.~~

(e) ~~(5)~~ Areas encompassing railroad and public right-of-way shall are not be subject to the Road Utility Fee.

(f) ~~(6)~~ Railroad property containing structures, such as maintenance areas, non-rolling storage areas, and areas used for the transfer of rail transported goods to non-rail transport shall be are subject to Road Utility Fees.

~~(g) Use Categories within the ITE Manual shall be determined by reference to weekday average trip generation rates.~~

~~(h) For nonresidential developed uses of property which the ITE Manual analyzes according to acreage rather than square footage, the City Engineer shall convert the ITE Manual trip generation rates to a square footage calculation and assign the appropriate Customer Group and road utility fee. If conversion to a square footage calculation is not practical, then the City Engineer may assign a special trip generation rate for an individual parcel.~~

~~(i) Building area shall be multiplied by the number of stories, designed for developed use.~~

(j) ~~(7)~~ Road Utility Fees imposed under this ordinance Chapter shall apply to all developed property, including developed property owned by local, state, federal governments as well as property which may be entitled to exemption from or deferral of ad valorem property taxation.

(k) ~~(8)~~ The fees imposed under this ordinance Chapter shall become due and payable from and after the date when the developed property is connected to the public sanitary sewer system and is receiving service therefore.

~~(l) Except as provided in TMC 3-4-110, a developed property which undergoes a change in use shall continue to be responsible for fees imposed by this ordinance. Upon learning of the change in use and determining that a different use category and customer group applies to the developed property, the City Engineer shall will determine and assign the appropriate use category and customer group and advise the Finance Director, who shall thereafter charge and collect the road utility fee in accordance with such revised designation. Nothing contained herein shall be construed as a waiver of the City's right and responsibility to charge and collect the road utility fee in accordance with correct information concerning the developed property.~~

~~(2) The City Engineer is authorized and directed to review the operation of this ordinance and where appropriate recommend changes thereto in the form of administrative policies for adoption by the City Council by resolution. Administrative~~



~~policies are intended to provide guidance to property owners, subject to this ordinance, as to its meaning or operation, consistent with policies expressed herein. Policies adopted by the Council shall be given full force and effect, and unless clearly inconsistent with this ordinance shall apply uniformly throughout the City.~~

**3-4-150 Change in Use of Property.** ~~Except as provided in TMC 3-4-220 (Vacant Property), a developed property which undergoes a change in use will continue to be responsible for fees imposed by this Chapter. Upon learning of the change in use and determining that a different Customer Group, use category, number of trips generated, or Gross Floor Area applies to the developed property, the City Manager shall will determine and assign the appropriate Customer Group, use category, number of trips generated, or Gross Floor Area, and modify the Road Utility Fee accordingly. Nothing contained herein shall be construed as a waiver of the City's right and responsibility to charge and collect the road utility fee in accordance with correct information concerning the developed property.~~

**3-4-090 3-4-200 Billing and Collection of fee the Road Utility Fee.**

(1) ~~The road utility 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, and billed and collected separately for those lots or parcels not utilizing City water and sewer. In cases where a developed property is subject to water and sewer utility charges, the Road Utility Fee bill shall be directed to the same person as the bill for water and sewer charges, whether that be the owner, tenant, agent, or other authorized representative responsible for occupancy the developed property. In the case of those lots or parcels which are not occupied by the owner, the fee shall be billed with the monthly water and sewer bill, if any, which is billed to the resident of the property, unless the owner of the property requests that the combined utility bill be sent to another address. If a tenant in possession of any premises pays such fee, such payment shall relieve the owner from such obligation and lien, but the City shall not be required to look to any person other than the owner for the payment of such fees. All such bills shall be rendered monthly by the Finance Director City Manager and shall become due and payable upon receipt.~~

(2) ~~In the event funds received from City utility billings, as described in subsection (1) of this section, are inadequate to satisfy in full all of the water, sanitary sewer, storm sewer and road utility fees, credit shall be given first to the road utility fee, second to the sanitary and storm sewer service charges and third to the charges for water service.~~

**3-4-100 3-4-210 Delinquent Accounts.**

~~When a person's account is delinquent, the person will be provided a notice of delinquency. If payment is not received, the City may discontinue City utility services~~

and may collect the charges through any means authorized by law. [Ord. 1395-16, 6/27/16]

**~~3-4-110~~ 3-4-220 ~~Waiver of Fees in Case of Vacancy~~ Vacant Property.**

(1) Except as provided in subsection (2) of this section, when any premises within the City become vacant, totally unoccupied, or unused, but water service remains, and upon written application of the owner or the owner's authorized agent, and approval by the ~~Finance Director~~ City Manager, the Road Utility Fee shall thereafter be billed at the lowest rate within either the residential or nonresidential Customer Group, as appropriate.

