

# DRAFT ORDINANCE

## ORDINANCE NO. A-252

### AN ORDINANCE ADOPTING A TRANSPORTATION UTILITY FEE FOR THE CITY OF COBURG

**WHEREAS**, The City has completed its Pavement Condition Survey of the City of Coburg's Street Network (Plan), dated January, 2018; and

**WHEREAS**, a Council appointed Street Funding Committee has reviewed this report and researched recommended funding mechanisms for increasing revenues to the Street Fund; and

**WHEREAS**, The Street Funding Committee has recommended a Transportation Utility Fee be considered for a funding option; and

**WHEREAS**, The Coburg City Council has deemed it a priority to commence pavement preservation and street improvements outlined in the Plan as identified by the City Council; and

**WHEREAS**, in order to finance City of Coburg street improvements, the Coburg City Council has determined that funding from a Transportation Utility Fee is required in addition to existing funding sources to the Street Fund.

### **NOW, THEREFORE, THE CITY OF COBURG ORDAINS THE FOLLOWING:**

#### **SECTION 1. Creation and Purpose.**

This Transportation Utility Fee is created and imposed for the purpose of operating and administering the pavement system maintenance and capital improvement program. This program will manage, plan, design, construct, preserve and maintain the street pavement system of the City of Coburg.

- A. Responsible Party.** The Transportation Utility Fee shall be paid by the Responsible Party for each billing Unit or Occupied Unit of real property per the terms of this ordinance.
- B. Purpose.** The purpose of the Transportation Utility Fee is to charge users for the service the City provides in repair and maintenance of public streets and right-of-way, and to be available to retire bonds purchased for the repair and maintenance of public streets. It is also to ensure the repair and maintenance occurs in a timely fashion, thereby reducing increased costs that result when maintenance is deferred.

**SECTION 2. Definitions.** Unless otherwise defined herein, terms used in this Ordinance have the meaning as described in Coburg Transportation Plan. As used in this ordinance, the following terms shall mean:

- A. APPEAL.** An appeal shall be the process for which a property owner may challenge the ITE code, associated trips, business square footage and assignment of a TUF Fee.
- B. BOND PURCHASE.** The purchase of bonds in order to fund street repairs & maintenance with the intention of utilizing the Street Utility Fee revenue to pay back/retire the bond.
- C. CITY.** City of Coburg
- D. CITY ADMINISTRATOR.** The City's Administrator or the City Administrator's designee.
- E. COUNCIL.** The City Council for the City of Coburg.
- F. DEVELOPED PROPERTY.** A parcel or legal portion of real property, on which an improvement exists or has been constructed. Improvement on developed property includes, but is not limited to buildings, parking lots, landscaping and outside storage.
- G. FEES.** Fees shall mean the amount owed after applying the appropriate rate to a particular developed property based upon factors as established by this ordinance.
- H. FINANCE DIRECTOR.** The City Finance Director or the Finance Director's designee
- I. GROSS SQUARE FOOTAGE.** Gross Square footage shall mean the calculated area of all non-residential structures, including but not limited to enclosed courtyards, stairwells, and square footage on each level of multi-story structures, but not including fences and parking areas which are not enclosed within a building.
- J. ITE MANUAL.** ITE Manual means the Institute of Transportation Engineers Trip Generation Manual.
- K. LOW INCOME ASSISTANCE.** Low Income Assistance means reduction in the fees associated with the Transportation Fee as it pertains to a resident qualifying application for utility rate adjustments in the water and sewer funds.
- L. MULTI-FAMILY.** Multi-Family residence shall mean a residential structure accommodating two or more dwelling units.
- M. NON-RESIDENTIAL PROPERTY.** Property that is not primarily used for personal domestic accommodation. Non-residential Property includes

industrial, commercial, institutional, hotel and motel, group homes, and other non-residential uses.

