



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

**Ordinance No. 2123**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.26 – BICYCLE AND PEDESTRIAN ACCESSIBILITY PROGRAM, ADOPTING A BICYCLE AND PEDESTRIAN ACCESSIBILITY PROGRAM AND ALLOWING PAYMENT OF A STREET MAINTENANCE FEE DEDICATED TO BICYCLE AND PEDESTRIAN IMPROVEMENTS.**

**WHEREAS**, the purchasing power of revenue received by the City as its share of state gas tax revenues has been decreasing; and

**WHEREAS**, revenue from other sources, combined with the City's share of gas tax revenues, has been insufficient to allow the City to both develop new pedestrian and bicycle infrastructure as needed and maintain existing bicycle and pedestrian infrastructure; and

**WHEREAS**, the American with Disabilities Act requires a program to make facilities accessible; and

**WHEREAS**, the City has prepared a Bicycle and Pedestrian Accessibility Program; and

**WHEREAS**, the City needs additional revenue streams to properly construct and maintain its bicycle and pedestrian system on a timely basis; and

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

Section 1. The Milwaukie municipal Code is amended by adding a new Chapter 3.26 – Bicycle and Pedestrian Accessibility Program, to read as shown in Exhibit A.

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

Read the first time on 7/19/16, and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 7/19/16.

Signed by the Mayor on 7/19/16.

  
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Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

  
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Pat DuVal, City Recorder

  
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City Attorney

## CHAPTER 3.26

### BICYCLE AND PEDESTRIAN ACCESIBILILTY PROGRAM

#### 3.26.010 PURPOSE

**This program is for reconstruction and new construction of bicycle and pedestrian facilities or vehicular improvements that promote bicycle and pedestrian safety on the transportation network throughout the City.**

#### 3.26.020 DEFINITIONS

As used in this chapter follows 3.25.010, unless the context requires otherwise:

#### 3.26.030 ADMINISTRATIVE OFFICERS

- A. Except as provided in subsections C of this section, the Engineering Director shall be responsible for the administration of this chapter. The Engineering Director shall be responsible for developing administrative procedures for the chapter, and consideration and assignment of categories of use subject to appeal to the City Council.
- B. The Engineering Director shall be responsible for implementation and enforcement of steps to minimize utility cut damage to transportation facilities, including a five (5)-year moratorium on capital projects on recently reconstructed, rehabilitated, or newly built City infrastructure. The Public Works Operations Director is responsible for City compliance with street cut repair policy.
- C. The Finance Director shall be responsible for the administration and collection of fees under this chapter.

#### 3.26.040 DEDICATION OF REVENUES

- A. All funds and all proceeds from funds collected pursuant to this chapter shall be used for the construction and/or reconstruction of bicycle and pedestrian facilities.

#### 3.26.050 ANNUAL REPORT

- A. Each spring the Engineering Director shall prepare and present to Council an annual report which will include a report on bicycle and pedestrian accessibility and safety.
- B. The report shall include a narrative description of the overall condition of the network, the findings of any new condition assessments, a schedule of projects for the upcoming year, an updated five (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.

#### 3.26.060 FEE

- A. A 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 Section 3.26.070.

- B. The fee is also imposed and levied on the property owner of the developed property in the event of nonpayment by the responsible party.

**3.26.070 DETERMINATION OF FEE**

A. Category Assignment

1. Each developed property in the City shall be assigned to a category of use according to the land use type listed in subsection C of this section.
2. Upon request of the customer, the Engineering Director shall review the category of use assignment. The Engineering 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 ORS 197.015.

B. Fee Calculation

1. The fee shall be calculated by multiplying the number of units (listed in subsection C) by the trip rate per unit for that assigned category of use and then by the monthly per trip charge determined by resolution of the City Council, to establish the monthly fee to be billed.
2. Fee Maximum  
The maximum monthly fee for nonresidential accounts shall be as determined by resolution of the City Council.
3. Fee Minimum  
The minimum monthly fee shall be equal to single family residential, except for multi-family residential units being billed separately which will be billed at the Multi-Family residential rate.
4. Fee Indexed  
All fees shall be adjusted for inflation annually according to the Consumer Price Index published by the Bureau of Labor Statistics. The adjustment for inflation shall be included in the annual fee schedule update beginning in 2017.