(2) When any premises within the City become vacant, totally unoccupied, or unused, and water service is discontinued, and upon written application of the owner or the owner's authorized agent, payment of all outstanding water, sanitary sewer, storm sewer and road utility charges, and approval by the ~~Finance Director~~ City Manager, the road utility fee shall thereafter not be billed and shall not be a charge to the owner of ~~of all the property.~~ against the property

(3) The ~~Finance Director~~ City Manager is authorized to cause an investigation of any property for which a fee reduction or waiver application is submitted under this section to verify any of the information contained in the application. ~~The Finance Director~~ City Manager ~~is further authorized to develop and use a standard form of application for fee reduction or waiver under this section, provided it shall contain a space for verification of the information and the person signing such form affirms under penalty for false swearing the accuracy of the information provided therein.~~

(4) Fees may be reduced or waived in accordance with this section only while the property remains vacant. For purposes of this section, "vacancy" shall ~~mean~~ mean that an entire building or billing unit has become vacant or continuously unoccupied for at least 30 days, not that a portion of a developed property without separate water meters has become vacant or unoccupied.

(5) ~~Fees shall be reduced or waived in accordance with this section only while the property remains vacant.~~ The person signing the application for waiver or reduction of fees shall notify the City within 5 days of the premises being occupied, partially occupied or used, regardless of whether water service is restored. The City may charge any property person with the appropriate Road Utility Fee, including charges for prior billing periods, upon determining by whatever means that the property did not qualify for ~~waiver or reduction of charges~~ as vacant during such time.

(6) ~~The decision of the~~ City Manager ~~Finance Director~~ under subsections (1) and (2) shall be this section is final.

**3-4-120 3-4-300 Administrative Interpretation Request for Review of Determination of Rate.**

~~(1) The City Engineer has the initial authority and responsibility to interpret all terms, provisions and requirements of this ordinance and to determine the appropriate charges thereunder. Unless accompanied by an application for partial or complete waiver of fees due to vacancy reviewed by the Finance Director, a property owner or their agent desiring interpretation or other examination of the property owner's Road Utility Fee shall submit a written application to the City Engineer. The application shall be submitted in sufficient detail to enable the City Engineer to render an interpretation. The City Engineer may require additional information, including an engineering study prepared by a licensed professional engineer in conformance with the methodology outlined in the ITE Manual to be submitted by the applicant before an interpretation is given.~~

(1) A property owner, tenant, agent, or other authorized representative responsible for payment of the Road Utility Fee wishing to challenge the City Manager's determination of the Customer Group, use category, number of trips generated, or Gross Floor Area applicable to determine the Road Utility Fee must file a Request for Review with the City Manager.

(2) The Request for Review must contain a statement and supported by evidence setting forth the reason(s) that the Customer Group, use category, number of trips generated, or Gross Floor Area is invalid, otherwise improper, or why it should be modified.

~~(2) (3) Within 30 days of the submission of an application for interpretation the Request for Review, together with the required information, the City Engineer City Manager shall must issue a cause a final decision to be made on the application. The decision shall must be written and shall include findings of fact and conclusions for the particular aspects of the decision, based upon applicable criteria. A copy of the decision shall must be mailed to the person submitting the request. The City Engineer City Manager shall must maintain a collection of such decisions. Decisions of the City Engineer Manager which affect the amount of fee to be charged to a property shall be forwarded to the Finance Director. Except as provided under subsection (3) of this section, the decision of the City Engineer is final.~~

~~(3) (4) If the City Manager agrees in whole or in part with the Request for Review, the City Manager will decision of the City Engineer affects the Category of Use and the Customer Group of the property owner requesting the interpretation, the City Engineer shall either assign a new Use Category or Customer Group, or determine the current~~

Use Category or Customer Group is proper. If a change in Use Category or Customer Group is assigned, the Finance Director shall be notified so that appropriate change may be made in the applicable fee modify the Road Utility Fee to be charged in the future. No back charges or refunds shall be are allowed.

(5) The decision of the City Engineer City Manager under this subsection (3) only, may be appealed to the City Council in accordance with TMC 3-4-120 TMC 3-4-310 (Appeal to Council).

### **3-4-130 3-4-310 Administrative Appeal to Council.**

(1) Any owner, tenant, agent, or other authorized representative responsible for payment of the Road Utility Fee wishing to challenge the City Manager's determination on their Request for Review may appeal the City Manager's determination to the Council by filing a Notice of Appeal. Any owner who disputes any interpretation given by the City Engineer as to the Use Category or Customer Group assigned to such owner's property pursuant to this ordinance may appeal such interpretation, but only in accordance with this section. The dispute must first be presented to the City Engineer pursuant to TMC 3-4-120 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 Road Utility Fee charged under this ordinance shall become effective with the next billing cycle.

(2) The Notice of Appeal must contain a statement and supported by evidence setting forth the reason(s) that the City Manager's decision is invalid, otherwise improper, or why it should be modified. An owner who disputes an interpretation made by the City Engineer as to the assigned Category of Use or Customer Group under this ordinance, shall submit a The Notice of Appeal must be filed with the City Manager within written appeal to the City Manager within 10 days from the date of the City Engineer's City Manager's decision, together with a filing fee in the amount of \$300. The application for appeal shall specify the reasons therefore and Notice of Appeal must also 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 Use Category or Customer Group has been assigned to the particular property.

