

ORDINANCE NO. 932

AN ORDINANCE AMENDING THE STAYTON MUNICIPAL CODE ("SMC") TO ADOPT CHAPTER 3.30 TO ESTABLISH A TRANSPORTATION MAINTENANCE PROGRAM FOR THE CITY OF STAYTON.

WHEREAS, the City Council finds that the streets, sidewalks and transportation system are in need of annual maintenance and repair; and

WHEREAS, the City has concluded that in order to generate funds to perform required maintenance on the City's streets, sidewalks and transportation system, it is appropriate for the City to adopt a transportation maintenance fee on developed properties inside the City of Stayton.

WHEREAS, the fee authorized SMC Chapter 3.30 is not subject to the property tax limitations of Section 11(b), Article XI, of the Oregon Constitution.

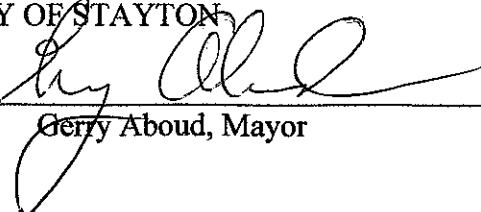
NOW, THEREFORE, the Stayton City Council does ordain as follows:

SECTION 1. Chapter 3.30 of the Stayton Municipal Code relating to a Transportation System Maintenance Program is hereby added to the Stayton Municipal Code to read as set forth in Exhibit "A", attached hereto and incorporated herein.

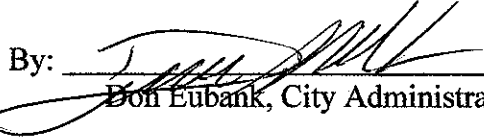
SECTION 2. Non-Emergency Ordinance. This ordinance is a non-emergency ordinance and will take effect 30 days after enactment of the City Council and approval by the Mayor.

ADOPTED BY THE STAYTON CITY COUNCIL this 20th day of December, 2010.

Signed: 12/20/2010

CITY OF STAYTON
By: 
Gerry Aboud, Mayor

Signed: 12/20/10

ATTEST
By: 
Don Eubank, City Administrator

APPROVED AS TO FORM:


David A. Rhoten, City Attorney

Exhibit “A”

Chapter 3.30

TRANSPORTATION MAINTENANCE PROGRAM

Section

- 3.30.010 Definitions.
- 3.30.020 Administrative officers.
- 3.30.030 Dedication of revenues.
- 3.30.040 Annual street maintenance program report.
- 3.30.050 Transportation maintenance fee.
- 3.30.060 Determination of transportation maintenance fee.
- 3.30.070 Administration of transportation maintenance fee.
- 3.30.080 Waiver of transportation maintenance fee in case of vacancy.
- 3.30.090 Transportation maintenance fee appeal procedure.
- 3.30.100 Exceptions to transportation maintenance fee.
- 3.30.110 Severability.
- 3.30.120 Sunset Provision.

§ 3.30.010 Definitions.

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

1. **DEVELOPED PROPERTY:** A parcel or portion of real property on which an improvement exists or has been constructed. Improvement on developed property includes, but is not limited to buildings, parking lots, landscaping and outside storage.
2. **DWELLING UNIT:** Any building, or any portion thereof, that contains 1 or more habitable rooms which are occupied or intended to be occupied by 1 family with facilities for living, sleeping, sanitation, cooking, and eating.
3. **FINANCE DIRECTOR:** The City of Stayton Finance Director or the Director's designee.
4. **GROSS SQUARE FOOTAGE AREA(GFA):** The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks. The GFA shall be measured in thousands (1,000) of square feet.
5. **NON-RESIDENTIAL PROPERTY:** Any property that is not residential property.
6. **PUBLIC WORKS DIRECTOR:** The City of Stayton Public Works Director or the Director's designee.
7. **RESIDENTIAL PROPERTY:** A property that is primarily for personal, domestic accommodation, including single-family, manufactured and mobile homes, and all types of multi-unit residential property, assisted living or congregate care facilities consisting of 2 or more dwelling units per building, but not including lodging facilities.
8. **RESPONSIBLE PARTY:** The person or persons who by occupancy or contractual arrangement are responsible to pay for utility services provided to an occupied unit. The person(s) paying the utility bill for an occupied unit shall be deemed the responsible party as to that occupied unit. For any developed property not otherwise required to pay a utility bill, "responsible party" shall mean the person or persons listed as the owner, or agent, on the Marion County Tax Assessment Records, unless another responsible party has agreed in writing to pay and a copy of the writing is filed with the City.
9. **SINGLE FAMILY RESIDENTIAL:** Residential property that has one dwelling unit.
10. **STREET:** A public street or right-of-way within the City that is under the jurisdiction or control of the City. For purposes of this chapter, county, state, and federal roads are excluded.
11. **TRANSPORTATION MAINTENANCE PROGRAM:** A program established by this chapter to maintain, repair and reconstruct City streets. Activities include the administration and collection of the street maintenance fee; preventive maintenance, repair, rehabilitation and reconstruction projects; design and inspection of such projects; street condition monitoring and assessment, including inspection of street repairs; and staff training and consultant services in support of the above activities.

