

**CITY OF PHOENIX, OREGON**

**ORDINANCE NO. 1039**

**AN ORDINANCE OF THE CITY OF PHOENIX REPEALING  
ORDINANCE 746, ORDINANCE 750 AND ORDINANCE 930 AND  
ESTABLISHING A TRANSPORTATION UTILITY FEE FUNDING  
TRANSPORTATION MAINTENANCE AND DECLARING AN  
EFFECTIVE DATE**

WHEREAS, the City of Phoenix is in need of additional funding to help maintain an adequate, sustained funding base for its transportation system. Funding is required to help provide sufficient and effective, staffing, maintenance, administration, operation, equipment, supplies, fixed facilities and other costs associated with transportation maintenance;

WHEREAS, the City Council finds that a fee is necessary and appropriate to provide additional funding for transportation maintenance within the city, and that the methodology and distribution of the fee described in this ordinance is a reasonable and rational way to help provide the operations and maintenance of transportation facilities within the City of Phoenix;

NOW, THEREFORE, the City of Phoenix Ordains as follows:

SECTION 1. Chapter 3.27, Transportation Utility Fee, is adopted herein to be incorporated into the Phoenix Municipal Code.

**Chapter 3.27  
TRANSPORTATION UTILITY FEE**

**Sections:**

- 3.27.010 Short Title
- 3.27.020 Purpose
- 3.27.030 Definitions
- 3.27.040 Establishment and Revision of Parks Maintenance Fee
- 3.27.050 Transportation Utility Fee - Dedicated
- 3.27.060 City to Maintain Local Streets; Exclusions
- 3.27.070 Billing and Collection of Parks Maintenance Fee
- 3.27.080 Administration; Review; Appeal Process
- 3.27.090 Enforcement
- 3.27.100 Disposition of Fees and Charges
- 3.27.110 Exemptions
- 3.27.120 Discounts for low-income elderly, and non-drivers

### **3.27.010 Short Title**

The provision of this Chapter shall be known and may be cited as the “City of Phoenix Transportation Utility Fee Ordinance”.

### **3.27.020 Purpose**

There is hereby created a transportation utility for the purpose of providing funds for the maintenance and improvement of local streets and related facilities under the jurisdiction of the City of Phoenix. The City Council hereby finds, determines, and declares the necessity of providing operation, maintenance and improvement of the city’s streets and related facilities within the right-of-way as a comprehensive transportation utility.

Operation, maintenance and improvement includes such activities as are necessary in order that streets and related facilities may be properly operated and maintained to safeguard the health, safety, and welfare of the city and its inhabitants and visitors. The following activities are to be funded by the transportation utility: costs of administering the transportation utility, patching, crack sealing, seal coating, pavement overlays including minor widening, repairing and installing sidewalks or curb cuts, street sweeping, repairing and installing curb and gutter, cleaning and installing storm drains, replacing and installing signs, striping, repairing and installing signals, illumination, rebasing or placing additional road base on local streets, street trees, miscellaneous repairs, and related operations of the Public Works Department on city streets and intersections with city streets.

The City Council further finds that non-motorized transportation (such as bicycle and pedestrian) facilities, including access for the disabled or handicapped, are an integral part of the transportation network. A portion of transportation utility funds may be used for maintenance of non-motorized transportation facilities whether within public streets or off-street right-of-way on other publicly-owned land or easements, provided the facilities are accepted by the city for maintenance.

### **3.27.030 Definitions**

As used within this ordinance, the words and phrases below have the following definitions and meanings:

- (1) “Responsible Party” shall mean the person or persons who by usage, occupancy or contractual arrangement are responsible to pay the utility bill for an Improved Premises.
- (2) “Improved Premises” shall mean structures, landscaping, paved areas, and any area which has been altered such that runoff from the site is greater than that which could have historically been expected.
- (3) “PM Peak Hour Trip” means a trip to or from an origin or destination during the weekday afternoon peak hour of traffic generation.

### **3.27.040 Establishment and Revision of Parks Maintenance Fee**

(1) The City Council hereby establishes, a transportation utility fee to be paid by the Responsible Party (whether owners or occupants) for each Improved Premises generating traffic in the city. The amount of the monthly transportation utility fee shall be set by this formula: Improved Premises Monthly Fee = Monthly Fee per PM Peak Hour Trip x Improved Premises count of PM Peak Hour Trips. PM Peak Hour Trips shall be determined using the 11<sup>th</sup> Edition of the Institution of Transportation Engineers (ITE) Manual. This fee is deemed reasonable and is necessary to pay for the operation and maintenance of local streets within the city. The transportation utility fee shall not be charged during any period when the Improved Premises is not receiving city water service or is shown to be vacant and not generating traffic.