(3) Upon receipt of a Notice of Appeal within the timelines established in subsection (2), the 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 will conduct a hearing during a public meeting and determine whether there is

substantial evidence in the record to support the interpretation given by the City Engineer ~~City Manager~~. The Council may continue the hearing for purposes of gathering additional information bearing on the issue. The Council shall will make a tentative oral decision and shall must adopt a final written decision together with appropriate findings in support. The failure to appeal an interpretation made under this Chapter within the time and in the manner provided is sufficient cause to deny the relief requested. ~~The decision of the Council with respect to the Use Category shall be limited to whether the appellant has been assigned to the appropriate Use Category. If the Council should determine that a different Use Category and Customer Group should be assigned, it shall so order, provided no refund of prior Road Utility Fees shall be given. Only where the Council decision results in a change in Use Category and Customer Group will the filing fee on the appeal be refunded. The Council decision shall be final.~~

(4) If the Council agrees in whole or in part with the Notice of Appeal, the Council will modify the Road Utility Fee to be charged that account in the future. No back charges or refunds are allowed. Except in cases of hardship as determined by the Council, disputes which result in changes in the Road Utility Fee charged under this Chapter become effective with the next billing cycle.

(5) The Council's decision on the matter is final.

#### **3-4-160 3-4-320 Inspection of Premises.**

The City Engineer ~~City Manager~~ is authorized, through consent of a person in charge of private property, or otherwise by administrative warrant, to enter upon private property for purposes of conducting any studies or collecting information bearing upon the determination of the appropriate Use Category or ~~Transportation Utility Fee~~ Customer Group, use category, number of trips generated, or Gross Floor Area applicable to determine the Road Utility Fee in accordance with this ordinance Chapter.

#### **3-4-170 3-4-400 Civil Penalty.**

(1) In addition to any other remedy provided in this Chapter, violation of this ordinance is punishable by a fine not to exceed \$500. Each day after an account subject to Road Utility Fees remains delinquent in payment of such fees constitutes a separate violation.

(2) The civil infraction procedures in TMC 7-1 apply to the prosecution of any violation that results in a civil penalty under this Chapter.

#### **3-4-180 3-4-500 Special Assessments.**

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.

**Section 2. Severability.** Each section of this ordinance, and any part thereof, is severable. If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance remains in full force and effect.

ADOPTED by the City Council this 26th day of June, 2017.

CITY OF TUALATIN OREGON

BY   
Mayor Pro Tem

APPROVED AS TO LEGAL FORM

BY   
City Attorney

ATTEST

BY   
City Recorder

## **Attachment A**

### **Clean Version of Proposed Ordinance**

#### **3-4-010 Title.**

This Chapter shall be known as the Road Utility Fee of the City of Tualatin.

#### **3-4-020 Legislative Findings.<sup>1</sup>**

(1) In 1987/88 the City developed a pavement management plan for purposes of determining the costs of maintaining City streets and thereby preventing their further deterioration. This plan resulted in City Council adoption of the "City of Tualatin Pavement Management Plan," (the "Plan") which concluded in part that over the following 11 years the average annual cost of street maintenance would be \$300,000.

(2) As documented in the Plan, a substantial percentage of streets under City jurisdiction are less than 20 years old, and, therefore, have not deteriorated to the point where reconstruction has become necessary. However, unless funds are allocated for periodic, regular and, where necessary, aggressive maintenance activities on such roads, then deterioration of such roads will ultimately require extensive reconstruction for substantially greater cost.

(3) Historically the City has devoted its road fund revenues to new street and intersection construction and minor maintenance. Since the greatest percentage of roads under City jurisdiction are relatively new, historically revenues have not been budgeted for aggressive road maintenance, as proposed by the Plan. Therefore, although the City considers the maintenance of its streets to be a proprietary function, the expenditures required for aggressive road maintenance are different than those historically budgeted from General Fund revenues.

(4) The cost of road reconstruction far exceeds the cumulative cost of aggressive road maintenance. Current revenue sources available to the City, such as the Systems Development Charges and the City's share of fuel and weight/mile taxes are addressing the need for expansion of capacity, elimination of certain hazard locations and minor maintenance. No revenue source exists however to adequately fund maintenance of the City's streets. According to the Plan, there exists an average revenue shortfall of \$300,000 annually within the Road Fund for pavement management.

(5) Like road maintenance expenditures, the City has no identified, regular source of funds to cover the cost of electricity and maintenance for its street lights. With a current cost of \$108,000 annually, the City's Road Fund shows an average revenue shortfall of \$50,000 annually for street lighting.

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<sup>1</sup> Subsection (8) - Updated to the 7<sup>th</sup> Edition of the ITE.

(6) In 1989 the City Council commissioned a study by CH2M Hill to examine the various funding options available to the City for road maintenance, identified in the Plan, and for street lighting, and to analyze the advantages and disadvantages of each. The CH2M Hill report, dated December 1989, and entitled, "City of Tualatin Road Maintenance and Street Lighting Funding Study," ("Study,") recommended the City establish a utility based revenue source so as to best address citizen desires for equity, revenue stability and flexibility. Such a system is deemed most appropriate for apportioning the cost of local road maintenance in relation to the impact of a particular use of property served by the local road system. The benefit obtained by a property from regular local road maintenance is closely related to the use that the property makes of City streets as measured by trip generation of developed properties.

