

ORDINANCE NO. 624

AN ORDINANCE ESTABLISHING A “STREET MAINTENANCE PROGRAM”, AND
REQUIRING PAYMENT OF A STREET MAINTENANCE FEE.

THE CITY OF AMITY ORDAINS AS FOLLOWS:

SECTION 1 – DEFINITIONS

For purposes of this ordinance, the following mean:

- (1) “City Administrator” means the City Administrator for the City of Amity.
- (2) “Developed Property” means a parcel or portion of real property on which an improvement exists or has been constructed. Improvement or developed property includes but is not limited to buildings, parking lots, landscaping and outside storage.
- (3) “Dwelling Unit” means one or more rooms designed for occupancy by one family and not having more than one cooking facility.
- (4) “Engineer” means the City Engineer or Public Works Director or his authorized representative.
- (5) “Gross Square Footage” means 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.
- (6) “Multi-Unit Residential Property” means residential property consisting of two or more dwelling units. For the purpose of this ordinance, condominiums, attached single-family residences and individual mobile home units are also classified as multi-unit properties.
- (7) “Non-Residential Property” means any property that is not residential property.
- (8) “Residential Property” means a property that is primary for personal domestic accommodation, including single single-family, multi-unit residential property and group homes, but not including hotels and motels.
- (9) “Person” means a natural person, firm, partnership, association or corporation, whether or not they are acting for themselves or as a clerk, servant, employee or agent of another.
- (10) “Person in charge of property” means an agent, occupant, lessee, contract purchaser or person, other than the owner, having possession or control of the property.
- (11) “Responsible Party” means 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 party if a copy of the writing is filed with the City.

- (12) “Single Family Residential” means residential property that has only detached dwelling units.
- (13) “Street” means alleys, sidewalks, parking areas and access ways owned or maintained by the city and includes the terms “highway”, “road” and “street”. In addition it includes property, whether publicly or privately owned and whether publicly or privately maintained, upon which the public operates vehicles, either by express or implied invitation and includes but is not limited to parking lots, service station lots, shopping center and supermarket parking lots and other access ways and parking lots open to general vehicular traffic, whether or not periodically closed to public use.
- (14) “Street Maintenance Program” means the program established by this ordinance to maintain, repair and reconstruct streets, including storm drainage, pedestrian and bicycle elements required as part of the street. Activities include the administration and collection of the Street Maintenance fee; preventive maintenance, rehabilitation and reconstruction projects; design and inspection of street repairs; and staff training and consultant services in support of the above activities.
- (15) “Trip Generation” means 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), approved by the Engineer.
- (16) “Use Category or Category of Use” means the code number and resulting trip generation estimate determined with reference to the ITE Manual and applicable to a particular developed property.

SECTION 2 – ADMINISTRATIVE OFFICERS

- (1) Except as provide below, the Engineer shall be responsible for the administration of this ordinance.
- (2) The Engineer shall develop and update a Street Maintenance Program project schedule. This schedule shall properly integrated with other City Capital Improvement Program, to ensure that it is coordinated with other City capital projects and projects of other agencies.
- (3) The Engineer shall provide an annual report on the Street Maintenance Program to the City Council and Budget Committee.
- (4) The Engineer shall be responsible for implementation and enforcement of steps to minimize utility cut damage to streets.

- (5) The City Administrator shall be responsible for the administration and collection of fees under this ordinance.

SECTION 3 – DEDICATION OF REVENUES

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

SECTION 4 – STREET MAINTENANCE FEE

- (1) 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 5.
- (2) The street maintenance fee is also imposed and levied on the person in charge of property in the event of non-payment by the responsible party.

SECTION 5 – DETERMINATION OF STREET MAINTENANCE FEE

- (1) Each responsible person shall pay a street maintenance fee as set forth by resolution of the city council.
- (2) Residential Fees.
 - a. Detached single family residences shall be considered 1 equivalent dwelling unit (EDU) (ITE code 210).
 - b. Multi-family residences shall be considered 1 EDU per each dwelling unit (ITE codes 220, 221, 222, 223, 224, 230, 231, 232, 233, 240)
 - c. Senior adult housing and congregate care facilities shall be considered 0.5 EDU per dwelling unit (ITE codes 250, 251, 252, 253, 255).
 - d. Assisted living facilities shall be considered 0.5 EDU per bed (ITE code 254).
- (3) Non Residential Fees.
 - a. Each non-residential developed property in the City shall be assigned to a category of use according to the land use type listed in subsection 5 of this section.
 - b. Upon request of the responsible person, the Engineer shall review the category of use assignment. The Engineer shall consider evidence provided by the responsible person 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.
- (4) Fee calculation.
 - a. The street maintenance fee shall be calculated by multiplying the number of EDU's by the trip rate per EDU for that properties assigned category of use (listed in subsection 5 of this section) and then by the charge per unit as established by resolution of the city council, to determine the monthly fee to be billed.
- (5) Category of Use.