- N. SCHOOL.** School shall mean all schools, kindergarten through grade twelve, providing busing or parent delivery of students and located within the city limits of City of Coburg.
- O. OCCUPIED UNIT.** Any structure or any portion of any structure occupied for residential, commercial, industrial, or other purposes. For example, in a multi-family residential development, each dwelling unit shall be considered a separate Occupied Unit. An Occupied Unit may include more than one structure if all structures are part of the same dwelling unit or commercial or industrial operation. For example, an industrial site with several structures that form an integrated manufacturing process operated by a single manufacturer constitutes one Occupied Unit. An industrial site that shares a common entry and parking areas, and where there are several businesses on the site which all have different uses, each business will be considered a separate occupied unit.
- P. PUBLIC RIGHT OF WAY (PROWAG).** Prowag means the Public Right-of-Way Accessibility Guidelines as published by the United States Access Board. These guidelines cover pedestrian access to sidewalks and streets, including crosswalks, curb ramps, street furnishing, pedestrian signals, parking and other components of Public Right-of Ways.
- Q. PUBLIC WORKS DIRECTOR.** The City Public Works Director or the Public Works Director's designee
- R. RESIDENTIAL PROPERTY.** Property that is used primarily for personal domestic accommodation, including single-family, multi-family residential property and home occupations, but not including group homes, hotels and motels.
- S. RESPONSIBLE PARTY.** The person or persons who by occupancy or contractual arrangement are responsible to pay for utility and other services provided to an Occupied Unit. Unless another party has agreed in writing to pay and a copy of the writing is filed with the City, the person(s) paying the City's water 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 Party if a copy of the writing is filed with the

City. In the case of a multi-use building in which one landlord receives one utility bill for several units representing different uses, the Owner/Landlord who receives the utility bill for the entire property will be the Responsible Party.

- T. SINGLE FAMILY RESIDENCE.** Single Family Residence shall mean a residential structure accommodating one dwelling unit.
- U. STREET REPAIR, RECONSTRUCTION, AND MAINTENANCE.** Any action to repair, reconstruct, resurface, replace, or maintain the roads within the City of Coburg. Street Maintenance does not include work that increases the capacity of a street such as a street widening, adding bike lanes or sidewalks, or the construction of new streets or street lighting. It does not include the maintenance or removal of trees within in the right-of-way of any City Street. Street maintenance shall include the resurfacing of existing streets; the repair, replacement or addition of curb and gutters, installation and maintenance of storm drainage; updates to ADA access; repair or replacement of the entire existing street structural section; repair or replacement of existing street shoulders, pavement markers, striping and other street markings; repair or replacement of existing channelization devices; adjustment of existing utilities to match finish grades; and any other related work within existing streets.
- V. UNIT RATE.** Fee amount charged per Transportation Rate Schedule as adopted by City Council. There shall be a unit rate applied to residential land uses, identified as the residential unit rate, and a unit rate schedule applied to all other land uses, identified as the non-residential rates.
- W. UNOCCUPIED UNIT.** Property that is undeveloped, or if developed, is not in current use or is not considered an Occupied Unit.
- X. USE CATEGORY.** Use category or **Category of Use** means the ITE business code and resulting trip generation estimate determined with reference to the ITE SDC Fee Schedule.
- Y. VACANT.** Vacant means that the entire developed property, building, or unit has no occupant for more than sixty (60) continuous days; when the property use is suspended for a seasonal closure lasting more than sixty (60) days, or property remodel, repair, or reconstruction

### **SECTION 3. TRANSPORTATION UTILITY FEES ALLOCATED TO THE STREET FUND**

- A. Collection of Fees.** All Transportation Utility Fees received shall be deposited into the Street Fund and dedicated to the operation of the City street system.

Other revenue sources may also be used for street maintenance. Amounts in the Street Fund may be invested by the Finance Director in accordance with State law. Earnings from such investments shall be dedicated to the Street Fund.

- B. Designation of Use.** The Street Fund shall not be used for other governmental or proprietary purposes of the City, except to pay for an equitable share of the city's overhead costs including accounting, management and other costs related to management and operation of the Street Fund. Engineering design, pavement evaluation, construction management, and other related costs, including project advertisements for bid, in the implementation of street maintenance projects shall also be considered as appropriate use for street maintenance funds collected through the Transportation Utility Fee.