12. **TRIP GENERATION:** The average number of vehicle trips, as determined by reference to the manual entitled, Trip Generation, published by the Institute of Transportation Engineers (ITE) ("ITE Manual"), 8th edition.
13. **USE CATEGORY OR CATEGORY OF USE:** The code number and resulting trip generation estimate determined with reference to the ITE Manual, and applicable to a particular developed property.
14. **UTILITY CUSTOMER:** The person(s) listed on the City of Stayton utility billing records for a developed property as the person(s) responsible for payment of the utility bill.

§ 3.30.020 Administrative officers.

1. Except as provided below, the Public Works Director and Finance Director shall be responsible for the administration of this chapter.
2. The Public Works Director shall annually develop and update a 5-year street maintenance program project schedule. This schedule shall be properly integrated into the City's capital improvement program, to ensure that it is coordinated with other City capital projects and projects of other agencies.
3. The Public Works Director shall provide an annual report on the transportation maintenance program to the City Council and Budget Committee.
4. The Finance Director shall be responsible for the administration and collection of fees under this chapter.

§ 3.30.030 Dedication of revenues.

All funds and all proceeds from funds collected pursuant to this chapter shall be used for the transportation maintenance program.

§ 3.30.040 Annual transportation maintenance program report.

1. Each year the Public Works Director shall prepare and present to the Budget Committee and City Council the "Annual Transportation System Maintenance Program Report" as part of the City's the annual budget proceedings. This document is a public record.
2. The report shall include a narrative description of the overall condition of the street network, the findings of any new condition assessments, a detailed project schedule for the upcoming year, an updated 5-year project schedule, the project selection criteria employed, and a report on the previous year projects, workload impacts, and overall program progress. The report shall include revenues received relative to revenue projections, project cost inflation trends, and any other new developments that impact the adequacy of the program funds to meet program goals.

§ 3.30.050 Transportation maintenance fee.

1. A transportation maintenance fee is imposed and levied upon the responsible party for all developed property within the City. The fee shall be based on the direct and indirect use of or benefit derived from the use of public streets generated by the developed property, to be calculated as described in § 3.30.060.
2. The transportation maintenance fee is also imposed and levied on the property owner of the developed property in the event of non-payment by the responsible party.

§ 3.30.060 Determination of transportation maintenance fee.