(7) It is anticipated that each City street will receive routine maintenance services every year. In addition, many City streets will receive major maintenance service, such as a chip seal or overlay, within the next eleven years. Unless these activities are funded, budgeted and appropriated, thereby properly maintaining City streets; the public health, safety and welfare will be seriously jeopardized.

(8) The Council finds the following source documents to be generally accepted and reliable for use in implementing the terms of this ordinance.

(a) Trip Generation, 7<sup>th</sup> Edition, published by the Institute of Transportation Engineers, ("ITE Manual,") and

(b) The City of Tualatin Pavement Management Plan, dated September 28, 1988, as updated.

(9) Since the Pavement Management Plan identifies a need to generate \$300,000 per year over the next 11 years and the next largest unfunded expense within the Road Fund is the cost of street lighting, the Council determined that the unfunded needs of these two programs would be \$350,000. It was further assumed that these costs would rise gradually as the City street system grows and the City builds and accepts more streets and street lights. The City Council established a goal of funding the entire average annual projected cost of street maintenance, according to the Pavement Management Plan, as well as \$50,000 or approximately one-half of the current cost of street lighting. The ratio of one to seven should be used in the future as a benchmark for allocating revenues from the Road Utility Fee collected under this ordinance to the expenditures for road maintenance and street lighting.

(10) Funds received under this ordinance shall be placed in the City's Road Fund and dedicated and used exclusively for street maintenance, including sidewalk repair, landscape enhancements along the rights-of-way, street tree replacement, and street lighting and for no other purpose, as more specifically out-lined in TMC 3-4-100.



(11) The adoption of this ordinance and the levying of charges and fees hereunder are adopted pursuant to the authority contained in the Oregon Constitution, Article XI, Section 2 and the City of Tualatin Charter of 1967, Section 4.

### **3-4-030 Creation of Road Utility and Dedication of Revenue to Road Fund.<sup>2</sup>**

(1) A road utility within the Road Fund is created for the purpose of maintenance of City streets, which includes repairing sidewalks under a sidewalk maintenance program, landscape enhancements along the rights-of-way, street tree replacement, and for paying the operating cost of street lights.

(2) All funds collected pursuant to this Chapter must be allocated to the City's Road Fund. The portion of the Road Fund that represents the fees collected under this chapter during a given year, fees carried over from prior years and investment earnings from the fees shall be used to operate and administer the City's street maintenance program, which includes repairing sidewalks under a sidewalk maintenance program, landscape enhancements along the rights-of-way, replacing street trees, and to pay the cost of lighting City streets. The fees paid and collected must be reasonably related to the cost of providing street maintenance and street lighting, and generate revenues that are required to provide those services pursuant to the Plan. To the extent that road utility fees collected are insufficient to properly maintain local streets, the cost may be paid from such other non-dedicated City funds as may be allocated by the City Council, but the City Council may direct the reimbursement to such fund if additional fees are collected. All amounts on hand in the Road Fund, including those collected pursuant to this Chapter may be invested by the Finance Director in accordance with State law. Earnings from such investments shall also be dedicated to the Road Fund.

(3) It is not necessary that the operations, administration and maintenance expenditures from the Road Fund for street maintenance and lighting purposes specifically relate to any particular property from which the fees for such purposes were collected. The fees shall not be used for other governmental or proprietary purposes of the City, except to pay for an equitable share of the City's accounting, management and other governing costs, incident to operation of the street maintenance program and the lighting of City streets. Otherwise the fees and charges shall be used solely to pay for the cost of operation, administration, maintenance, repair, improvement, renewal, replacement and reconstruction of City streets and related facilities and the actual costs of electricity and maintenance of City street lights.

(4) Revenues collected under this ordinance will be budgeted within the City Road Fund between expenditures for street maintenance and the operation and maintenance of City street lighting on the basis of approximately 6/7ths for street maintenance and 1/7th for street lighting. Revenues received for future years maintenance under the Plan will be reserved.

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<sup>2</sup> Subsections (2); (3); and (4) were moved from former TMC 3-4-060.

### 3-4-040 Definitions.

As used in this Chapter, the following means:

