2019 Municipal Attorneys
Institute –
Rethinking Special Assessments
June 13, 2019

City of Oshkosh

Current Policy
• Charges levied against property to defray costs of public work improvements which benefit such property
• Any property may be assessed
  • E.g.- Gov. and Non-Profits
• Reduces debt constraint on the General Fund
• Municipality uses a reasonable formula to allocate actual benefits
• Authorized by WI. Statues

Current Policy (continued)
• City Special Assess Street and Utility Improvements
• Define Life of Improvement
  • Streets; economic life of 3 - 25 years depending on improvement
• Charged to All Property Types
  • Charged at different rates based on use
    • Residential - 2/3
    • Other (Non-Residential) – 3/4
Current Policy (continued)

Invoiced with Tax Bills
- Option to extend payment to 5, 10, or 15 years depending on the aggregate amount of special assessments
- Interest charged at 6% per annum

Hardships
- Only reference to hardships is in Sec. 25-90 of code
- Option to defer payment, resolution by council
- Typically used for undeveloped properties
- Currently have 29 properties with deferred special assessments

Life of Improvements

Established by City Code (Section 25-11)

- Sealcoats – 3 Years
- Cold-mixed Asphalt – 5 Years
- Hot-mixed Asphalt – 12 Years
- Concrete Pavement – 25 Years

Special Assessment Rate

- Calculation of Assessment Rate
- Maximum Widths/Thickness Assessed

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<th>% Max Width</th>
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<td>Grade &amp; Gravel</td>
<td>100 32'</td>
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<td>Asphalt</td>
<td>66 2/3</td>
<td>66 2/3</td>
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<td>75 48'</td>
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<td>Concrete</td>
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<td>75 48'</td>
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Assessed Costs vs. Actual Costs

- Policy states City covers 1/3 or 1/4 of costs associated with street construction
- Due to deductions, credits, or limits, actual City share is higher
  - 2012 Streets CIP
    - Special Assessed Amount $2,548,880
    - City Costs $4,120,600 (61%)

Example of Credits/Units

- Corner Lot Credits
- Double Frontage Credits
- Additional Depth/Width
- Intersections
- Use of Prior Year Rates
- Cap on Increase Over Prior Year Rates
- Churches/Schools at Residential Rate

Repayment Issues

1. Combination of Individual Special Assessments
2. Interest Rate (6%)
3. Length of Repayment
4. Insolvent funds (negative cash)
Interest Rates
- Historical Rates
  - Prior to 9/26/1999 – 10%
  - From 9/26/1999 through 6/14/2009 - 8%
  - Since 6/14/2009 – 6%
- Current Rate
  - Payment plans currently accrue interest at 6% annually

Interest Rates
- Considerations
  - City is not a lending institution
  - Cost of Borrowed Money
    - Common ‘Rule of Thumb’ – Borrowing Rate Plus 2%
  - Impact of Additional Borrowing on the City’s Debt Capacity
  - Difficulty to administer floating interest rates

Length of Payment Options
- Assessment Totals < $500 – Paid in Full
- Assessment Totals > $500 to $999 – 5 or 10 Years
- Assessment Totals > $1,000 – 15 Years
Assessments
James P. Walsh | Appleton City Attorney | League of Wisconsin Municipalities

Special Assessments
- Sec. 66.0701, Wis. Stats.

Appleton East / John Street Project
- Appleton used “front foot” assessments by Appleton East
- Total Cost of Project: $2.8 Million
- Number of Properties: 82
- Average Residential Assessment Amount: $3,200
- Heavy push back
  - Signs in yards, media coverage
Public Relations

- Considerations
  - Fixed incomes
  - Fairness: Everyone pays the same
  - Line in the Sand ... Phasing out the assessments. They ‘paid for streets already’.

Changed to a Wheel Tax

- Authorized by Sec. 341.35, Wis. Stats. for “Transportation related purposes”
  - Appleton was more specific: Per Council action, all proceeds of the wheel tax are restricted for road reconstruction expenditures only.
- Wis. Admin. Code Sec. Trans 126
- City letter pursuant to statute
- City ordinance

After the Wheel Tax ...

- A number of people registered in the wrong community
- Corrections came in throughout the first year
- It took the whole first year to figure things out
- How to correct
  — Fill out a form provided by WisDOT
  — Appleton processes a half-dozen refunds throughout the year
  — We require proof of address
Amount Collected

- Administration is done by the State; the City is paid monthly
- Pretty consistent in amounts of payments; relatively easy to forecast for budget purposes
- Total Collected:
  - 2015: $1,275,330.50
  - 2016: $1,346,402.50
  - 2017: $1,350,392.74
  - 2018: $1,270,332.05

Cannot Compare

- This was designed to replace what we collected in special assessments
- Taxpayers always paid a portion before, this is a fund to help replace the portion paid for by special assessments

What Changed?

Before ...
- Citizens came to the design hearings to say their street isn’t that bad.

Now ...
- Citizens say, “I pay wheel tax, why do I have potholes?”
TARF: An Alternative to Special Assessments

Jim Godlewski
City Attorney
City of Neenah

2019 Municipal Attorneys Institute
Introduction: Politics of Special Assessments

As costs for public improvements increase.....
- Resistance to special assessments grow as individual assessments shock:

SCREAMING HEADLINES:
- 'Doomed Dozen' wins relief but continues fight against Grand Chute's special assessments
- HOMEOWNERS STUNNED BY $42,600 SPECIAL ASSESSMENT
- Grand Chute businessman faces whopping $286,577 bill for work on Elsner Road
- Homeowners may be forced to sell because of massive special assessment

... Search for Alternatives: eg. Wheel Tax as implemented by Appleton & others

Neenah’s Choice: TARF or Tax Assessment Replacement Fee: Part of Utility Bill.
Why Focus on Alternatives

- Cost of Public Improvements in street repairs and improvements increasing rapidly
  - Neenah Street Reconstruction costs in 2014: $1.3 Million
  - Street Reconstruction costs in 2019: $2 Million, more than a 50% increase
  - As Costs continue to grow, special assessments will increase

- Alternate financing tools are perceived essential in light of excessive costs to taxpayers
  - Growth in Special Assessments costs result in taxpayer resentment
  - Failure of system to spread costs among all benefited also creates tension

- TARF accomplishes two objectives:
  - Reduces costs to individual property owners
  - Spreads costs to additional beneficiaries
Presentation Outline: a Google Maps Edition

• Traditional maps provided not only a specific view of route & destination
  ▫ Like Google Maps.
• They also provide a broader context that sometimes reveal a better route
  ▫ Google Maps does not provide the broader context, looking instead at details
  ▫ This presentation, because the TARF approach is so new, cannot give that broader context without more experience
• The remainder of my presentation will:
  ▫ Provide brief description of how TARF works;
  ▫ Explore the advantages of TARF
  ▫ Summarizes disadvantages of the different funding mechanisms
First, the fundamentals: How TARF works

• The Common Council, under its power to protect the welfare of the public, established a “Transportation Utility”
• Using ITE recognized traffic generation factors, Neenah’s TARF ordinance apportions pavement repair and rehabilitation based on the a parcel’s impervious surface area
  ✓ Theory: larger developed area translates to increased traffic benefiting the rate payer; use of City streets, kept in good shape, attracts more traffic...
  ✓ Charge based on Impervious Area Unit (residential average impervious area)
• IMPORTANT: ordinance provides appeal and exemption process, provides fairness to property owners with unique circumstances.
How TARF Works, continued.

- Council sets TARF revenue during budget process
  - Initially, goal to replace special assessment for resurfacing &/or reconstruction of pavement
  - Historically, special assessments raised $400,000
- TARF fee for 2019 was set at $23 per Impervious Area Unit (IAU) of the property assessed, with exemptions for vacant property
- First TARF billing occurred in late March
  - TARF fee billed quarterly: residential charge $5.75 / quarter
  - TARF charge to large properties capped at 87 IAU or roughly $500 a quarter

This past winter was particularly rough on road surfaces and they in turn were rough on auto alignments!
TARF: a Summary & Limitations

• The TARF charge proceeds from the theory that good quality roads benefit all and costs should be borne in proportion to a property’s traffic generation characteristics.

• Neenah TARF only applies to pavement reconstruction; resurfacing and replacement.
  ▫ Other large public infrastructure projects, as well as installation of new streets, cannot access TARF funds.
  ▫ However, the TARF approach may provide a mechanism for addressing infrastructure crises such as lead water laterals.
TARF Advantages

• Allows for broader participation in the funding of road repairs.  
  ✓ Those that generate traffic are more responsible for cost of improvements, in line with benefits derived.
• Reduces large special assessment bills to residential properties  
  ✓ Recognize that good roads benefit entire population  
  ✓ Reduce inflammatory headlines!
• While broader payment for road projects would result from greater tax support, TARF not subject to levy limits imposed on the property tax
Funding Mechanisms Disadvantages

• **Special Assessments:**
  - ✓ Large payments with little advanced notice
  - ✓ Lacks popular support.
  - ✓ Great benefit to traffic generators with little participation in costs

• **Wheel tax:**
  - ✓ Only addresses vehicle use, not traffic generation: large benefit with little cost
  - ✓ Registration often results in vehicles mistakenly included from adjoining municipalities

• **TARF**
  - ✓ Requires careful development of ordinance by staff for record
  - ✓ Unlike other methods, no specific statutory reference, legal challenge?

The consequence from avoiding potholes!
Experience in Other Communities

- **TARF ordinances (also referred to as Transportation Utility Fees or TUFs) exist in other areas**
  - Mostly used in Western States (e.g. Oregon).
  - See institute of Transportation Studies presentation, attached

- **Ordinance examples from other states:**
  - City of Phoenix, AZ
  - City of Newburg, OR
  - City of Hubbard, OR

- **Wisconsin Experience is Limited**
  - Attempted in the Wausau area by the Village of Weston
  - Lasted for a short time and was repealed by referendum:
    - Opposition to subsidizing bus system
Conclusion

• Tax Assessment Replacement Fee a promising alternative that more fairly spreads the cost of infrastructure repair and upgrade among all who benefit.

• NOT a panacea:
  ▫ Final solution found only when general population sees that good and well maintained infrastructure benefits everyone
  ▫ However TARF, by spreading cost broadly, may provide a significant contribution to the infrastructure conundrum!

THANK YOU!
Program Attachments

- The following documents are attached or linked for the curious:
  - Chapter 17, Article VIII, Neenah Code of Ordinances:
    https://library.municode.com/wi/neenah/codes/code_of_ordinances?nodeId=S
    PAGEOR_CH17UT_ARTVIIITRASREFE
  - Statutory excerpts providing authority to create TARF utility
  - Neenah Staff Memo explaining TARF and statutory support for TARF
Program Attachments, continued

• ITS TUF Presentation Outline, 2014
• Ordinance Examples
  ✓ City of Phoenix, AZ
  ✓ City of Newberg, OR
  ✓ City of Hubbard, OR
Statutory Excerpts for Authority
The following statutory sections provide authority for TARF:

**62.04 Intent and construction.** It is declared to be the intention of the revision of the city charter law, to grant all the privileges, rights and powers, to cities which they heretofore had unless the contrary is patent from the revision. For the purpose of giving to cities the largest measure of self-government compatible with the constitution and general law, it is hereby declared that ss. 62.01 to 62.26 shall be liberally construed in favor of the rights, powers and privileges of cities to promote the general welfare, peace, good order and prosperity of such cities and the inhabitants thereof.

**62.11 – Common Council**

(5) **POWERS.** Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language.

**66.0621 Revenue obligations.**

(1) In this section:

(a) “Municipality” means a city, village, town, county, commission created by contract under s. 66.0301, public inland lake protection and rehabilitation district established under s. 33.23, 33.235 or 33.24, metropolitan sewerage district created under ss. 200.01 to 200.15 and 200.21 to 200.65, town sanitary district under subch. IX of ch. 60, a local professional baseball park district created under subch. III of ch. 229, a local professional football stadium district created under subch. IV of ch. 229, a local cultural arts district created under subch. V of ch. 229 or a municipal water district or power district under ch. 198 and any other public or quasi-public corporation, officer, board or other public body empowered to borrow money and issue obligations to repay the money and obligations out of revenues. “Municipality” does not include the state or a local exposition district created under subch. II of ch. 229.

(b) “Public utility” means any revenue producing facility or enterprise owned by a municipality and operated for a public purpose as defined in s. 67.04 (1) (b) including garbage incinerators, toll bridges, swimming pools, tennis courts, parks, playgrounds, golf links, bathing beaches, bathhouses, street lighting, city halls, village halls, town halls, courthouses, jails, schools, cooperative educational service agencies, hospitals, homes for the aged or indigent, child care centers, regional projects, waste collection and disposal operations, sewerage systems, local professional baseball park facilities, local professional football stadium facilities, local cultural arts facilities, and any other necessary public works projects undertaken by a municipality.

(c) “Revenue” means all moneys received from any source by a public utility and all rentals and fees and, in the case of a local professional baseball park district created under subch. III of ch. 229 includes tax revenues deposited into a special fund under s. 229.685 and payments made into a special debt service reserve fund under s. 229.74 and, in the case of a local professional football stadium district created under subch. IV of ch. 229 includes tax revenues deposited into a special fund under s. 229.825 and payments made into a special debt service reserve fund under s. 229.830.
(2) This section does not limit the authority of a municipality to acquire, own, operate and finance in the manner provided in this section a source of water and necessary transmission facilities, including all real and personal property, beyond its corporate limits. A source of water 50 miles beyond a municipality's corporate limits shall be within the municipality's authority.

(3) A municipality may, by action of its governing body, provide for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility, motor bus or other systems of public transportation from the general fund, or from the proceeds of municipal obligations, including revenue bonds. An obligation created under sub. (4) or (5) is not an indebtedness of the municipality, and shall not be included in arriving at the constitutional debt limitation.

(3m) A county in which an electronics and information technology manufacturing zone designated under s. 238.396 (1m) exists may issue bonds under this section whose principal and interest are paid only through sales and use tax revenues imposed by the county under s. 77.70. The county shall be and continue without power to repeal such tax or obstruct the collection of the tax until all such payments have been made or provided for.

(4) If payment of obligations is provided by revenue bonds, the following is the procedure for payment:

(a) The governing body of the municipality, by ordinance or resolution, shall order the issuance and sale of bonds, executed as provided in s. 67.08 (1) and payable at times not exceeding 40 years from the date of issuance, and at places, that the governing body of the municipality determines. The bonds shall be payable only out of the special redemption fund. Each bond shall include a statement that it is payable only from the special redemption fund, naming the ordinance or resolution creating it, and that it does not constitute an indebtedness of the municipality. The bonds may be issued either as registered bonds under s. 67.09 or as coupon bonds payable to bearer. Bonds shall be sold in the manner and upon the terms determined by the governing body of the municipality.

2. Interest, if any, on bonds shall be paid at least annually to bondholders. Payment of principal on the bonds shall commence not later than 3 years after the date of issue or 2 years after the estimated date that construction will be completed, whichever is later. After the commencement of the payment of principal on the bonds, at least annually, the municipality shall make principal payments and, if any, interest payments to bondholders or provide by ordinance or resolution that payments be made into a separate fund for payment to bondholders as specified in the ordinance or resolution authorizing the issuance of the bonds. The amount of the annual debt service payments made or provided for shall be reasonable in accordance with prudent municipal utility management practices.

3. All revenue bonds may contain a provision authorizing redemption of the bonds, in whole or in part, at stipulated prices, at the option of the municipality on any interest payment date. The governing body of a municipality may provide in a contract for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility, that payment shall be made in bonds at not less than 95 percent of the par value of the bonds.

(b) All moneys received from bonds issued under this section shall be applied solely for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility, and in the payment of the cost of subsequent necessary additions, improvements and extensions. Bonds issued under this section shall be secured by a pledge of the revenues of the public utility to the holders of the bonds and to the holders of coupons of the bonds and may be additionally secured by a mortgage lien upon the public utility to the holders of the bonds and to the holders of coupons of the bonds. If a mortgage lien is created by ordinance or resolution, the lien is perfected by publication of the ordinance or resolution or by recording of the ordinance or resolution in the records of the municipality. In addition, the municipality may record the lien by notifying the register of deeds of the county in which the public utility is located concerning its issuance of bonds. If the register of deeds receives notice from the municipality, the register of deeds shall record any mortgage lien created. The
public utility remains subject to the pledge and, if created, the mortgage lien until the payment in full of the principal and interest of the bonds. Upon repayment of bonds for which a mortgage lien has been created, the register of deeds shall, upon notice from the municipality, record a satisfaction of the mortgage lien. Any holder of a bond or of coupons attached to a bond may protect and enforce this pledge and, if created, the mortgage lien and compel performance of all duties required of the municipality by this section. A municipality may provide for additions, extensions and improvements to a public utility that it owns by additional issues of bonds under this section. The additional issues of bonds are subordinate to all prior issues of bonds under this section, but a municipality may in the ordinance or resolution authorizing bonds permit the issue of additional bonds on a parity with prior issues. A municipality may issue new bonds under this section to provide funds for refunding any outstanding municipal obligations, including interest, issued for any of the purposes stated in sub. (3). Refunding bonds issued under this section are subject to all of the following provisions:

1. Refunding bonds may be issued to refinance more than one issue of outstanding municipal obligations notwithstanding that the outstanding municipal obligations may have been issued at different times and may be secured by the revenues of more than one public utility. Public utilities may be operated as a single public utility, subject to contract rights vested in holders of bonds or promissory notes being refinanced. A determination by the governing body of a municipality that any refinancing is advantageous or necessary to the municipality is conclusive.

4. The refunding bonds are not an indebtedness of a municipality, and shall not be included in arriving at the constitutional debt limitation.

5. The governing body of a municipality may include a provision in any ordinance or resolution authorizing the issuance of refunding bonds pledging all or part of the revenues of any public utility or utilities originally financed, extended or improved from the proceeds of any of the municipal obligations being refunded, and pledging all or part of the surplus income derived from the investment of a trust created in relation to the refunding.

6. This subsection constitutes full authority for the authorization and issuance of refunding bonds and for all other acts authorized by this subsection to be done or performed and the refunding bonds may be issued under this subsection without regard to the requirements, restrictions or procedural provisions contained in any other law.

(c) The governing body of a municipality shall, in the ordinance or resolution authorizing the issuance of bonds, establish a system of funds and accounts and provide for sufficient revenues to operate and maintain the public utility and to provide fully for annual debt service requirements of bonds issued under this section. The governing body of a municipality may establish a fund or account for depreciation of assets of the public utility.

(d) If a governing body of a municipality creates a depreciation fund under par. (c) it shall use the funds set aside to restore any deficiency in the special redemption fund specified in par. (e) for the payment of the principal and interest due on the bonds and for the creation and maintenance of any reserves established by the bond ordinance or resolution to secure these payments. If the special redemption fund is sufficient for these purposes, moneys in the depreciation fund may be expended for repairs, replacements, new constructions, extensions or additions of the public utility. Accumulations of the depreciation fund may be invested and the income from the investment shall be deposited in the depreciation fund.

(e) The governing body of a municipality shall by ordinance or resolution create a special fund in the treasury of the municipality to be identified as “the .... special redemption fund" into which shall be paid the amount which is set aside for the payment of the principal and interest due on the bonds and for the creation and maintenance of any reserves established by bond ordinance or resolution to secure these payments.

(f) At the close of the public utility's fiscal year, if any surplus has accumulated in any of the funds specified in this subsection, it may be disposed of in the order set forth under s. 66.0811 (2).
(g) The reasonable cost and value of any service rendered to a municipality by a public utility shall be charged against the municipality and shall be paid by it in installments.

(h) The rates for all services rendered by a public utility to a municipality or to other consumers shall be reasonable and just, taking into account and consideration the value of the public utility, the cost of maintaining and operating the public utility, the proper and necessary allowance for depreciation of the public utility, and a sufficient and adequate return upon the capital invested.