#### **SECTION 4. ADMINISTRATION**

- A. Implementation.** Except as provided in subsections (B), (C) and (D) of this section, the City Administrator shall be responsible for the implementation of the Transportation Utility Fee created by this title when administratively feasible, but not sooner than 30 days after this Ordinance is adopted. The City Administrator shall be responsible for developing or delegating the development of administrative procedures, administration of rates, and for the purposes of establishing the rate for the specific Occupied Unit, and the consideration and assignment for categories of use subject to appeal.
- B. Street Maintenance Program.** The Public Works Director shall be responsible for developing and maintaining Street Maintenance programs for the maintenance of City streets and, subject to the review of the Over-Site Committee if appointed, City Budget Committee review and City Council approval, allocation and expenditure of budget resources for street system maintenance in accordance with this chapter.
- C. Review/Oversite.** An oversight committee/commission appointed by the City Council will review the Public Works reports, and be given periodic updates to the street maintenance programs.
- D. Collection.** The Finance Director will be responsible for the collection and calculation of the fees.

#### **SECTION 5. CATEGORIES OF USE**

The City Administrator may interpret all terms, provisions and requirements of this chapter and determine the appropriate TUF categories for use subject to appeal.

**A. Assignment.** The City Administrator will direct the establishment of assignment of categories of use for each non-residential property utilizing the ITE Codes as established in the City of Coburg Transportation SDC Schedule.

## **SECTION 6. DETERMINATION OF TRANSPORTATION UTILITY RATE**

**A. Establishment of Rate.** A Transportation Utility Rate is hereby established and shall be based upon the following.

1. The City's priority corrective and preventative street maintenance projects.
2. For Residential Property, a base rate shall be set by the City Council by resolution.
3. Non-residential properties shall pay the same base rate as residential properties plus an additional rate to be charged according to the following formula: the number of daily trips calculated based upon land use by the ITE Code Transportation Rate schedule adopted by the City. The specified Average Daily Person Trips shall be calculated times the existing 1000 square feet of business space, and then times the rate set per the resolution adopted by Council. This shall be detailed in the rate schedule adopted by resolution and may be updated annually by resolution of the City Council.

The non-residential rate will be applied to each unit.

4. The amount of the Transportation Utility Fee shall be set by Council resolution.
5. The Transportation Utility Fee program shall be reviewed annually as part of the City Budget Process.

**B. Unit Fee.** Based upon the rates set by Council resolution, the Finance Director shall direct the charge of a per unit Transportation Utility Fee to the responsible party for each billing unit with an active utility account, or for occupied units not connected to City water and/or sewer, to the responsible party of each occupied unit of residential or non-residential property. The amount payable shall be adjusted if there is a change of use or development.

All adjustments based on a change in use or development shall be determined by a building modification permit, or a change in use of an existing building.

In January of each year the City shall send non-residential properties a reminder of the Transportation Fee charged to a property. At this time a non-residential business may request a review of fee if circumstances creating the original fee has changed.

- C. Billing.** The Transportation Utility Fee shall be billed to and collected from the Responsible Party identified in Section 6 above. Transportation Utility Fees shall be included as part of the water and sewer bill for billing units with active utility accounts, and included on an “Other Utility” bill for Occupied Units not connected to City water or sewer services. All such bills shall be rendered regularly through the utility billing system and shall become due and payable upon receipt. If an owner has applied for and been approved for a fee reduction for low income assistance or for an unoccupied unit, then billing payments shall be credited to the tree fee first, and the water bill last, and shall not be credited to the Transportation Utility Fee.
- D. Collections.** Collections from responsible parties shall be applied first to interest and penalties, second to the Transportation Utility Fee, third to the tree Fee, fourth to the sewer utility, and last to the water fee.

## **SECTION 7. REDUCTION OF FEES**

- A. Low Income Assistance.** A principal residence of a person may qualify for a special user rate if the person meets certain income criteria as established in Low Income Assistance Program established at the City of Coburg.
1. Any person desiring to receive a transportation reduction of fees must submit an application to the City on established forms provided for all utilities.
  2. The amount of rate adjustment will be established by the same policies that govern the application process for Low Income Assistance on utility bills.
- B. Vacancy.** When a developed property within the City becomes vacant as described below, upon written application and approval by the City Administrator, the transportation rate shall thereafter not be billed and shall not be a charge against the property until the property once again occupied.