1. The City Council shall adopt by resolution the schedule of Transportation Maintenance Fees for residential and non-residential uses.
 - a. Residential fees.
 - i. Single-family residences (SFR) shall have a trip rate of 9.57 trips per unit and pay the minimum monthly residential rate set forth by separate resolution. *[Example: \$2.00 per month per dwelling unit.]*
 - ii. Multi-family residences shall have a trip rate of 5.37 trips per unit and pay a proportionate share of the minimum monthly SFR residential rate per dwelling unit. $[5.37/9.57 = 56.11\%$ of the minimum monthly rate per dwelling unit]. *[Example \$1.12 per month per dwelling unit based on a \$2.00 minimum SFR rate.]*
 - iii. Mobile home parks shall have a trip rate of 4.99 trips per dwelling unit and pay a proportionate share of the minimum monthly SFR residential rate per dwelling unit. $[4.99/9.57 = 52.15\%$ of the minimum monthly rate per dwelling unit]. *[Example: \$1.04 per month per dwelling unit based on a \$2.00 minimum SFR rate.]*
 - iv. Assisted living and congregate care facilities shall have a trip rate of 2.4 trips per bed or per living unit and pay a proportionate share of the minimum monthly SFR residential rate per living unit. $[2.40/9.57 = 25.1\%$ of the minimum monthly rate per dwelling unit]. *[Example: \$0.50 per month per living unit based on a \$2.00 per month SFR rate.]*
 - b. Non-residential fees.
 - i. **Category Assignment.** Each non-residential developed property in the City shall be assigned to a category of use according to the land use type listed in Attachment A to this Ordinance and which may be modified from time to time by resolution of the City Council.
 - ii. **Request Review of Assignment.** Upon request of the customer, the Finance Director shall review the category of use assignment. The Finance Director shall consider evidence provided by the customer that relates to the actual trip generation patterns of the property in question. The determination of category of use shall not be considered a land use decision as that term is defined in O.R.S. 197.015.

- iii. **Fee Calculation.** The transportation maintenance fee shall be calculated by multiplying the number of units by the trip rate per unit for that assigned category of use and then by the monthly per trip charge or by the flat rate per category of use as stated in a City Council Resolution to establish the monthly fee to be billed.
- iv. **Fee Minimum.** The minimum monthly Transportation maintenance fee for non-residential accounts shall be the Single Family Residential rate listed in §3.30.060 1.a.i.
- v. **Category of Use.**
 - a) Category 1 shall be a trip rate of 5 trips per 1,000 square feet of building space.
 - b) Category 2 shall be a trip rate of 15 trips per 1,000 square feet of building space.
 - c) Category 3 shall be a trip rate of 30 trips per 1,000 square feet of building space.
 - d) Category 4 shall be a trip rate of 50 trips per 1,000 square feet of building space.
 - e) Category 5 shall be a trip rate of 80 trips per 1,000 square feet of building space.
 - f) Category 6 shall be a trip rate of 140 trips per 1,000 square feet of building space.
 - g) Category 7 shall be a trip rate of 800 trips per 1,000 square feet of building space.
 - h) Category 8 shall be a trip rate of 4 trips per acre of land used for the state purpose (excluding the vacant portion of a specific parcel).
 - i) Category 9 shall be a trip rate of 160 trips per fueling station.
 - j) Category 10 shall be a trip rate of 10 trips per rental room.
 - k) Category 11 shall be a trip rate of 1.5 trips per student
- vi. **Unlisted uses.** In the event that a property is occupied by a use that is not expressly listed in Attachment A, the Finance Director shall determine which category the property should be placed in, based on similarity in expected trip generation. If no category is appropriate, the Finance Director shall determine the trips per unit shall be based on a Transportation study, the Trip Generation Manual, or any other method of determining trips. Any determination by the Finance Director under this section may be reviewed under the procedure described in § 3.30.090.2. The result of the review may be appealed to the City Council by filing a notice of appeal within 10 days of the date notice of the result of the review is mailed to the property owner.

§ 3.30.070 Administration of transportation maintenance fee.

1. The transportation maintenance fee shall be billed and collected with and as part of the monthly utility bill for those lots or parcels utilizing City water and/or sewer. For new construction the collection of the transportation maintenance fee will begin at the time the City issues a certificate of occupancy or begins collection of the sanitary sewer user charge, whichever comes first. In the event of non-payment, the City may bill the property owner or take other action as authorized by law to collect from the responsible party.
2. In the event funds received from City utility billings are inadequate to satisfy in full all of the sanitary sewer charges, water charges, and Transportation maintenance fees, credit shall be given first to the sanitary sewer charges, second to the water service charges and third to the transportation maintenance fee.
3. Notwithstanding any provision herein to the contrary, the City may institute any necessary legal proceedings to enforce the provisions of this chapter, including, but not limited to injunctive relief and collection of charges owing. The City's enforcement rights shall be cumulative.

§ 3.30.080 Waiver of transportation maintenance fee in case of vacancy.