(i) The governing body of a municipality may adopt all ordinances and resolutions necessary to carry into effect this subsection. An ordinance or resolution providing for the issuance of bonds may contain such provisions or covenants, without limiting the generality of the power to adopt an ordinance or resolution, as are considered necessary or desirable for the security of bondholders or the marketability of the bonds. The provisions or covenants may include but are not limited to provisions relating to the sufficiency of the rates or charges to be made for service, maintenance and operation, improvements or additions to and sale or alienation of the public utility, insurance against loss, employment of consulting engineers and accountants, records and accounts, operating and construction budgets, establishment of reserve funds, issuance of additional bonds, and deposit of the proceeds of the sale of the bonds or revenues of the public utility in trust, including the appointment of depositaries or trustees. An ordinance or resolution authorizing the issuance of bonds or other obligations payable from revenues of a public utility constitutes a contract with the holder of bonds or other obligations issued pursuant to the ordinance or resolution.

(j) The ordinance or resolution required under par. (c) may set apart bonds equal to the amount of any secured debt or charge subject to which a public utility may be purchased, acquired, leased, constructed, extended, added to or improved. The ordinance or resolution shall set aside for interest and debt service fund from the income and revenues of the public utility a sum sufficient to comply with the requirements of the instrument creating the lien, or, if the instrument does not make any provision for it, the ordinance or resolution shall fix the amount which shall be set aside into a secured debt fund from month to month for interest on the secured debt, and a fixed amount or proportion not exceeding a stated sum, which shall be not less than 1 percent of the principal, to be set aside into the fund to pay the principal of the debt. Any surplus after satisfying the debt may be transferred to the special redemption fund. Public utility bonds set aside for the debt may be issued to an amount sufficient with the amount then in the debt service fund to pay and retire the debt or any portion of it. The bonds may be issued at not less than 95 percent of the par value in exchange for, or satisfaction of, the secured debt, or may be sold in the manner provided in this paragraph, and the proceeds applied in payment of the secured debt at maturity or before maturity by agreement with the holder. The governing body of a municipality and the owners of a public utility acquired, purchased, leased, constructed, extended, added to or improved under this paragraph may contract that public utility bonds providing for the secured debt or for the whole purchase price shall be deposited with a trustee or depository and released from deposit to secure the payment of the debt.

(k) A municipality purchasing, acquiring, leasing, constructing, extending, adding to or improving, conducting, controlling, operating or managing a public utility subject to a mortgage or deed of trust by the vendor or the vendor's predecessor in title to secure the payment of outstanding and unpaid bonds made by the vendor or the vendor's predecessor in title, may adjust, renew, consolidate or extend the obligation evidenced by the outstanding bonds and continue the lien of the mortgage, securing the mortgage by issuing bonds to refund the outstanding mortgage or revenue bonds at or before their maturity. The refunding bonds are payable only out of a special redemption fund created and set aside by ordinance or resolution under par. (c). The refunding bonds shall be secured by a mortgage lien upon the public utility, and the municipality may adopt all ordinances or resolutions and take all proceedings, following the procedure under this subsection. The lien has the same priority on the public utility as the mortgage securing the outstanding bonds, unless otherwise expressly provided in the proceedings of the governing body of the municipality.
1. If the governing body of a municipality, by ordinance or resolution, declares its intentions to authorize the issuance or sale of revenue bonds under this section, the governing body may, prior to issuance of the bonds and in anticipation of their sale, authorize the issuance of bond anticipation notes by the adoption of a resolution or ordinance. The notes shall be named “bond anticipation notes”. Bond anticipation notes may be issued for the purposes for which the municipality has authority to issue revenue bonds. The ordinance or resolution authorizing the bond anticipation notes shall state the purposes for which the bond anticipation notes are to be issued and shall set forth a covenant of the municipality to issue the revenue bonds in an amount sufficient to retire the outstanding bond anticipation notes. The ordinance or resolution may contain other covenants and provisions, including a description of the terms of the revenue bonds to be issued. The municipality may pledge revenues of the public utility to payment of the principal and interest on the bond anticipation notes. Prior to issuance of the bond anticipation notes, the governing body may adopt an ordinance or resolution authorizing the revenue bonds.

2. Bond anticipation notes may be issued for periods of up to 5 years and may, by ordinance or resolution of the governing body of a municipality, be refunded one or more times, if the refunding bond anticipation notes do not exceed 5 years in term and if they will be paid within 10 years after the date of issuance of the original bond anticipation notes. Bond anticipation notes shall be executed as provided in s. 67.08 (1) and may be registered under s. 67.09. These notes shall state the sources from which they are payable. Bond anticipation notes are not an indebtedness of the municipality issuing them, and no lien may be created or attached with respect to any property of the municipality as a consequence of the issuance of the notes.

3. Any funds derived from the issuance and sale of revenue bonds under this section and issued subsequent to the execution and sale of bond anticipation notes constitute a trust fund, and the fund shall be expended first for the payment of principal and interest of the bond anticipation notes, and then may be expended for other purposes set forth in the ordinance or resolution authorizing the revenue bonds. No bond anticipation notes may be issued unless a financial officer of the municipality certifies to the governing body of the municipality that contracts with respect to additions, improvements and extensions are to be let and that the proceeds of the notes are required for the payment of the contracts.

4. Following the issuance of the bond anticipation notes, revenues of the public utility may be paid into a fund to pay principal and interest on the bond anticipation notes, which moneys or any part of them may, by the ordinance or resolution authorizing the issuance of bond anticipation notes, be pledged for the payment of the principal of and interest on the notes. The ordinance or resolution shall pledge to the payment of the principal of the notes the proceeds of the sale of the revenue bonds in anticipation of the sale of which the notes were authorized to be issued and may provide for use of revenue of the public utility or other available funds for payment of principal on the notes. The notes are negotiable instruments.

6. A municipality authorized to issue or sell bond anticipation notes under this paragraph may, in addition to the revenue sources or bond proceeds, appropriate funds out of its annual tax levy for the payment of the notes. The payment of the notes out of funds from a tax levy is not an obligation of the municipality to make any other appropriation.

7. Bond anticipation notes are a legal form of investment for municipal funds under s. 66.0603 (1m).
substance. A municipality may issue additional obligations under this section, but those obligations are subordinate to all prior obligations, except that the municipality may in the ordinance or resolution authorizing obligations under this subsection permit the issue of additional obligations on a parity with those previously issued. 

(6) (a) Revenue bonds issued by a local professional baseball park district created under subch. III of ch. 229 are subject to the provisions in ss. 229.72 to 229.81.

(b) Revenue bonds issued by a local professional football stadium district created under subch. IV of ch. 229 are subject to the provisions in ss. 229.829 to 229.834.

(c) Revenue bonds issued by a local cultural arts district created under subch. V of ch. 229 are subject to the provisions in ss. 229.849 to 229.853.


A village has power to own and operate a home for the aged, finance the same under ss. 66.066 and 66.067 [now s. 66.0807], and to lease the facility to a nonprofit corporation, but probably could not lease to a profit corporation for operation. 62 Atty. Gen. 226.

Wisconsin municipal debt finance: An outlook for the eighties. Schilling, Griggs and Ebert, 63 MLR 539 (1980).

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66.0807 Joint operation of public utility or public transportation system.

(1) In this section, “privately owned public utility” includes a cooperative association organized under ch. 185 or 193 for the purpose of producing or furnishing utility service to its members only.

(2) A city, village or town served by a privately owned public utility, motor bus or other systems of public transportation rendering local service may contract with the owner of the utility or system for the leasing, public operation, joint operation, extension and improvement of the utility or system by the municipality; or, with funds loaned by the municipality, may contract for the stabilization by municipal guarantee of the utility or system which is operated within the municipality and any territory immediately adjacent and tributary to the municipality; or may contract for the accomplishment of any object agreed upon between the parties relating to the use, operation, management, value, earnings, purchase, extension, improvement, sale, lease or control of the utility or system property. The provisions of s. 66.0817 relating to preliminary agreement and approval by the department of transportation or public service commission apply to the contracts authorized by this section. The department of transportation or public service commission shall, when a contract under this section is approved by it and consummated, cooperate with the parties in respect to making valuations, appraisals, estimates and other determinations specified in the contract to be made by it.

History: 1977 c. 29 s. 1654 (9) (g); 1981 c. 347 s. 80 (2); 1985 a. 187; 1993 a. 16, 246; 1999 a. 150 ss. 171, 237; Stats. 1999 s. 66.0807; 2005 a. 441.

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66.0809 Municipal public utility charges.

(1) Except as provided in sub. (2), the governing body of a town, village or city operating a public utility may, by ordinance, fix the initial rates and shall provide for this collection monthly, bimonthly or quarterly in advance or otherwise. The rates shall be uniform for like service in all parts of the municipality and shall include the cost of fluorinating the water. The rates may include standby charges to property not connected but for which public utility facilities have been made available. The charges shall be collected by the treasurer or other officer or employee designated by the city, village or town.

(2) If, on June 21, 1996, it is the practice of a governing body of a town, village or city operating a public utility to collect utility service charges using a billing period other than one permitted under sub. (1), the governing body may continue to collect utility service charges using that billing period.
Except as provided in subs. (4) and (5), on October 15 in each year notice shall be given to the owner or occupant of the lots or parcels of real estate to which utility service has been furnished prior to October 1 by a public utility operated by a town, city, or village and payment for which is owing and in arrears at the time of giving the notice. The department in charge of the utility shall furnish the treasurer with a list of the lots or parcels of real estate for which utility service charges are in arrears, and the notice shall be given by the treasurer, unless the governing body of the city, village, or town authorizes notice to be given directly by the department. The notice shall be in writing and shall state the amount of arrears, including any penalty assessed pursuant to the rules of the utility; that unless the amount is paid by November 1 a penalty of 10 percent of the amount of arrears will be added; and that unless the arrears, with any added penalty, are paid by November 15, the arrears and penalty will be levied as a special charge, as defined under s. 74.01 (4), against the lot or parcel of real estate to which utility service was furnished and for which payment is delinquent. The notice may be served by delivery to either the owner or occupant personally, or by letter addressed to the owner or occupant at the post-office address of the lot or parcel of real estate.

On November 16, the officer or department issuing the notice shall certify and file with the clerk a list of all lots or parcels of real estate, giving the legal description, for which notice of arrears was given under par. (a) and for which arrears remain unpaid, stating the amount of arrears and penalty. Each delinquent amount, including the penalty, becomes a lien upon the lot or parcel of real estate to which the utility service was furnished and payment for which is delinquent, and the clerk shall insert the delinquent amount and penalty as a special charge, as defined under s. 74.01 (4), against the lot or parcel of real estate.

All proceedings in relation to the collection of general property taxes and to the return and sale of property for delinquent taxes apply to the special charge under par. (b) if it is not paid within the time required by law for payment of taxes upon real estate.

Under this subsection, if an arrearage is for utility service furnished and metered by the utility directly to a manufactured home or mobile home unit in a licensed manufactured and mobile home community, the notice shall be given to the owner of the manufactured home or mobile home unit and the delinquent amount becomes a lien on the manufactured home or mobile home unit rather than a lien on the parcel of real estate on which the manufactured home or mobile home unit is located. A lien on a manufactured home or mobile home unit may be enforced using the procedures under s. 779.48 (2).

This subsection does not apply to arrearages collected using the procedure under s. 66.0627.

In this subsection:
1. “Metered” means the use of any method to ascertain the amount of service used or the use of a flat rate billing method.
2. “Utility service” includes loans provided as financial assistance under s. 196.372 (2).

If sub. (5) applies, the municipal utility is complying with sub. (5) (am) 1., and a notice of arrears under sub. (3) (a) is given or past-due charges are certified to the comptroller under s. 62.69 (2) (f), on the date the notice of arrears is given, or the past-due charges are certified under s. 62.69 (2) (f), the municipality has a lien upon the assets of each tenant of a rental dwelling unit who is responsible for arrears in the amount of the arrears, including any penalty assessed pursuant to the rules of the utility.

The department in charge of the utility shall provide a notice to each tenant against whom the municipality has a lien. The notice shall be in writing and shall state the amount of arrears including any penalty assessed pursuant to the rules of the utility, that the tenant is subject to a lien upon his or her assets for arrears for which he or she is responsible, that the lien will transfer to the owner of the rental dwelling
unit if the owner pays the arrears, and that the lien will be enforceable upon the filing of the lien with the clerk of courts.

(e) If par. (a) applies, prior to December 17, the municipality shall file with the clerk of courts a list of tenants of rental dwelling units responsible for arrears and against whom the municipality continues to have a lien. No action to enforce a lien under par. (a) may be maintained unless a notice of lien is filed under this paragraph.

(d) If par. (a) applies and the owner of the rental dwelling unit has paid the municipality the amount provided in the notice of arrears given under sub. (3) (a), or certified to the comptroller under s. 62.69 (2) (f), or the amount placed as tax against the real estate under sub. (3) (b) or s. 62.69 (2) (f), the lien under par. (a) transfers to the owner of the rental dwelling unit and the municipality no longer has a lien against the tenant.

(e) An owner of a rental dwelling unit who has a lien under par. (d) may file a notice of lien with the clerk of court of the county in which the rental dwelling unit is located not more than 6 months after the date the lien arose under par. (a). The clerk of courts shall file and enter the notice of lien in the judgment and lien docket. No action to enforce a lien under par. (d) may be maintained unless a notice of lien is filed under this paragraph.

(f) Within 7 days after a lien established and filed under this subsection is satisfied, the lienholder shall file with the clerk of courts a notice of lien satisfaction.

(4) A municipal utility may use the procedures under sub. (3) to collect arrearages for electric service only if one of the following applies:

(a) The municipality has enacted an ordinance that authorizes the use of the procedures under sub. (3) for the collection of arrearages for electric service provided by the municipal utility.

(b) In 1996, the municipality collected arrearages for electric service provided by the municipal utility using the procedures under s. 66.60 (16), 1993 stats.

(5) This subsection applies only if all of the following conditions are met:

1. Water or electric utility service is provided to a rental dwelling unit.

1m. The water or electric utility service is provided by a town sanitary district created under subch. IX of ch. 60 that has sewerage connections serving more than 700 service addresses, by a public inland lake protection and rehabilitation district under subch. IV of ch. 33 that has sewerage connections serving more than 700 service addresses or by a municipal public utility.

2. The owner of the rental dwelling unit notifies the utility in writing of the name and address of the owner.

3. The owner of the rental dwelling unit notifies the utility in writing of the name and address of the tenant who is responsible for payment of the utility charges.

4. If requested by the utility, the owner of the rental dwelling unit provides the utility with a copy of the rental or lease agreement in which the tenant assumes responsibility for the payment of the utility charges.

(am) A municipal public utility shall send bills for water or electric service to a customer who is a tenant in the tenant's own name.

2. If a customer who is a tenant vacates his or her rental dwelling unit, and the owner of the rental dwelling unit provides the municipal public utility, no later than 21 days after the date on which the tenant vacates the rental dwelling unit, with a written notice that contains a forwarding address for the tenant and the date that the tenant vacated the rental dwelling unit, the utility shall continue to send past-due notices to the customer at his or her forwarding address until the past-due charges are paid or until notice has been provided under sub. (3) (a) or the past-due charges have been certified to the comptroller under s. 62.69 (2) (f).
(b) A municipal public utility may use sub. (3) or, if s. 62.69 applies, s. 62.69 (2) (f), to collect arrearages incurred after the owner of a rental dwelling unit has provided the utility with written notice under par. (a) if the municipal public utility is complying with par. (am) 1. and serves notice of the past-due charges on the owner of the rental dwelling unit within 14 days of the date on which the tenant's charges became past due. The municipal public utility shall serve notice in the manner provided in s. 801.14 (2).

(bm) No earlier than 14 days after receiving a notice under par. (b) of a tenant's past-due charges for electric service, the owner of a rental dwelling unit may request that the municipal public utility terminate electric service to the rental dwelling unit. Except as provided under rules of the public service commission relating to disconnection of service and subject to the procedural requirements under those rules, unless all past-due charges are paid, the municipal utility shall terminate electric service to the rental dwelling unit upon receipt of a request under this paragraph. This paragraph does not apply if a municipal public utility does not use the procedures under sub. (3) to collect the past-due charges.

(c) A municipal public utility may demonstrate compliance with the notice requirements of par. (b) by providing evidence of having sent the notice by U.S. mail or, if the person receiving the notice has consented to receive notice in an electronic format, by providing evidence of having sent the notice in an electronic format.

(d) If this subsection applies and a municipal public utility elects to collect arrearages under sub. (3) or s. 62.69 (2) (f), the municipal public utility shall provide all notices under sub. (3) or s. 62.69 (2) (f) to the tenant and to the owner of the property or a person designated by the owner.

(7) A municipal utility may require a prospective customer to submit an application for water or electric service.

(8) A municipal public utility shall disclose to the owner of a rental dwelling unit, upon the owner's request, whether a new or prospective tenant has outstanding past-due charges for utility service to that municipal public utility in that tenant's name at a different address.

(9) A municipal utility is not required to offer a customer who is a tenant at a rental dwelling unit a deferred payment agreement. Notwithstanding. ss. 196.03, 196.19, 196.20, 196.22, 196.37, and 196.60, a determination by a municipal utility to offer or not offer a deferred payment agreement does not require approval, and is not subject to disapproval, by the public service commission.

(10) A municipal utility may adopt application, deposit, disconnection, or collection rules and practices that distinguish between customers based upon whether the customer owns or leases the property that is receiving utility service where the possibility exists for any unpaid bills of a tenant to become a lien on the property that is receiving utility service.


Municipalities owning electric companies may pass ordinances allowing unpaid charges for furnished electricity to be placed on tax bills of the receiving property. 73 Attty. Gen 128.

Under the facts of the case, a municipal utility's claim for unpaid utility charges was subject to the automatic stay in bankruptcy court. Reedsburg Utility Co v. Grede Foundries, Inc. 651 F.3d 786 (2011).

66.0811 Municipal public utility revenues.

(1) A city, village or town owning a public utility is entitled to the same rate of return as permitted for privately owned utilities.

(2) The income of a municipal public utility shall first be used to make payments to meet operation, maintenance, depreciation, interest, and debt service fund requirements, local and school tax equivalents, additions and improvements, and other necessary disbursements or indebtedness. Beginning with taxes levied in 1995, payable in 1996, payments for local and school tax equivalents shall at least be equal to the payment made on the property for taxes levied in 1994, payable in 1995, unless a lower payment is authorized by the governing body of the municipality. Income in excess of these requirements may be used to purchase and hold interest bearing bonds, issued for the acquisition of the utility; bonds issued by
the United States or any municipal corporation of this state; insurance upon the life of an officer or manager of the utility; or may be paid into the general fund.

(3) A city, town or village may use funds derived from its water plant to meet operation, maintenance, depreciation, interest and debt service funds; new construction or equipment or other indebtedness for sewerage construction work other than that which is chargeable against abutting property; or the funds may be placed into the general fund to be used for general city purposes or in a special fund to be used for special municipal purposes.

History: 1999 a. 150 ss. 187, 188, 239.
Cross-reference: See also ch. PSC 109, Wis. adm. code.

66.0813 Provision of utility service outside of municipality by municipal public utility.

(1) A town, town sanitary district, village or city owning water, light or power plant or equipment may serve persons or places outside its corporate limits, including adjoining municipalities not owning or operating a similar utility, and may interconnect with another municipality, whether contiguous or not, and for these purposes may use equipment owned by the other municipality.

(2) Plant or equipment, except water plant or equipment or interconnection property in any municipality interconnected, situated in another municipality is taxable in the other municipality under s. 76.28.

(3)

(a) Notwithstanding s. 196.58 (5), a city, village or town may by ordinance fix the limits of utility service in unincorporated areas. The ordinance shall delineate the area within which service will be provided and the municipal utility has no obligation to serve beyond the delineated area. The delineated area may be enlarged by a subsequent ordinance. No ordinance under this paragraph is effective to limit any obligation to serve that existed at the time that the ordinance was adopted.

(b) Notwithstanding s. 196.58 (5), a municipality that operates a utility that provides water service may enter into an agreement with a city or village to provide water service to all or a part of that city or village. The agreement shall delineate the area within which service will be provided and the municipal water utility shall have no obligation to serve beyond the area so delineated. The agreement is not effective to limit any obligation to serve which may have existed at the time the agreement was entered into.

(4) An agreement by a city, village or town to furnish utility service outside its corporate limits to unincorporated property used for public, educational, industrial or eleemosynary purposes fixes the nature and geographical limits of that utility service unless altered by a change in the agreement, notwithstanding s. 196.58 (5). A change in use or ownership of property included under that agreement does not alter terms and limitations of that agreement.

