TIGARD MUNICIPAL CODE

Chapter 15.20 STREET MAINTENANCE FEE

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15.20.010 Creation and Purpose

A street maintenance fee is created and imposed for the purpose of maintenance of city streets. The street maintenance fee shall be paid by the responsible party for each occupied unit of real property. The purposes of the street maintenance fee are to charge for the service the city provides in maintaining public streets and to ensure that maintenance occurs in a timely fashion, thereby reducing increased costs that result when maintenance is deferred.

15.20.020 Definitions

As used in this chapter, the following shall mean:

A. Public Works Director. The public works director or the public works director's designee.

B. Developed property or developed use. 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.

C. Finance Director. The finance & information services director or designee.

D. Residential Property. Property that is used primarily for personal domestic accommodation, including single family, multi-family residential property and group homes, but not including hotels and motels.

E. Nonresidential Property. Property that is not primarily used for personal domestic accommodation. Nonresidential property includes industrial, commercial, institutional, hotel and motel, and other nonresidential uses.

F. Street Functional Classification. Street classifications as described in the Tigard Transportation System Plan.

1. Arterials are defined as streets having regional level connectivity. These streets link major commercial, residential, industrial and institutional areas.

2. Collectors are defined by citywide or district wide connectivity. These streets provide both access and circulation within and between residential and commercial/industrial areas.

3. Neighborhood routes are defined as streets that provide connections within the neighborhood and between neighborhoods. These streets provide connectivity to collectors or arterials.

4. Local commercial/industrial streets are those streets within the city that are not designated as arterials or collectors and whose

primary function is serving traffic to and from commercial and/or industrial (i.e., nonresidential) uses.

5. Local streets are any streets within the city that are not designated as arterials, collectors, neighborhood routes or identified as commercial/industrial streets. These streets have the sole function of providing access to immediately adjacent land.

G. Parking Space Requirement. The minimum off-street vehicle parking requirement as stated in the minimum and maximum off-street vehicle and bicycle parking requirements in the Tigard Community Development Code section 18.765 updated in February, 2014.

H. Pavement Management Program (PMP). An annual program of corrective and preventative maintenance on City of Tigard streets funded by the street maintenance fee (SMF). The program helps to extend the life of the pavement structure by various means such as, pavement overlaying, slurry sealing, or complete removal and replacement of asphalt.

I. Occupied Unit. Any structure or any portion of any structure occupied for residential, commercial, industrial, or other purposes. For example, in a multifamily residential development, each dwelling unit shall be considered a separate occupied unit when occupied, and each retail outlet in a shopping mall 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. Property that is undeveloped or, if developed, is not in current use is not considered an occupied unit.

J. 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 and/or sewer bill for an occupied unit shall be deemed the responsible party as to that occupied unit. For any occupied unit not otherwise required to pay a city utility bill, "responsible party" shall mean the person or persons legally entitled to occupancy of the occupied unit, unless another responsible party has agreed in writing to pay and a copy of the writing is filed with the city. Any person who has agreed in writing to pay is considered the responsible person if a copy of the writing is filed with the city.

K. Street Maintenance. Any action to maintain city streets, including repair, renewal, resurfacing, replacement and reconstruction. Street maintenance does not include the construction of new streets or street lighting. Street maintenance shall include resurfacing of existing streets, repair or replacement of curb and gutter where they exist, 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, other work that is required by law to be done in conjunction with street maintenance (such as curb ramp retrofits in accordance with the Americans with Disabilities Act), and any other related work within the existing streets. It includes repair or restoration of existing storm drainage systems within existing streets, but does not include installation of new drainage systems. It includes right-of-way maintenance on the city's arterial and collector streets, which covers maintenance and enhancement of planting strips, medians and areas between sidewalks and property lines on these

street to prevent the uncontrolled growth of weeds and other undesirable vegetation in these areas. It does not include repair or replacement of existing sidewalks except where work is required by law to be done in conjunction with street maintenance. (Ord. 10-01 § 2)

15.20.030 Administrative Officers Designated

A. Except as provided in subsections B and C of this section, the public works director shall be responsible for the administration of this chapter. The public works director shall be responsible for developing administrative procedures for the chapter, administration of fees, and for the purposes of establishing the fee for a specific occupied unit, the consideration and assignment of categories of use, and parking space requirements subject to appeal in accordance with this chapter.

