

ORDINANCE #8-Amendment #1

AN ORDINANCE CREATING THE PORT OF TILLAMOOK BAY TRANSPORTATION UTILITY MAINTENANCE PROGRAM; ESTABLISHING A TRANSPORTATION UTILITY MAINTENANCE FEE; AND PROVIDING FOR PENALTIES FOR NONPAYMENT

RECITALS

WHEREAS, pursuant to ORS 777.250, the Port of Tillamook Bay ("Port") has authority to construct improvements on Port-owned property and to charge and collect fees for services made available within its industrial park; and

WHEREAS, in 2015 the Port completed a multi-million dollar project to invest in the rehabilitation of its Transportation Utility system; and street and other related facilities deterioration, if not managed through a program of prevention, early detection, maintenance and repair, can lead to large-scale disrepair and destruction of streets and other related facilities with serious traffic safety consequences as well as the sustained interruption of the flow of traffic and blighting of the industrial park; and

WHEREAS, the Port Board of Commissioners ("Port Commission") recognizes there exists a priority need to preserve this investment through adoption of a well-regulated Transportation Utility maintenance program and Transportation Utility maintenance fee to address both short-term routine annual maintenance services and long-term major maintenance to preserve the Transportation Utility system at an overall safe functioning level; and

WHEREAS, the Port Commission has examined the costs associated with maintenance of the Transportation Utility system and finds that categorizing Transportation Utility users based upon their impact to the street and other related facilities and apportioning Transportation Utility maintenance fees accordingly is a reasonable and rational way to fund the needs of the maintenance program; and has determined the following documents to be generally accepted and reliable for use in development of the categories and fees for implementing the program: Trip Generation 8th Edition, published by the Institute of Transportation Engineers, ("ITE Manual."); AASHTO Design Guide for Design of Pavement Structures published by the American Association of State Highway and Transportation Officials, 1993 ("AASHTO Design Guide"), Port of Tillamook Bay Transportation Utility Maintenance Program (Fund Development); and Port of Tillamook Bay Transportation Utility Maintenance Program (Cost Share),

NOW, THEREFORE THE PORT OF TILLAMOOK BAY ORDAINS AS FOLLOWS:

This Ordinance shall be known as the Transportation Utility Maintenance Ordinance of the Port of Tillamook Bay.

ARTICLE I
Definitions

Section 1. The following words and phrases as used within this Ordinance have the following definitions and meanings:

AASHTO Design Guide. AASHTO Design Guide for Design of Pavement Structures published by the American Association of State Highway and Transportation Officials, 1993

Equivalent Single Axle Load (ESAL). Summation of equivalent 18,000-pound single axle loads used to combine mixed traffic to design traffic for the design period.

Traffic Equivalence Factor. A numerical factor that expresses the relationship of a given axle load to another in terms of their effect on the serviceability of the pavement structure. For this ordinance the following table shall be used for calculating car equivalents:

Vehicle Type	ESAL's	Car Equivalents
Car/Pickup	0.0006	1
Bus/Box Truck	0.4	500
Semi-Trailer	1.2	2000

Heavy Vehicle Impact. Axle loading applied to pavements from Heavy Vehicles contributes disproportionately to the pavement wear as measured by the Pavement Condition Index (PCI). AASHTO has developed guidelines for calculating the impacts and methods for determining equivalents. See Appendix D of the AASHTO Design Guide.

Heavy Vehicles. Any vehicle with greater than 2,000-pound single axle loading, for this ordinance passenger cars and trucks are approximately 4,000 to 6,000-pounds, buses and box trucks are approximately 30,000-pounds, and semi-truck and trailers are 80,000-pounds.

Street or Road. A public street or road or other related facilities or right-of-way within the Port of Tillamook Bay boundary which is under the jurisdiction or control of the Port. For purposes of this ordinance, private, county, state and federal roads are excluded.

Transportation Utility User ("User"). That entity, company, organization and/or individual which travels by vehicle upon a Port street or other related facilities within the Port of Tillamook Bay boundary, which is under the jurisdiction or control of the Port.

Developed Property. A parcel or legal portion of real property located within the Port of Tillamook Bay Industrial Park, whether owned by the Port or other party, 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.

Undeveloped Property. A parcel or legal portion of real property located within the Port of Tillamook Bay Industrial Park, whether owned by the Port or other party, on which no improvement exists (e.g. open space) but is currently subject to a lease and/or other use agreement with the Port.