(5) An agreement under sub. (4) under which a city or village agrees to furnish sewerage service to a prison, which is located in an area that has been incorporated since that agreement was made, may be amended to provide that the city or village will also furnish water service to the prison. An agreement amended under this subsection fixes the nature and geographical limits of the water and sewer service unless altered by a change in the agreement, notwithstanding s. 196.58 (5). A change in use or ownership of property included under an agreement amended under this subsection does not alter the terms and limitations of that agreement.

(5m) (a) In this subsection:
1. “Municipality” means a city, village, or town.
2. “Public utility” has the meaning given in s. 196.01 (5).

(b) Notwithstanding subs. (3) and (4), a municipality in a county bordered by Lake Michigan and the state of Illinois may request the extension of water or sewer service from another municipality in that county that owns and operates a water or sewer utility if the request for service is for an area that, on the date of the request, does not receive water or sewer service from any public utility or municipality and the
municipality requesting the service contains an area that, on the date of the request, receives water or sewer service from the water or sewer utility owned and operated by the other municipality. The municipality requesting the service extension may specify the point on the water or sewer utility's system from which service is to be extended to the area that is the subject of the request. The municipality that owns and operates the water or sewer utility shall approve or disapprove the request in writing within 45 days of the date on which the request was made. The municipality that owns and operates the water or sewer utility may disapprove the request only if the utility does not have sufficient capacity to serve the area that is the subject of the request or if the request would have a significant adverse effect on the utility. A municipality making a request under this paragraph may appeal to the public service commission any decision of the municipality that owns and operates the water or sewer utility to deny the service extension. The public service commission may include in its decision conditions on the extension of service to ensure that costs resulting from the extension are borne by the users causing the cost and that the connection point selected by the municipality requesting the service is reasonable. Either municipality may appeal the decision of the public service commission.

(e) Paragraph (b) applies even if the municipality that owns and operates the water or sewer utility has, before July 14, 2015, enacted an ordinance or entered into an agreement specifying that the municipality is not obligated to provide utility service beyond an area covered by the ordinance or agreement.

(6) A town, village or city owning a public utility, or the board of any municipal public utility appointed under s. 66.0805, may enter into agreements with any other towns, villages or cities owning public utilities, or any other boards of municipal public utilities, for mutual aid in the event of an emergency or disaster in any of their respective service areas. The agreements may include provisions for the movement of employees and equipment in and between the service areas of the participating municipalities for the purpose of rendering aid and for the reimbursement of a municipality rendering aid by the municipality receiving the aid.

History: 1999 a. 150 ss. 189, 240; 2015 a. 55.
Cross-reference: See also ch. PSC 185, Wis. adm. code.

66.0815 Public utility franchises and service contracts.

(1) FRANCHISES.

(a) A city, village or town may grant to any person the right to construct and operate a public utility in the city, village or town, subject to reasonable rules and regulations prescribed by ordinance.

(b) The board or council may submit the ordinance when passed and published to a referendum.

(c) An ordinance under sub. (1) may not take effect until 60 days after passage and publication unless sooner approved by a referendum. Within the 60-day period electors equal in number to 20 percent of those voting at the last regular municipal election may file a petition requesting a referendum. The petition shall be in writing and filed with the clerk and as provided in s. 8.37. The petition shall conform to the requirements of s. 8.40. Each signer shall state his or her residence and signatures shall be verified by the affidavit of an elector. The referendum shall be held at the next regular municipal election, or at a special election within 90 days of the filing of the petition. The ordinance may not take effect unless approved by a majority of the votes cast. This paragraph does not apply to extensions by a utility previously franchised by the village, city, or town.

(d) If a city or village at the time of its incorporation included within its corporate limits territory in which a public utility, before the incorporation, had been lawfully engaged in rendering public utility service, the public utility possesses a franchise to operate in the city or village to the same extent as if the franchise had been formally granted by ordinance adopted by the governing body of the city or village. This paragraph does not apply to any public utility organized under this chapter.

(2) SERVICE CONTRACTS.

(a) A city, village or town may contract for furnishing light, heat, water or motor bus or other systems of public transportation to the municipality or its inhabitants for a period of not more than 30 years or for an
indeterminate period if the prices are subject to adjustment at intervals of not greater than 5 years. The public service commission has jurisdiction over the rates and service to any city, village or town where light, heat or water is furnished to the city, village or town under any contract or arrangement, to the same extent that the public service commission has jurisdiction where that service is furnished directly to the public.

(b) When a city, village or town has contracted for water, lighting service or motor bus or other systems of public transportation to the municipality the cost may be raised by tax levy. In making payment to the owner of the utility a sum equal to the amount due the city, village or town from the owner for taxes or special assessments may be deducted.

c) This subsection applies to every city, village and town regardless of any charter limitations on the tax levy for water or light.

d) If a privately owned motor bus or public transportation system in a city, village or town fails to provide service for a period in excess of 30 days, and the owner or stockholders of the privately owned motor bus or public transportation system have announced an intention to abandon service, the governing body of the affected municipality may without referendum furnish or contract for the furnishing of other motor bus or public transportation service to the municipality and its inhabitants and to the users of the defaulting prior service for a period of not more than one year. This paragraph does not authorize a municipality to hire, directly or indirectly, any strikebreaker or other person for the purpose of replacing employees of the motor bus or public transportation system engaged in a strike.


66.0817 Sale or lease of municipal public utility plant. A town, village or city may sell or lease any complete public utility plant owned by it in the following manner:

(1) A preliminary agreement with the prospective purchaser or lessee shall be authorized by a resolution or ordinance containing a summary of the terms proposed, of the disposition to be made of the proceeds, and of the provisions to be made for the protection of holders of obligations against the plant or against the municipality on account of the plant. The resolution or ordinance shall be published at least one week before adoption, as a class 1 notice, under ch. 985. The resolution or ordinance may be adopted only at a regular meeting and by a majority of all the members of the governing body.

(2) The preliminary agreement shall fix the price of sale or lease, and provide that if the amount fixed by the department of transportation or public service commission is greater, the price shall be that fixed by the department or commission.

(3) The municipality shall submit the preliminary agreement when executed to the department of transportation or public service commission, which shall determine whether the interests of the municipality and its residents will be best served by the sale or lease, and if it so determines, shall fix the price and other terms.

(4) After the price and other terms are fixed under sub. (3), the proposal shall be submitted to the electors of the municipality. The notice of the referendum shall include a description of the plant and a summary of the preliminary agreement and of the price and terms as fixed by the department of transportation or public service commission. If a majority voting on the question votes for the sale or lease, the board or council may consummate the sale or lease, upon the terms and at a price not less than fixed by the department of transportation or public service commission, with the proposed purchaser or lessee or any other with whom better terms approved by the department of transportation or public service commission can be made.

(5) Unless the sale or lease is consummated within one year of the referendum, or the time is extended by the department of transportation or public service commission, the proceedings are void.

(6) If the municipality has revenue or mortgage bonds outstanding relating to the utility plant and which by their terms may not be redeemed concurrently with the sale or lease transaction, an escrow fund with a
domestic bank as trustee may be established for the purpose of holding, administering and distributing that portion of the sales or lease proceeds necessary to cover the payment of the principal, any redemption premium and interest which will accrue on the principal through the earliest retirement date of the bonds. During the period of the escrow arrangement the funds may be invested in securities or other investments as described in s. 66.0603 (1m).

(7) For the purpose of this section, the department of transportation has jurisdiction over transportation systems and the public service commission has jurisdiction over public utilities as defined in s. 196.01.

History: 1971 c. 260; 1977 c. 29 ss. 712, 1654 (9) (g); 1981 c. 347 ss. 14, 80 (2); 1981 c. 390 s. 252; 1983 a. 207 s. 93 (1); 1993 a. 16; 1999 a. 150 s. 190; Stats. 1999 s. 66.0817; 1999 a. 186 s. 48.
Neenah Staff Memo Explaining TARF Ordinance
MEMORANDUM

DATE: October 5, 2018
TO: Chair Erickson, members of the Finance & Personnel Committee
FROM: City Attorney Jim Godlewski
Public Works Director Gerry Kaiser
RE: Ordinance 2018-17 Transportation Assessment Replacement Fee

Transportation Assessment Replacement Fee

Attached is the proposed Transportation Assessment Replacement Fee ordinance, Ord. 2018-17. This ordinance would authorize the creation of the Transportation Assessment Replacement Fee (“TARF”) designed to replace the special assessments for street repairs and reconstruction. In addition, the ordinance provides a mechanism for paying the cost of street reconstruction against eligible parcels throughout the City. The result allows the City to continue local funding of street repairs and reconstructions, along with funding installation of pedestrian facilities (sidewalks & trails) in part with funds generated from land parcels that generate traffic, but instead of assessing large special assessments against only those parcels immediately abutting the streets under repair that year, creating very large payments by a very small portion of properties that benefit from the improvements, this ordinance creates a fee on all eligible parcels in the City spreading the cost of street reconstruction broadly to all eligible parcels.

Basis of TARF

TARF would be generated in a manner similar to the storm sewer assessment found at Chapter 17 Article IV. The TARF would utilize the storm water ERU to calculate the TARF fee for each parcel. The theory supporting this use of the ERU is that the more impervious surface that a parcel has not only increases the amount of run off, but also generates more traffic since the parcel is more developed (as represented by the amount of impervious surface.

In addition, the TARF is designed to only replace the revenue derived from special assessments. In calculating the TARF, public works would estimate the amount needed to match the amount that would have been generated by special assessment (currently approximately $400,000 per year) and then adjust the formula found at §17-206 to generate that amount. This annual adjustment would occur during the annual operating
budget and would be reflected in the annual Budget resolution. The result of this approach is that instead of imposing a large special assessment a very small portion of the City parcels that directly abut the transportation infrastructure previously funded by Special Assessments, the fee would be imposed on all eligible parcels on the theory that all parcels benefit from a well maintained transportation infrastructure.

Revenue generated by the TARF would be deposited in a segregated fund dedicated only to fund the cost associated with the purposes for the TARF (street and other infrastructure repair and reconstruction in the public right of way.).

**Billing and Payment of TARF**

Like the storm sewer assessment fee, the TARF would be an added charge on the City’s utility billings. The Water Utility is charged with the responsibility of providing billing support for the TARF and the Finance Department would be charged with collecting and accounting for the TARF. Like other utility charges, delinquent TARF payments would be added to the annual property tax as a special charge pursuant to Wis. Stat. §66.0627.

**Exemptions from TARF**

The ordinance provides a mechanism for the Council to provide exemptions from the fee when the Council determines the exemption is consistent with the public interest. Exemption would be provided for by resolution. It is through this resolution that the exemption for residents special assessed for street repairs in the past 5 years would be established.

**Other Annual Special Assessments**

During the Committee of the Whole meeting, several aldermen expressed an interest in finding a mechanism to eliminate all annual special assessments in favor of a fee based system to cover those costs. The following describes the various items paid through special assessments and illustrates the difficulty in substituting fees for special assessments but also suggests potential options for the Committee and Council to consider. What makes the other improvements (sewer laterals and related improvements) difficult to translate into a fee based system is that unlike street improvements, lateral replacements only benefit a single property, whereas on street and sidewalk repairs and installations, all members of the public could conceivably use the improvements funded by the TARF. Nonetheless, the following is a summary of the current special assessment practices used to pay costs related to sewer lateral repair and replacement.

**Sanitary Sewer Special Assessments**

The City does not assess for sanitary sewer main installation or replacement except in the case of new developments, in which case that cost is typically paid directly by the
developer. Prior to the early 2000s, the City did not work on laterals when making sewer main relays or repairs. Around that time, the City began replacing a portion of the lateral on sewer main relay projects so that there was good pipe under the street. The property owner was not assessed for that work unless they chose to extend the replacement to their building. Assessing for partial sanitary sewer lateral replacements started in 2013. The reason for the change was the recognition that the sanitary sewer lateral is considered private property from the main to the building. It is interesting to note that, on projects similar to ours, most of our surrounding communities require lateral replacement to the building and assess the property owner for the full cost.

The condition of the private lateral can have a significant impact on the function of the public sewer main. In our projects, we have encouraged the replacement of clay tile laterals beyond the right-of-way because replacement to the right-of-way does not completely resolve potential Inflow/Infiltration related to a lateral. With this approach, we’ve had variable success in gaining homeowner participation in full replacement. We would like to increase that participation. Increasing participation necessarily increases the number of property owners impacted by these costs. This seems somewhat contrary to the desire to reduce cost impacts.

There are a number of options to address the cost impact. The costs noted are based on the number of properties affected by construction in 2018 (135) and the typical bid price for the related work items from Contracts 1-18 and 2-18. For a comparison, the costs under our current practice are listed below.

**Current Special Assessment Practice.**

- **Utility Cost Impact:** The utility provides the initial funding for the lateral replacement and is then reimbursed through special assessment payments, so the net cost to the Utility should be $0.
- **Property Owner Cost Impact:** For a typical property, lateral replacement to the right-of-way costs about $1,500. The cost for replacement between the right-of-way and the house varies somewhat by the replacement method but $2,000 is a good estimate. This brings the total cost for full lateral replacement to $3,500.

There are several options to consider regarding sanitary sewer lateral replacement:

**Option 1:** Have Sanitary Sewer Utility pay for the portion of the lateral in the right-of-way.

- **Utility Cost Impact:** The total annual cost impact on the utility would be approximately $203,000. The Utility would need to recover these capital costs through the sewer rate.
Property Owner Cost Impact: For a property that replaces the sanitary sewer lateral beyond the right-of-way, the cost would be about $2,000. If the property owner chose not to replace the lateral beyond the right-of-way, their cost would be $0.

Notes: The benefit of this approach goes to the property owner. As with our current approach, there is little incentive for the property owner to complete the lateral replacement other than the price benefit of doing this work through a city contract and having a payment plan.

Option 2: Have Sanitary Sewer Utility pay for the full cost of lateral replacement from main to building.

Utility Cost Impact: The total cost impact on the utility would be approximately $475,000. The Utility would need to recover these capital costs through the sewer rate.

Property Owner Cost Impact: For a property that replaces the sanitary sewer lateral beyond the right-of-way, the direct cost would be $0.

Notes: The benefit of this approach is that the entire lateral is replaced, so a more complete effort on I/I reduction is achieved. The impact on the necessary sewer rate increase needs to be evaluated.

Option 3: Assess per current practice but cost-share on full lateral replacement. If the property owner replaces a lateral to the building, the Utility waives the cost of the assessed portion of the lateral.

Utility Cost Impact: If there is 100% participation, the total annual cost to the Utility would be similar to Option 1 - $203,000. The Utility would need to recover these capital costs through the sewer rate.

Property Owner Cost Impact: For a property that replaces the sanitary sewer lateral beyond the right-of-way, the direct cost would be about $2,000. If the property owner chose not to replace the entire lateral, their cost would be about $1,500.

Notes: This approach incentivizes the property owner to replace the entire lateral. The approach could be modified to achieve an actual 50/50 cost share.

There are a few additional aspects that we need to consider to establish a final scope for the change in special assessment policy.

1. It is the position of staff that the Utility should not take over ownership of the sanitary sewer lateral regardless of any financial involvement in replacement cost.
2. It is not uncommon for lateral replacement to a building to require interior plumbing changes (connections to basement fixtures, installation of sump pits to disconnect drain tile from the sanitary sewer lateral, etc). Under option 2 or 3, those costs should not be included in the Utility’s cost share.
3. The Council needs to determine if this change should be expanded to include Utility involvement in random lateral failures that require repair or replacement during the course of the year. In addition to help from our staff in sorting through sewer lateral issues, we currently assist in a couple of other ways:
   a. by reducing street excavation permit charges for these situations;
   b. by adding replacements to open utility contracts and assessing the property owner.

**Storm Sewer Special Assessments**

The City does not assess for storm sewer main installation or replacement except in the case of new developments, in which case that cost is typically paid directly by the developer. Storm sewer laterals were not installed as standard practice until the 1980s, so we have not yet run into cases where those have needed replacement. Staff have discussed the benefits of adding storm sewer laterals where they don’t currently exist on streets with storm sewer main when utility work is being done. These would provide property owners with a ready option to address sump pump and yard drainage issues. These laterals would also be private property, so they should be handled in a manner consistent with the arrangement determined for sanitary sewer laterals.

**Water Utility Charges**

The Water Utility does not assess for main installation or replacement except in the case of new developments, in which case that cost is typically paid directly by the developer. Public Service Commission rules dictate the ownership and maintenance responsibilities for water services. Essentially the service is owned by the property owner but is maintained by the Utility from the main to the curb stop. The primary reason for service replacement is to eliminate lead services. PSC rules limit the ability of the Utility to participate in the cost of replacing services between the curb stop and the building. Currently, the cost for building-side water service replacement under a city contract is paid by the Utility and is included in the special assessment billing to the property owner. The corresponding portion of a property owner’s special assessment payment is provided to the Water Utility to cover their costs.

**Conclusion**

Ordinance 2018-17 creating the Transportation Assessment Replacement Fee provides an alternate mechanism for raising revenue for street repair, resurfacing and reconstruction. It also could provide funding for the construction of sidewalks and pedestrian trails authorized by the Council. It would eliminate the significant financial impact on residents by spreading the cost more broadly that the current special assessment procedure. This fee is only available to offset the costs of public infrastructure repair, resurfacing and reconstruction as well the installation of sidewalks.
An appropriate motion would be to recommend the Common Council approved Ord. 2018-17 creating the Transportation Infrastructure Utility and the Transportation Assessment Replacement Fee for the purpose of funding transportation infrastructure installation, repair, resurfacing and reconstruction.
ITS Presentation Outline on TUFs
Promises and Pitfalls of Transportation Utility Fees

TRB 5th International Conference on Surface Transportation Financing

July 11, 2014
Agenda

• What is a TUF?
• Comparison with other funding sources
• Legal challenges
• Future potential
Agenda

• What is a TUF?
• Comparison with other funding sources
• Legal challenges
• Future potential
What is a transportation utility fee?

• Primarily used by local governments to fund the maintenance of local roads
• Paid by property occupants based on land use intensity
• Also know as
  • Street maintenance fee
  • Road use fee
  • Street utility fee
• Distinct from transportation impact fees and mitigation fees
  • Paid by property occupants rather than developers
  • Paid on an ongoing (monthly) basis for maintenance
STREET SERVICE
1228 PORTERFIELD DR

Service Dates
05/27/2014 06/25/2014

City of Austin Transportation User Fee - Residential $7.80
Transportation User Fee - Residential $7.80

TOTAL CURRENT CHARGES $7.80

Residential Transportation Details:
Residential A Transportation Fee 1 $3.50
Residential Transportation Sub-total: $3.50
What is the basis for the fee?

In theory:
- Charge property owners (or occupants) for their share of transportation costs based on their use of the transportation system.
- “Use” is defined as the generation of trip ends.

In practice:
- Local utilities do not meter use of the transportation system.
- Instead, they estimate trip generation based on land use.
- 16 out of 25 TUF ordinances specify the use of ITE rates.
What cities have used TUFs?

<table>
<thead>
<tr>
<th>Cities with existing TUF ordinances</th>
<th>Year established</th>
</tr>
</thead>
<tbody>
<tr>
<td>La Grande, Oregon</td>
<td>1985</td>
</tr>
<tr>
<td>Ashland, Oregon</td>
<td>1989</td>
</tr>
</tbody>
</table>

[Map showing locations of La Grande and Ashland, Oregon]
What cities have used TUFs?

<table>
<thead>
<tr>
<th>Cities with existing TUF ordinances</th>
<th>Year established</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tualatin, Oregon</td>
<td>1990</td>
</tr>
<tr>
<td>Medford, Oregon</td>
<td>1991</td>
</tr>
<tr>
<td>Austin, Texas</td>
<td>1992</td>
</tr>
<tr>
<td>Phoenix, Oregon</td>
<td>1994</td>
</tr>
<tr>
<td>Wilsonville, Oregon</td>
<td>1997</td>
</tr>
</tbody>
</table>
What cities have used TUFs?