(2) City Council may, from time to time, by resolution, change the transportation utility fee based upon revised estimates of the costs of maintaining streets city streets, revised priorities for local improvements that would reduce long-term maintenance costs, revised categories of use, revised trip generation or trip length factors or other relevant factors.

(3) Unless a yearly fee schedule adjustment has already been established by resolution of the City Council, the transportation utility fees shall be adjusted by the inflationary cost impacts measured and calculated each March 1st by the City Manager and approved by the City Council. Such calculations will be based upon cost changes in the Engineering News-Record Construction Cost Index (ENR Index) for Seattle, WA. The adjusted calculated transportation utility fee shall be rounded to the nearest cent. Changes to the fee based on inflationary cost impacts shall be adopted by resolution of the City Council.

(4) The transportation utility fee imposed by the City of Phoenix is classified as not subject to the limits of Section 11b of Article XI of the Oregon Constitution.

### **3.27.050 Transportation Utility Fee - Dedicated**

(1) All transportation utility fees collected by the city shall be paid into the Street Fund. Such revenues shall be used for the purposes described in Section 1 of this ordinance. Transportation utility funds may be used to provide that portion of a capacity-increasing street improvement project within existing right-of-way that represents the cost of a pavement overlay as well as portions of the project for which system development charges have not been collected. It shall not be necessary that the expenditures from the Street Fund specifically relate to any particular use from which the transportation utility fees were collected.

(2) To the extent that the fees collected are insufficient to properly maintain local streets, the cost of the same may be paid from such other city funds as determined by the

City Council, but the City Council may order reimbursement to such fund as additional fees are thereafter collected. Transportation utility fees shall not be imposed in amounts greater than that which is necessary, in the judgement of the City Council, to provide sufficient funds to properly maintain and improve streets and related transportation facilities.

### **3.27.060 City to Maintain Local Streets; Exclusions**

The city shall maintain all accepted local streets within city-owned land, city rights-of-way, and city easements. The city may maintain other accepted local streets, bicycle and pedestrian and other non-motorized vehicle facilities, and intersections with county roads or state highways within or adjacent to the city. Local streets to be maintained exclude private streets and streets or any other facilities not yet accepted by the city for maintenance.

### **3.27.070 Billing and Collection of Parks Maintenance Fee**

(1) The Responsible Party for any Improved Premises within the City of Phoenix shall pay a transportation utility fee according to rates set forth in this Code. Unless another Responsible Party has agreed in writing to pay and a copy of the writing is filed with the city, the person(s) paying the city's water bill shall pay the transportation utility fees. In the event the Improved Premises does not receive city water service, the transportation utility fees shall be paid by the person(s) having the right to occupy the Improved Premises.

(2) Transportation utility bills shall be rendered monthly and shall become due and payable in accordance with the rules and regulations pertaining to the collection of utility fees. If the Improved Premises does not receive city water service, an annual bill shall be rendered and shall become due and payable within 90 days of issuance. Monthly transportation utility fees for new development shall commence upon completion, occupancy, or use of the improvements, whichever comes first. The Finance Director may use the date of connection to the water system to commence the transportation utility fee unless other evidence of the date of completion, occupancy or use is provided to the Finance Director in writing. Areas annexed to the City of Phoenix or under contract to annex shall become subject to the transportation utility fee on the date of annexation or the date of the annexation contract, whichever comes first.

(3) Transportation utility fees shall be deposited into the Street Fund to be separately kept and used for the purposes provided herein.

### **3.27.080 Administration; Review; Appeal Process**

(1) The City Manager or his/her designee shall be responsible for determining fee amounts in accordance with usage, developing street maintenance and improvement programs, performing traffic counts, and establishing standards for the operation and

maintenance of streets and related facilities to the end that the transportation system shall be maintained, and that the city's investment therein kept available for the benefit of the public.