Residential Property. Property that is used primarily for personal domestic accommodation, including single family, multi-family residential property, home occupation businesses and group homes, but not including hotels and motels.

Multi-Family Residential. Residential property consisting of two or more dwelling units.

For purposes of this ordinance, condominiums and individual mobile home units are also classified as multi-family residences.

Non-Residential. Property that is not primarily used for personal domestic accommodation. Nonresidential property includes industrial, commercial, institutional, hotel and motel and other nonresidential uses.

Occupied Unit. Any structure or any portion of any structure occupied for residential, commercial, industrial, or other purposes. For example, in a multifamily residential development, each dwelling unit shall be considered a separate occupied unit when occupied; and each retail outlet in a shopping mall shall be considered a separate occupied unit. An occupied unit may include more than one structure if all structures are part of the same dwelling unit or commercial or industrial operation. For example, an industrial site with several structures that form an integrated manufacturing process operated by a single manufacturer constitutes one occupied unit. Property, whether undeveloped (e.g. open space) or developed and not in current use, is not considered an occupied unit. However, property, whether undeveloped (e.g. open space) or developed, not in current use but subject to a lease and/or use agreement with the Port, is considered an occupied unit.

Pavement Conditional Index (PCI). A uniform way to measure pavement distress with a rating scale of 1 to 100, with higher values indicating better condition.

Responsible Party. The person, or persons, who either own, lease, occupy, or otherwise control developed or undeveloped property and who by occupancy or contractual arrangement are responsible for paying for lease rent, utilities and/or other services provided to the property. Unless another party has agreed in writing to pay and a copy of the writing is filed with the Port, the person(s) paying the lease rent, utilities and/or other services 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 utility 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 Port. Any person who has agreed in writing to pay is considered the responsible person if a copy of the writing is filed with the Port.

Transportation Utility Maintenance. Any action to maintain Port streets or other related facilities, including repair, renewal, resurfacing, replacement and reconstruction. Transportation Utility maintenance does not include the construction of new streets, parking lots, sidewalks, or street lighting. Transportation Utility maintenance shall include resurfacing of existing streets parking lots, sidewalks, loading docks, repair or replacement of curb and gutter where they exist, repair or replacement of the entire existing street structural section, repair or replacement of existing street shoulders, pavement markers, striping and other street markings, repair or replacement of existing channelization devices, adjustment of existing utilities to match finish grades, other work that is required by law to be done in conjunction with street maintenance (such as curb ramp retrofits in accordance with the Americans with Disability Act), and any other related work within the existing streets or related facilities. It includes repair or restoration of existing storm drainage systems within existing streets but does not include installation of new drainage systems.

Vehicle. A thing used for transporting people or goods, especially on land, such as a car, bus or truck.

General Manager. The person appointed by the Port of Tillamook Bay Board of Commissioners to perform the functions of General Manager.

Accounting Manager. The person appointed by the General Manager to perform the functions of Accounting Manager.

ITE Manual. Institute of Transportation Engineers Trip Generation Manual, Eighth Edition.

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) 8th Edition, ("ITE Manual").

User Category. The billing category assigned to a particular User for the purposes of determining the proportionate cost and Transportation Utility Fee to be charged for implementing the Port of Tillamook Bay Transportation Utility Maintenance Program.

ARTICLE II

Port of Tillamook Bay Transportation Utility Maintenance Program

Section 1. The Port of Tillamook Bay Transportation Utility Maintenance Program ("Program") is hereby created for the purpose of maintaining a safe, functioning Port Transportation Utility system. The Program will provide well-regulated maintenance to the Transportation Utility system and be funded through fees collected for this purpose. The Program helps to extend the life of the Transportation Utility system by various means such as street and other related facilities maintenance, including the storm water system maintenance including chip sealing, overlay work, complete removal and replacement of asphalt, road markings/stripping, shoulder dressing, spraying, street sweeping, street lighting, inspections and other necessary maintenance items.

Section 2. The Port of Tillamook Bay Transportation Utility Maintenance Program Fund ("Transportation Utility Fund") is hereby established. Revenue collected pursuant to this ordinance shall be dedicated to the Transportation Utility Fund and be used exclusively to fund Program costs. In the event revenue is insufficient to meet Program costs, additional funding may be allocated by the Port Commission from other non-dedicated Port revenue; and the Port Commission may direct the reimbursement to such other funds if additional fees are collected. In any event, the allocation of additional funding, whether into or out of the Transportation Utility Fund, shall be equal to said allocation.

