

ORDINANCE NO. 1262

AN ORDINANCE AMENDING THE CANBY MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.30, "STREET MAINTENANCE PROGRAM," AND REQUIRING PAYMENT OF A STREET MAINTENANCE FEE.

WHEREAS, revenues from existing sources, including the State Motor Fuel Tax and the City's Construction Excise Tax, are not adequate to maintain the City of Canby's street system; and

WHEREAS, the condition of the City of Canby's street system has been declining each year as demonstrated by detailed inventories performed in 2000, 2002, and 2005; and

WHEREAS, poorly maintained streets create a variety of problems including increased wear on vehicles and increased safety hazards; and

WHEREAS, regular maintenance of streets is cost-effective for the City and for citizens because deteriorated streets are expensive to repair and maintain and cause increased wear on vehicles; and

WHEREAS, a well-maintained street system provides for increased safety, supports property value appreciation, prolongs the life of public and private vehicles, and contributes to a more attractive community; and

WHEREAS, the City of Canby has prepared a Street Maintenance Program, attached as Exhibit A, working with a citizen Task Force and professional consultants, to address these issues; and

WHEREAS, additional funding is required in order to fund increased maintenance of the City of Canby's street system; now therefore

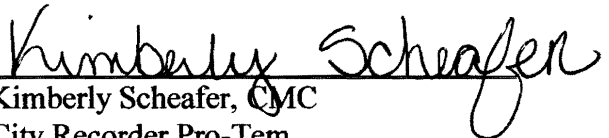
THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City of Canby's Municipal Code is amended by adding a new Chapter 3.30, "Street Maintenance Program," to read as shown in the attached Exhibit A.

Section 2. This ordinance shall take effect 30 days after passage. The fee imposed by Section 1 shall commence July 1, 2008.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, January 2, 2008; ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, January 16,

2008, commencing at the hour of 7:30 pm at the Council Meeting Chambers at the Canby City Hall,
155 NW 2nd Avenue, Canby, Oregon.

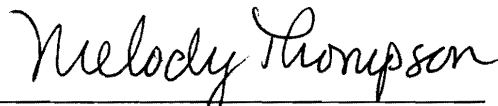


Kimberly Scheafer, CMC
City Recorder Pro-Tem

PASSED on second and final reading by the Canby City Council at a regular meeting thereof
on the 16th day of January, 2008, by the following vote:

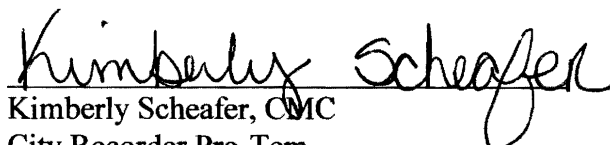
YEAS 4

NAYS 2



Melody Thompson
Mayor

ATTEST:



Kimberly Scheafer, CMC
City Recorder Pro-Tem

Chapter 3.30

STREET MAINTENANCE PROGRAM

Sections:

- 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 Street Maintenance Fee**
- 3.30.060 Determination of Street Maintenance Fee**
- 3.30.070 Administration of Street Maintenance Fee**
- 3.30.080 Waiver of Street Maintenance Fee in Case of Vacancy**
- 3.30.090 Street Maintenance Fee Appeal Procedure**
- 3.30.100 Exceptions to Street Maintenance Fee**
- 3.30.110 Severability**

3.30.010 Definitions

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

(A) "Community Development Director." The City of Canby Community Development Director or the Director's designee.

(B) "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.

(C) "Dwelling Unit." One or more rooms designed for occupancy by one family and not having more than one cooking facility.

(D) "Gross Square Footage." The area of all structures, located on a developed property, measured along the exterior walls of the structures, and including but not limited to enclosed courtyards and stairwells, but not including fences and parking areas which are not enclosed within a building.

(E) "Multi-unit Residential Property." Residential property consisting of two or more dwelling units. For the purposes of this ordinance, condominiums, attached single-family residences, and individual mobile home units are also classified as multi-unit residential properties.

(F) "Non-Residential Property." Any property that is not residential property.

(G) "Residential Property." A property that is primarily for personal, domestic accommodation, including single single-family, multi-unit residential property and group homes, but not including hotels and motels.