- (1) "City Manager" means the City Manager, or the City Manager's designee.<sup>3</sup>
- (2) "City Street" or "Street" means a public road or right-of-way, which is under the jurisdiction or control of the City.
- (3) "Developed property" or "developed use" means a lot or parcel, or legal a portion of a lot or parcel, or other real property, on which an improvement exists or has been constructed.
- (4) "Improvement" means the development of property, or a portion thereof, and includes, but is not limited to, buildings, parking lots, landscaping, and outside storage.<sup>4</sup>
- (5) "ITE Manual" means the manual entitled Trip Generation, published by the Institute of Transportation Engineers, 7th Edition.<sup>5</sup>
- (6) "Mixed uses" means a single lot or parcel or property with more than one distinct use, and where, if located on separate lots or parcels without any shared amenities, such as walkways, driveways or parking areas, the uses would be assigned to distinct Use Categories. Mixed uses may include retail shopping centers with more than one tenant in either shared or separate leasable spaces and shared or common areas such as walkways, on site traffic areas, and parking. Mixed uses will generally contain a single water meter and sewer utility service.<sup>6</sup>
- (7) "Multi-family Residential Property" means residential property consisting of more than three separate living units or spaces.
- (8) "Non-residential." A use of property which is primarily not for personal, domestic accommodation. The term non-residential includes, but is not limited to, industrial and commercial uses of property.
- (9) "Related Properties" means more than one lot or parcel or property with at least one common boundary, where the uses on such properties would be assigned to distinct Use Categories if the uses did not share common driveways, walkways or parking

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<sup>3</sup> Added City Manager to definitions.

<sup>4</sup> Moved the definition of "Improvement" from the last sentence after the definition of "Developed Property" in former TMC 3-4-040(3) and made it its own definition section

<sup>5</sup> Moved the definition of the "ITE Manual" from the last sentence in the definition of "trip generation" in former TMC 3-4-040(11) and made it its own definition section.

<sup>6</sup> Moved the definition of "Mixed Uses" was in TMC 3-4-140(2)(a) to the definition section.

areas, and whose orientation is designed to reduce the number of trip destinations. Related properties may have more than a single water meter and sewer utility service.<sup>7</sup>

(10) "Residential Property." A use of property which is primarily for personal, domestic accommodation, including single family, multi-family residential property and group homes, but not including hotels and motels.

(11) "Single family residential" means residential property consisting of single family detached dwellings, duplexes, and triplexes.

(12) "Trip generation" means the "average rate" of weekday vehicle trips, as determined by reference to the ITE Manual.<sup>8</sup>

(13) "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 or improved property.

(14) "Vacant" means that an entire building or billing unit has become vacant or continuously unoccupied for at least 30 days, not that a portion of a developed property without separate water meters has become vacant or unoccupied.<sup>9</sup>

### **3-4-050 Administration.**

(1) The City Manager is responsible for the administration of this Chapter, including for developing administrative procedures, and for collecting the fees established by Council.

(2) The City Manager is responsible for developing and maintaining street maintenance programs for the maintenance of City streets and, subject to City Budget Committee review and City Council approval, allocation and expenditure of budget resources for street maintenance and street lighting in accordance with this Chapter.

(3) The City Manager is authorized and responsible to interpret all terms, provisions, and requirements of this Chapter, to adopt administrative policies, and to determine the appropriate fees, consistent with this Chapter and the Council fee resolution. The City Manager is also authorized and directed to review the operation of this Chapter and where appropriate recommend changes to Council.<sup>10</sup>

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<sup>7</sup> Moved the definition of "Related Properties" in former TMC 3-4-140(2)(b) and moved to the definition section.

<sup>8</sup> Added the term weekday to the "trip generation" definition because of the language in former TMC 3-4-150(1)(g) ("Use Categories within the ITE Manual shall be determined by reference to weekday average trip generation rates.")

<sup>9</sup> Added the definition of "Vacant" from the definition of "vacancy" in former TMC 3-4-110(4).

<sup>10</sup> Subsection (3) modified former TMC 3-4-120(1) (Administrative Interpretation).

### **3-4-100 Road Utility Fee Established.**

(1) A Road Utility Fee is imposed and levied upon the owner, tenant, agent, or other authorized representative responsible for occupancy of an improved or developed property within the City.

(2) The Road Utility Fee will be established annually by resolution of the Council. The fee shall be based on the benefit that an owner, occupant, tenant, agent, or other authorized representative responsible for occupancy of a property receives from the direct and indirect use of or benefit derived from the use of public streets, sidewalk maintenance, street tree replacement, landscape enhancements along the rights-of-way, street lights and related facilities, as set forth in this Chapter.

(3) The Road Utility Fee imposed may be paid by the owner, occupant, tenant, agent, or other authorized representative responsible for occupancy of a property.

### **3-4-110 Road Utility Fee Rates.**

(1) The Road Utility Fee rates established annually by resolution of the Council will be based upon the trip generation impacts and the base rate maintenance cost for each Customer Group. The Customer Groups are:<sup>11</sup>

(a) Single Family Residential Customer Group;

(b) Multi-Family Residential Customer Group; and

(c) Non-Residential Customer Group. The Non-Residential Customer Group Consists of multiple subgroups based upon vehicle trips generated by the property's uses, as determined by the ITE Manual. The Non-Residential Customer Groups are, as follows:

(i) Group 1: 7 or fewer average daily vehicle trips per thousand square feet of developed area;

(ii) Group 2: more than 7 but less than 21 average daily vehicle trips per thousand square feet of developed area;

(iii) Group 3: 21 or more but less than 53 average daily vehicle trips per thousand square feet of developed area;

(iv) Group 4: 53 or more but less than 151 average daily vehicle trips per thousand square feet of developed area;

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<sup>11</sup> Subsection (1) modified former TMC 3-4-080(2) and contains all of the same groups.