Section 3. All amounts on hand in the Transportation Utility Fund, including those collected pursuant to this ordinance, may be invested by the Port in accordance with State law. Earnings from such investments shall also be dedicated to the Transportation Utility Fund.

Section 4. It shall not be necessary that the operations, administration and maintenance expenditures from the Transportation Utility Fund specifically relate to any particular property from which the fees for such purposes were collected.

Section 5. Revenue collected pursuant to this ordinance shall not be used for other governmental or proprietary purposes of the Port, except to pay for an equitable share of the Port's overhead costs including accounting, management and other costs related to management and operations of the Program. Engineering design, pavement evaluation, construction management and other related costs, including project advertisement, in the implementation of the Transportation Utility maintenance projects, shall also be considered as being used for Transportation Utility maintenance.

ARTICLE III. Transportation Utility Maintenance Fee

Section 1. A Transportation Utility Maintenance Fee ("Transportation Utility Fee") is hereby established for funding the costs associated with the Program. The amount of the Transportation Utility Fee shall be set in accordance with an associated User Category; and the Transportation Utility Fee shall be paid by the Responsible Party for each occupied unit of developed or undeveloped real property. The purposes of the Transportation Utility Fee are to charge for the service the Port provides in maintaining the Transportation Utility system and to ensure that maintenance occurs in a timely manner, thereby reducing increased costs that result when maintenance is deferred.

Section 2. The Transportation Utility Fee shall be added as an additional item on the Port's monthly water and sewer bill for those properties utilizing Port water/sewer and billed and collected separately for those properties not utilizing Port water/sewer.

Section 3. The Office Administrator shall be responsible for the collection of fees under his ordinance.

ARTICLE IV Methodology- User Category and Transportation Utility Fee

Section 1. Use of the Port's Transportation Utility involves a mixture of interdependent uses between categories of industrially-developed property and non-industrially-developed property. This blending makes exact calculations difficult; but the most reasonable apportionment is approximately ninety- nine and one-half (99.5%) percent use attributable to non-residential development and approximately one-half (.5%) percent use to residential development. In keeping with this apportionment, it is estimated that approximately ninety-nine and one-half (99.5%) percent of total annual revenue generated by the Program will come from non-residential developments and approximately one-half (.5%) percent will come from residential developments.

Section 2. The Transportation Utility Fee shall be based on the Port's Transportation Utility Maintenance Program (Fund Development) which identifies both short-term annual routine maintenance activities and long-term maintenance activities together with an annualized estimate of the costs associated with these activities, and the Transportation Utility Maintenance Program (Cost Share) which provides an apportioned fee schedule for each User Category.

Section 3. Each User or Responsible Party subject to this ordinance will be assigned to a User Category, developed out of the Port's examination of the ITE Manual, which identifies the category of Transportation Utility use, and that will be used to determine the amount of its corresponding Transportation Utility Fee. For purposes of this ordinance, the following categories

are established: Single-Residential, Multi-Residential, General Office, Small Warehousing, Medium Warehousing, Large Warehousing Small Industrial, Medium Industrial, Large Industrial, Major Industrial, Aviation-GA Airport, Aviation-RV Park, and Aviation Airport Business Park.

Undeveloped properties that are unused and not subject to a lease and/or use agreement with the Port are exempt from the Transportation Utility Fee.

Section 4. Each User Category will provide a cost share of the annual revenue needed to accomplish the Program goals and which, through the Port's examination of the ITE Manual data, has been determined to be the fair apportionment of share when factored against the categories of Transportation Utility use and impact.

Section 5. The General Manager shall make a determination as to which User Category most accurately reflects the User's impact on the Transportation Utility system and assign Users to the User Category which most accurately reflects the traffic generated by the particular use. In making this determination, the General Manager may use the ITE Manual Trip Generation data to determine the average trips per 1,000 (gross) square feet of developed area and any such other data as the General Manager deems appropriate in making this determination.

Section 6. In cases where the ITE Manual does not indicate average trips per 1,000 (gross) square feet of developed area and/or in cases where gross square footage information significantly misrepresents the magnitude of the development, equivalent factors may be used to determine the appropriate User Category. Such equivalency factors include but are not limited to: Ranking of similar developments where such information is available, average daily traffic generated by that development, or other pertinent information associated with road usage attributable to that development.