B. The public works director 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 system maintenance in accordance with this chapter.

C. The finance director shall be responsible for the collection and calculation of fees and the appeals process under this chapter. (Ord. 10-01 § 2)

15.20.040 Street Maintenance Fees Allocated to the Street Maintenance Fee Fund

A. All street maintenance fees received shall be deposited to the street maintenance fee fund or other fund dedicated to the operation and maintenance of the city street system. The street maintenance fee fund shall be used for street maintenance. Other revenue sources may also be used for street maintenance. Amounts in the street maintenance fee fund may be invested by the finance director in accordance with state law. Earnings from such investments shall be dedicated to the street maintenance fee fund.

B. The street maintenance fee 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 maintenance program. Engineering design, pavement evaluation, construction management, and other related costs, including project advertisements for bid, in the implementation of the street maintenance projects shall also be considered as being used for street maintenance. (Ord. 10-01 § 2)

15.20.050 Determination of Street Maintenance Fee

A. The street maintenance fee shall be established based on the following:

1. The city's five-year maintenance and reconstruction plan for corrective and preventative maintenance of the city's street infrastructure.

2. The average annual cost based on the five-year maintenance and reconstruction plan with costs allocated as follows:

a. Arterial maintenance costs allocated 62% to nonresidential uses and 38% to residential uses.

b. Local commercial/industrial street maintenance costs allocated 100% to nonresidential uses.

c. Collector maintenance costs allocated 50% to residential uses and 50% to nonresidential uses.

d. Neighborhood routes and local street maintenance costs allocated 100% to residential uses.

3. For residential property, the fee shall be charged on a per unit basis.

4. For nonresidential property other than gasoline stations, the fee shall be based on the minimum number of vehicle parking spaces as stated in the minimum and maximum off-street vehicle and bicycle parking requirements in the Tigard Community Development Code for each occupied unit. The nonresidential fee will be calculated with a cap of 250 spaces for any individual customer, however, the calculated fee will be charged without a cap to nonresidential customers.

a. In that nonresidential property with fewer than six required spaces shall constitute a tier with a 50% reduction of the total fee amount.

b. In recognition that religious institutions have minimum parking space requirements that are relatively large in comparison to the actual use of those spaces, the total fee for each religious institution shall be reduced by 50%.

5. The street maintenance fee for gasoline stations shall be based on the number of fueling positions.

B. The street maintenance fee rates shall be established by council resolution.

C. The street maintenance fee will be adjusted according to an annual index.

1. The index is defined in the city's Master Fees and Charges Schedule.

2. A floor of two percent and a ceiling of seven percent has been established.

D. The program shall be reviewed annually as part of the city's budget process.

E. Following each review of the program, the finance director shall review the revenue received from the new rates after a full year of collection to determine if the annual revenues meet the annual funding level set from the updated five-year street maintenance plan. The finance director shall report the findings of that review to city council and may make recommendations on any potential fee increases or decreases based on that review. Any unspent funds will be placed in a reserve fund. (Ord. 13-06 §1; Ord. 10-01 §2).

15.20.060 Determination of Amount, Billing and Collection of Fee

A. For the purpose of establishing the fee, the minimum required number of parking spaces or the number of fueling positions for each occupied unit of nonresidential property shall be determined by the public works director. For uses not explicitly listed in the Tigard Development Code as to required parking, the public works director shall assign the use to the similar category with the most similar impact on the transportation system, considering relevant information such as:

1. The size of the site and the building;

2. The number of employees;

3. Other developed sites with similar use.

B. The public works director shall establish the amount of street maintenance fee payable for each unit of nonresidential property and shall inform the finance director of the amount. The amount payable shall be re-determined if there is a change in use or development. All redeterminations based on a change in use or development shall be prospective only. The finance director shall charge the per-unit street maintenance fee to the responsible party for each occupied unit of residential property.