- a. Category 1 shall be established at 1 trip per EDU. Land uses include all residential, wholesale market, furniture store, general heavy industrial, mini warehouse, high cube warehouse and utilities (ITE codes 120,151, 152, 170, all 200s, 860, 890).
 - b. Category 2 shall be established at 2 trips per EDU. Land uses include nursing homes, discount clubs (ITE codes 620, 861).
 - c. Category 3 shall be established at 4 trips per EDU. Land uses include general light industrial, industrial park, manufacturing, warehouses, hotel, motel, general office, single tenant office, office park, auto care center, self-service car wash, tire store, supermarket and superstores (ITE codes 110, 130, 140, 150, all 300's, 710, 714, 715, 750, 760, 840, 848, 849, 850, 854, 864, 866, 867, 947).
 - d. Category 4 shall be established at 8 trips per EDU. Land uses include truck terminals, health clubs, elementary school, middle/junior high school, high school, church, hospital, business park, building materials/lumber, specialty retail, nursery retail (garden center) nursery-wholesale, shopping center, restaurants, quick lubrication, auto parts sales, gasoline service stations with and without convenience markets and car wash, convenience market, home improvement superstore and video rental (ITE codes 30, 473, 491, 492, 520, 522, 530, 536, 560, 610, 770, 812, 814, 817, 818, 820, 823, 837, 843, 851, 852, 853, 862, 896, 925, 931, 932, 944, 945, 946).
 - e. Category 5 shall be established at 16 trips per EDU. Land uses include day care center/pre school, clinics, medical/dental office, hardware/ paint store, freestanding discount, fast food restaurant w/drive through, car sales, bank/ savings (ITE codes 565, 630, 720, 813, 815, 816, 841, 863, 870, 911, 912, 933, 934, 935, 936, 937, 938, 940).
 - f. Category 6 shall be established at 32 trips per EDU. Land uses are pharmacy/drug store, government office building, fire and police stations, US post office (ITE 880, 881, 730, 732, 733).
 - g. Category 7 shall be established at 64 trips per EDU. Land uses are parking lots, park and ride facilities (ITE code 90).
- (6) Equivalent dwelling units.
- a. The units used in calculating the street maintenance fee shall be the greater of the number of units assigned per the meter size or the number of individually occupied spaces (ie. 3 commercial spaces sharing a 1" meter would be 3 units, instead of the 2.5 units assigned to the 1" meter).
 - b. When no water meter exists the unit used in calculating the street maintenance fee shall be one (1) thousand gross square feet of building area, with the following exceptions. The unit for parking and outside storage facilities shall be one (1) acre. The unit for tennis courts or racquet courts shall be one (1) court. The unit for quick lubrication vehicle stops or gas stations shall be one (1) fueling or service position.
- (7) Unlisted uses. In the event that a property is occupied by a use that is not expressly listed in any of above categories, the engineer shall determine which category the property should be placed in, based on similarity in expected trip generation. If no category is appropriate, the Engineer shall determine the trips per unit shall be based on a transportation study, the trip generation manual or any other method for determining trips. Any determination by the Engineer under this section may be reviewed under the procedure described in section 8, subsection (2). The result of the review may be appealed to the City Council by filing a notice of appeal and paying the appropriate fee within 10 days of the date notice of the result of the review is mailed to the property owner.

SECTION 6 – ADMINISTRATION OF STREET MAINTENANCE FEE

- (1) The street maintenance fee shall be billed and collected with and 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..
- (2) 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..
- (3) Notwithstanding any provision herein to the contrary, the city may institute and necessary legal proceedings to enforce the provisions of this ordinance, including, but not limited to injunctive relief and collection charges owing. The city’s enforcement rights shall be cumulative.

SECTION 7 – WAIVER OF STREET MAINTENANCE FEE IN CASE OF VACANCY

- (1) 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 City Administrator upon written application of the person in charge of property, 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.
- (2) 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.
- (3) 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.

SECTION 8 – STREET MAINTENANCE FEE APPEAL PROCEDURE

- (1) Any owner who disputes any interpretation given by the city as to the category of use assigned to such owners 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 Engineer 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 city council, 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. The Engineer shall conduct the review considering all relevant evidence presented by the responsible person related to their actual trip generation patterns. Such evidence may include business records, parking lot usage, or traffic studies. The Engineer shall

make a determination based on the evidence provided and provide notice to the customer.

- (3) A responsible person who wishes to dispute an interpretation made by the Engineer 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 Engineer's determination. under subsection (2) 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.
- (4) 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 Engineer. 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 council with respects 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, provide no refund of prior street maintenance fees shall be given. The filing fee on the appeal is non refundable. The council decision shall be final.

SECTION 9 – EXCEPTIONS TO STREET MAINTENANCE FEE

The following shall not be subject to the street maintenance fee:

- a. City of Amity public parking lots
- b. Publicly owned parkland, open spaces and greenways, unless off-street parking designated to accommodate the use of such is provided.
- c. Areas encompassed by railroad and public right-of-ways, 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..

SECTION 10 – SEVERABILITY

In the event any section, subsection, paragraph, sentence or phrase of this ordinance 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. 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.

SECTION 11 – EFFECTIVE DATE

This ordinance will take effect 30 days from the date of its passage.

FIRST READING: January 5, 2011

SECOND READING: February 2, 2011

SUBMITTED AND APPROVED THIS 2nd DAY OF February, 2011.

Ayes: Dahl, Homen, van Soolen

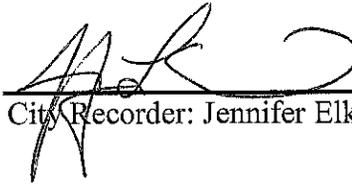
Nays:

SIGNED:



Mayor: Michael Cape

ATTEST:



City Recorder: Jennifer Elkins