Section 7. The Transportation Utility Fee shall be calculated as an equal proportionate share of the total amount of revenue needed to accomplish the Program goals outlined in the Transportation Utility Maintenance Program (Fund Development) and Transportation Utility Maintenance Program (Cost Share) for each User Category divided by the number of Users assigned to each User Category. For example, if there are ten (10) users assigned to a User Category, and the total proportionate share of that category is \$1,000.00, then the apportioned equal share will be \$100.00 per User.

Section 8. The Transportation Utility Fee will be adjusted according to the annual Consumer Price Index, Portland. A floor of one and a half (1.5%) percent and a ceiling of three (3%) percent is established for this purpose.

Section 9. Transportation Utility Fees shall be established by Resolution.

Section 10. The Transportation Utility Fee shall be reviewed annually as part of the Port's budget process. Following each annual review, the Accounting Manager shall review the revenue received from the new rates after a full year of collection to determine if the annual revenues meet the annual funding level set from the Transportation Utility Maintenance Program (Fund Development) and report same to the General Manager. The General Manager shall report the findings of that review to the Port Commission and may make any recommendations on any potential fee increases or decreases based on that review. Any unspent funds will be placed in a reserve fund.

Section 11. It is the Port Commission's intention to leave the initial Transportation Utility Fee schedule unchanged for the first three (3) years the Program is in effect. Thereafter, the Port Commission may revise the Transportation Utility Fee schedule to reflect actual revenue/expenditure patterns, anticipated needs for future Transportation Utility maintenance/reconstruction and/or changes in conditions which the Commission finds should be taken into consideration.

Section 12. The General Manager, or designee, is authorized to enter upon private and/or leased property for purposes of conducting any studies or collecting information bearing upon the determination of the appropriate Transportation Utility Fee in accordance with this ordinance.

ARTICLE V

Nonpayment; Penalty; and Enforcement

Section 1. In the event of nonpayment of fees when due, the Port, in addition to other lawful enforcement procedures, may enforce collection of fees required by this ordinance by withholding delivery of water service to any premises where fees are delinquent or unpaid. In addition, for those Users who are also leaseholders of the Port, the nonpayment of fees when due may also be considered a lease default.

Section 2. In the event of a nonpayment, in addition to other lawful enforcement procedures, violation of this ordinance is punishable by a fine not to exceed \$100 to any User or Responsible Party who has not paid the Transportation Utility Fee, whether or not delivery of water service is provided and/or withheld. Each day after an account subject to Transportation Utility Fees remains delinquent in payment of such fees constitutes a separate violation.

Section 3. Notwithstanding any provision herein to the contrary, and in order to collect that portion of any unpaid fee, the Port may institute any necessary legal proceedings to enforce the provisions of this ordinance including, but not limited to, the collection of outstanding fees, including Port's legal costs for obtaining same, injunctive relief and collection of charges owing. The Port's enforcement rights shall be cumulative.

ARTICLE VI

Program Administration

Section 1. Except as provided herein, the General Manager shall be responsible for Program administration; is authorized to develop administrative procedures to implement this Ordinance and Program; and, where appropriate, to recommend changes thereto through development, review and amendment for consideration by the Port Commission. The General Manager has the initial authority and responsibility to interpret all terms, provisions and requirements of this ordinance and Program and to determine the appropriate charges thereunder.

Section 2. Unless accompanied by an application for partial or complete waiver of fees, a Responsible Party or their agent desiring an interpretation or other examination of the User Category and/or Transportation Utility Fee shall submit a written application to the General Manager. The application shall be submitted in sufficient detail to enable the General Manager to render an interpretation. The General Manager may require additional information, including an engineering study prepared by a licensed professional engineer in conformance with the

methodology outlined in the ITE Manual to be submitted by the applicant before an interpretation is given.

Section 3. Within thirty (30) days of the submission of an application for interpretation together with the required information, the General Manager shall cause a final decision to be made on the application. The decision shall be written and shall include findings of fact and conclusions for the particular aspects of the decision, based upon applicable criteria. A copy of the decision shall be mailed to the person submitting the request. The General Manager shall maintain a collection of such decisions. Decisions of the General Manager which affect the amount of the fee to be charged to a property shall be forwarded to the Accounting Manager. Except as provided under Section 4 of this Article, the decision of the General Manager is final.

Section 4. If the decision of the General Manager affects the User Category of the Responsible Party requesting the interpretation, the General Manager shall either assign a new User Category or determine the current User Category is proper. If a change in User Category is assigned, the Accounting Manager shall be notified so that an appropriate change may be made in the applicable fee charged in the future. No back charges or refunds shall be allowed. The decision of the General Manager, under this Section only, may be appealed to the Port Commission in accordance with Article VII of this ordinance.