(v) Group 5: 151 or more but less than 400 average daily vehicle trips per thousand square feet of developed area;

(vi) Group 6: 400 or more average daily vehicle trips per thousand square feet of developed area; and

(vii) Group 7: specially assigned trip generation figures.

(2) On or before July 1, 2018, and each July 1 thereafter, the Council will adjust the Road Utility Fee based upon the rolling five-year average of the following inflationary indices:<sup>12</sup>

(a) the National Highway Construction Cost Index reflecting the cost of materials, weighted at 50%;

(b) The U.S. Bureau of Labor Statistics Employment Cost Index for Private Industry Workers, By Occupational Group and Industry, Construction Group reflecting the cost of labor, weighted at 30%; and

(c) The average annual change in total real market value of Washington County real property as estimated from data published by the Washington County Department of Assessment and Taxation reflecting the cost of right-of-way, weighted at 20%.

(3) Notwithstanding subsection (2), the Council may revise the Road Utility Fee to reflect actual revenues, anticipated maintenance and lighting requirements, improvements in the methods of calculating revenues or requirements and changes in conditions which the Council finds should be taken into consideration in rates.

### **TMC 3-4-120 Determination and Application of Rates.<sup>13</sup>**

(1) To determine the Road Utility Fee for each owner, occupant, tenant, agent, or other authorized representative responsible for occupancy of a property, the City Manager must determine the appropriate Customer Group, use category, number of trips generated, and Gross Floor Area for each property and apply the rates set by Council.

(2) The City Manager must determine the appropriate Customer Group based on the use of the property and the trips generated per thousand square feet of development with reference to the ITE Manual.

(3) The City manager must determine the appropriate use category of each developed property as follows:<sup>14</sup>

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<sup>12</sup> Subsection (2) is a new provision on indexing and is the same as what Washington County uses for the TDT.

<sup>13</sup> This is a new section and modifies former TMC 3-4-080(2) and (3).

(a) Apply the use category from the ITE Manual that best represents the use of the property.

(b) In the absence of a specific use category from within the ITE Manual for a particular developed use, the City Manager must determine the appropriate category by interpreting the ITE Manual and assigning the category which most accurately reflects the use of the particular property based upon the following factors:

- (i) the size of the site and the building;
- (ii) the number of employees;
- (iii) other developed sites operated by the same or an affiliated owner for a use generating comparable amounts of traffic;
- (iv) other developed sites operated by a different owner for a use generating comparable amounts of traffic;
- (v) the number of work shifts;
- (vi) the number of hours of operation; and
- (vii) the planning district designation.

(c) In lieu of, or in addition to, the factors in subsection (b) for determining the use category, the City Manager may require and consider the results of a traffic study conducted in accordance with the methodology outlined in the ITE Manual, and provided the study includes on site traffic counts not less than twice nor more than four times during the year immediately following the beginning of operation on site.

(d) In furtherance of this rule, the City Manager may assign a use category on an interim basis, provided it is not less than the lowest use category among available residential or nonresidential groups.

(e) The determination of use category is not a land use decision as that term is defined in ORS 197.015.

(4) For Non-Residential Customer Groups, after determining the appropriate use category for a developed property, the City Manager must use the estimated vehicle trip generation figures for the assigned use category from the ITE Manual and designate the developed property to a particular Customer Group based on the estimated number of vehicle trips in the ITE Manual for that use category.

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<sup>14</sup> Subsection (3) is from former TMC 3-4-080(2) and (3)

(5) For each Non-Residential Customer Group, the City Manager must determine the Gross Floor Area measured in thousands of square feet or fractions of thousand square feet as follows: <sup>15</sup>

(a) the sum in square feet of the area of each floor level in the building, including cellars, basements, mezzanines, penthouses, corridors, lobbies, stores, and offices, that are within the principal outside faces of exterior walls, not including architectural setbacks or projections. Included are all areas that have floor surfaces with clear standing head room (6 feet, 6 inches minimum) regardless of their use.

(b) If a ground-level area, or part thereof, within the principal outside faces of the exterior walls is not enclosed, this Gross Floor Area is considered part of the overall square footage of the building.

(c) Unroofed areas and unenclosed roofed-over spaces, except those contained within the principle outside faces of exterior walls, are excluded from the Gross Floor Area calculations.

(d) Parking garages within the building are excluded from the Gross Floor Area calculations.

(6) For the Non-Residential Customer Group, when uses of property under the ITE Manual are analyzed according to acreage rather than square footage, the City Manager must convert the ITE Manual trip generation rates to a square footage calculation and calculate the Road Utility Fee based on the square footage calculation. If conversion to a square footage calculation is not practical, then the City Manager may assign a special trip generation rate for an individual parcel. <sup>16</sup>

### **3-4-140 3-4-130 Mixed Uses and Related Properties.**

(1) Mixed uses within a single building and Related Properties are not entitled to apportionment of the Road Utility Fee bill, unless the separate uses contain separate water meters and sewer services.

