



**CITY OF MILWAUKIE**  
*"Dogwood City of the West"*

**Ordinance No. 2122**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 13.32 ADOPTING A FEE IN LIEU OF CONSTRUCTION PROGRAM.**

**WHEREAS**, the City Council, by Ordinance number 2025, adopted a Fee In Lieu of Construction on March 15, 2011; and

**WHEREAS**, the consensus of the city Council discussion has been to develop a more comprehensive Fee in Lieu of Construction Program; and

**WHEREAS**, the City Council has held two work sessions on March 1, 2016 and April 5, 2016 to develop a new Fee in Lieu of Construction Program; and

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1. The Milwaukie Municipal Code is amended by adding a new Chapter 13.32 Fee in Lieu of Construction Program, to read as shown on the attached Exhibit A

Section 2. This ordinance shall take effect 30 days after passage.

Read the first time on 5/17/16, and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 5/17/16.

Signed by the Mayor on 5/17/16.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

## **13.32 FEE IN LIEU OF CONSTRUCTION**

### **13.32.010 PURPOSE**

If facility improvements are required, the City will require construction of the improvements at the time of development. However, the applicant may request to pay a fee in lieu of constructing the required facility improvements determined to be proportional. The fee in lieu of construction (FILOC) program ensures that opportunities to improve public facilities are maximized and that the goals and requirements of the City of Milwaukie are met. This section provides criteria for making FILOC determinations and administering the FILOC program.

### **13.32.020 Criteria**

The City may accept a fee in lieu of construction of required facility improvements if one or more of the following conditions exist.

- A. Required improvements are not feasible due to the inability to achieve proper design standards.
- B. Required improvements would create a safety hazard.
- C. Required improvements are part of a larger approved capital improvement project that is listed as a funded project in the City's Capital Improvement Program (CIP).
- D. Required improvements would create a situation that would not comply with City standards without extensive additional offsite improvements.
- E. Required improvements are less than needed to meet City standards due to the City's inability to require full improvements based on proportionality requirements on the development.

### **13.32.030 Findings**

If the Engineering Director determines that a fee in lieu of construction satisfies one of the criteria in Subsection 13.32.020 above, the City may accept a fee in lieu of construction upon the Engineering Director finding that deferring construction of facility improvements will not result in any safety hazards and is not necessary for the development. If the Engineering Director cannot make such a finding, then the City will not accept a fee and shall require construction of the improvements. The Engineering Director has sole discretion as to what improvements constitute a safety hazard or are necessary for the development.

## EXHIBIT A

### 13.32.040 Fees

If determined by the Engineering Director that required facility improvements are eligible for FILOC, the applicant shall pay to the City an amount equal to the estimated cost to construct the required improvements. The amount of the fee shall be determined by resolution of the City Council. All fees shall be paid to the City prior to the issuance of any development or building permits.

A. If previous development(s) on the subject property have resulted in the full construction of facility improvements or payment of FILOC fees and the proposed development has additional impacts, the City may only assess additional FILOC fees when there has been a change to the City's design standards.

B. If previous development(s) on the subject property have resulted in the partial construction of facility improvements or payment of FILOC fees and the proposed development has additional impacts, the City may assess additional FILOC fees for the balance of the improvements to bring the facilities into compliance with the City's current design standards.

### 13.32.050 Administration

Fees collected by the City may be used to construct public facility improvements or to leverage additional grant money for larger facility improvement projects. An accounting of fees collected and expended will be made available by the City to the public on an annual basis at the end of the fiscal year. Expenditure of fees is subject to the following:

A. Fees shall be used for construction of public facility improvement projects that benefit the development site, are within the same Neighborhood District Association (NDA) boundary, or are within 1000 feet of the development site, with the following two exceptions.

1. For development within a downtown zone, fees shall be used for construction of facility improvements that benefit the development site, are within one or more of the downtown zones, or are within 1000 feet of the development.

2. For development within the Historic Milwaukie NDA and not within a downtown zone, fees shall be used for construction of facility improvements that benefit the development site, are within the Historic Milwaukie NDA and not within a downtown zone, or are within 1000 feet of the development. Fees collected in the Historic Milwaukie NDA may be spent in one or more of the downtown zones with the approval of the Historic Milwaukie NDA.

B. Staff shall identify the facility improvement projects that meet the requirement of benefiting the development site as defined in Subsection 13.32.050.A. Staff shall coordinate with the neighborhood district associations to prioritize the project lists for each neighborhood.

C. Fees will be kept separately between facility types (Water, Sewer, Storm, Streets, Parks, etc.) and utilized on like facility improvements for which they were received.

## EXHIBT A

### **13.32.060 Refunds**

Fees collected by the City may be paid or refunded to the original payee or a third party upon written request to the Engineering Director, provided that FILOC funds are available. Fees refunded in this manner may only be used for the construction of the specified improvements for which they were received, including, but not limited to, surveying, engineering, design, and construction. In no event shall the refund exceed the original amount paid. Requests for FILOC refunds shall be approved by the Engineering Director and will be issued in accordance with an "Improvement Agreement" approved by the City of Milwaukie and executed by the original FILOC payee or third party requesting the refund.