Section 5. Funds collected pursuant to this ordinance shall be dedicated and used exclusively for the Port of Tillamook Bay Transportation Utility Maintenance Program.

Section 6. During the third year of the Program, and every three (3) years thereafter, the General Manager shall perform a review of the Program; and the General Manager shall advise the Port Commission of changes, if any, deemed advisable. The Port Commission may direct an alternative review schedule at its discretion.

ARTICLE VII

Appeal

Section 1. Any Responsible Party who disputes any interpretation given by the Port as to the assigned User Category assigned to the Responsible Party's property pursuant to this Program may appeal such interpretation in accordance with the criteria and procedures specified in this Article. If the appeal is successful, relief will be granted by reassignment to a more appropriate User Category. In such instances, reimbursement will be given for any overpayment, retroactive to the filing date of the appeal. Factors to be taken into consider include but are not limited to: Availability of more accurate information; equity relative to user categories assigned to other developments of a similar nature; changed circumstances; or situations uniquely affecting road usage by the party filing the appeal.

Section 2. The General Manager, or designee, shall be responsible for administering the Appeal process.

Section 3. The following is the criteria and procedures for an appeal:

- a. An appeal must be made by the Responsible Party for the subject property.
- b. An appeal of the User Category associated with a Responsible Party's property must be received by the Port within ten (10) business days of the appellant's receipt of the billing for the subject appeal. Appeals made beyond this period shall not be received and/or

- considered.
- c. Only one (1) appeal per subject property shall be considered within a given calendar year.
 - d. Application for the appeal must be on the Port's form provided for this purpose, stating the reason(s) for the appeal, and include supporting documentation to justify the requested change.
 - e. The General Manager, or designee, shall be responsible for evaluating the appeal. If the General Manager decides information provided through the appeal process justifies a change, the General Manager may authorize this change (up or down) retroactive to the date the appeal was filed.
 - f. The General Manager shall make all reasonable attempts to resolve appeals utilizing available existing information, including supporting documentation filed with the appeal, within thirty (30) days of the date the appeal was filed. If, however, more detailed site-specific information is necessary, the General Manager may request the appellant provide information regarding: Size of the development, number of employees, number of business patrons, volume and/or nature of the business activity, or any other factors reasonably related to the User Category placement.
 - g. In any event, the General Manager shall file a report within ninety (90) days of the date the appeal was filed explaining the disposition of the appeal, along with the rationale and supporting documentation for the decision reached.
 - h. Decisions of the General Manager may be further appealed to the Port Commission and shall be heard at a public meeting. Upon such further appeal, the Port Commission shall at its first regular meeting thereafter set a hearing date and determine if the matter shall be heard solely upon the record, partially on the record, or with the record and a de novo hearing. In no event shall a final decision be made later than ninety (90) days after the matter was formally appealed to the Port Commission.
 - 1. Appeals filed within one hundred twenty (120) days of the effective date of this ordinance shall not be subject to paying a filing fee. After this 120-day period, the initial filing fee for an appeal shall be One Hundred (\$100.00) Dollars. A filing fee of Two Hundred and Fifty (\$250.00) Dollars is required for appeals to the Port Commission. Filing fees are intended to reimburse the Port for the administrative costs associated with the appeal.

ARTICLE VIII

Severability

Section 1. In the event any section, subsection, paragraph, sentence or phrase of this ordinance or any administrative policy adopted herein 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.

Section 2. Nothing contained herein shall be construed as limiting the Port's authority to levy special assessments in connection with public improvements pursuant to applicable law.

Section 3. 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.

Section 4. 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 Transportation Utility 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.

**ARTICLE IX
Changes**

Section 1. Any changes to the fees collected and/or forms associated with implementation of this Ordinance shall be by adoption of a Resolution by the Port Commission.

**ARTICLE X
Effective Date**

Section 1. This ordinance and the fees imposed under same shall take effect on the 30th day after the date this ordinance is adopted.

Date of First Reading:

Date of Second Reading:

Adopted this __ day of _____

Yes: __ No: __ Absent/Abstain: ____

PORT OF TILLAMOOK BAY

ATTEST:

Sierra Lauder, President
Board of Commissioners

Kevin Stoeker, Secretary
Board of Commissioners