(2) For each separate use, the City Manager will determine the appropriate Customer Group, use category, number of trips generated, and Gross Floor Area, as set forth in TMC 3-4-120 (Determination and Application of Rates).

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<sup>15</sup> Subsection (5) is taken directly from the definition of Gross Floor Area definition in the ITE Manual. This is also consistent with the City's calculation of square feet, as set forth in former TMC 3-4-150(1)(i) ("Building area shall be multiplied by the number of stories, designed for development.")

<sup>16</sup> Subsection (6) is from former TMC 3-4-150(1)(h) and moved here.

(3) The City Manager will then apply the rates set by Council, as appropriate for each separate use. The Road Utility Fee for each separate use will then be billed with the water and sewer services account related to the separate use.

(4) Although these standards will generally apply to nonresidential uses, they may be used to determine the appropriate Use Category or Customer Group for mixed uses which consist of residential and nonresidential uses.

**3-4-140 Application of Road Utility Fee to Certain Properties.**<sup>17</sup> The application of the Road Utility Fee under of this Chapter to certain properties is as follows:

(1) City-owned parking lots, which are not associated with public services other than parking, are not subject to the Road Utility Fee as they do not generate traffic in and of themselves.

(2) Parking lots owned and operated by Tri-Met for mass transit passengers, such as "Park and Ride" are not subject to the Road Utility Fee as they serve a purpose of reducing overall trip generation through the use of public transportation.

(3) Publicly owned Park land, Open spaces and Greenways are not be subject to the Road Utility Fee unless public off-street parking designed to accommodate the use of such areas is provided.

(4) Areas used for commercial farming or forestry operations will be billed according to the predominant use of any structures on the site. Where a site is used exclusively for farming or forestry and not for residential or commercial uses, the site shall not be subject to the Road Utility Fee. Where there is more than one developed use on the site, the Use Category shall be determined by examining the predominant use which shall be the use which is made on the property for the longest portion of the year. Where more than one use is made of a farming or forestry site and two or more uses predominate, then each use must be examined separately, as set forth in TMC 3-4-130 (Mixed Uses and Related Properties), and a combination of use categories will be used to determine the Road Utility Fee.

(5) Areas encompassing railroad and public right-of-way are not subject to the Road Utility Fee.

(6) Railroad property containing structures, such as maintenance areas, non-rolling storage areas, and areas used for the transfer of rail transported goods to non-rail transport are subject to Road Utility Fees.

(7) Road Utility Fees imposed under this Chapter apply to all developed property, including developed property owned by local, state, federal governments as well as

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<sup>17</sup> This is from former TMC 3-4-140(1) and moved here.



property which may be entitled to exemption from or deferral of ad valorem property taxation.

(8) The fees imposed under this Chapter become due and payable from and after the date when the developed property is connected to the public sanitary sewer system and is receiving service therefore.

**3-4-150 Change in Use of Property.**<sup>18</sup> Except as provided in TMC 3-4-220 (Vacant Property), a developed property which undergoes a change in use will continue to be responsible for fees imposed by this Chapter. Upon learning of the change in use and determining that a different Customer Group, use category, number of trips generated, or Gross Floor Area applies to the developed property, the City Manager will determine and assign the appropriate Customer Group, use category, number of trips generated, or Gross Floor Area, and modify the Road Utility Fee accordingly. Nothing contained herein shall be construed as a waiver of the City's right and responsibility to charge and collect the road utility fee in accordance with correct information concerning the developed property.

**3-4-200 Billing and Collection of fee-the Road Utility Fee.**

(1) The road utility 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, and billed and collected separately for those lots or parcels not utilizing City water and sewer. In cases where a developed property is subject to water and sewer utility charges, the Road Utility Fee bill shall be directed to the same person as the bill for water and sewer charges, whether that be the owner, tenant, agent, or other authorized representative responsible for occupancy the developed property. All such bills shall be rendered monthly by the City Manager and shall become due and payable upon receipt.

(2) In the event funds received from City utility billings, as described in subsection (1) of this section, are inadequate to satisfy in full all of the water, sanitary sewer, storm sewer and road utility fees, credit shall be given first to the road utility fee, second to the sanitary and storm sewer service charges and third to the charges for water service.

**3-4-210 Delinquent Accounts.**<sup>19</sup>

When a person's account is delinquent, the person will be provided a notice of delinquency. If payment is not received, the City may discontinue City utility services and may collect the charges through any means authorized by law.

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<sup>18</sup> This is from former TMC 3-4-140(1)(I) and made its own Section.

<sup>19</sup> This is from former TMC 3-4-100.

### **3-4-220 Vacant Property.**<sup>20</sup>

(1) Except as provided in subsection (2) of this section, when any premises within the City become vacant, totally unoccupied, or unused, but water service remains, and upon written application of the owner or the owner's authorized agent, and approval by the City Manager, the Road Utility Fee shall thereafter be billed at the lowest rate within either the residential or nonresidential Customer Group, as appropriate.