<table>
<thead>
<tr>
<th>Cities with existing TUF ordinances</th>
<th>Year established</th>
</tr>
</thead>
<tbody>
<tr>
<td>Talent, Oregon</td>
<td>2000</td>
</tr>
<tr>
<td>Loveland, Colorado</td>
<td>2000</td>
</tr>
<tr>
<td>Dufur, Oregon</td>
<td>2001</td>
</tr>
<tr>
<td>Grants Pass, Oregon</td>
<td>2001</td>
</tr>
<tr>
<td>Hubbard, Oregon</td>
<td>2001</td>
</tr>
<tr>
<td>Lake Oswego, Oregon</td>
<td>2003</td>
</tr>
<tr>
<td>North Plains, Oregon</td>
<td>2003</td>
</tr>
<tr>
<td>Philomath, Oregon</td>
<td>2003</td>
</tr>
<tr>
<td>Tigard, Oregon</td>
<td>2003</td>
</tr>
<tr>
<td>Bay City, Oregon</td>
<td>2003</td>
</tr>
<tr>
<td>Corvallis, Oregon</td>
<td>2005</td>
</tr>
<tr>
<td>Milwaukie, Oregon</td>
<td>2007</td>
</tr>
<tr>
<td>West Linn, Oregon</td>
<td>2008</td>
</tr>
<tr>
<td>Eagle Point, Oregon</td>
<td>2009</td>
</tr>
</tbody>
</table>
What cities have used TUFs?

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<thead>
<tr>
<th>Cities with existing TUF ordinances</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Mission, Kansas</td>
<td>2010</td>
</tr>
<tr>
<td>Hillsboro, Oregon</td>
<td>2011</td>
</tr>
<tr>
<td>Silverton, Oregon</td>
<td>2013</td>
</tr>
<tr>
<td>Provo, Utah</td>
<td>2013</td>
</tr>
</tbody>
</table>
What cities have used TUFs?

<table>
<thead>
<tr>
<th>Discontinued TUF ordinances</th>
<th>Year discontinued</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pocatello, Idaho</td>
<td>1988</td>
</tr>
<tr>
<td>Fort Collins, Colorado</td>
<td>1989</td>
</tr>
<tr>
<td>Port Orange, Florida</td>
<td>1994</td>
</tr>
<tr>
<td>Seattle, Washington</td>
<td>1995</td>
</tr>
</tbody>
</table>
Agenda

• What is a TUF?
• Comparison with other funding sources
• Legal challenges
• Future potential
Local Transportation Funding Sources

For ongoing maintenance of the local transportation network

- Fuel tax transfers from state government
- Property taxes
- Intergovernmental transfers
- Miscellaneous charges and receipts
- Sales taxes
- Income taxes
- Other taxes
- Road and crossing tolls
- Intergovernmental transfers (not from fuel tax)
- Local highway and user tax revenues
- Other local imposts
- Miscellaneous income

Source: Calculated from FHWA, 2011 and Tax Policy Center, 2010
# Comparison with Alternative Revenue Sources

<table>
<thead>
<tr>
<th>Fuel tax</th>
<th>Property tax</th>
<th>Sales tax</th>
<th>TUF</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Relationship to use/benefit</strong></td>
<td><strong>Limits on potential revenue</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costs distributed based on volume of fuel consumed</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proxy for vehicle miles traveled</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>User fee</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

- **Fuel tax**: Costs distributed based on volume of fuel consumed. Proxy for vehicle miles traveled. User fee.
- **Property tax**: Not indexed to inflation, politically difficult to raise.
- **Sales tax**: Increasing fuel efficiency (and resulting *variability* in fuel efficiency).
- **TUF**: **Relationship to use/benefit** | **Limits on potential revenue**
## Comparison with Alternative Revenue Sources

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<td></td>
<td></td>
</tr>
<tr>
<td>Costs distributed based on property value</td>
<td></td>
<td>Competition with other local government services</td>
<td></td>
</tr>
<tr>
<td>Proxy for contribution of transportation access to property value</td>
<td></td>
<td>Legal limits on tax rates (e.g. Proposition 13 in California, Measure 5 in Oregon)</td>
<td></td>
</tr>
<tr>
<td>Value capture</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
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<tr>
<td>Relationship to use/benefit</td>
<td>Limits on potential revenue</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costs distributed based on spending on taxable items</td>
<td>Voter approval required</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No clear relationship to use or benefit from the transportation system</td>
<td>Bias towards capital expenditures over operations and maintenance.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# Comparison with Alternative Revenue Sources

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</thead>
<tbody>
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<td>Relationship to use/benefit</td>
<td>Limits on potential revenue</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costs distributed based on estimate of trip ends generated by property owners</td>
<td>Cannot exceed transportation spending</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Concept of benefit rather than use</td>
<td>Subject to courts’ determination of legality</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hybrid between user fee and value capture</td>
<td></td>
<td></td>
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</tr>
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</table>
Agenda

• What is a TUF?
• Comparison with other funding sources
• Legal challenges
• Future potential
Legal Challenges

Is it a tax or a fee?

The authority granted to cities by their state constitutions may vary, but in general, the power of a city to levy a tax is much more limited than the power to charge a fee.
Characteristics of Fees

1. Related to benefit: “[T]hey are charged in exchange for a particular governmental service which benefits the party paying the fee”

2. Voluntary: “[T]he party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge”

3. Earmarked: “[T]he charges are collected not to raise revenues, but to compensate the governmental entity providing the service for its expenses.”

(Emerson College v. The City of Boston 1984)
We agree with appellants that municipalities at times provide sewer, water and electrical services to its residents. However, those services, in one way or another, are based on user's consumption of the particular commodity, as are fees imposed for public services such as the recording of wills or filing legal actions. In a general sense a fee is a charge for a direct public service rendered to the particular consumer, while a tax is a forced contribution by the public at large to meet public needs.

(Brewster v. City of Pocatello 1988 [empasis added]).
The amount of a special fee must be reasonably related to the overall cost of the service. ... *Mathematical exactitude, however, is not required.*... To be sure, the city council could have chosen some other method of raising funds for street maintenance, but the mere existence of alternatives is not a sufficient reason to invalidate the particular method chosen. ... The city council also could have elected to impose the fee on a larger segment of the public—for example, all licensed drivers residing within the city or all adult residents of the city. We, however, do not view the class of persons liable for the fee—*i.e.*, the owners or occupants of developed lots fronting city streets—so limited in relation to the nature of the service as to render the ordinance invalid

*(Bloom v. City of Fort Collins 1989 [emphasis added]).*
Two Possible Solutions

- Change the law to allow transportation utility fees
  - May require constitutional amendment

OR

- Meter trip generation
  - We have the technology
Agenda

• What is a TUF?
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Future Potential

Metered Use of the Transportation System

- Refined transportation utility fees
- Mileage-based user fees
Relationship with MBUFs

**Gateway:**

TUFs have a longer history in more cities than MBUFs. The definition of the transportation network as a public utility may prepare people to accept other, more precise user fees.

**Substitute:**

TUFs may be simpler and less costly to implement at a local level than MBUFs, especially if the utility does not seek to directly meter use of the transportation network.

**Complement:**

Not all roads provide the same benefits. It might be appropriate to charge for use of highways and arterials based on mileage while charging for use of local access roads based on trip ends.
THANK YOU

Carole Turley
UCLA Urban Planning
caroleturley@ucla.edu

Special thanks to:

Martin Wachs, UCLA
UCLA Institute for Transportation Studies
UCLA Lewis Center
Ordinance Examples: City of Phoenix, AZ
Chapter 13.28
TRANSPORTATION UTILITY FEE

Sections:
13.28.010  Purpose.
13.28.030  Transportation utility fee – Dedicated.
13.28.040  City to maintain local streets – Exclusions.
13.28.050  Billing and collection for transportation utility fee.
13.28.060  Enforcement.
13.28.080  Notice of decision.
13.28.090  Disposition of fees and charges.
13.28.100  Definitions.
13.28.110  Exemptions.
13.28.120  Discounts for low-income elderly, and non-drivers.

13.28.010 Purpose.

There is created a transportation utility for the purpose of providing funds for the maintenance and minor improvement of local streets and related facilities under the jurisdiction of the city of Phoenix. The council finds, determines and declares the necessity of providing operation, maintenance and minor improvement of the city's streets and related facilities within the right-of-way as a comprehensive transportation utility. Operation, maintenance and minor 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 curbcuts, 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 council further finds that 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 bicycle and pedestrian facilities whether within public streets or off of street right-of-way on other publicly-owned land or easements, provided the facilities are accepted by the city for maintenance.

(Ord. 746 § 1, 1994)


A. The city council hereby establishes, and may by ordinance amend, 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: monthly fee = number of units x chargeable daily trip-ends x $0.15. Chargeable daily trip ends shall be determined according to the schedule set forth in Exhibit A, of the ordinance codified in this chapter. This fee is deemed reasonable and is necessary to pay for the operation and maintenance of streets within the city. The transportation utility fee shall not be charged during any period when the premises is not receiving city water and sewer service, or is shown to be vacant and not generating traffic.

B. The 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.

C. The $0.15 rate in the formula adopted in the ordinance codified by this chapter shall be increased to account for inflation annually on September 1st, based on the Consumers Price Index -- All Urban Consumer Portland Index (CPI-U) December to December, provided that no other increases were implemented within the prior twelve months. The city recorder will provide the city council with a review of the rate and fee amounts annually.

D. 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.
13.28.030 Transportation utility fee – Dedicated.
A. 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 13.28.010. 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 fund specifically relate to any particular use from which the transportation utility fees were collected.
B. 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 may be 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 judgment of the city council, to provide sufficient funds to properly maintain and improve streets and related transportation facilities.

13.28.040 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 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.

13.28.050 Billing and collection for transportation utility fee.
A. 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 sewer bill shall pay the transportation utility fees. In the event the premises does not receive city sewer service then the person(s) paying the city’s water bill shall pay the transportation utility fees. If there is neither city water nor city sewer service to the improved premises, the transportation utility fees shall be paid by the person(s) having the right to occupy the premises.
B. Transportation utility bills shall be rendered monthly by the city recorder and shall become due and payable in accordance with the rules and regulations pertaining to the collection of utility fees. If there is neither city water nor city sewer service to the improved premises, an annual bill shall be rendered and shall become due and payable within ninety days of issuance. Monthly transportation utility fees for new development shall commence upon completion, occupancy, or use of the improvements, whichever comes first. The city recorder may use the date of connection to the water system or sewer system to commence the transportation utility unless other evidence of the date of completion, occupancy or use is provided to the city recorder 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.

C. The city recorder shall deposit all such fees so collected into the street fund to be separately kept and used for the purposes provided herein. Partial payments on utility bills shall be allocated on a pro rata basis to the balances due on the various charges on the bill. The customer shall not be allowed to specify a different allocation.

(Ord. 746 § 5, 1994)

13.28.060 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 chapter 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 city recorder is 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 premises served by the city for inspection, repair, and enforcement of the provisions of this chapter.

(Ord. 746 § 6, 1994)

A. The city recorder shall be responsible for administration of this chapter in regards to utility billings, accounting for revenues collected, and general administrative tasks. The public works director 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.
B. 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 percent may be approved by the public works director. Greater variations than fifteen percent shall require approval by the city council.

C. Any responsible party of nonresidential premises may request in writing that a traffic study acceptable to the city's public works director be made at the party's sole expense to show the usage level in chargeable trip-ends for the transportation utility fee. The traffic study shall be performed by a traffic engineer registered in the state of Oregon and approved by the public works director, and shall calculate chargeable trip ends adjusted for pass by trips and trip lengths. If the chargeable trip-ends are within five percent more or less of the level in Exhibit "A" [to the ordinance from which this chapter derives], 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 public works director, if the traffic count results in chargeable trip-ends less than ninety-five percent of the level in Exhibit "A"; however, no adjustment will be made below the minimum paid by a single-family residence. An upward adjustment in the transportation utility fee shall be made by the public works director, if the traffic count results in chargeable trip-ends more than one hundred five percent of the level in Exhibit "A". Any adjustment shall take effect in the month following completion of the traffic count and be reported in writing to the city recorder and city council by the public works director. Results of traffic counts shall not be appealed to the city council. Traffic counts for a specific nonresidential premises shall not be allowed more than once in each calendar year.

D. For any issues not addressed in subsection B or C of this section 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 or determination, except upon a showing of such changed circumstances. The petitioner shall have the burden of proof.

E. Petitions filed pursuant to subsection D of this section shall be reviewed in a hearing before the city council. Within sixty 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.

(Ord. 750 § 1, 2000; Ord. 746 § 7, 1994)
13.28.080 Notice of decision.
Every decision or determination of the city recorder, public works director or city council 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 chapter.

(Ord. 746 § 8, 1994)

13.28.090 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 street network and related facilities for which the city has maintenance responsibility.

(Ord. 746 § 9, 1994)

13.28.100 Definitions.
As used in this chapter:

"Responsible party" means the person or persons who by usage, occupancy or contractual arrangement are responsible to pay the utility bill for an improved premises.

"Improved premises" means 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.

"Trip-end" means a trip to or from an origin or destination. A trip-end is the standard unit of measure for trip generation and can be measured as one pass by a traffic counter. Two trip-ends are involved in a simple round trip. Round trips with multiple stops include "passby trips" at the destinations between the beginning and end of the trip.

"Chargeable daily trip-end" is a figure that represents adjustments of the Institute of Transportation Engineers trip generation rates to:

1. Remove passby trips from various nonresidential uses; and

2. Multiply trip generation rates by a trip length ratio to better estimate usage.
13.28.110 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.

(Ord. 746 § 11, 1994)

13.28.120 Discounts for low-income elderly, and non-drivers.
A. Discounts applying to low income elderly persons for water, or sewer fees shall also apply to transportation utility fees.

B. Responsible parties occupying single-family houses, multifamily dwelling units or mobile homes within the city may apply in writing for a discounted fee for households without a motor vehicle. Upon confirming the filing that no occupant of the household owns or is using a motor vehicle, the premises shall be charged the rate for senior housing which is considered comparable to the share of transportation utility expenses that relate to bicycles, pedestrians and delivery vehicles.
Ordinance Examples: City of Hubbard, OR
ORDINANCE NO. 244-2001

AN ORDINANCE ADOPTING A TRANSPORTATION UTILITY FEE FOR THE CITY OF HUBBARD.

WHEREAS, the City Council of the City of Hubbard finds it necessary to adopt a Transportation Utility fee in order to provide funds for the maintenance of local streets under the jurisdiction of the City of Hubbard, and

WHEREAS, the Council declares the necessity of providing maintenance and upkeep of the City's local streets and related facilities within the right-of-way as a Comprehensive Transportation Utility with such maintenance to include, 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.

THE CITY OF HUBBARD ORDAINS AS FOLLOWS:

Section 1. The City of Hubbard Transportation Utility Fee be established as set forth in the attached document marked "Exhibit A" attached hereto and by this reference incorporated herein and entitled "Transportation Utility Fee."

The foregoing ordinance was passed by City Council of the City of Hubbard this 17th day of May 8, 2001, by the following vote:

AYES: 5
NAYS: 8
ABSENT: 

WHEREUPON, the Mayor declared the motion to be carried and the ordinance adopted.

Passed and approved by the City Council of the City of Hubbard this 8th day of May 2001.

Don Thwing, Mayor

ATTEST:
Vickie L. Nogle, CMC
City Recorder

APPROVED BY CITY ATTORNEY:
Robert L. Engle, City Attorney

Page One - Ordinance No. 244-2001  Adopted May 8, 2001
Chapter 13.45

TRANSPORTATION UTILITY FEE

Sections:
13.45.010 Declaration of purpose.
13.45.020 Establishment of transportation utility fee.
13.45.030 Transportation utility fee dedicated.
13.45.040 City to maintain local streets - Exceptions.
13.45.050 Billing and collection of fee.
13.45.060 Enforcement.
13.45.070 Administrative review - Appeals.
13.45.080 Notice of decision.
13.45.090 Disposition of fees and charges.
13.45.100 Exemptions.
13.45.110 Discount for the elderly.
13.45.120 Violation - Penalty.
13.45.130 Severability.
13.45.140 Effective date.

13.45.010 Declaration of purpose.
There is hereby created a transportation utility for the purpose of providing funds for the maintenance of local streets under the jurisdiction of the city of Hubbard. 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 Comprehensive Transportation Utility 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.

13.45.020 Establishment of transportation utility fee.
The city council may establish by resolution a transportation utility fee to be paid by the owners or occupants of property within the corporate limits of the city. 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 uses shall be based upon a flat fee for residential classifications and based upon the average number of vehicle trip generated for non-residential classifications. 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.

13.45.030 Transportation utility fee - Dedicated.
All fees collected pursuant to this chapter shall be paid into the Street Fund. Such revenues shall be used for the purposes of the operation, administration, and maintenance of the local transportation network of the city. It shall not be necessary that the operations, administration, and maintenance expenditures from the Street Fund specifically relate to any particular property from which the fees for said purposes were collected.
13.45.040  City to maintain 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.

13.45.050  Billing and collection of fee.

(1) The transportation utility fee shall be billed collected with and as part of the water and sewer bill for those properties utilizing city water and/or sewer, and billed and collected separately for those properties not utilizing city water or sewer. In cases where a developed property is subject to water and/or sewer utility charges, the transportation utility 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. All such bills shall be billed and collected pursuant to HMC 13.15.150.

(2) The Finance Director shall deposit all such fees so collected into the Street Fund to be separately kept and used for the purposes provided herein. Partial payments on utility bills shall be allocated first to the transportation utility fee, second to the sewer service charges and third to the charges for water service.

13.45.060  Enforcement.

(1) Any charge due hereunder which is not paid when due may be recovered 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 city Finance Director is hereby empowered and directed to enforce this provision against such delinquent users.

(2) The Public Works Superintendent 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. The employees of the city shall, at all reasonable times, have access to any premises served by the city for inspection, repair, or the enforcement of the provisions of this chapter.

13.45.070  Administrative review - Appeals.

(1) Any user or occupant who disputes the amount of the fee, or disputes any determination made by or on behalf of the city pursuant to and by the authority of this chapter 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.

(2) 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.

(3) Within forty-five (45) 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.
13.45.080 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 chapter.

13.45.090 Disposition of fees and charges.

The fees paid and collected by virtue of this chapter shall not be used for general or other governmental propriety purposes of the city, except to pay for an equitable share of the city's accounting, management and other governing costs, incident to operation of the street maintenance program. Otherwise the fees and charges shall be used solely to pay for the cost of operation, administration, maintenance, repair, improvement, renewal, replacement and reconstruction of city streets and related facilities.

13.45.100 Waiver of fees in case of vacancy.

When any premises within the city become vacant, totally unoccupied, or unused, and water service is discontinued, and all outstanding water, sewer and transportation utility charges have been paid; and with approval, by the Finance Director, the transportation utility fee shall thereafter not be billed and shall not be a charge against the property.

13.45.110 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.

13.45.120 Discount for the elderly.

Discounts applying to low income elderly persons for city water and sewer fees shall also apply to transportation utility fees.

13.45.130 Violation - Penalty.

In addition to any other remedy provided in this chapter, violation of this ordinance is punishable by a fine not to exceed $500. Each day after an account subject to transportation utility fees remains delinquent in payment of such fees constitutes a separate violation.

13.45.140 Severability.

(1) 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 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.

(2) 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.

13.45.150 Effective date.

This ordinance shall begin June 15, 2001.
RESOLUTION NO. 318-2001

A RESOLUTION ESTABLISHING THE TRANSPORTATION UTILITY FEE REQUIRED BY SECTION 13.45 OF THE HUBBARD MUNICIPAL CODE.

WHEREAS, the City Council of the City of Hubbard finds it necessary to create a transportation utility for the purpose of providing funds for the maintenance of local streets under the jurisdiction of the City of Hubbard; and

WHEREAS, the City Council has adopted a Transportation Utility Fee under section 13.45 of the Hubbard Municipal Code.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUBBARD, THAT:

Section 1: The City of Hubbard Transportation Utility Fee is set forth in the attached document marked "Exhibit A" attached hereto and by this reference incorporated herein and entitled "Transportation Utility Fee."

INTRODUCED AND ADOPTED this 12th day of June 2001.

