

ORDINANCE NO. 1325

**AN ORDINANCE ESTABLISHING THE ROAD MAINTENANCE
REGULATORY PROGRAM AND ADOPTING FEES FOR ROAD MAINTENANCE
SERVICES**

WHEREAS, street and road deterioration, if not managed through a program of prevention, early detection, and repair, can lead to large-scale disrepair and destruction of City streets and roads with serious traffic safety consequences; and

WHEREAS, the City Council has concluded that a safe, functioning City street system through a regulated program of street maintenance is a priority need; and

WHEREAS, City Council directed the City Manager and Public Works Director to consider methods of regulating a needed road maintenance program with a stable funding source to assure implementation of such a program; and

WHEREAS, City staff held work sessions and has unanimously recommended a system whereby City streets are maintained at an overall safe functioning street maintenance system; and

WHEREAS, the City Manager and Public Works Director recommends the following methodology to categorize user classifications and to fairly apportion fees for such user classification for the purposes of a safe, functioning street maintenance system through a regulated road maintenance program; and

WHEREAS, the City Council held a public hearing on May 6, 2009, allowing for public comment and testimony on the road maintenance regulatory program and fees; and

WHEREAS, the City Council finds said road maintenance regulatory program and methodology of categorizing road user classifications and apportioning fees to respective classifications is a reasonable and rational way to regulate a safe, functioning street maintenance system.

NOW, THEREFORE THE CITY OF TOLEDO ORDAINS AS FOLLOWS:

SECTION 1. Chapter 13.40 is added to the Toledo Municipal Code to read as follows:

13.40.010. Title. This title shall be known as the "Road Maintenance Fund".

13.40.020. Purpose. For the purpose to establish a stable funding source to maintain safe road conditions and provide for periodic improvements to road segments before reaching poor conditions.

The structure of this maintenance fund is intended to be a fee for service and not a charge against property. The person responsible for paying the city's water and sewer utility charges is responsible for paying the road maintenance fee, which in most cases is the occupant of improved property. Therefore, the fee is not necessarily imposed on the owner of the property.

13.40.030. Definitions. The following words and phrases, as used within this ordinance, have the following definitions and meanings:

Developed Property. A parcel or portion of real property on which an improvement exists. Improvement on developed property includes, but is not limited to, buildings, parking lots, and outside storage.

Gross Square Footage. The calculated area of all structures, located on a site, measured along the exterior walls of such 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.

ITE Manual. Institute of Transportation Engineers Trip Generation Manual.

Multi-Family Residential. Property for residential use consisting of three or more dwelling units. For purposes of this ordinance, condominiums and individual mobile home units in a mobile home park are also classified as multi-family residences.

Non-Residential. A use of property which is primarily not for personal, domestic accommodation.

Pavement Condition Index (PCI). A uniform way to measure pavement distress with a rating scale from 1 to 100, with higher values indicating better condition.

Single-Family Residential. A dwelling unit which is occupied by one or more persons of which there shall be only one dwelling unit per lot and which provides complete, independent living facilities for one or more persons including, but not limited to, permanent provisions for living, sleeping, eating, cooking and sanitation. Two dwelling units and accessory dwelling units shall be considered as part of a single-family residence.

Street or Road. A public road or right-of-way within the City, which is under the jurisdiction or control of the City. For purposes of this ordinance, county, state and federal roads are excluded.

Truck. A multi-axel motor vehicle having six or more tires in contact with the pavement surface.

13.40.040. Regulatory Program.

1. There is hereby created a road maintenance regulatory program for the purpose of maintaining a safe, functioning City street maintenance system.

2. A road maintenance program is hereby established. Revenues collected pursuant to this ordinance shall be dedicated to the road maintenance program and used exclusively to fund a road maintenance program to provide for a safe, functioning street system. In the event that road maintenance fees collected are insufficient to maintain City streets, additional funding may be allocated by the City Council from other non-dedicated City funds provided, however, the City Council may direct the reimbursement to such other fund if additional road maintenance fees are collected.

13.40.050. Administrative Policies.

1. The use of the City's streets and roads involves a complex mixture of interdependent uses between categories of residentially developed property and non-residentially developed property. The blending makes exact calculations difficult, but the most reasonable apportionment is approximately fifty (50) percent use attributable to residential development and approximately fifty (50) percent use to non-residential development. In keeping with this division, approximately fifty (50) percent of the total revenues needed to be generated by the road maintenance program fee on an annualized basis shall come from residential developments and approximately fifty (50) percent shall come from non-residential developments.
2. To avoid significant fluctuation in billing fees, road maintenance program fees shall be an average annualized revenue requirement based on a five-year estimate of road maintenance/reconstruction needs, as determined by the Public Works Director with approval of the City Council.
3. The City Manager is authorized and directed to review the operation of this ordinance and where appropriate, recommend changes in the form of administrative procedures for adoption by the City Council by resolution. Such procedures, if adopted by the City Council, shall be given full force and effect, and unless clearly inconsistent with this ordinance, shall apply uniformly throughout the City.
4. The initial road maintenance fee shall not be increased for the first three years of the maintenance program. During the third year and every three years thereafter, the City Manager, Public Works Director and the Finance Director will meet for the purpose of reviewing the road maintenance fee. Any proposed changes to the fee structure will be presented to the City Council for consideration and approval. The review shall occur sooner than the third year in the event the City receives substantial new sources of funds from federal, state, regional, or county programs earmarked for street system maintenance/improvements.
5. The provisions of this ordinance may be appealed by writ of review within sixty (60) days of its effective date. The amount of a road maintenance fee may be appealed in accordance with the criteria and procedures specified in this ordinance.