C. The street maintenance fee shall be billed to and collected from the responsible party for each occupied unit. Billings shall be included as part of the water and sewer bill for occupied units utilizing city water and/or sewer, and billed and collected separately for those occupied units not utilizing city water and/or sewer. All such bills shall be rendered regularly by the finance director and shall become due and payable upon receipt.

D. Collections from utility customers will be applied first to interest and penalties, then proportionately among the various charges for utility services and street maintenance.

E. An account is delinquent if the street maintenance fee is not paid by the due date shown on the utility bill. The city may follow the procedures for collection of delinquent accounts set forth in Sections 12.03.030 and/or 12.03.040, including termination of water and/or sanitary sewer service. (Ord. 10-01 §2).

15.20.070 Waiver of Fees in Case of Vacancy

A. When any developed property within the city becomes vacant as described in subsection F of this section, upon written application and approval by the finance director, the street maintenance fee shall thereafter not be billed and shall not be a charge against the property until such time as the property is no longer vacant.

B. The finance director is authorized to cause an investigation of any property for which an application for determination of vacancy is submitted to verify any of the information contained in the application. The finance director is further authorized to develop and use a standard form 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 provided therein.

C. When any developed property within the city has the utilities shut-off due to vacancy, the street maintenance fee shall be waived for the duration of the vacancy as described in subsection F of this section.

D. When any multi-occupied developed property within the city has one or more vacancies as described in subsection F of this section, the responsible party may request, in writing, a waiver of a portion of the street maintenance fee applicable to the vacant units.

E. When a change of use occurs, a vacancy has been filled, or a property is developed, it is the responsible party's responsibility to inform the city of any change so the proper street maintenance fees may be assessed. If the responsible party does not inform the city of any change, the city shall cancel the vacancy waiver and charge the responsible party as per subsection F of this section.

F. For purposes of this section, a unit of property is vacant when it has been continuously unoccupied and unused for at least 30 days. Fees shall be waived in accordance with this section only while the property remains vacant. The waiver duration is for six months. After six months, the responsible party must re-apply for the waiver if the property continues to be unoccupied and unused. The responsible party has 30 days to re-apply for the vacancy waiver after the expiration of the six month waiver. Any occupancy or use of the property terminates the waiver. As a penalty for not reporting a change in property vacancy, the city may charge any property two times the appropriate street maintenance fee, that would have been due without the vacancy waiver for prior billing periods, upon determining by whatever means that the property did not qualify for waiver of charges during the relevant time. The decision of the finance director under subsections A, B and F of this section shall be final. (Ord. 10-08 §1, 2010; Ord. 10-01 §2)

15.20.080 Administrative Provisions and Appeals

A. The public works director 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 public works director's determination of the amount of the fee by submission of a written application to the public works director. The application shall be submitted in sufficient detail to enable the public works director to render a decision.

B. Within 30 days of the submission of a complete application requesting reconsideration of the amount of the street maintenance fee to be charged to an occupied unit, the public works director shall render a decision on the application. The decision shall be written and shall include findings of fact and conclusions for the particular aspects of the decision, based upon applicable criteria, which may include a land use decision that modifies the minimum required vehicle parking for an occupied unit. A copy of the decision shall be mailed to the person submitting the request. The public works director shall maintain a collection of such decisions. Decisions of the public works director, which affect the amount of fee to be charged to a property, shall be forwarded to the finance director. Except as provided under subsection D of this section, the decision of the public works director is final.