CITY OF HUBBARD, OREGON

BY: ____________________________
    Mayor

ATTEST:

BY: ____________________________
    Recorder

APPROVED AS TO FORM:

BY: ____________________________
    City Attorney

Adopted June 12, 2001
Exhibit "A"

Transportation Utility Fees

1. Residential:
   A. Single Family $4.25 Per month
   B. Multiple Family $4.25 Per month per dwelling unit
   C. Mobile Home Park $4.25 Per month per dwelling unit

2. Non-residential:
   A. Churches/Private Clubs $4.25 Per month
   B. Commercial - Low (0 - 2.5 vt) $1.00 Per month per 1,000 sq. ft.
      Ex: Offices
          Barber/Beauty Shops
          Furniture Sales
   C. Commercial - Medium (2.5 - 19 vt) $2.50 Per month per 1,000 sq. ft.
      Ex: Retail Sales
          Cleaners/Laundromats
          Auto Repair Shops
          Banks without drive-up window
          Restaurants/Taverns/Lounges
   D. Commercial - High (19+ vt) $4.00 Per month per 1,000 sq. ft.
      Ex: Service Stations
          Convenience Stores with gas pumps
          Banks with drive-up window
          Restaurants with drive-up window
   E. Warehouse/Storage
      (0 to 20,000 sq. ft.) $0.40 Per month per 1,000 sq. ft.
      (>20,000 sq. ft.) $0.24 Per month per 1,000 sq. ft.
   F. Manufacturing/Industrial/Wholesale
      (0 to 20,000 sq. ft.) $0.56 Per month per 1,000 sq. ft.
      (>20,000 sq. ft.) $0.40 Per month per 1,000 sq. ft.

3. The minimum monthly fee for any commercial account is $4.25 per business.

Note: Area calculations are applied to the square footage of structures used for commercial purposes.

   vt = vehicle trips per 1,000 square feet based on the ITE Manual.
Ordinance Examples: City of Newberg, OR
REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 2, 2017

<table>
<thead>
<tr>
<th>Order No.</th>
<th>Ordinance No. XX</th>
<th>Resolution No.</th>
<th>Motion No.</th>
<th>Information No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. 2016-2811</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

SUBJECT: An Ordinance Amending Newberg Municipal Code Title 3 To Add A New Chapter Adopting A Transportation Utility Fee

Contact Person (Preparer) for this Motion: James (Jay) O. Harris, Public Works Director
Dept.: Public Works
File No.: 

HEARING TYPE: ☑ LEGISLATIVE ☐ QUASI-JUDICIAL ☐ NOT APPLICABLE

RECOMMENDATION:

Adopt Ordinance No. 2016-2811 amending Title 3 of the Newberg Municipal Code, adding a new chapter establishing a transportation utility fee to supplement other revenue to maintain and replace pavement surfaces city-wide.

EXECUTIVE SUMMARY:

The citizens of Newberg rely and expect a safe dependable transportation network. The current system is getting older and more expensive to maintain, preserve and replace. The roads are showing significant signs of distress and the current funding sources are not keeping up with the need. For the last couple of years, the City has been evaluating additional revenue options to close the funding gap. It has been determined that to maintain our current pavement conditions city-wide approximately $2.5 million in funding is needed each year. Approximately $0.6 million is currently available, leaving a gap/shortfall of $1.9 million. The funding gap is too large to be generated from one source. The proposed funding sources to close the gap is $1.2 million generated from a transportation utility fee (TUF) and potentially $0.7 million generated from another source. This Request for Council Action and the attached ordinance evaluates the TUF portion of the proposed new funding.

Staff first presented the Ordinance to Council on December 5, 2016. At that meeting the City Council listened to public testimony, and changes were incorporated into the revised Ordinance language. The Ordinance was presented to Council a second time at the January 3, 2017, Council meeting. At that meeting Council requested that items such as the maximum fee cap and fee waiver policies were taken back to the Ad-Hoc Committee for review and consideration. The Ad-Hoc Committee met on February 8, 2017, March 2, 2017, and April 18, 2017, to discuss provisions in the Ordinance. A copy of the February 8th, and March 2nd, Ad-Hoc Committee meeting notes is included as Attachment A. The April 18th Ad-Hoc committee meeting was held to improve the public notice of the committee meetings (the meeting notice and agenda was posted on the City website). The recommendation from the committee shown in Attachment A was not modified at the April 18th meeting.

Revisions to the January 3rd Ordinance were completed by staff which follow the recommendations from the Ad-Hoc Committee, as described below.

ORDINANCE MODIFICATIONS:

The Ad-Hoc Committee reviewed the January 3rd Ordinance and provided their input for refinement of the Ordinance (refer to Attachment A), as summarized on the next page:
1. **Funding:** $2.5 million total, $0.6 million existing, $1.2 million Transportation Utility Fee (TUF), $0.7 million other future funding source.

   No change proposed, keep the targeted revenue for the TUF at $1.2 million.

2. **Maximum Fee Cap:** What is the appropriate maximum monthly fee cap amount, $600, or lower/higher?

<table>
<thead>
<tr>
<th>Use</th>
<th>Bill with Cap</th>
<th>Bill without Cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>GFU Main Campus</td>
<td>$600</td>
<td>$3,300</td>
</tr>
<tr>
<td>NSD – High School</td>
<td>$600</td>
<td>$1,326</td>
</tr>
<tr>
<td>NSD – Middle School</td>
<td>$600</td>
<td>$974</td>
</tr>
<tr>
<td>NSD – Elementary School</td>
<td>$600</td>
<td>$1,045</td>
</tr>
<tr>
<td>Providence Hospital</td>
<td>$600</td>
<td>$1,175</td>
</tr>
<tr>
<td>Cultural Center</td>
<td>$600</td>
<td>$751</td>
</tr>
</tbody>
</table>

   The Ad-Hoc Committee recommended that the maximum fee cap section be removed from the Ordinance. Staff removed Section 3.45.080.F, Fee Maximum from the proposed Ordinance.

3. **Funding Allocation:** Should the TUF increase for residential properties to subsidize non-residential uses (i.e.: 35% residential share or 50% residential share)?

   Council consensus at the December 5, 2016, hearing was to keep the funding allocation at the 35% residential share. The Ad-Hoc Committee agrees with Council. This rate schedule is attached as Exhibit B to the Ordinance.

4. **Prioritization of Improvements:**
   a. A maximum of 70% of revenue is proposed to be allocated to preservation of the good to fair streets, and a minimum of 30% to reconstruct the poor to very poor streets. Should different funding percentages be considered?
   b. The pavement condition model prioritizes pavement and preservation and replacement projects based on traffic volumes. Is selecting the maintenance prioritization of higher volume streets first acceptable?

   The consensus of the Council was to maintain the split of 70% good to fair streets and 30% to poor streets. The Ad-Hoc Committee agrees with Council. Refer to Section 3.45.060, Prioritization of Improvements in the Ordinance.

5. **Fee Waivers:** Council requested at the November 7, 2016 meeting, information adding low income waivers to the proposed Ordinance. Staff found the other communities include other types of waivers, such as vacancy, unemployment, and motor vehicle discounts, and added the fee waivers to the original (December, 2016) Ordinance. The Ad-Hoc Committee reviewed the fee waiver section in the Ordinance and found the provisions to be acceptable.

   The Council expressed some concern about the definition of vacancy at the December 5, 2016 hearing. The definition of “vacancy” was modified in Exhibit A to allow for seasonal vacancies in buildings/units. The Ad-Hoc Committee reviewed the fee waiver provisions and found them to be acceptable. Refer to Section 3.45.130, Waiver of Fees, in the Ordinance.

6. **Funding Model:** Exhibit B, the monthly rate schedule, shows the four residential and six non-residential rate classes. The “variable within fee class” model was originally chosen by the Ad-Hoc Committee last
year over other models such as a flat fee or trip generation model. The Exhibit B table was generated from a financial model prepared by the consultant team, which included the assumptions outlined in the Ordinance language for all of the developed uses in the City. In the recent Ad-Hoc Committee meetings, the subject of the “variable within fee class model” methodology was revised and the group recommended the grouping of the classes in Exhibit B.

The use of the variable within fee class model was recommended a second time by the Ad-Hoc Committee. No change was made to the Ordinance.

7. **Heavy Vehicle Clause:** The Ad-Hoc Committee discussed the topic of heavy vehicles and the impact of the weight on the city streets.

   The Ad-Hoc Committee recommends that a construction impact and/or a loading dock fee be discussed at a later date separate from this Ordinance.

8. **Combining Non-Profits:** The Ad-Hoc Committee discussed the topic of combining properties for the school district, CPRD, and the City to lower the impact of the transportation utility fee on the governmental non-profits. It was found that the fee reduction would be minimal for CPRD and the City, but combining school district properties into one group for elementary, middle, and high schools would reduce the school district monthly fee by approximately 50% when utilizing a maximum fee cap of $600 (a total fee of $1800 per month or $21,600 per year). The maximum fee caps were removed from the Ordinance, staff reduced the trip rate by each type of school by 50% to reduce the monthly fee. Results are shown below:

<table>
<thead>
<tr>
<th>ITE #</th>
<th>Description</th>
<th>Quantity</th>
<th>Units</th>
<th>Rate/Unit</th>
<th>Full Cost (Month)</th>
<th>Adj. Cost (Month)</th>
</tr>
</thead>
<tbody>
<tr>
<td>520</td>
<td>Elementary Schools</td>
<td>1,854</td>
<td>Student</td>
<td>$0.72</td>
<td>$1,334</td>
<td>$667</td>
</tr>
<tr>
<td>522</td>
<td>Middle Schools</td>
<td>1,173</td>
<td>Student</td>
<td>$0.90</td>
<td>$1,056</td>
<td>$528</td>
</tr>
<tr>
<td>530</td>
<td>High School</td>
<td>1,635</td>
<td>Student</td>
<td>$0.96</td>
<td>$1,570</td>
<td>$785</td>
</tr>
<tr>
<td></td>
<td>Total/month=</td>
<td></td>
<td></td>
<td></td>
<td>$3,960</td>
<td>$1,980</td>
</tr>
<tr>
<td></td>
<td>Total/year=</td>
<td></td>
<td></td>
<td></td>
<td>$47,520</td>
<td>$23,760</td>
</tr>
</tbody>
</table>

The Ad-Hoc Committee recommends a reduction of the TUF paid by the Public School District only. Section 3.45.100.10 was added to the Ordinance which reduces the trip rate per student by 50%, which in turn reduces their total yearly cost for all of the public schools to approximately $23,760.00.

Council is invited to review the information presented in this Ordinance and express their opinion on the items listed above. Council could consider the adoption of this Ordinance using/modifying the information presented, or request staff to research additional items and return at a later date to continue the discussion.

**BACKGROUND AND HISTORY:**

Discussions to adequately fund the pavement maintenance projects have been ongoing for the last decade. In 2002, city staff estimated that the pavement maintenance program needed $850,000 in yearly funding, with a $350,000 per year funding shortfall. A TUF ordinance was proposed in 2002, but the work was put on hold to focus on the adoption of a city-wide storm water fee. In 2006, city staff estimated that the funding shortfall/gap had grown to approximately $700,000 yearly.

In April of 2013, staff continued the discussion with Council regarding the state of our street system. Resolution
No.2013-3090 in October of 2013, approved the consultant contract for Pavement Services Inc. to complete a city-wide pavement condition evaluation and to prioritize the street maintenance projects. Over an 8-month period, the consultant walked all of the city streets, evaluating the condition and ride quality of the pavement surfaces, and subsequently entered the data into modeling software. The modeling software calculated the pavement condition index (PCI) for each street segment. A PCI value of 0 was assigned by the software to gravel roads, whereas new pavement was assigned 100. Examples of each type of surface and the corresponding PCI are shown below.

**Pavement Condition Index Examples:**

![Very Good (PCI=95)](image1) ![Good (PCI=70)](image2) ![Fair (PCI=80)](image3) ![Poor (PCI=45)](image4) ![Very Poor (PCI=20)](image5) ![Gravel (PCI=0)](image6)

In July of 2014, Council adopted Resolution No. 2014-3156, the final Pavement Management System Implementation Report by Pavement Services Inc. The report indicated that the City of Newberg’s overall city-wide pavement condition index (PCI) was approximately 73 of 100, with a backlog of street repair projects of about $14.3 million dollars. Four budget scenarios were identified in the 2014 report:

- **A.** Eliminate the project backlog by spending $2.8 million a year over a 7 year period.
- **B.** Maintain the current $150,000 per year funding level. The project backlog is proposed to increase to $21.0 million by 2022.
- **C.** Increase the annual funding to $486,000. The project backlog will grow to $17.9 million by 2022.
D. Maintain the existing overall city-wide PCI of 73, which requires an annual budget of $1.87 million.

At the September 21, 2015 City Council work session a report was provided that outlined the various pavement maintenance and rehabilitation techniques, and a review of the 2014 Pavement Management System Implementation Report. After Council discussion, direction was to prepare a report on the potential funding options available to maintain the existing city-wide PCI of 73 (shown as option D above).

At the January 19, 2016 City Council business meeting, the report on funding options identified various options to supplement the existing funding sources for pavement maintenance projects. After discussion, consensus was provided to move forward with the preparation of a pavement system maintenance and funding master plan, and to focus on a transportation utility fee (TUF) in the implementation of the first phase of funding. A TUF is a dedicated funding source that cannot be spent on other purposes outside of the adopted intent, and the monthly cost to each user is generally proportional to the use of the system. The TUF can be assessed on the monthly municipal services statement, and should balance the fairness in cost between the users while being administratively feasible by the City. There are multiple models that can be used to determine the appropriate fee from simple, such as a flat rate per meter, to very complex, such as a trip generation model table created for every use in the city.

Last spring, the City posted the pavement master planning proposal on the city website and emailed/called multiple consultants. The City received three proposals from various engineering and financial consultants. Kittelson & Associates was identified as the most qualified consultant with the knowledge, and experience to complete the various phases of work identified in the proposal. The contract for Kittelson & Associates was approved by Council by Resolution No.2016-3281. Over the last 6 months, the consultant team led by Tony Roos at Kittelson & Associates has prepared presentations for the pavement ad-hoc committee meetings, assisted in public outreach efforts, updated the 2014 pavement condition index model, and has painstakingly prepared multiple transportation utility fee financial models.

Kittelson & Associates has found that the revised pavement condition index (PCI) has decreased from 73 in 2014 to 68 in the last two years. Kittelson & Associates also estimates that approximately $2.5 million per year is necessary in order to increase the 2014 PCI over the next ten years. Without an increase in existing funding, the overall pavement condition index is expected to decrease another 9 points to 61 in 2022, as shown on the next page.
Kittelson & Associates calculates that with the expenditure of $2.5 million dollars per year, the PCI is anticipated to increase to 78 of 100 by 2026. Additional modeling will be needed in the coming years to confirm that the pavement model is calibrated properly and the city is on course to maintaining (and potentially increasing) the PCI over the next decade.
Last July, an ad-hoc committee was appointed by the Mayor consisting of residents, business owners, non-profits, and representatives from government agencies. The committee met six times and reviewed the issues/methods to maintain and replace pavement systems, and considered multiple transportation utility fee rate models. The models considered by the committee varied from a fixed monthly fee for all users, to various trip rate generation models. The ad-hoc committee also provided input on the public outreach efforts, which is discussed further on the next page. The ad-hoc committee met for the final time on April 18th, and their recommendations are as follows:

A. The current level of spending to maintain pavement is a problem. Without more regular pavement maintenance and rehabilitation funds, the condition of roads will continue to deteriorate and become even more expensive to address in the future.

B. There are several types of revenue sources, but there is likely not one single source would generate the annual revenue needed to maintain the system to today’s conditions.

C. Of the various transportation utility fee structures, “Variable Fee within class” was preferred because it was more equitable without being overly complex to administer. It allows the fee to be defined based on both intensity of uses as well as magnitude or size for non-residential payers. Many cities in Oregon with a fee use this structure for the same reasons. The classes are shown on the next page:
<table>
<thead>
<tr>
<th>Class</th>
<th>Trips/1000 sf*</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single Family</td>
<td>9.5</td>
<td>Residential homes</td>
</tr>
<tr>
<td>Multi-Family</td>
<td>6.4</td>
<td>Apartment sites</td>
</tr>
<tr>
<td>Mobile Home</td>
<td>5.00</td>
<td>Mobile home parks</td>
</tr>
<tr>
<td>Non-Residential</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class 1</td>
<td>Less than 18</td>
<td>Manufacturing</td>
</tr>
<tr>
<td>Class 2</td>
<td>Between 18 and 30</td>
<td>Office</td>
</tr>
<tr>
<td>Class 3</td>
<td>Between 30 and 51</td>
<td>Auto Repair, Clinic</td>
</tr>
<tr>
<td>Class 4</td>
<td>Between 51 and 80</td>
<td>Sit Down Restaurant</td>
</tr>
<tr>
<td>Class 5</td>
<td>Over 80</td>
<td>Convenience Store, Drive Thru</td>
</tr>
<tr>
<td>Class 6</td>
<td>Special</td>
<td>Gas Stations, Churches,</td>
</tr>
</tbody>
</table>

*The trips generated are from the Institute of Transportation Engineers Trip Generation Manual.

D. The target revenue that would need to be collected using a fee may change based on other options, such as a local gas tax. The committee reviewed scenarios that generated $1 million and $1.3 million from transportation utility fees and decided that $1.2 million was the upper limit of revenue from this source of funding.

E. The allocation of fees to residential and non-residential users reflects “trip generation.” It is estimated that 35% of trips are generated by residential properties. Fees should be calculated by assigning 35% of the funding responsibility to residential and 65% assigned to non-residential, and not weighted more to the residential side to reduce the fees paid by the non-residential uses.

F. Exploring ways to reduce fees for those that may be financially burdened. Included fee waivers in the Ordinance, but ultimately decided that maximum fee caps were not equitable to all users.

G. Explore ways to reduce overall fees, such as allowing for a phased in approach, sunset/rate adjustment clause, funding allocation clause, and a funding prioritization clause. Phasing in of fees and a sunset clause were not included in the proposed Ordinance. Funding allocation was ultimately chosen at 35% residential and 65% non-residential, and funding prioritization was selected as 70% towards funding of maintenance for good and fair streets, and 30% towards poor condition streets.

The public involvement efforts led by Kristen Kibler with JLA Associates for the proposed TUF ordinance were significant. A summary of the public outreach and involvement efforts are:

<table>
<thead>
<tr>
<th>Event Description</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ad-hoc committee meeting #1</td>
<td>July 14, 2016</td>
</tr>
<tr>
<td>Ad-hoc committee meeting #2</td>
<td>August 3, 2016</td>
</tr>
<tr>
<td>Ad-hoc committee meeting #3</td>
<td>August 31, 2016</td>
</tr>
<tr>
<td>Ad-hoc committee meeting #4</td>
<td>November 2, 2016</td>
</tr>
<tr>
<td>Ad-hoc committee meeting #5</td>
<td>February 8, 2017</td>
</tr>
<tr>
<td>Ad-hoc committee meeting #6</td>
<td>March 2, 2017</td>
</tr>
<tr>
<td>Ad-hoc committee meeting #7</td>
<td>April 18, 2017</td>
</tr>
</tbody>
</table>
Website updates       Ongoing
Newsletter article       July, September
Facebook posts       Ongoing
City Council update meeting #1     July 18, 2016
Mayor’s Cabinet meeting         September 27, 2016
Open House w/ survey         September 28, 2016
Online Open House w/ survey     September 28 - October 16, 2016
Noon Rotary meeting         October 26, 2016
City Council update meeting #2  November 7, 2016
City Club meeting         November 15, 2016
Morning Rotary meeting       November 17, 2016
Kiwanis meeting           November 17, 2016
City Council Ordinance Presentation #1    December 5, 2016
City Council Ordinance Presentation #2    January 3, 2017
City Council Ordinance Presentation #3    May 2, 2017

JLA prepared a summary below of the open house and online open house surveys. Meeting summary notes from the six ad-hoc committee meetings are on the City website located on the Engineering Division homepage.

City of Newberg Pavement Maintenance and Funding
Open House and Public Responses Summary

The City of Newberg Pavement Maintenance and Funding Master Plan Open House was held on September 28, 2016, from 5-7 p.m. at the Public Safety Building. Fifteen attendees signed in to the meeting. The purpose of the open house was to explain the city’s current funding challenge regarding aging roads and increasing maintenance expenses. Public feedback on proposed management approaches and potential revenue sources, specifically a transportation utility fee and local gas tax, was collected. Nine comment forms were submitted in person at the event. An online Open House was also available from September 28 to October 15. The website was created for those who couldn’t attend the Open House or for those who attended and wanted to view more information online. Input on proposed pavement management spending approaches and potential revenue sources was also collected via an online comment form, with 39 individuals completing the online questions.