(2) When any premises within the City become vacant, totally unoccupied, or unused, and water service is discontinued, and upon written application of the owner or the owner's authorized agent, payment of all outstanding water, sanitary sewer, storm sewer and road utility charges, and approval by the City Manager, the road utility fee shall thereafter not be billed and shall not be a charge to the owner of the property.

(3) The City Manager is authorized to cause an investigation of any property for which a fee reduction or waiver application is submitted under this section to verify any of the information contained in the application.

(4) Fees may be reduced or waived in accordance with this section only while the property remains vacant.

(5) The person signing the application for waiver or reduction of fees shall notify the City within 5 days of the premises being occupied, partially occupied or used, regardless of whether water service is restored. The City may charge any person the appropriate Road Utility Fee, including charges for prior billing periods, upon determining by whatever means that the property did not qualify as vacant during such time.

(6) The decision of the City Manager under this section is final.

### **3-4-300 Request for Review of Determination of Rate.**<sup>21</sup>

(1) A property owner, tenant, agent, or other authorized representative responsible for payment of the Road Utility Fee wishing to challenge the City Manager's determination of the Customer Group, use category, number of trips generated, or Gross Floor Area applicable to determine the Road Utility Fee must file a Request for Review with the City Manager.

(2) The Request for Review must contain a statement and supported by evidence setting forth the reason(s) that the Customer Group, use category, number of trips generated, or Gross Floor Area is invalid, otherwise improper, or why it should be modified.

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<sup>20</sup> This is from former TMC 3-4-110.

<sup>21</sup> This modified former TMC 3-4-120. Changed title and process from request for interpretation to a Request for Review. The timelines for filing did not change.

(3) Within 30 days of the submission of the Request for Review, the City Manager must issue a decision. The decision must be written and include findings of fact and conclusions for the particular aspects of the decision, based upon applicable criteria. A copy of the decision must be mailed to the person submitting the request. The City Manager must maintain a collection of such decisions.

(4) If the City Manager agrees in whole or in part with the Request for Review, the City Manager will modify the Road Utility Fee to be charged in the future. No back charges or refunds are allowed.

(5) The decision of the City Manager may be appealed to the City Council in accordance with TMC 3-4-310 (Appeal to Council).

### **3-4-310 Appeal to Council.<sup>22</sup>**

(1) Any owner, tenant, agent, or other authorized representative responsible for payment of the Road Utility Fee wishing to challenge the City Manager's determination on their Request for Review may appeal the City Manager's determination to the Council by filing a Notice of Appeal.

(2) The Notice of Appeal must contain a statement and supported by evidence setting forth the reason(s) that the City Manager's decision is invalid, otherwise improper, or why it should be modified. The Notice of Appeal must be filed with the City Manager within 10 days from the date of the City Manager's decision, together with a filing fee in the amount of \$300. The Notice of Appeal must also include an engineering study prepared by a licensed professional engineer in conformance with the methodology outlined in the ITE Manual.

(3) Upon receipt of a Notice of Appeal within the timelines established in subsection (2), 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 will conduct a hearing during a public meeting and determine whether there is substantial evidence in the record to support the interpretation given by the City Manager. The Council may continue the hearing for purposes of gathering additional information bearing on the issue. The Council will make a tentative oral decision and must adopt a final written decision together with appropriate findings in support. The failure to appeal an interpretation made under this Chapter within the time and in the manner provided is sufficient cause to deny the relief requested.

(4) If the Council agrees in whole or in part with the Notice of Appeal, the Council will modify the Road Utility Fee to be charged that account in the future. No back charges or refunds are allowed. Except in cases of hardship as determined by the Council,

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<sup>22</sup> This modified former TMC 3-4-130 to better explain the appeal process. The timelines and amount of the filing fee were not changed.

disputes which result in changes in the Road Utility Fee charged under this Chapter become effective with the next billing cycle.

(5) The Council's decision on the matter is final.

**3-4-320 Inspection of Premises.**<sup>23</sup> The City Manager is authorized, through consent of a person in charge of private property, or otherwise by administrative warrant, to enter upon private property for purposes of conducting any studies or collecting information bearing upon the determination of the appropriate Customer Group, use category, number of trips generated, or Gross Floor Area applicable to determine the Road Utility Fee in accordance with this Chapter.

**3-4-400 Civil Penalty.**<sup>24</sup>

(1) In addition to any other remedy provided in this Chapter, violation of this ordinance is punishable by a fine not to exceed \$500. Each day after an account subject to Road Utility Fees remains delinquent in payment of such fees constitutes a separate violation.

(2) The civil infraction procedures in TMC 7-1 apply to the prosecution of any violation that results in a civil penalty under this Chapter.

**3-4-500 Special Assessments.**<sup>25</sup> Nothing contained herein shall be construed as limiting the City's authority to levy special assessments in connection with public improvements pursuant to applicable

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<sup>23</sup> This modified former TMC 3-4-160 to clarify that the City cannot enter private property without either consent of the person in charge or by administrative warrant.

<sup>24</sup> This modified former TMC 3-4-400 to clarify that if a Civil Penalty is issued that the civil infraction procedures in TMC 7-1 apply.

<sup>25</sup> This was renumbered from former TMC 3-4-180.