1. When any property within the City becomes vacant and utility services are discontinued (if applicable), a waiver of the transportation maintenance fee may be granted by the Finance Director upon written application of the person responsible, including a signed statement, affirming under penalty of perjury that the property is vacant, and upon payment of all outstanding sanitary sewer and street maintenance charges.
2. For purposes of this section, "vacant" shall mean that an entire building or utility billing unit has become vacant or continuously unoccupied for at least 30 days. "Vacant" shall not mean that only a portion of a property without a separate water meter has become vacant or unoccupied.
3. Fees shall be waived in accordance with this section only while the property remains vacant. The person responsible shall notify the City within 5 days of the premises being occupied, partially occupied or used, regardless of whether utility service is restored.

§ 3.30.090 Transportation maintenance fee appeal procedure.

1. Any utility customer who disputes any interpretation given by the City as to the category of use assigned to such owner's property pursuant to this chapter may request a review and appeal such interpretation, but only in accordance with this section. The dispute must first be presented to the Finance Director for review/settlement; and, if not settled, thereafter may be appealed to the City Administrator in accordance with this section. Failure to appeal an interpretation

made under this chapter within the time and in the manner provided shall be sufficient cause to deny the relief requested. Except in cases of hardship as determined by the Council, disputes which result in changes in the transportation maintenance fee charged under this chapter shall become effective with the next billing cycle.

2. A utility customer may request a review of the category of use assigned. The Finance Director shall conduct the review, considering all relevant evidence presented by the customer related to their actual trip generation patterns. Such evidence may include business records, parking lot usage, or traffic studies. The Finance Director shall make a determination based on the evidence provided and provide notice to the customer.
3. A customer who wishes to dispute an interpretation made by the Finance Director as to the assigned category of use under this chapter shall submit a written appeal to the City Administrator within 10 days from the date of notice of the Finance Director's determination, together with a filing fee in an amount set by separate resolution. The application for appeal shall specify the reasons therefore and include an engineering study prepared by a licensed professional engineer in conformance with the methodology outlined in the ITE Manual. Appeals shall be limited to the issue of whether the appropriate category of use has been assigned to the property. The City Administrator shall review the matter and notify the appellant of his decision, in writing, within fifteen (15) calendar days.
4. A customer who wishes to appeal the City Administrator's decision as to the assigned category of use under this chapter shall submit a written appeal to the City within 10 days from the date of written notice of decision. The City Administrator shall schedule the matter for City Council review within 30 days of receipt of the written appeal and notify the appellant not less than 10 days prior to the date of such Council review. The Council shall conduct a hearing during a public meeting and determine whether there is substantial evidence in the record to support the interpretation given by the Finance Director. The Council may continue the hearing for purposes of gathering additional information bearing on the issue. The Council shall make a tentative oral decision and shall adopt a final written decision together with appropriate findings in support. The decision of the Council with respect to the category of use shall be limited to whether the appellant has been assigned to the appropriate category of use. If the Council should determine that a different category of use should be assigned, it shall so order, provided no refund of prior transportation maintenance fees shall be given. Only where the Council decision results in a change in category of use will the filing fee on the appeal be refunded. The Council decision shall be final.

§ 3.30.100 Exceptions to transportation maintenance fee.

The following shall not be subject to the transportation maintenance fee:

1. City-owned public parking lots.

2. Publicly owned parkland, open spaces, and greenways, unless public off-street parking designed to accommodate the use of such areas is provided.
3. Areas encompassed by railroad and public rights-of-way, except for developed railroad property such as maintenance areas, non-rolling storage areas and areas used for the transfer of rail-transported goods to non-rail transport, which areas shall be subject to transportation maintenance fees.

§ 3.30.110 Severability.

In the event any section, subsection, paragraph, sentence or phrase of this chapter is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of the chapter shall continue to be effective. If a court of competent jurisdiction determines that this chapter imposes a tax or charge, which is therefore unlawful as to certain but not all affected properties, then as to those certain properties, an exception or exceptions from the imposition of the transportation maintenance fee shall be created and the remainder of the ordinance and the fees imposed thereunder shall continue to apply to the remaining properties without interruption. Nothing contained herein shall be construed as limiting the City's authority to levy special assessments in connection with public improvements pursuant to applicable law.

§ 3.30.120 Sunset Provision.

The provisions of Chapter 3.30 are hereby repealed effective June 30, 2013.