(2) Any Responsible Party of a nonresidential premises may request in writing a specific adjustment in the transportation utility fee for seasonal factors. The request shall provide a showing of evidence about seasonal patterns affecting the use. The petitioner shall have the burden of proof. An adjustment so that the high and low seasons do not differ by more than fifteen (15) percent may be approved by the City Manager or his/her designee. Variations greater than 15 percent shall require approval by the City Council.

(3) Any Responsible Party of a nonresidential premises may request in writing that a traffic count be made to demonstrate PM Peak Hour Trips generated by the Improved Premises for the transportation utility fee. The City Manager or his/her designee shall within 60 days cause such traffic count to take place. If the observed PM Peak Hour Trips are within five percent more or less of that in the 11<sup>th</sup> Edition of the ITE Manual, no adjustment in the transportation utility fee shall be made because this is within the expected margins for day-to-day variations. A downward adjustment in the transportation utility fee shall be made by the City Manager or his/her designee, if the traffic count results in chargeable trip ends less than ninety-five (95) percent of the level in 11<sup>th</sup> Edition of the ITE Manual. An upward adjustment in the transportation utility fee shall be made by the City Manager or his/her designee, if the traffic count results in chargeable trip ends more than one hundred five (105) percent of the level in 11<sup>th</sup> Edition of the ITE Manual. Any adjustment shall take effect in the month following completion of the traffic count and be reported in writing to the Finance Director by the City Manager or his/her designee. Results of traffic counts shall not be appealable to the City Council. Traffic counts for a specific nonresidential premises shall not be required to be made by the City more than once in each calendar year.

(4) For any issues not addressed in (2) or (3) above, any Responsible Party who disputes the amount of the fee made against such party's premises, or any party who disputes any determination made by or on behalf of the city pursuant to and by the authority of this ordinance may petition in writing for revision or modification of such fee or determination. Such petitions may be filed with the City Recorder only once in connection with any specific fee of determination, except upon a showing of such changed circumstances. The petitioner shall have the burden of proof.

(5) Petitions filed pursuant to (4) above shall be reviewed in a hearing before the City Council. Within 60 days of the filing of a petition under this section, the City shall make findings of fact based on relevant information, shall make a determination based upon such findings, and if found appropriate, modify such fee or determination accordingly. Such determination by the City shall be considered a final order.

(6) Every decision or determination of the City shall be in writing, and notice thereof shall be mailed 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.

### **3.27.090 Enforcement**

Any charge due hereunder which is not paid when due may be recovered from the Responsible Party in an action at law by the city. In addition to any other remedies or penalties provided by this or any other ordinance of the city, failure of any user of city utilities within the city to pay said charges promptly when due shall subject such user to discontinuance of any utility services provided by the city. The Finance Director is hereby empowered and directed to enforce this provision against such delinquent users. The employees of the city shall, at all reasonable times, have access to any Improved Premises served by the city for inspection and enforcement of the provisions of this ordinance.

### **3.27.100 Disposition of Fees and Charges**

The fees paid and collected pursuant to this ordinance shall not be used for general or other governmental proprietary purposes of the city, except to pay for the equitable share of the cost of operation, administration including administration of the transportation utility, maintenance, repair, improvement, renewal, replacement, and reconstruction of the local street network and related facilities for which the city has maintenance responsibility.

### **3.27.110 Exemptions**

The City Council may, by resolution, exempt any class of user when they determine that the public interest deems it necessary and that the contribution to street use by said class is insignificant.

### **3.27.120 Discounts for low-income elderly, and non-drivers**

(1) Discounts applying to low-income elderly persons for water fees shall also apply to transportation utility fees.

(2) Responsible Parties occupying single family homes, multi-family dwelling units or mobile homes within the city may apply in writing for a discounted fee for the households for which they are responsible to pay transportation utility fees without a motor vehicle. Upon confirming the filing that no occupant of the household owns or is using a motor vehicle, the Improved Premises shall be charged the rate for affordable housing which considered comparable to the share of transportation utility expenses that relate to non-motorized vehicles.

SECTION 2. Effective Date of Fee Collection. The effective date for responsibility to pay fees under this ordinance is May 15, 2024. The currently adopted fee shall remain in effect until a new resolution is adopted.

**PASSED AND ADOPTED** by the City Council and signed by me in authentication of thereof on this 15<sup>th</sup> Day of May, 2024.

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Terry Baker, Mayor

ATTEST:

Approved as to form:

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Bonnie Pickett, City Recorder

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Douglas McGeary, City Attorney