1. The City Administrator is further authorized to develop and use a standard form of application for determination of vacancy is submitted to verify any of the information contained on the application. The City Administrator is further authorized to develop and use a standard for of application, 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 therein.
  2. Any occupancy or use of the property terminates the waiver. The City may charge any property with the appropriate transportation rate, including charges for prior billing periods, upon determining by whatever means that a property did not qualify for a waiver or changes during the relevant time. The decision of the City Administrator under this section shall be final.
- C. False Applications.** It is unlawful for any person to make, assist in making or to derive the benefits from any false application of fee reduction or waiver provided under this chapter. In addition to other penalties provided by law, the City shall be entitled to recover from any person or persons receiving the benefit of a waiver as a result of any false statement made in any application the amount therefore, including interest from the date the waiver is granted.

## **SECTION 9. COMMENCEMENT OF CHARGES AND COLLECTION**

- A. New Construction.** For new construction, fees charges shall commence with the issuance of a building permit or installation of a water meter, whichever comes first.
- B. Annexation.** Occupied and developed property annexed to the City shall begin paying the fee the first month following their annexation. Properties annexing into the City that contains empty land shall begin paying when the first utility bill is established for the property
- C. Monthly Collection.** The fees imposed by this chapter shall be collected with the monthly City utility bill according to the rate schedule approved by resolution. This includes those parcels connected to water or billed alone as a Transportation Utility Fee for those users not connected to or not otherwise charged for water service.

## **SECTION 10 APPEALS**

- A. Authority.** The City Administrator shall have the initial authority and responsibility to interpret all terms, provisions and requirements of this chapter and to determine the appropriate charges thereunder. The



responsible party for an Occupied Unit may request reconsideration of the determination of the amount of the fee by submission of a written application to the City Administrator. The application shall be supported with sufficient factual details to enable the City Administrator to render an informed decision.

- B. Decision.** Within thirty (30) days of the submission of a complete application requesting reconsideration of the amount of the Transportation Utility Fee to be charged to an Occupied Unit, the City Administrator shall render a decision on the application. The decision shall be provided in written form and shall include findings of fact and conclusions for the particular aspects of the decision, based upon available criteria. A copy of the decision shall be mailed to the person submitting the request.
- C. Use Categories.** For the purpose of reviewing the fee, the City Administrator may determine that the land use category is proper and that the fee charged is appropriate. However, if the decision of the City Administrator results in a change in category of land use, the City Administrator shall, for the purpose of establishing the fee, assign a new use category and notify the Finance Director so that the appropriate change may be made in the applicable fee to be charged in the future.
- D. Refunds or Credits.** If the City Administrator determines that there is a change in category of land use necessary, and that the client has been overcharged for the Transportation Utility Fee, the City shall issue a credit or refund to the responsible party of the Occupied Unit who pays the utility billing.
- E. Appeal of City Administrator Decision.** The Responsible Party may appeal the City Administrator's determination to the City Council. The notice of appeal must be filed on the Transportation Utility Fee Appeal Form. An appeal must be filed in writing within ten (10) days of the date of receipt of notice of assignment of fee, or change of use code for ITE Trips according to land use. This form must be filed with the office of the City Recorder in writing, stating:
1. The name and address of the appellant
  2. The address of the affected premises
  3. The nature of the determination being appealed
  4. The reason the determination is incorrect
  5. What the correct determination of the appeal should be.

A responsible party who fails to file such a statement within the time permitted waives his or her objections and the appeal shall be dismissed. If

notice of appeal is properly filed, except in an emergency, the City shall continue to bill the property at the initial fee during the appeal process. After a determination is made on the appeal, the City will refund or credit the customer if such fee has been reduced through the appeal process

The appellant shall be allowed at least ten (10) days' written notice of the hearing on the appeal. At its next available meeting, the City council shall hear and determine the appeal on the basis of the written statement and such additional evidence as the Council deems appropriate. At the hearing the appellant may present testimony and oral argument personally or by counsel, and additional evidence. The rules of evidence as used by courts of law do not apply. The decision of the Council shall be in writing and shall contain findings of fact and conclusions of law that substantiate the Council's decision. The decision shall be mailed to the appellant within ten (10) days of the completion of the appeal hearing. The decision of the Council shall be final.