C. Category of Use

1. Category 1 shall be estimated at 0.75 trips per unit. Land uses include elementary and middle schools, private schools (K12), and lodge/fraternal organizations (ITE Codes 520, 521, 522 and 591).
2. Category 2 shall be estimated at two (2) trips per unit. Land uses include general heavy industrial, mini-warehouses, City parks, high schools, colleges, furniture stores and congregate care facilities (ITE Codes 120, 151, 253, 254, 411, 530, 540, 550 and 890).
3. Category 3 shall be estimated at four (4) trips per unit. Land uses include manufacturing, warehouses, utilities, County parks, religious institutions, nursing homes, elderly housing and mobile home parks. (ITE Codes 140, 150, 170, 240, 251, 252, 255, 412, 560, and 620).
4. Category 4 shall be estimated at eight (8) trips per unit. Land uses include general light industrial, industrial park, PUDs, motels, golf courses, general office, single-tenant

office buildings, office parks, research and development centers, and drinking places (ITE Codes 110, 130, 270, 320, 430, 710, 715, 750, 760, and 836).

5. Category 5 shall be estimated at sixteen (16) trips per unit. Land uses are hotels, cemeteries, hospitals, business parks, wholesale nurseries, automobile care centers, self-service car washes, tire stores, discount clubs, and apparel stores (ITE Codes 310, 432, 566, 610, 770, 818, 840, 847, 848, 849, 861 and 870).
6. Category 6 shall be estimated at thirty-two (32) trips per unit. Land uses include marinas, tennis courts, racquet clubs, health clubs, bowling alleys, recreational community centers, day care, libraries, clinics, medical/dental office buildings, building materials and lumber, discount stores, specialty retail, hardware/paint stores, nursery/garden centers, shopping centers, high turnover sit-down restaurants, quick lubrication vehicle stops, new car sales, gas stations with convenience market, supermarkets, home improvement superstores, and electronics superstores (ITE Codes 420, 491, 492, 493, 494, 495, 565, 590, 630, 720, 812, 813, 814, 815, 816, 817, 820, 832, 837, 841, 844A, 845, 850, 862 and 863).
7. Category 7 shall be estimated at sixty-four (64) trips per unit. Land uses include government office buildings, quality restaurants, and gas stations (ITE Codes 730, 831, 844, 846, and 854).
8. Category 8 shall be estimated at one hundred twenty-eight (128) trips per unit. Land uses include U.S. Post Offices, fast food restaurants, convenience markets, and banks (ITE Codes 732, 833, 834, 851, 911, and 912).
9. Category 9 shall be estimated at two hundred (200) trips per unit. Land use is a multipurpose recreational facility (ITE Code 435).
10. Category 10 shall be estimated at four hundred forty (440) trips per unit. Land use is a movie theater (ITE Code 444).
11. Category 11 shall be estimated at ten (10) trips per unit. Land use is single family residential (ITE Code 210).
12. Category 12 shall be estimated at six (6) trips per unit. Land use is Multi-family residences, except for elderly housing, mobile home parks and congregate care (ITE Code 220, 221, 222, 230, 231, 232, and 260)

D. Units. The unit used in calculating the nonresidential fee shall be one thousand (1,000) gross square feet of building area, with the following exceptions:

USE	UNIT
Parks, golf courses, cemeteries, marinas, multipurpose recreational facilities	One (1) acre
Schools and colleges	One (1) student
Lodges	One (1) member
Hotels and motels	One (1) room
Self-service car washes	One (1) wash stall
Tennis courts and racquet clubs	One (1) court
Quick lubrication vehicle stops and gas stations	One (1) fueling or service position
Movie theaters	One (1) screen
Assisted Living facilities	One (1) bed
Residential uses, except assisted living.	One (1) dwelling unit