(H) "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 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 sewer 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.

(I) "Single Family Residential." Residential property that has only detached dwelling units.

(J) "Street." A public street or right-of-way within the City of Canby that is under the jurisdiction or control of the City. For purposes of this ordinance, county, state, and federal roads are excluded.

(K) "Street Maintenance Program." Program established by this chapter to maintain, repair and reconstruct City of Canby streets. Activities include the administration and collection of the Street Maintenance Fee; preventive maintenance, 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.

(L) "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"), 7th edition.

(M) "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.

3.30.020 Administrative Officers

(A) Except as provided below, the Community Development Director shall be responsible for the administration of this ordinance.

(B) The Community Development Director shall annually develop and update a five-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.

(C) The Community Development Director shall provide an annual report on the Street Maintenance Program to the City Council and Budget Committee.

(D) The Community Development Director shall be responsible for implementation and enforcement of steps to minimize utility cut damage to streets.

(E) The Finance Director shall be responsible for the administration and collection of fees under this ordinance.

3.30.030 Dedication of Revenues

(A) All funds and all proceeds from funds collected pursuant to this chapter shall be used for the Street Maintenance Program.

3.30.040 Annual Street Maintenance Program Report

(A) Each year the Community Development Director shall prepare and present to the Budget Committee and City Council the "Annual Street Maintenance Program Report." This document is a public record.

(B) 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 Street Maintenance Fee

(A) A Street 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 Section 3.30.060.

(B) The Street 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 Street Maintenance Fee

(A) Residential Fees.

1. Detached Single Family Residences shall be charged \$5.00 per month. ITE Code 210.
2. Multi-Family Residences, except for Senior Housing, mobile home parks, and Congregate Care, shall be charged \$3.34 per month for each dwelling unit. ITE Codes 220, 221, 222, 223, 224, 230, 231, 232, 233.
3. Detached Senior Housing and mobile home parks will be charged \$2.09 per month for each dwelling unit. ITE Codes 240, 250, 251.
4. Attached Senior Housing and Congregate Care facilities will be charged \$1.04 per month for each dwelling unit. ITE Codes 252, 253, 254.

(B) Non-residential fees.

1. 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 sub-section C.
2. Upon request of the customer, the Community Development Director shall review the Category of Use assignment. The Community Development 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.
3. Fee calculation. The Street Maintenance 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 of \$0.522 to establish the monthly fee to be billed.
4. Fee minimum. The minimum monthly Street Maintenance Fee for non-residential accounts shall be \$5.00.

(C) Category of Use.

1. Category 0 shall be estimated at 1.00 trip per Unit. Land Uses include city park, state park, waterslide park, movie theater, military base, wholesale market, furniture store, general heavy industrial,

mini-warehouse, high cube warehouse, utilities. ITE Codes 411, 413, 414, 444, 501, 860, 890, 120, 151, 152.

2. Category 1 shall be estimated at 2 trips per Unit. Land Uses include county park, nursing home, discount club, light rail transit station w/ parking, all suite hotel, business hotel. ITE Codes 93, 311, 312, 412, 620, 861.
3. Category 2 shall be estimated at 4 trips per Unit. Land Uses include general aviation airport, general light industrial, industrial park, manufacturing, warehouses, hotel, motel, resort hotel, regional park, golf course, prison, general office, corporate headquarters, single tenant office, office park, research center, auto care center, self-service car wash, tire store, wholesale tire store, supermarket, discount supermarket, and toy/children's superstore. ITE Codes 22, 110, 130, 140, 150, 310, 320, 330, 417, 430, 571, 710, 714, 715, 750, 760, 840, 947, 848, 849, 850, 854 and 864.
4. Category 3 shall be estimated at 8 trips per Unit. Land Uses include water port/marine terminal, truck terminals, casino/video lottery establishment, tennis club, racquet club, elementary school, middle/junior high school, high school, church, hospital, business park, building materials/lumber, specialty retail center, nursery-retail (garden center), nursery-wholesale, shopping center, factory outlet center, quality restaurant, quick lubrication, auto parts sales, gasoline/service station, gasoline/service station w/convenience market, gasoline/service station w/convenience market and car wash, convenience market (16 hr), home improvement superstore, and video rental. ITE Codes 10, 30, 473, 491, 492, 520, 522, 530, 560, 610, 770, 812, 814, 817, 818, 820, 823, 931, 837, 843, 944, 945, 946, 852, 862 and 896.
5. Category 4 shall be estimated at 16 trips per Unit. Land Uses include beach park, marina, junior/community college, day care center/preschool, library, clinic, medical-dental office building, free-standing discount superstore, free-standing discount store, hardware/paint stores, high turnover sit-down restaurant, fast food restaurant w/drive through, new car sales, convenience market (24 hr), electronics superstore, apparel store, bank/savings w/walk-in, bank savings w/drive-in, bus depot, and racquetball club. ITE Codes 415, 420, 540, 565, 590, 630, 720, 813, 815, 816, 932, 934, 841, 851, 863, 870, 911, 912.
6. Category 5 shall be estimated at 32 trips per Unit. Land Uses are fast food restaurant w/out drive-through, convenience market w/gas pump, pharmacy/drug store w/out drive through, and