#### **SECTION 11. RATES AND COLLECTION.**

- A.** All charges and service rates levied in accordance with ordinances of the City shall be a debt due to the City. If this debt is not paid within thirty (30) days, it shall be deemed delinquent and may be recovered by civil action in the name of the City against the property Owner. All service rates, charges, costs and assessments shall be levied and imposed, upon all persons or developed property whose premises are now and hereafter located in the City Limits of Coburg. A record of unpaid debts for services shall be kept by the City and such a list shall be a portion of the City's lien records. The City may follow the same enforcement procedures set forth in the City's Water Ordinance to collect delinquent payments, including, but not limited to, discontinuation of water services. In addition to any other remedy, at any time after the passage of thirty (30) days after the debt is due, the City may elect to foreclose on the debt in the City lien records unless the Owner can provide proof that the debt has been paid in full.
- B.** The Council may establish, by resolution, other methods for the collection of all rates authorized by this ordinance. All rates levied or charged pursuant to this ordinance shall be payable in the same manner and at the same time as water use charges. In addition to all other remedies, the Council may provide for the termination of water service for any property where any rate authorized by this Ordinance is not paid.

- C. The Owner of property may make contractual arrangements for a tenant to pay some or all of the rates developed pursuant to this Ordinance. Where the City has notice of such arrangements, the City will honor those contractual commitments by a tenant, as long as the rates are paid in full and on time. The Owner of a property will remain ultimately responsible for payments of any rates charged to a property, regardless of any contractual arrangements the Owner may have made.

## **SECTION 12. REVIEW OF FUND AND ANNUAL REPORT.**

The Public Works Director or other City Staff as delegated by the City Administrator shall perform a full rate review no less frequently than every 12 months which shall be reviewed by the City Council. The following are examples of circumstances that council may consider when adjusting fees:

- a. Grants and funding received by the City that offset the cost of repairs and maintenance of the roads.
- b. Larger than expected costs to complete any transportation projects.
- c. Recession or undue financial distress placed on the community as a whole.

Annual reviews of the fee and adjustments shall consider the November Engineering News 20 City Construction Index, or other means determined by the City Engineer to be acceptable in determining the increase or decrease of the cost of construction of any one or all of the projects to be completed.

Any adjustments to fees shall be made by City Council resolution.

## **SECTION 13. SEVERABILITY**

- A. In the event any section, subsection, paragraph, sentence or phrase of this chapter or any administrative policy adopted herein is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of the ordinance 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 parties, then as to those certain parties, an exception or exceptions from the imposition of the Transportation Utility Fee shall thereby be created and the remainder of the ordinance and the fees imposed thereunder shall continue to apply to the remaining properties without interruption.

**SECTION 14. CLASSIFICATION OF CHARGES**

For purposes of ORS 310.145 (Classification of Taxes and Fees for Purposes of Measure 5 Limits), the Transportation Utility Fee is not intended to be a tax on property or a property owner as a direct consequence of ownership, but instead is a fee or charge on subject to the limits of Section 11(b), Article XI, of the Oregon Constitution.

**SECTION 15. EFFECTIVE DATE.**

This ordinance shall become effective \_\_\_\_\_.

**ADOPTED** by the **City Council** of the **City of Coburg** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by a vote of \_\_\_\_ for and \_\_\_\_ against.

**APPROVED** by the Mayor of the City of Coburg this \_\_\_\_\_th day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Ray Smith, Mayor

ATTEST:

\_\_\_\_\_  
Sammy L. Egbert, City Recorder

**CITY OF COBURG  
TRANSPORTATION UTILITY FEE APPEAL FORM**

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**Date** \_\_\_\_\_

**Name of Person Submitting Appeal** \_\_\_\_\_

**Business Address** \_\_\_\_\_

**Contact Phone** \_\_\_\_\_ **Email** \_\_\_\_\_

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I am submitting an appeal for the following reasons:

\_\_\_\_\_ ITE Code Assigned to My Business \_\_\_\_\_ Associated Trips Assigned

\_\_\_\_\_ Square Footage Considered for setting my fee

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In order for an Appeal to be considered by the City it must be submitted within 10 days of receipt of assigned fee. In addition, the following must be attached to this form:

1. A written description of why you are appealing the fee. Please provide proof or alternate information to support your appeal
  
  2. A building footprint with square footage prepared and stamped by a licensed Engineer if appealing square footage assigned
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Received by City of Coburg on: \_\_\_\_\_  
Date Received

Acknowledgment of Receipt \_\_\_\_\_  
Name and Signature of Staff Member

Date Appeal will be considered \_\_\_\_\_  
Date