**E. Unlisted Uses**

In the event that a property is occupied by a use that is not expressly listed in any of the above categories, the Engineering Director shall determine which category the property should be placed in, based on similarity in expected trip generation. If no category is appropriate, the Engineering 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 Engineering Director under this section may be reviewed under the procedure described in Section 3.26.110.B. The result of the review may be appealed to the City Council by filing a notice of appeal within ten (10) days of the date notice of the result of the review is mailed to the property owner.

**3.26.080 ADMINISTRATION OF FEE**

- A. Under the supervision of the Finance Director, the fee for bicycle and pedestrian accessibility and safety shall be billed and collected with and as part of the monthly water and sewer bill for those lots or parcels utilizing City water and sewer, as provided for in Section 13.04.100, and billed and collected separately for those developed properties not utilizing City water and sewer. In the event of nonpayment, the City may bill the property owner or take other action as authorized by law to collect from the responsible party.
- B. In the event funds received from City utility billings are inadequate to satisfy in full all of the water, sanitary sewer, storm sewer, streets, and bicycle and pedestrian fees, credit shall be given to the bicycle and pedestrian fee, street maintenance fee, sanitary sewer service charges, storm sewer service charges, and water service charges proportionately.
- C. 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.

**3.26.090 WAIVER OF FEE IN CASE OF VACANCY**

- A. When any property within the City becomes vacant and water service is discontinued, a waiver of the 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 water, sanitary sewer, storm sewer, street maintenance, bicycle and pedestrian charges.
- B. For purposes of this section, "vacant" means that an entire building or utility billing unit has become vacant or continuously unoccupied for at least thirty (30) days. "Vacant" shall not mean that only a portion of a property without a separate water meter has become vacant or unoccupied.
- C. Fees shall be waived in accordance with this section only while the property remains vacant. The person responsible shall notify the City within five (5) days of the premises being occupied, partially occupied, or used, regardless of whether water service is restored.

**3.26.100 RELIEF FOR LOW INCOME RESIDENTIAL CUSTOMERS FROM FEE**

The fee shall not be billed to those households included in the low income utility program.

**3.26.110 FEE APPEAL PROCEDURE**

- A. 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 chapter may request a review and appeal such interpretation, but only in accordance with this section. The dispute must first be presented to the Engineering 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 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 fee charged under this chapter shall become effective with the next billing cycle.

- B. A utility customer may request a review of the category of use assigned. The Engineering 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 Engineering Director shall make a determination based on the evidence provided and provide notice to the customer.
- C. An owner who disputes an interpretation made by the Engineering Director as to the assigned category of use under this chapter shall submit a written appeal to the City Manager within ten (10) days from the date of notice of the Engineering Director's determination under subsection B of this section, together with a filing fee in the amount determined by 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.
- D. The City Manager shall schedule the matter for City Council review and notify the appellant not less than ten (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 Engineering 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 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.

### **3.26.120 EXCEPTIONS TO FEE**

The following shall not be subject to fee:

- A. City-owned parking lots;
- B. Publicly owned parkland, open spaces, and greenways, unless public off-street parking designed to accommodate the use of such areas is provided;
- C. Areas encompassed by railroad and public rights-of-way, except for developed railroad property such as maintenance areas, nonrolling storage areas, and areas used for the transfer of rail-transported goods to nonrail transport, which areas shall be subject to fees.

### **3.26.130 PROJECT SELECTION**

The Engineering Director and Public Works Operations Director shall annually update a five (5) year schedule of bicycle and pedestrian projects. Projects will be selected from an adopted master plan, capital improvement plan, or the Bicycle and Pedestrian Accessibility Program. Projects can also be included if recommended by the Public Safety and Advisory Committee and approved by City Council.

**3.26.140 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 ordinance 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 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.