pharmacy/drug store w/drive-through. ITE Codes 933, 853, 880, and 881.

7. Category 6 shall be estimated at 64 trips per Unit. Land Uses include commercial airport, truck terminal, utilities, campground/recreational vehicle, multi-purpose recreational facility, government office building, US post office, and amusement (theme) park. ITE Codes 21, 30, 170, 416, 435, 730, and 732.
8. Category 7 shall be estimated at 128 trips per Unit. Land Uses include state motor vehicles department. ITE Codes 731.
9. Category 8 shall be estimated at 256 trips per Unit. Land Uses include park and ride lot with bus service. ITE Codes 90.

(D) Units. The Unit used in calculating the Non-Residential Street Maintenance Fee shall be one (1) thousand square gross square feet of building area, with the following exceptions. The Unit for parks, golf courses, park and ride facilities with bus service, cemeteries, marinas, and multi-purpose recreational facilities shall be one (1) acre. The Unit for lodges shall be one (1) member. The Unit for hotels or motels shall be one (1) room. The Unit for self-service car washes shall be one (1) wash stall. The Unit for tennis courts or racquet clubs shall be one (1) court. The Unit for quick lubrication vehicle stops or gas stations shall be one (1) fueling or service position. The Unit for movie theaters shall be one (1) seat.

(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 Community Development Director shall determine which category the property should be placed in, based on similarity in expected trip generation. If no category is appropriate, the Community Development 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 Community Development Director under this section may be reviewed under the procedure described in section 3.30.090, sub-section (B). 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 Street Maintenance Fee

(A) The Street Maintenance Fee shall be billed and collected with and as part of the monthly sewer bill for those lots or parcels utilizing City sewer and billed and collected separately for those Developed Properties not utilizing City sewer. 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.

(B) In the event funds received from City utility billings are inadequate to satisfy in full all of the sanitary sewer and Street Maintenance fees, credit shall be given first to the Street Maintenance fee and second to the sanitary sewer service charges.

(C) 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.

3.30.080 Waiver of Street Maintenance Fee in Case of Vacancy

(A) When any property within the City becomes vacant and utility services are discontinued (if applicable), a waiver of the Street 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.

(B) 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.

(C) 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 Street Maintenance 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 ordinance may request a review and appeal such interpretation, but only in accordance with this section. The dispute must first be presented to the Community Development 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 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 Street Maintenance Fee charged under this ordinance shall become effective with the next billing cycle.

(B) A utility customer may request a review of the Category of Use assigned. The Community Development 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 Community Development Director shall make a determination based on the evidence provided and provide notice to the customer.

(C) A customer who wishes to dispute an interpretation made by the Community Development Director as to the assigned Category of Use under this ordinance shall submit a written appeal to the City Administrator within 10 days from the date of notice of the Community Development Director's determination under subsection B of this section, together with a filing fee in the amount of \$300. 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 Administrator shall schedule the matter for City Council review 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 Community Development 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 Street 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 Street Maintenance Fee

The following shall not be subject to the Street Maintenance Fee:

- (A) City of Canby public 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, non-rolling storage areas and areas used for the transfer of rail-transported goods to non-rail transport, which areas shall be subject to Street 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 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 Street 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.