Public Responses (through October 18)
In total, 48 respondents completed the comment form, either online or in-person.

- All respondents agreed that road pavement maintenance is either of concern or significant concern.
- Nearly half of respondents (23 out of 48) thought that a Transportation Utility Fee is worth further consideration. A few were unsure at this time, while 19 out of the 48 had concerns about using a Transportation Utility Fee. Of these, many were concerned that water and/or sewer bills are already too high, as well as some stating concerns that road
users who may live or work outside of the area will not contribute to the cost of maintaining the roads.

- About two-thirds of respondents (31 of 48 respondents) indicated that a Local Gas Tax is worth further consideration. Those who had concerns commented that six cents was too high or that there should be no new taxes at all.
- If there is new revenue for road maintenance, there was more support for spending it on street surface-pavement maintenance and rehabilitation. Out of 48 total forms there was a marked difference in what type of spending was supported.
  
  - Street surfaces/pavement – 38
  - Paths and trail – 15
  - Street trees – 16
  - Undergrounding of overhead lines - 10
  - Sidewalks, curbs, ramps – 20
  - Bike lanes – 12
  - Lighting – 17

Of the respondents who completed demographic questions, 34 live in Newberg, 19 work in Newberg, 26 own property in Newberg, and 8 own a business in Newberg (there is overlap in these responses). All who responded, marked their race as white. There was nearly equal representation of male and female respondents. The primary age ranges marked were between 25-34 (11 respondents) and 55-64 (10 respondents) years old.

DISCUSSION:
Combined, the city’s existing state gas tax and federal funds exchange allows for approximately $625,000 to be used for pavement maintenance/preservation projects every year, as shown in the table below. Note that dedicating all of the $625,000 of existing gas tax funds ongoing each year towards pavement maintenance and replacement projects may affect the funding of other street related projects such as the full conversion of existing street lights to LED lights, completion of key missing segments of sidewalks, roadway widening, and traffic calming projects.

<table>
<thead>
<tr>
<th>Existing Revenue Sources</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Gas Tax</td>
<td>$1,300,000</td>
</tr>
<tr>
<td>Federal Gas Tax (exchange fund w/ ODOT)</td>
<td>$250,000</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td><strong>$1,550,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Existing Expenditures</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newberg-Dundee Bypass Payment</td>
<td>$143,000</td>
</tr>
<tr>
<td>Street Lights (Electricity, pole replacement, etc.)</td>
<td>$280,000</td>
</tr>
<tr>
<td>Capital Projects not related to pavement rehab (i.e. LED Conversion, sidewalks, street widening, exc.)</td>
<td>$200,000</td>
</tr>
<tr>
<td>Contingency</td>
<td>$300,000</td>
</tr>
<tr>
<td><strong>Total Expenditures</strong></td>
<td><strong>$923,000</strong></td>
</tr>
</tbody>
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| Potential Funds Available for Pavement Projects   | $627,000     |

To obtain the necessary $2.5 million dollars in funding to maintain PCI, it is recommended to combine existing funding ($625,000) with a transportation utility fee ($1,200,000), with consideration to a voter approved 0.05 cent per gallon gas tax measure ($675,000). At the July 18, 2016 City Council project update meeting, Council
requested that staff complete further research on a ballot measure to consider a local gas tax. It was determined that it was too late to file the ballot measure for the November 2016 election, and the next general election that is not subject to the double majority regulations is in May of 2017. The ad-hoc committee discussed the advantages and disadvantages of a local gas tax, and were of the opinion that a gas tax may be a more equitable funding option when combined with the TUF, compared the passage of a property measure such as a general obligation bond or local option levy.

The identification of the timing and number of projects to be completed in over the next year is difficult to estimate. Most pavement maintenance projects require warm temperatures and dry conditions, which limits the projects to starting in May/June and completing in September/October. If the TUF is adopted in the next month by Council, and the fee is implementation by the Finance Department is completed by the summer of 2017, potentially $900,000 in revenue could be collected by next summer. Adding in existing funding sources, it may be possible to complete a maximum of $1.5 million in pavement maintenance projects in the summer of 2018, refer to a preliminary map of the 2018 projects on the next page.

Acquiring additional sources of revenue over the next year to close the funding gap (the City needs to be spending approximately $2.5 million per year on pavement maintenance) is critical to improving the condition of the pavement systems city-wide over the next 10+ years.
FY 18/19 project list ($1.5 million): Funding Split: 57% preservation, 43% replacement
Crack sealing $ 62,000 (City-wide, continue program sealing newer to older streets)
Slurry sealing $800,000 (214 roadway segments)
Major: Grind-Inlay/Overlay $638,000 (Wynooski and River Streets)
(Approximately $900,000 in TUF funds are needed for 2018 summer projects)
FISCAL IMPACT:

With the elimination of maximum fee caps, and applying the fee waivers, the transportation utility fee Ordinance is estimated to generate nearly $1.2 million in additional funding to maintain and replace pavement city-wide.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL PRIORITIES FROM MARCH 2016):

In March of 2016, city council adopted priorities. None of the city council priorities apply to the preservation and funding of the pavement system.

The preparation of the pavement system maintenance and funding master plan and the subsequent city council adoption of supplemental funding measures will provide the capital improvement project plan and the funding needed to properly maintain the roadways throughout the city. Regular planned maintenance to the street pavement systems will decrease the long term pavement and vehicle maintenance costs, and will increase mobility, comfort, safety and livability for everyone that works, lives and visits the City of Newberg.
ORDINANCE NO. 2016-2811

AN ORDINANCE AMENDING NEWBERG MUNICIPAL CODE TITLE 3 TO ADD A NEW CHAPTER ADOPTING A TRANSPORTATION UTILITY FEE

RECITALS:

WHEREAS, the condition of the City of Newberg's street network has been declining as demonstrated by engineering analysis to calculate the pavement condition index (PCI) conducted in 2014 and updated in 2016;

WHEREAS, regular maintenance of streets is cost-effective for the city and for citizens because deteriorated streets are increasingly expensive to repair and maintain, cause increased wear on vehicles, and pose increased safety hazards to the public;

WHEREAS, it is the responsibility of the City of Newberg to ensure safe passage for its citizens on public right-of-way falling within its jurisdiction;

WHEREAS, The city council has indicated a desire to maintain and modernize the city’s transportation and utilities infrastructure by creating a stable road maintenance funding source, by looking at alternative funding mechanisms, by developing a street maintenance plan, and secure adequate and stable funding with citizen input and community outreach;

WHEREAS, a well maintained street network enhances the livability, property values and economic vitality of the community;

WHEREAS, revenues from existing sources (including the state motor fuel tax and the Oregon Transportation Investment Act), are not adequate to maintain the City of Newberg’s street network to meet these standards;

WHEREAS, it is the intent of the city council to create a utility with all lawful powers to manage, plan, design, construct, maintain, use, and where necessary, alter the transportation system in the City of Newberg by the creation of a funding mechanism that provides the resources necessary to carry out the objectives of a street maintenance program, which is equitable for all citizens and businesses in the City of Newberg;

WHEREAS, all citizens and businesses in the City of Newberg will be served by the program and receive the long-term benefits of such service;

WHEREAS, additional funding is required in order to fund increased maintenance and replacement of the City of Newberg’s street system; and

WHEREAS, the Newberg City Council held public hearings on December 5, 2016, January 3, 2017, and May 2, 2017, regarding the adoption of a transportation utility fee;
THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

Section 1: A new chapter adopting a transportation utility fee (TUF) 3.45, is added to and made a part of Title 3, Revenue and Finance, of the Newberg Municipal Code as set forth in attached Exhibit A to this ordinance.

Section 2: Exhibit B to this ordinance, rate schedule, lists the categories, trip rates and unit charges for developed residential and non-residential land use classes within the corporate limits of the City of Newberg, and shall be effective until modified by future resolution of the Council. Section 3.35.080 of attached Exhibit A, outlines the methodology to calculate, collect and adjust the rates and charges outlined in Exhibit B.

Section 3: The city manager is the delegated authority to implement the TUF created by this title when administratively feasible, but not sooner than July 1, 2017

➢ EFFECTIVE DATE of this ordinance is 30 days after the adoption date, which is: June 2, 2017.

ADOPTED by the City Council of the City of Newberg, Oregon, this 2nd day of May, 2017, by the following votes: AYE: NAY: ABSENT: ABSTAIN:

_______________________________
Sue Ryan, City Recorder

ATTEST by the Mayor this 5th day of May, 2017.

__________________________
Bob Andrews, Mayor
Chapter 3.45 Transportation Utility Fee

Sections:
3.45.010 Purpose.
3.45.020 Definitions.
3.45.030 Administration.
3.45.040 Street Fund.
3.45.050 Fee imposed.
3.45.060 Prioritization of improvements.
3.45.070 Annual street maintenance program report.
3.45.080 Fee determination, adjustments and termination.
3.45.090 Mixed use and related properties.
3.45.100 Implementation rules.
3.45.110 Billing and collection.
3.45.120 Commencement of charges.
3.45.130 Waiver of fees.
3.45.140 Appeals.
3.45.150 Inspection of developments.
3.45.160 Severability.

3.45.010 Purpose.
A transportation utility fee (TUF) is created to operate and administer the pavement system maintenance and capital improvement programs. This program will manage, plan, design, construct, preserve and maintain the street pavement system in the City of Newberg, excepting county roads and state highways within the city limits. This includes but is not limited to, patching, crack sealing, fog sealing, slurry sealing, chip sealing, grinding, inlaying, overlaying and reconstructing public streets and ADA improvements within the rights-of-way.

The TUF is a fee based on the direct and indirect use of or benefit derived from the use of public transportation facilities and is reasonably related to the cost of providing these services. For purposes of ORS Volume 8 (Revenue and Taxation), the Transportation Utility Fee is not intended to be a tax on property or a property owner as a direct consequence of ownership, but instead is a fee or charge not subject to the limits of Section 11(b), Article XI, of the Oregon Constitution.

3.45.020 Definitions.
For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“City manager” means the city manager or person designated or appointed by the city manager to perform functions or tasks under this chapter.

“City street or street” means a public street, alley and/or right-of-way within the city that is subject to the authority or control of the city.

“Class” means the billing group of similar trip generating uses that the individual categories are assigned.
“Developed property or developed use” means 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, commercial agricultural, open space, parks, and outside storage.

“Gross square footage” means the calculation of the area of all structures and stories of structures located on a parcel or lot, measured along the exterior walls of the structures. This includes enclosed courtyards and stairwells, but does not include fences and parking areas that are not enclosed within a structure.


“Mixed-use property” means a developed multi-use and/or multi-tenant property with common or separate utility accounts for the individual uses on the property or where condominium ownership establishes common and separate ownership with the same parcel.

“Multi-family residential property” means residential property with more than three separate living units or spaces such as apartment complexes.

“Non-residential property” means a business, commercial, industrial, institutional or nonprofit use of real property that is not used primarily for personal or domestic accommodation.

“Parcel” means a unit of land that is created by a partitioning of land.

“PROWAG” means the Public Right-of-Way Accessibility Guideline as published by the United States Access Board. These guidelines cover pedestrian access to sidewalks and streets, including crosswalks, curb ramps, street furnishings, pedestrian signals, parking and other components of public rights-of-way.

“Residential property” means a use of real property primarily for personal or domestic accommodation, including single-family and multi-family residential property, but not including hotels, motels and other commercial establishments that provide temporary shelter.

“Responsible party” means the person or persons who by occupancy or by contractual arrangement are responsible to pay for utility and other services provided to a developed property or developed use. The person(s) paying the municipal services statement for the developed property or developed use shall be deemed the responsible party. For any developed property or developed use not otherwise required to pay a municipal services statement, “responsible party” shall mean the property owner.

“Single-family residential” means residential real property including single-family detached homes, duplexes and triplexes.

“Trip generation” means the average number of daily vehicle trips as determined by reference to the most recently published edition of the manual, Trip Generation, published by the Institute of Transportation Engineers (ITE; ITE manual).

“Unit rate” means the dollar amount charged per adjusted average daily trip. There shall be a unit rate applied to residential land uses identified as the residential unit rate, and a unit rate applied to all other land uses, identified as the non-residential unit rate.

“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 developed property.
“Vacant” means that the entire developed property building, or unit has no occupant for more than 30 continuous days; when the property use is suspended for a seasonal closure lasting more than 30 days; or property remodel, repair, or reconstruction. An unoccupied portion of a developed property having no separate water meter does not qualify under this definition as vacant.

“Waiver” means partial or full waiving of TUF.

3.45.030 Administration.
A. Authority and Effective Date. The city manager is the delegated authority to implement the TUF created by this title when administratively feasible, but not sooner than July 1, 2017. The city manager may interpret all terms, provisions and requirements of this chapter and determine the appropriate TUF category. A property owner desiring an interpretation or other examination of the TUF category must submit a written application to the city manager. The application must provide sufficient detail to allow an interpretation. The city manager may require additional information, including an engineering study prepared by a licensed professional engineer using ITE manual methodology.

B. Categories of Use. The city manager will establish the assignment of categories of use subject to appeal to the city council.

C. Decisions. Following implementation of the TUF program, within 30 days of the submission of an application with the required information, the city manager will make a final decision on the application. The decision will be written and include findings of fact and conclusions based upon applicable criteria. A copy of the decision will be mailed to the applicant. The city manager will maintain a file containing all decisions. Except as provided under subsection (2) below, decisions of the city manager are final.

1. Categories. If a city manager decision affects the trip generation rate and/or category of the developed property for which an interpretation is requested, the city will assign the proper category to the developed property. An appropriate TUF category will be assigned and applied to the developed property. No back charges or refunds will be made.

2. Appeal. The decision of the city manager under this subsection may be appealed to the city council in accordance with section 3.45.140.

D. Programs. The city manager will develop and maintain programs for the maintenance of city transportation facilities and capital improvement programs to upgrade substandard facilities to current engineering standards for the safety and welfare of the community. Said program is subject to the city budget committee review and city council approval for the allocation and expenditure of budget resources for the transportation facility improvement and maintenance.

E. Fees. The city manager is responsible for the collection of fees under this chapter.

3.45.040 City street fund.
A. All funds collected under this chapter will be deposited into the city street fund. If the TUF collected are insufficient for the intended purpose, the city council may allocate other non-dedicated city funds to pay such costs. All amounts in the street fund may be invested in accordance with state law. Earnings from such investments will be also credited to the street fund.

B. The administration, maintenance and operations expenditures from the city street fund need not relate
to the real property from which the TUF is collected. The TUF may not be used for other city purposes. TUF revenues will be used solely to pay items as noted in 3.45.010.

3.45.050 Fee imposed.
A. A transportation utility fee is imposed upon the owners of all developed property within the corporate limits of the City of Newberg.

B. Property owners with specific activities and uses of property that result in extraordinary wear and tear or structural damage to a city transportation facility may be assessed a special damage assessment fee, which is determined by the city manager on a case by case basis.

C. The TUF may be paid by the owner, occupant or anyone designated by the owner or occupant provided that person is listed as the responsible party on the city utility accounts system.

3.45.060 Prioritization of improvements.
A maximum of seventy percent of the annual revenue will be allocated for maintaining streets that have been determined to be in fair to good condition, with a pavement condition index (PCI) of 60 to 100, as determined by standard engineering practices. A minimum of thirty percent of the annual revenue will be allocated to restoration or reconstruction of residential streets with a pavement condition index (PCI) below 60.

3.45.070 Annual street maintenance program report.
Each year the public works department shall prepare and present to the city council the “Annual Street Maintenance Program Report.” This 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, a report on the previous year’s projects, and workload impacts and overall program progress. The report shall include revenues received relative to revenue projections, project cost inflation trends and any other developments that impact the adequacy of the program funds to meet program goals.

3.45.080 Fee determination, adjustments and terminations.
A. The TUF will be calculated as a monthly service charge and collected from owners or occupants of developed property in a manner similar to the collection of city water or sewer fees. Fees need not be invoiced monthly but will not be invoiced for intervals longer than three months.

B. Adjustment or termination of the TUF will be approved by city council resolution. The TUF may be modified biennially based on one or more of the following factors:

1. Cost of service adjustment. A rate adjustment reflecting a change in the amount of revenue required to maintain the city transportation pavement facilities defined by this chapter net of other city revenue that may be pledged for that purpose.

2. Inflationary index adjustment. A rate adjustment reflecting the changes in the cost of labor, materials and other services linked to changes to broader economic conditions as measured by the Oregon Department of Transportation Four-Quarter Moving Average Construction Cost Index.

3. New revenue adjustment. An adjustment based on revenue received from outside sources (not locally generated) to provide street maintenance.

4. Road condition assessments. Assessments that forecast reduced costs to maintain the condition of
the road system.

5. Fee termination. The fee can be terminated by the city council if it is determined that the funding is no longer needed to maintain the street system.

C. TUF program review. The adjustment to the TUF determined by Section 3.45.080(B) will not be automatic or pre-determined. The citizen rate review committee will review the TUF program on a biennial basis as defined in Newberg Municipal Code sections 2.15.120 through 2.15.210 and recommend any modification to the amount of TUF collected to the city council.

D. Establishment of Service Fees. Monthly service fees will be established for the following types and classes of developed property or developed use:

1. Residential properties.
   
   a. Single family. Includes developed property with one, two, or three separate dwelling units. Each attached or separate dwelling unit is subject to the TUF for this class.
   
   b. Multi-family. Includes developed property with four or more attached dwellings, condominiums, and town homes including accessory dwelling units. Each dwelling is subject to the TUF for this class.
   
   c. Mobile homes. Property located in parks as defined in ORS 446.003(23).

2. Non-residential properties.
   
   a. Class 1. Those categories generating fewer than eighteen (18) average daily trips per 1000 gross square feet of developed area.
   
   b. Class 2. Those categories generating from eighteen (18) to thirty (30) average daily trips per 1000 gross square feet of developed area.
   
   c. Class 3. Those categories generating more than thirty (30) to fifty-one (51) average daily trips per 1000 gross square feet of developed area.
   
   d. Class 4. Those categories generating more than fifty-one (51) to eighty (80) average daily trips per 1000 gross square feet of developed area.
   
   e. Class 5. Those use categories generating more than eighty (80) average daily trips per 1000 gross square feet of developed area.
   
   f. Class 6. Categories with trip generating characteristics that either are not documented in the ITE manual or have special circumstances that merit separate fee calculation. Examples include: gas stations, hospitals, universities, schools, parks, assisted living centers, fairgrounds, golf courses, and aviation facilities.

3. Non-residential class distribution. The trip ranges described for classes 1 through 5 are established equally, as close as possible by the following steps:
   
   a. Sort all non-class 6 categories from lowest to highest daily trip generation.
b. Set the break line between each class as close as possible to equally distribute the total trips generated by classes 1 through 5.

E. Fee Minimum. The minimum monthly fee for non-residential accounts shall be equal to the fee imposed for a single family residential home.

3.45.090 Mixed-use and related properties.
A. Special standards may apply for determining the appropriate customer category where developed properties share or utilize common transportation facilities such as walkways, driveways or parking areas. Except as provided in this section, no TUF will be apportioned among mixed-use or related developments or combinations of mixed-use and related developments.

B. Mixed-uses with multiple use categories that share a single water meter will be assessed a total combined TUF based on the sum of each use category fee. Although these standards generally apply to non-residential uses, they also will be used to determine the appropriate customer category in properties with mixed uses of residential and non-residential developments.

C. The following procedure may be used to apportion TUF fees within mixed-use properties for the separate uses:

1. Residential uses. Each equivalent residential unit will be assessed a TUF in accordance with the applicable residential rate for that unit.

2. Non-residential uses. For developed properties with at least one common boundary where the uses would be assigned separate categories if the uses did not share common driveways, walkways or parking areas, and where the property design reduces the number of trip destinations that normally would be assigned to that use, a combined TUF may be established. Related properties may have more than a single water meter and sewer utility service established, and the combined TUF will be apportioned by the city manager between uses as follows:

   a. Establish a collective trip assignment for the mixed-uses based on the lowest applicable trip generation factors that could be applied to the subject properties. The assignment may include individual trip calculations for some uses and combined trip calculations for other uses.

   b. Establish the appropriate customer category and related cost-per-trip rate for that category and apply that rate to the collective trip assignment.

   c. Establish an allocation of the combined fee amount to the water meter/sewer accounts that serve the collective properties using one or more of the following methods:

      i. Building area square footage.
      ii. ITE manual daily trip generation factors.
      iii. Internal traffic counts.
      iv. Other factors deemed suitable for apportioning the fee commensurate with use.