13.40.060. Road Maintenance User Fee.

1. A road maintenance fee is hereby established and shall be assessed to street users as defined herein by the development category and classification. A request for water or sewer service will automatically initiate appropriate billing for the road maintenance fee. Billing shall be as a line item on the City's water/sewer utility bill.
2. Undeveloped properties shall not be charged a road maintenance fee.
3. Each residential developed property within the City limits will be designated to one of two billing categories: single-family dwelling unit or multi-family dwelling unit. The road maintenance fee for a single-family dwelling unit shall be greater than the corresponding fee for a multi-family dwelling unit. The fee difference shall be proportionate to trip generation rates as established in the ITE Manual.
4. Each non-residential developed property within the City limits shall be assigned to a billing

category based on the following three factors associated with road usage: “Intensity” of vehicle trips generated per 1,000 (gross) square feet of developed area, or equivalent. Statistical data from the ITE Manual is to be used to establish levels of intensity, and “Magnitude” of development as measured by gross square feet of developed area, or equivalent. “Trucks” per day serving the development.

5. The methodology for classification of the categories of residential and non-residential developed property, the fair apportionment to each classification, and the amount of the road maintenance fee shall be initially established by City Council resolution. Changes shall also be adopted by resolution.

13.40.070. Appeal Procedure.

1. Any owner who disputes any interpretation given by the City as to the Category of use assigned to such owner’s property pursuant to this ordinance may request a review and appeal of such interpretation, but only in accordance with this section. The dispute must first be presented in writing to the Public Works Director for review and thereafter may be appealed to the City Council in accordance with this section. Failure to appeal an interpretation made under this ordinance within the time and in the manner provided below shall be sufficient cause to deny the relief requested. Disputes which result in changes in the street maintenance fee charged under this ordinance shall become effective with the next billing cycle.

2. A utility customer may request a review of the Category of use assigned. A written request for review must be submitted within 14 days of the new assignment or 14 days after a change in Category has been made by the City. The Public Works 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, square footage of building, and traffic studies completed by the property owner. The Public Works Director shall make a determination to approve or deny the request to reassign the Category of use based on the evidence provided and must provide written notice to the customer.

3. A customer who wishes to dispute an interpretation made by the Public Works Director as to the assigned Category of use under this ordinance shall submit a written appeal to the City Managers office within 10 business days from the date of notice from the Public Works Director’s determination under Paragraph 2 of this section, together with a filing fee in the amount established by the City Council resolution. The application for appeal shall specify the reasons and include an engineering study prepared by a license 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.

4. The City Manager shall schedule the matter for City Council review and notify the appellant no less than 10 business days prior to the date of such City Council review. The City 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 Public Works Director. The City Council may continue the hearing for purposes of gathering additional information. The City Council shall make a tentative oral decision and shall adopt a final written decision together with appropriate Category of use. The decision of the City Council with respect of the Category of use shall be limited to whether the appellant has been assigned to the appropriate Category of use. If the City Council should determine that a different Category of use should be assigned, it shall so order. No refund of prior Road Maintenance Fees shall be given. Only where the City Council

decision results in a change in Category of use will the filing fee on the appeal be refunded. The City Council decision shall be final.

13.40.080. Enforcement.

1. In the event funds received from City utility billings are inadequate to satisfy in full all of the water, sewer, streetlight, and road maintenance fees, credit shall be applied proportionately.
2. In addition to other lawful enforcement procedures, the City may enforce the collection of charges required by this ordinance by withholding delivery of water to any premises where road maintenance fees are delinquent or unpaid.
3. Notwithstanding any provision herein to the contrary, the City may institute any necessary legal proceedings to enforce the provisions of this ordinance, including, but not limited to injunctive relief and collection of charges owing. The City's enforcement rights shall be cumulative.

13.40.090. Severability.

1. In the event any section, subsection, paragraph, sentence or phrase of this ordinance 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.
2. 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. The fees and charges herein are not intended to be taxes, nor are they subject to the property tax limitations of Article XI, Section 11(b), of the Oregon Constitution.

PASSED AND ADOPTED by the City Council of the City of Toledo, Lincoln County, Oregon, on the 6th day of May, 2009.

ATTEST:

APPROVED:

s/Teresa Jenkins
Teresa Jenkins, City Recorder

s/Rod Cross
Rod Cross, Mayor