

Bay City Ordinances

ORDINANCE NO. 602

AN ORDINANCE ESTABLISHING A STREET MAINTENANCE AND REPAIR FEE AND PROVIDING FOR COLLECTION THEREOF AND DECLARING AN EMERGENCY

The City Council of the City of Bay City, Oregon ordains as follows:

- (1) Purpose. There is hereby created a street maintenance fee for the purpose of providing funds for the maintenance and repair of City maintained streets under the jurisdiction of the City of Bay City. The council hereby finds, determines and declares the necessity of providing maintenance and upkeep of the City's local streets and related facilities within the right-of-way as a Street Maintenance Fee with such maintenance to include, without limitation, the following activities: patching, crack sealing, seal coating, over-laying and other activities as are necessary in order that local streets may be properly maintained to safeguard the health, safety and welfare of the City and its inhabitants.
- (2) Establishment of street maintenance fee. The City Council may establish by resolution a street maintenance fee to be paid by the owners or occupants of property within the corporate limits of the City as set forth in the Resolution setting the fees. Such fee shall be established in such amounts which will provide sufficient funds to properly maintain local streets throughout the City. Fees charged to individual structures and users shall be based upon an equivalent dwelling unit standard already assigned to each sewer account within the City. The City Council may from time to time by resolution, change the fees based upon revised estimates of the cost of properly maintaining local streets, revised categories of developed use, revised traffic generation factors, and other relevant factors.
- (3) Street maintenance fee - Dedicated. All fees collected pursuant to this ordinance shall be paid into the Street Reserve Fund. Such revenues shall be used for the purposes of the maintenance and repair of the City maintained streets. It shall not be necessary that the maintenance and repair expenditures from the Street Reserve Fund specifically relate to any particular property from which the fees for said purposes were collected.
- (4) City maintained local streets - Exceptions. The City shall maintain all accepted local streets within City-owned land, City rights-of-way, and City easements and maintain other accepted local streets within or adjacent to the City. Such local streets specifically exclude private streets and streets not yet accepted by the City for maintenance.

(5) Billing and collection of fee.

- A. The street maintenance fee shall be billed and collected with, and as part of, the water and sewer bill for those properties utilizing City water and/or sewer. In cases where a developed property is subject to water and/or sewer utility charges, the street maintenance fee bill shall be directed to the same person as the bill for water and/or sewer charges. If a tenant in possession of any premises pays such fee, such payment arrangement shall not relieve the owner from such obligation and lien.
- B. All charges shall be deemed delinquent if not paid by the 10th of the month in which it is billed. If such charges are not paid by the 25th day of the month in which it is billed, an additional charge of 5% of the unpaid balance per month shall be added to the bill.
- C. The City Recorder shall deposit all such fees so collected into the Street Reserve Fund to be separately kept and used for the purposes provided herein. Partial payments on utility bills shall be allocated first to the street maintenance fee. If charges are not paid by the 25th day of the month in which it is billed, the City, at its option, and after due notice to the consumer, may discontinue water service to the premises served.
- D. There shall be no annual prepayment discount for the Street Maintenance Fee.

(6) Enforcement. The City may use such means for collecting of street maintenance fees, as are provided by the laws of the State of Oregon or are authorized by the charter and ordinances of the City. When the consumer is the owner of the property being serviced, any delinquencies in payment thereof may be certified to the Assessor for Tillamook County, Oregon, in accordance with the Oregon Revised Statutes. If the consumer is not the property owner of the property, then City may proceed by any action in law or statute to recover said fees. Any overdue street maintenance fee further may be collected, at the option of the City, by an action at law in the name of the City.

- (7) Administrative review - Appeals.
- A. Any user, occupant or property owner who disputes the amount of the fee, or disputes any determination made by or on behalf of the City may petition the City Council for a hearing on a revision or modification of such fee or determination. Such petitions may be filed only once in connection with any fee or determination, except upon a showing of changed circumstances sufficient to justify the filing of such additional petition.
 - B. Such petitions shall be in writing, filed with the City Recorder, and the facts and figures shall be submitted in writing or orally at a hearing scheduled by the City Council. The petitioner shall have the burden of proof.
 - C. Within sixty (60) days of filing of the petition, the City Council shall make findings of fact based on all relevant information, shall make a determination based upon such findings and, if appropriate, modify such fee or determination accordingly. Such determination by the City Council shall be considered a final order.
- (8) Notice of decision. Every decision or determination of the City Council shall be in writing, and notice thereof shall be mailed to or served upon the petitioner within a reasonable time from the date of such action. Service by certified mail, return receipt requested, shall be conclusive evidence of service for the purpose of this ordinance.
- (9) Disposition of fees and charges. The fees paid and collected by virtue of this ordinance shall not be used for general or other governmental propriety purposes of the City. The fees and charges shall be used solely to pay for the cost of maintenance and repair of City maintained streets and related facilities.
- (10) Exemptions. The City Council may, by resolution, exempt any class of user when they determine that the public interest deems it necessary or that the contribution to street use by said class to be insignificant. The City of Bay City owned property is declared exempt from the Street Maintenance Fee.
- (11) Violation - Penalty. In addition to any other remedy provided in this ordinance, violation of this ordinance is punishable by a Class D Violation plus court costs. Each day after an account subject to street maintenance fees remains delinquent in payment of such fees constitutes a separate violation.
- (12) 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

determination 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.

(13) No Limitation.

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.

(14) Not a tax. The fees and charges herein are not intended to be taxes, nor are they subject to the property tax limitations of Article XI, Section 11(b), of the Oregon Constitution.

(15) Effective date/Emergency. The City declares an emergency to exist and finds that an effective date of this ordinance shall begin February 1, 2003 and that such an effective date is necessary to protect the health, safety and welfare of the City residents.

PASSED and Adopted by the City Council this 31st day of January, 2003, and APPROVED by the Mayor this 31st day of January, 2003.

/s/ James A. Cole, Jr., Mayor
James A. Cole, Jr., Mayor

ATTEST:

/s/ Linda Dvorak
Linda Dvorak, City Recorder

First Reading: January 14, 2003
Second Reading: January 14, 2003
Ayes: 4
Nays: 1
Abstentions: 0