3.45.100 Implementation rules.
A. The following rules apply to the application of this chapter and the TUF:
1. No fee parking lots are not subject to the TUF as they do not themselves generate traffic. Parking
lots that charge for parking (such as a storage or sales lot that charges a fee) are subject to the TUF.

2. Publicly owned undeveloped park land, open spaces and greenways are not subject to the TUF unless
there is off-street parking for users.

3. Areas for commercial farming or forestry operations are subject to the TUF as a class 6 trip
generation. Where there is more than one developed property on the site, the category will be
determined based on Section 3.45.090, mixed-use and related properties.

4. Railroad and public rights-of-way are not subject to the TUF. However, railroad property containing
structures, such as maintenance areas, non-rolling storage areas and property used for the transfer of rail
transported goods to non-rail transport are subject to the TUF.

5. Categories within the ITE manual will be determined by reference to weekday average trip
generation rates.

6. For non-residential developed properties with an ITE manual analysis by acreage rather than square
footage, the city manager will convert the ITE manual trip generation rates to a square footage
calculation and assign the appropriate TUF. If conversion to a square footage calculation is not practical,
the city manager may assign a special trip generation rate for that developed property.

7. Developed property structure area will be multiplied by the number of stories, designed for
development use.

8. The TUF applies to all developed property, including developed property owned by local, state, and
federal governments, non-profit organizations and to all developed properties that are not subject to ad
valorem property tax levies.

9. A developed property that undergoes a change in use must continue to pay the existing TUF. After
receiving information about the change in use, the city manager may determine that a different category
applies to the developed property. Thereafter, the city will charge and collect the TUF that applies to the
revised designation. The city will charge and collect the TUF in accordance with correct information
concerning developed properties.

10. The ITE trip rate for public Elementary (code #520), Middle (code #522), and High (code #530)
Schools, shall be reduced by 50%, which results in a reduction of the rate per student per month by ½.

B. The city manager will review the operation of this chapter and may make appropriate recommendations for
amendments to this chapter or the adoption of administrative rules by city council resolution. Administrative
rules may provide guidance to property owners concerning the application and interpretation of the terms of
this chapter. Rules adopted by the city council will have full force and effect, unless clearly inconsistent with
this chapter.

3.45.110 Billing and Collection.
A. The TUF will be billed and collected with the monthly municipal service statement for developed
properties using city water and sewer, and may be billed and collected separately for developed properties not
utilizing city water and sewer as follows:
1. For a developed residential property and subject to water and sewer utility charges, the TUF bill will be sent to the responsible party.

2. For a developed non-residential property that is subject to water and sewer utility charges, a common TUF bill will be sent to the responsible party. See subsection 3.45.090 for special rate calculation procedures related to mixed-use properties for exceptions to this rule.

3. For a developed residential or non-residential property that is not subject to water and sewer utility charges, the TUF bill will be sent to the property owner.

4. All TUF bills become due and payable per date noted on the bill.

5. If payments received from city utility billings are inadequate to satisfy in full all balances, credit will be applied proportionately between funds, unless directed otherwise by the city manager.

3.45.120 Commencement of charges and collection
A. For new construction, service charges will commence with the issuance of a building permit or installation of a water meter, whichever comes first. Developed real property annexed to the city shall begin paying the fee the first month following annexation, regardless of whether or not the parcel is connected to city water or sewer.

B. For existing structures, service charges will commence upon the effective date noted in Section 3.45.030.A.

3.45.130 Waiver of Fees.
A. Applying for a waiver. Any person desiring a waiver must submit an application on city forms and be submitted not less than 14 days prior to the billing date of the period for which the waiver will be applied. Persons requesting a waiver must document that they meet the criteria and pay any associated application fee. Only one discount or waiver will be granted at a time for individual properties. Waivers will only be applied prospectively; no retroactive waiver or refund will be issued. Except as set forth below, waivers expire after 12 monthly billing cycles. Those who qualify may reapply within the 60 days prior to the expiration of the waiver.

B. Vacancy Waiver.

1. When any developed property within the city becomes vacant, as defined in section 3.45.020, and water service remains in effect, upon written application of the property owner, the TUF will be billed at the lowest available rate upon the approval of the city manager.

2. When any developed property within the city becomes vacant, as defined in section 3.45.020, and water service is discontinued, upon written application of the property owner, the TUF will not be billed if all current and outstanding water, sanitary sewer, storm sewer and transportation utility fee charges have been paid in full.

3. The city manager is authorized to investigate any developed property for which a fee reduction or waiver application is submitted to verify any of the information contained in the application. The city manager is also authorized to develop and use a standard form of application for fee reduction or waiver.
The form will provide space for verification of the information and the person signing the form must affirm under penalty of perjury the accuracy of the information provided.

C. Hardship Waiver.

1. The responsible party may qualify for a waiver if the person meets the income criteria, which is defined as a household earning less than 80 percent of the HUD median household income in Newberg.

2. The principal owner of a multi-family residential property may qualify for a waiver if the property is identified as a low income qualified housing identified by the Housing Authority of Yamhill County.

D. Unemployment waiver. An unemployment waiver provides a six-month waiver to residents who have had the responsible party recently laid off from their job. Evidence of receipt of current unemployment benefits and proof of residency at the service address is required. Residents can reapply for the waiver if still receiving unemployment benefits after six months.

E. Motor vehicle discount. A discount can be obtained for residential class households in which no one owns a motor vehicle. The discount is good for one full year after the discount is approved or until a vehicle is acquired by the household. Residents must demonstrate that each member of the household of driving age does not have a vehicle. Qualifying residents must reapply each year to receive a waiver for the next 12 months.

F. The amount of transportation utility hardship waivers will be as follows:

1. Vacancy – 100% waiver
2. Hardship – 50% waiver
3. Unemployment – 50% waiver
4. Motor Vehicle Discount -50% waiver

3.45.140 Appeals.
A. Section 3.45.030, Administration, outlines the process to establish and adjust categories. Any responsible party who disputes any interpretation by the city manager regarding the category assigned to the developed property or developed use, may appeal that interpretation under this section. The appeal will be denied unless it is made within the time allowed, as stated below, and follows the process provided by this section. Appeals that result in changes in the TUF become effective with the next billing cycle.

B. A responsible party who disputes the assigned category may submit a written appeal to the city manager within fifteen business days from the date of the city manager’s decision. The appeal must specify the basis for appeal and include an engineering study prepared by a licensed professional engineer using ITE manual methodology, excepting that the pass-by and diverted trip analyses do not apply to this TUF program. Appeals are limited to the facts relating to the developed property improvements and area, traffic generations rates, category of use, and other factors material to the calculation of the TUF.

C. The city manager will place the appeal on a city council meeting agenda and provide the appellant with at least ten business days’ written notice of the meeting at which the appeal will be heard. The city council will conduct a hearing and determine whether there is substantial evidence in the record to support the decision of the city manager. The city council may continue the hearing to gather additional information. The city council will make a tentative oral decision and later adopt a final written decision with appropriate findings. The
decision of the city council will be limited to the facts cited in 3.45.140.B above. The city council will base their decision on the relevant testimony and facts provided, but there will be no refund of TUF’s previously paid. All city council decisions are final.

3.45.150 Inspection of Developments.
The city manager is authorized to enter upon private property for purposes of conducting any studies or collecting information bearing upon the determination of the assignment of the appropriate TUF under this chapter.

3.45.160 Severability.
If any provision of this ordinance or its application to any person or circumstances is held to be unconstitutional or invalid for any reason, the remainder of this ordinance or the application of the provisions to other persons or circumstances shall not be affected.
### Exhibit B – Ordinance 2016-2811

<table>
<thead>
<tr>
<th>ITE</th>
<th>Description</th>
<th>Trip Rate</th>
<th>Examples/Units</th>
<th>Rate: $/Unit/Month</th>
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<tr>
<td></td>
<td><strong>Residential Land Uses</strong></td>
<td></td>
<td></td>
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<tr>
<td>210</td>
<td>Single-Family Detached Housing</td>
<td>Refer to ITE Manual for current residential trip rates</td>
<td>Residential Home, per Dwelling Unit (DU)</td>
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<tr>
<td>220/230</td>
<td>Multi-Family</td>
<td></td>
<td>Apartment Sites, Per DU</td>
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<tr>
<td>240</td>
<td>Mobile Home</td>
<td></td>
<td>Mobile Home Park, Per DU</td>
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<td></td>
<td><strong>Non-Residential Land Uses</strong></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Class 1 Less than 18 Manufacturing</td>
<td></td>
<td>Manufacturing</td>
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<tr>
<td></td>
<td>Class 2 From 18 to 30 Office</td>
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<td>Office</td>
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<tr>
<td></td>
<td>Class 3 More than 30 to 51 Auto Repair, Clinic</td>
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<td>Auto Repair, Clinic</td>
<td>$ 21.35</td>
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<tr>
<td></td>
<td>Class 4 More than 51 to 80 Sit Down Restaurant</td>
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<td>Sit Down Restaurant</td>
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<tr>
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<td>Class 5 More than 80 Convenience Store, Drive Thru</td>
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<td><strong>Class 6 - Others</strong></td>
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<td>251</td>
<td>Senior Adult Housing Attached</td>
<td>Refer to ITE Manual for current Class 6 trip rates</td>
<td>Per DU</td>
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<td>Congregate Care</td>
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<td>Assisted Living</td>
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<td>255</td>
<td>Continued Care Retirement Community</td>
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<td>Per Unit</td>
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<td>310</td>
<td>Hotel</td>
<td></td>
<td>Per Room</td>
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<tr>
<td>320</td>
<td>Motel</td>
<td></td>
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<td>411</td>
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<td>Per Acre</td>
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<tr>
<td>412</td>
<td>County Park, Farmland, Commercial Agriculture</td>
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<td>Golf Course</td>
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<td>Per Hole</td>
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<td>520</td>
<td>*Public Elementary School</td>
<td></td>
<td>Per Student</td>
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<tr>
<td>522</td>
<td>*Public Middle/Junior High School</td>
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<td>Per Student</td>
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<td>530</td>
<td>*Public High School</td>
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<td>540</td>
<td>Junior/Community College</td>
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<td>Per Student</td>
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<td>University/College</td>
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<td>Per Student</td>
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<td>Quick Lubrication Veh. Shop</td>
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<td>Per Service Position</td>
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<td>Gas/serve Station</td>
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<td>Per Fueling Position</td>
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<tr>
<td>945</td>
<td>Gas/Serv. Station with Conv. Market</td>
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<td>Per Fueling Position</td>
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</table>

*Refer to Exhibit A, Section 3.45.100.A.10
Introductions/Meeting Purpose/Public Comments

The purpose of the meeting was to review the draft ordinance that Council has seen and have some follow-up discussion on several items in the ordinance. Council had several questions and requested some additional discussion and feedback from the ad-hoc committee. The committee will go through several topics and provide feedback to council at this meeting.

There were no public comments at this time.

Review of Staff Work and Council Discussion

Since the last Ad-Hoc meeting, council has had two readings of the draft ordinance. There was discussion and questions at the council meetings, as well as public testimony. Many are curious about potential fee numbers and when a fee might be implemented. The likely start time would be July 1 – to match up with fiscal years and budgeting cycles for many agencies/organizations. The Council minutes for the last reading had been distributed to the committee. If adopted, there will need to be clear public information and web updates related to the fee amounts and how it is calculated or structured. The city assumes there is another phase of funding for roads, such as a gas tax, but that is not being moved forward to voters this year. Everyone agrees that this alone will not fix Newberg roads.

Review of Draft Ordinance with Committee Discussion on specific issues for council

The group discussed the following topics and provided feedback for Council. This has been organized in order of topic, not discussion order that often switched between topics before returning to the topic being
reviewed and discussed.

Funding split—Council had agreed with the ad-hoc committee’s earlier recommendation of using a split that was based on collecting 35% of funds from residences. The data lends itself to this split and there was a sense that residents should not subsidize businesses. More trips are based on business and commercial activities. The group reviewed the differences in the residential classes. Single family, multi-family (condos, apts.), and mobile homes have different classes.

Funding Model—The ad-hoc committee had recommended the “variable fee within class” methodology for calculating fees. Council had reviewed all the models; council members and some community members still wanted to know more about the “trip generation” model methodology. The group discussed the models further. The lower the class means the lower the assumption of trip generation, so trips are still factored in. Some said this was not clear at the council reading. They thought it should be made clear that the classes are based on data about trips for the classes. The trip generation model is based more precisely on trips by each site and would take considerably more FTE to administer. Trip generation would be able to provide more variation in rates, but would still need to plan for similar revenue. The main drawback for the trip generation model was labor needed to administer. There are 584 properties that are non-residential. With the trip generation model, there could be 584 different rates. The “variable fee within class” model was still recommended by the ad-hoc committee.

Heavy Vehicle Clause—The group discussed the impact heavy vehicles have on roads and if or how that could be factored into the fees. The topic had been raised at Council. The fee classes are based on ITE codes, so they do account for more/frequency of trips. Classes do not cover the load size. Everyone agreed that truck weight affected roads, but that it didn’t need to be part of the transportation utility fee. There was some general agreement that it would be too complicated to calculate. Over time, truck routes should be repaired/rehabilitated to carry heavy loads, with thicker base rock under the pavement. The group agreed that this process did not need to include a heavy vehicle clause, but another city process could examine truck routes and making sure road classifications were up to date so that they were scheduled for appropriate repairs. The group recommended that a heavy vehicle clause not be included in a transportation utility fee, but they felt the city should still continue separate discussions related to heavy loads on roads and truck routes. A construction impact fee or loading dock fees were ideas to address this, but could be discussed separate from any TUF.

Prioritization of Improvements—Council had discussed concerns about the funding program and the fees not being equitable if roads in poor condition could not be fixed. The majority of the poor roads are concentrated in the oldest area of the city. The computer model that prioritizes road projects each year chooses a mix of maintenance vs. rebuild, with more emphasis on maintaining good road and not letting the PCI slip lower. However, geographic equity had been discussed at the ad-hoc committee and again at the council. Both groups had recommended that there should be some discretion in being able to make sure there are improvements being made throughout the city. The ad-hoc committee discussed what would happen if a prioritization clause was used. This would mean pushing some poor roads up in the schedule. Since funding would generally be the same over the next years, this might push a 10-12 year program into a 15 year program. There was some discussion about borrowing money in advance to be able to get to some of the worst roads earlier. Borrowing may cost a little more, but it is possible. Borrowing a larger amount up front via a revenue bond allow the City to move forward with a loan sooner. There may also be an ODOT loan that could work – this loan would not promise the full faith of the city. Someone mentioned that inflation and interest also needed to be factored. Any loan would need to be guaranteed through future revenue of the transportation utility fee program, so the city needs to know that the funds are there. There was agreement that
everyone should benefit from paying a fee – either by seeing roads repaired in their neighborhood or on routes to school or work. The ad-hoc committee would want neighbors to see the road repairs and know that the program is working. The group agreed on a recommendation that would assure there would be work scheduled in all areas of the city. They agreed that a prioritization clause should specify that no less than 30% of annual funds should be spent on roads in bad and failed condition in each year.

**Waivers**—Council did not need any additional feedback on waivers included in the draft ordinance. The ad-hoc committee reviewed what had been included and asked some clarification questions. If properties are vacant (not generating trips), they are eligible for waiver. Income hardship waivers are eligible for a 50% waiver. Unemployment status is eligible for a 6-month, 50% waiver. Non-vehicle owners are eligible for a 50% waiver; the remaining 50% accounts for trips generated by the residence – mail, service calls, garbage truck, etc. The effect of all the waivers is anticipated to be a loss of approximately $32K. There were some questions about fees on undeveloped properties. An undeveloped property would likely fall under a lower class, depending on what it was used for, and already have a lower rate. This was already captured in the model.

**Caps/Maximum Fees**—Council had asked for additional feedback on fee caps that could put a maximum fee in place. There are 584 non-residential properties. Tony Roos reviewed minimum and maximum sample bills in the various classes with no cap or maximum fees. Committee members asked about specific properties and Tony showed examples of Newberg properties that would pay the most in fees on one property. They also discussed the effect of having multiple properties. A business in a lower class with multiple properties may pay a combined high fee than one larger property higher class if caps were in place. If a cap of $600 was in place, there are about a dozen parcels that benefit by the reduced fee. Fred Meyer is a main example that was cited. With a cap, they save considerably. The committee reviewed tables and fees for different properties. The $600 fee cap seemed too simple and didn’t benefit those that fell just below, i.e. a smaller business with fewer trips being charged $575/month would not benefit by a $600 cap for a much larger property. This would also reduce overall revenue. When a cap of $600 is used, the revenue loss is about $150K. A $1000 cap would benefit about six parcels and show revenue loss of about $100K. The committee also discussed how a $600 cap could benefit non-profits, such as the school district or CPRD. With multiple properties, the total fees add up. This is discussed in next topic section. The group agreed that the caps needed more discussion. There was a request to see some variation in the cap, i.e. a cap based on a percentage over a certain amount. Tony will do more work on this for their review and discussion. Tony could also look at caps that other communities may use. If caps were used, the community would want to know who was benefitting. The group would have another meeting to discuss a different methodology for caps.

**Combining non-profit properties**—Council had asked for additional feedbacks on combining properties to reduce bills. The school district had given testimony at the council meeting about the fees. They believed they had responsibility in helping maintain the roads that their buses use, but wanted to make sure the fee could work within their budget. With fees applied to each school site, the combined fee could impact their budget, which comes from public taxes. The group discussed other non-profits, such as George Fox or churches. The ITE codes put churches in a classification that has a lower fee. George Fox and the public school district both had methodology that factored number of students. Committee members recognized that George Fox had more ability to pay through internal fees or tuition than the tax-based public school district. Tony reviewed the application of a $600 cap on schools if the multiple public school properties were combined by type – high school, middle school, and elementary or into just one group. With a cap, the school district would save in monthly fees. The same approach was also taken on all the CPRD properties or all City properties. The group agreed that looking at combining for these groups might make sense. The discussion of caps was tabled until the next meeting, so this would need to be included with that continued discussion.
**Targeted revenue**—Council had understood the target revenue number of $2.5M, with about half coming from a transportation utility fee. Caps and waivers can reduce the overall revenue collected, meaning the target won’t be collected and the program takes longer to improve roads. The ad-hoc committee discussed whether the target should be raised to accommodate caps and waivers. If that was done, the remaining parcels and residents pay more to subsidize the caps/waivers. Overt time, new developments and residents would add to the revenue. The group will discuss again at the next meeting.

**Next steps**
The ad-hoc committee agreed to meet again to continue their discussion on caps, specifically a method based on percentage above a cap that may be more equitable. They would also follow-up on the combining of non-profit organization properties, like schools and parks. They would also give feedback on target revenue, which is affected by these reductions in fees. There was also a confirmation that the Council could formalize adjustments to the ordinance in the future.

**Meeting Adjourned**
DRAFT Meeting Summary

Committee Members Present:
Bob Andrews, Mayor
E.C. Bell, Chehalem Valley Presbyterian Church
Fred Gregory, GFU
Dave Hampton, Friendsview Retirement Comm.
Patrick Johnson, Council
Greg McKinley, A-DEC
Dave Parker, Newberg School District
Jack Reardon, Citizen
Matt Zook, City of Newberg Finance

Committee Members not Present:
Carr Biggerstaff, Chehalem Valley Chamber
Don Clements, CPRD
Maureen Rogers, Chapters
Bill Rourke, Citizen

Public Present:
Stephen McKinney, City Council
Mark Grier

Staff and Consultant Team Present:
Joe Hannan, City of Newberg
Jay Harris, City of Newberg
Kristen Kibler, JLA
Tony Roos, Kittelson
Truman Stone, City of Newberg

Introductions/Meeting Purpose/Public Comments
The purpose of the meeting was to continue discussion from the February meeting on fee caps, combining like uses (for school district, CPRD, etc.), and the effect of these reductions on target revenue. The ad-hoc committee feedback would be incorporated into the third Council reading of the ordinance in April.
The group reviewed the direction of the ordinance from their last meeting.