C. For the purpose of reviewing the fee, the public works director may determine that the land use category is proper and that the fee charged is appropriate. However, if the decision of the public works director results in a change in the category of land use, the public works director shall, for the purpose of establishing the fee, assign a new use category, determine the appropriate fee for the category, and notify the finance director so that the appropriate change may be made in the applicable fee to be charged in the future. No back charges or refunds are required. The decision of the public works director, under this subsection C only, may be appealed.

D. Council may form a subcommittee consisting of two council members, or appoint a committee of disinterested citizens, hereinafter known as the appeal committee, to address any appeals to the public works director's decisions. A responsible party who disputes the determination of the public works director as to use category or number of required parking spaces may file a written appeal with the appeal committee. All appeals must be submitted within 10 days from the date of the public works director's decision, together with a filing fee in an amount set by council by resolution. The application for appeal shall specify the reasons for the appeal and shall provide sufficient information for the appeal

committee to render a decision. No other appeals shall be permitted.

E. The appeal committee shall schedule a review of each appeal and shall notify the appellant not less than 10 days prior thereto of the date of such review. The appeal committee shall conduct a hearing to determine whether there is substantial evidence in the record to support the interpretation given by the public works director and may continue the hearing for purposes of gathering additional information bearing on the issue. The appeal committee shall render an initial oral decision and shall adopt a final written decision together with appropriate findings in support thereof. The decision of the appeal committee shall be for the purpose of establishing the fee and limited to whether the appellant has been assigned to the appropriate use category, or whether the appropriate minimum vehicle parking space requirement or number of fueling positions has been correctly identified. If the appeal committee should determine that for the purpose of establishing the fee, a different use category should be assigned, or that the minimum parking space requirement should be revised, it shall so order, provided no refund of prior street maintenance fees shall be given. Only where the committee decision results in a change in use category and/or change in the minimum parking space requirement will the filing fee on the appeal be refunded. The appeal committee decision shall be final. (Ord. 10-01 §2)

15.20.090 Administrative Policies

A. The following policies shall apply to the operation and scope of this chapter:

1. Street maintenance fees imposed under this chapter shall apply to all occupied units, occupied units owned and/or occupied by local, state and federal governments, as well as property which may be entitled to exemption from or deferral of ad valorem property taxation.

2. Publicly owned park land, open spaces and greenways shall not be subject to the street maintenance fee unless public off-street parking designed to accommodate the use of such areas is provided.

3. Areas used for commercial farming or forestry operations shall be billed according to the 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 street maintenance fee. Where there are different seasonal uses of structures on farm or forest land, the use category shall be determined by examining the use for the longest portion of the year. Where more than one use is made of a farming or forestry site, then each use shall be examined separately and combination of use categories shall be used to determine the street maintenance fee.

4. Areas encompassing railroad and public right-of-way shall not be subject to the street maintenance fee.

5. 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 subject to street maintenance fees.

6. For newly developed properties, the fees imposed under this chapter shall become due and payable from and after the date when the developed property is occupied and connected to the public water or sanitary sewer system.

B. The public works director is authorized and directed to review the operation of this chapter and, where appropriate, recommend changes thereto in the form of administrative policies for adoption of the city council by resolution. Administrative policies are intended to provide guidance to property owners, subject to this chapter, 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 chapter shall apply uniformly throughout the city.

C. If an occupied unit of nonresidential property is used for more than one use with different minimum parking requirements, the street maintenance fee shall be based on the required parking for the total of the various uses.

D. The determination or assignment of a use category and minimum number of parking spaces under the provisions of this chapter are strictly for the purpose of establishing a fee and are not statutory land use decisions. (Ord. 10-01 §2)

15.20.100 Penalty

In addition to any other remedy, violation of any provision of this chapter shall be a Class A civil infraction. Each day of delinquency in paying the street maintenance fee constitutes a separate violation.

15.20.110 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 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 street maintenance fee shall thereby be created and the remainder of the chapter and the fees imposed thereunder shall continue to apply to the remaining properties without interruption.

B. 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. (Ord. 03-10) ■