- Funding split – confirmed 35% residential, 65% non-residential
- Variable by class was confirmed as the rate model
- Heavy vehicle clause would not be included in fee ordinance, but recommended to Council/staff for future action
- Prioritization clause would be included to assure that “no less than 30% of funding” would be allocated to poor condition roads. Mayor Andrews stressed the importance of this wording to make sure that at least 30% was always spent on poorest condition roads. More could be spent, but “no less than 30%” of the annual funding.
- Fee waivers were appropriate for low income residents, vacancies, unemployment, and residences with no vehicles.

The group would focus on the remaining topics: Fee caps, combining like uses for non-profit parcels, and target revenue (the number that was initially used to calculate fees)
There were no public comments at this time.

Review of Draft Ordinance with Committee Discussion on specific issues for council (continued from last meeting with updated information)
This discussion was a continuation from the previous meeting with additional information on the impact specifically of fee caps.

**Fee Caps**—The group had general discussion on fee caps, public perception, and impact of fee caps. They looked at different methods for applying discount caps, specifically caps at $500, 600, or $1000 with an additional percentage added in based on the square footage. This was suggested at the last meeting to address businesses in the same classes that fell just below a flat cap and those that benefit greatly with a flat cap, i.e. there should be some noticeable fee difference between businesses in the same class that would pay $575 vs a business paying a reduced cap of $600 (from a much higher uncapped fee). They looked up several businesses and compared monthly fees using the table Tony Roos had updated with the discount cap methodology. The following highlights discussion items on fee caps.

- Why would we reduce the revenue by offering caps? If the goal is to address road conditions, caps would reduce the ability to raise revenue.
- Why would we offer caps? There is a desire to be friendly to business and businesses may need to pass along fees to customers, many of which are likely Newberg residents. There are about a dozen businesses that pay quite large monthly fees.
- Will the residents end up paying for the cost of any fees? If there is a cap on some parcels, and the revenue target is increased to make up for the loss of capped fees, the fees would get redistributed for everyone and increase slightly for those not capped. If the revenue target remains the same, there is a revenue loss from the cap.
- Why would some businesses get a break from paying the fee while others do not? The group was concerned about some parcels seeing a large benefit from the cap while others hovered just below the cap limit and saw no reduction of fees. They also discussed businesses that had multiple parcels that may have a combined fee not eligible for a cap.
- Do other cities have caps? Tualatin does not. They started their fee earlier so it is lower and their road never fell into the same condition. Tigard bases fees on parking stalls. This is probably more difficult to administer.

The group discussed the caps throughout the meeting. In the end, they recommended that there be no caps offered. They understood this would be unfavorable to a few businesses, but there was a common sense that there was no fair way to apply caps that didn’t reduce the revenue available for roads or create an increase for others paying their full fees.

**Combining non-profits**—The group discussed whether to combine properties for the school district and parks district. Other consolidation of city buildings would not see any fee reduction, even if caps were in place. Tony Roos had done some additional research on parks trips; there would now be just a negligible difference in the total fee paid by the Chehalem Parks and Recreation District, even if caps were in place. The group agreed that the only non-profit needing some special consideration in how it is grouped is the school district. The group agreed that only the Newberg School District would be combined. The group did not believe any other non-profits or for-profits should be considered for combining parcels when billing. This would be more complicated to administer. Since it was unique, the Newberg School District would be in its own section of the ordinance. It would need to be consolidated for billing purposes, so would need separate language.

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*City of Newberg: ORDINANCE NO. 2016-2811*
**Target Revenue**—The group knew that caps and waivers would mean reduced revenue. They want to see a fund that is able to accomplish pavement maintenance. They looked at the impact on fees for all the classes if caps were in place. Many felt strongly that the monthly rates should not get higher by increasing the target to capture loss in revenue. Many felt that the residential rates should not go above $5/month on municipal services bills. This was another factor in not recommending caps. They recommended the target revenue remain at $1.2M knowing the waivers would still reduce the actual revenue. They also recognized that over time, new businesses and residents would add to the revenue.

**Summary of Recommendations from this meeting:**
- Keep the target revenue at $1.2M to avoid increasing rates for those not receiving waivers
- Do not offer caps to be fair among the different non-residential properties
- Combine school district properties in its own section of the ordinance, since it will be calculated differently with combined parcels of high, middle, and elementary schools.

**Next steps**
Staff will make adjustments in the draft ordinance prior to the next council reading scheduled in April. Ad-hoc committee members are encouraged to attend and testify. If approved, the transportation utility fee could take effect as early as July 1. There will need to be information about the fee amounts for all users and the pavement maintenance.

**Meeting Adjourned**
Appleton City Council approves change to special assessments

By:

WeAreGreenBay.com  ()
Updated: Aug 06, 2014 11:14 PM CDT

APPLETON, Wisconsin - APPLETON, Wis. (WFRV) - Property owners concerned about special assessments received some good news Wednesday night.

The common council voted unanimously to change the utility portion for city-issued special assessments.

Property owners will no longer be assessed for sewer mains running down the middle of the street only for laterals.

The move will affect the city's budget, but council members say it's the right thing to do.

"In the long run it may lead us to reconsidering rates," Alderman Kyle Lobner says, "but it's not a big change in the grand scheme, and we think it's worth it to avoid having to hit people with this major bill when their assessments happen."

The highly-debated special assessment issue regarding street reconstruction and a proposed wheel tax - is up next for the council.
CED PROPERTIES LLC v. CITY OF OSHKOSH

Supreme Court of Wisconsin.
CED PROPERTIES, LLC, Plaintiff-Appellant-Petitioner, v. CITY OF OSHKOSH, Defendant-Respondent.

No. 2016AP474
Decided: April 03, 2018

For the plaintiff-appellant-petitioner, there were briefs filed by Erik S. Olsen, Joseph J. Rolling, Andrew D. Weininger, and Eminent Domain Services, LLC, Madison. There was an oral argument by Erik S. Olsen. For the defendant-respondent, there was a brief filed by Richard J. Carlson and Silton Seifert Carlson, SC, Appleton. There was an oral argument by Richard J. Carlson.

1 CED Properties, LLC (CED) challenges the special assessment imposed by the City of Oshkosh (City) following the reconfiguration of a traditional traffic light intersection into a roundabout. We review the unpublished court of appeals decision, CED Properties, LLC v. City of Oshkosh, No. 2016AP474, unpublished slip op., 373 Wis.2d 767, 2017 WL 218343 (Wis. Ct. App. Jan. 18, 2017), affirming the circuit court’s grant of summary judgment in favor of the City. CED raises two issues: (1) whether the term “special benefits” in Wisconsin’s eminent domain statute has the same meaning in Wisconsin’s special assessments statute, and if so, whether the City’s denial of the existence of any special benefits during the earlier eminent domain proceeding precludes the City from asserting the conferral of special benefits in the later special assessment action; and (2) whether CED raised genuine issues of material fact precluding summary judgment.

We hold that “special benefits” has the same meaning under both statutes. Although the failure to raise the issue of special benefits in an eminent domain action does not necessarily preclude a municipality from later doing so in a special assessment action, a municipality’s admission that special benefits are non-existent in the context of an eminent domain proceeding constitutes relevant evidence in a later challenge to the special assessment.

We further hold the court of appeals erred in concluding CED failed to overcome the presumption of correctness afforded the City’s special assessment and to establish sufficient genuine issues of material fact. The affidavit of CED’s expert raises material factual issues in dispute, including whether the roundabout project conferred a local rather than a general benefit, whether the project conferred any special benefits on CED's property or actually diminished its value, and whether the amount of the special assessment was fair and equitably apportioned among the commercial properties involved as well as proportionate to the benefits accruing to the property. Because we conclude CED overcame any presumption of correctness by presenting competent evidence to the contrary, we reverse the decision of the court of appeals and remand to the circuit court for a trial.

I. BACKGROUND

CED owns property located on the northeast corner of the intersection of United States Highway 45 and State Highway 76. Locally, United States Highway 45 is called Murdock Avenue and State Highway 76 is called Jackson Street. A Taco Bell franchise has operated on the property since 1992.

In January 2008, the City and the Wisconsin Department of Transportation entered into an improvement plan agreement to reconstruct and install a multi-lane roundabout at the Jackson-Murdock
intersection. The reconstruction plan proposed the removal of traffic signals, concrete and asphalt paving, concrete driveway approaches, sidewalk replacement and repair, sanitary and storm sewer laterals, and the improvement of streetscaping and landscaping. The plan required the City to take about six percent of CED's property to ensure enough space to build the roundabout. The City used its power of eminent domain under Wis. Stat. ch. 32 to do so. In April 2012, after lengthy litigation, the City and CED agreed the City would pay CED $180,000 just compensation for the taking. During that litigation, the City filed with the circuit court the appraisal of its expert, Patrick Wagner. According to Wagner's report, the City's partial taking caused CED's property to decrease in value by $38,850, and he testified during his deposition that the taking did not confer any “special benefits” on CED's property under Wis. Stat. § 32.09(3) (2015-16).

¶ 6 In July 2010, the City passed a resolution that levied special assessments upon CED's property and other commercial properties pursuant to its police power under Wis. Stat. § 66.0703(1)(a) to help fund the intersection improvement project. CED challenged the special assessment, but the City argued the challenge was untimely. That dispute ended after this court ruled that CED's appeal of the assessment was timely and its complaint sufficient; we instructed the circuit court to grant summary judgment in favor of CED. See CED Properties, LLC v. City of Oshkosh, 2014 WI 10, 352 Wis. 2d 613, 843 N.W.2d 382 [hereinafter “CED I”].

¶ 7 Following this court's decision in CED I, the City re-assessed CED pursuant to Wis. Stat. § 66.0703(10), imposing a special assessment of $19,486.36 based on CED's frontage along Jackson Street and $20,616.67 based on CED's frontage along Murdock Avenue for a total special assessment of $40,103.03. The City issued a final resolution authorizing the re-assessment and a report describing the special benefits conferred upon CED as: “a substantial increase in accessibility, which includes safer, lower cost, and shorter travel times for customers, deliveries and employees. These special benefits are different in kind than those enjoyed by the public for through traffic.” The City said additional special benefits were conveyed by correcting sidewalk defects in sections contiguous with the property, which “provide[d] a safe corridor for pedestrians to access the site,” and by improving the streetscape, which enhanced the property's overall aesthetics.

¶ 8 The City's report further explained that the project improved the intersection's primary function of moving and carrying traffic (a “community benefit”) as well as the secondary benefit of providing access to traffic flow (a “special benefit” to abutting property owners, like CED). According to the City, this intersection served about 25,000 vehicles each day, with 1,973 (or about 7.9 percent) of those vehicles tied to stops at the Taco Bell on CED's property. The City's analysis indicated that before the roundabout, it took a vehicle 37.9 seconds to travel through the intersection; this was reduced to 10.5 seconds per vehicle after the project.

¶ 9 CED again appealed the special assessment to the circuit court, claiming the project conferred only community or general benefits of better traffic flow and no local or special benefits at all. CED further claimed the assessment was unreasonable because it had no nexus between the linear feet upon which the property was assessed and the alleged benefits conferred.

¶ 10 The City moved for summary judgment. It acknowledged the improvement conferred public benefits, but asserted that the improvement also conferred special benefits assessable against CED, that the resulting assessment was reasonable, and that CED failed to overcome the presumption of correctness afforded the City's assessment.

¶ 11 CED opposed the motion, arguing that because the City conceded “special benefits” did not accrue to CED's property during the Wis. Stat. ch. 32 eminent domain action, the City forfeited the opportunity to assert “special benefits” during the later special assessment appeal. Alternatively, CED argued that even if asserting special benefits during the eminent domain action was not a condition precedent to asserting them during the ch. 66 special assessment action, the improvements were not local in nature, no special benefits accrued, and the assessments' costs were unreasonably apportioned among the abutting property owners. CED also argued that the special assessment violated the equal protection clause of the Wisconsin and United States Constitutions.
In support of its arguments, CED submitted the affidavit and appraisal of its expert witness, James C. Johnson. According to his affidavit, Johnson is a certified general appraiser who was previously employed by the Wisconsin Department of Transportation as an “access specialist.” During his time with that department, he “served on the committee that established the ‘Special Benefits Criteria’ which were implemented and used by the [department] for assessing whether benefits were general benefits or special benefits.” He cites to cases on which he acted as an “access expert . on the issue of reasonable access.” He served as the department’s “litigation coordinator,” training the department’s consultant appraisers “on evaluating general vs. special benefits.” “[A]ll requests for changes in the amount of compensation due to landowners in the southwest region were reviewed by [Johnson] . includ[ing] consideration of any access issues, general benefits, and special benefits.”

Having personally inspected CED’s property, Johnson believed that “absolutely no benefit to [CED's property], let alone a special benefit” arose from any of the improvements. In fact, Johnson opined that the roundabout was a detriment to CED’s property, explaining: “Retail fast food sites like the subject are more valuable when they are on controlled intersections” since “[g]reater time at the intersection is desirable for the subject because the subject is an impulse stop.” According to Johnson’s appraisal, as of October 29, 2009, the roundabout project caused the fair market value of CED’s property to decrease $251,370.

CED also submitted an affidavit from its attorney, attaching, as material here, Wagner’s appraisal and the page from Wagner’s deposition where he said no special benefit accrued to CED’s property in the eminent domain action. CED asserted in its brief opposing summary judgment that Wagner’s appraisal and testimony precluded the City from later specially assessing CED for “special benefits.”

The circuit court granted the City’s motion for summary judgment. It did not address whether genuine issues of fact remained regarding the existence of a special benefit, whether the benefit was local or general, or whether the assessment was reasonable.

CED appealed and the court of appeals affirmed, with Judge Mark Gundrum dissenting. CED Properties, LLC v. City of Oshkosh, No. 2016AP474, unpublished slip op., 373 Wis.2d 767, 2017 WL 218343 (Wis. Ct. App. Jan. 18, 2017). The court of appeals’ majority ruled CED failed to prove “a genuine issue of material fact to show that it has overcome the presumption of correctness” and failed to prove the special assessments were not reasonable. Id., ¶ 29. Judge Gundrum disagreed, concluding that CED’s expert’s affidavit setting forth reasons why the project made vehicle access to CED’s property “worse, not better” was sufficient evidence that “could support a finding by a reasonable jury that a special benefit does not exist.” Id., ¶ 34 (Gundrum, J. dissenting) (quoting First State Bank v. Town of Omro, 2015 WI App 99, ¶ 20, 366 Wis. 2d 219, 873 N.W.2d 247). Judge Gundrum said “a jury issue exists as to whether the Jackson-Murdock Project conferred special benefits on the CED property,” and the “matter should be returned to the circuit court for a jury trial on the issue.” Id., ¶¶ 30, 34. CED petitioned for review in this court, which we granted.

II. STANDARD OF REVIEW

This case requires us to review a grant of summary judgment against CED. “We independently review a grant of summary judgment using the same methodology of the circuit court and the court of appeals.” Water Well Sols. Serv. Grp., Inc. v. Consol. Ins. Co., 2016 WI 54, ¶ 11, 369 Wis. 2d 607, 881 N.W.2d 285. The law governing summary judgment is well-known. Summary judgment is appropriate when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2). Summary judgment must be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Id.

We apply a two-step test to make this determination. Garza v. Am. Transmission Co. LLC, 2017 WI 35, ¶ 21, 374 Wis. 2d 555, 893 N.W.2d 1 (citing Green Spring Farms v. Kersten, 136 Wis. 2d 304, 314-15, 401 N.W.2d 816 (1987)). First, this court asks if the plaintiff stated a claim for relief. Id. Second, this court applies Wis. Stat. § 802.08(2), asking if any factual issues exist that preclude a grant of summary
judgment. Id. It is undisputed here that CED’s complaint states a claim for relief. The parties’ dispute focuses on whether CED presented sufficient evidence to create any material issues of fact to overcome the presumption of correctness.

¶ 19 “Summary judgment is a drastic remedy; therefore, the moving party must clearly be entitled to judgment as a matter of law.” Genrich v. City of Rice Lake, 2003 WI App 255, ¶ 6, 268 Wis. 2d 233, 673 N.W.2d 361 (citing Vill. of Fontana-On-Geneva Lake v. Hoag, 57 Wis. 2d 209, 214, 203 N.W.2d 680 (1973). In reviewing a grant of summary judgment, we view the facts in a light most favorable to CED, the nonmoving party. See Genrich, 268 Wis. 2d 233, ¶ 6, 673 N.W.2d 361. Any doubts as to whether a genuine issue of material fact exists should be resolved against the City as the moving party. Id.

¶ 20 This case also involves the interpretation and interplay of two statutes, Wis. Stat. §§ 32.09 and 66.0703(1)(a). The interpretation of statutes presents a question of law we review de novo. State v. Talley, 2017 WI 21, ¶ 24, 373 Wis. 2d 610, 891 N.W.2d 390.

III. ANALYSIS

¶ 21 CED and the City disagree on whether the term “special benefits” has the same meaning in both Wis. Stat. ch. 32 and ch. 66. CED argues that if it has the same meaning, then the City cannot take the position that no special benefits exist in a ch. 32 action but later assert special benefits exist in a ch. 66 action. We hold the term “special benefits” has the same meaning in both statutes, but that it is used differently in each context. Accordingly, the City is not barred from imposing a special assessment on CED’s property to pay for improvements, provided the City establishes the improvements were local, conferred special benefits on CED’s property, and were fair, equitable, and in proportion to the benefits accruing to the property. These issues involve questions of fact for the trier of fact to resolve.

A. The Meaning and Application of “Special Benefits”

¶ 22 We begin with the language of the statutes. See State ex rel. Kalal v. Cir. Ct. for Dane Cty., 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110 (quoting Seider v. O’Connell, 2000 WI 76, ¶ 31, 236 Wis. 2d 211, 612 N.W.2d 659). Except for technical or specially-defined words or phrases, “[s]tatutory language is given its common, ordinary, and accepted meaning.” Id. Additionally, because “[c]ontext is important to meaning. . .statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” Id., ¶ 46 (citations omitted). “Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.” Id.

¶ 23 Wisconsin Stat. §§ 32.09 and 66.0703(1)(a) both use the term “special benefits.” Wisconsin Stat. § 32.09 governs “all matters involving the determination of just compensation in eminent domain proceedings.” Section 32.09(3) provides:

Special benefits accruing to the property and affecting its market value because of the planned improvement shall be considered and used to offset the value of property taken or damages under [Wis. Stat. § 32.09(6) ], but in no event shall such special benefits be allowed in excess of damages described under sub. (6).[10]

(Emphasis added.) Section 66.0703 governs the general rules applicable to special assessments imposed by a city, town or village. Section 66.0703(1)(a) provides:

Except as provided in s. 66.0721,[11] as a complete alternative to all other methods provided by law, any city, town or village may, by resolution of its governing body, levy and collect special assessments upon property in a limited and determinable area for special benefits conferred upon the property by any municipal work or improvement; and may provide for the payment of all or any part of the cost of the work or improvement out of the proceeds of the special assessments.

(Emphasis added.)
Because neither statute defines the non-technical term “special benefits,” we give the term its common, ordinary, and accepted meaning. Kalal, 271 Wis. 2d 633, ¶ 45, 681 N.W.2d 110. The common, ordinary, and accepted meaning of the term “special benefits” itself does not change from one statutory section to another, particularly when the statutory provisions have some relationship as they do here. “Statutes in pari materia are to be interpreted together as though they were one law.” Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 252 (2012). In other words, laws addressing the same subject should be interpreted harmoniously, if possible. Id. There is no textual basis for assigning different interpretations of “special benefits” accruing to property in the context of eminent domain versus “special benefits” conferred on property upon which a special assessment is levied. Wisconsin courts have applied the same definition of special benefits in both the eminent domain and special assessment contexts.

“Special benefits” means “an uncommon advantage.” Red Top Farms v. DOT, 177 Wis. 2d 822, 833, 503 N.W.2d 354 (Ct. App. 1993) (eminent domain); Goodger v. City of Delavan, 134 Wis. 2d 348, 352, 396 N.W.2d 778 (Ct. App. 1986) (special assessment). “Special” is defined as “[s]urpassing what is common or usual.” American Heritage Dictionary of the English Language (1992 3d ed.). “Benefit” is defined as “[s]omething that produces or enhances well being; an advantage.” Benefit, American Heritage Dictionary of the English Language (1992 3d ed.). This judicial definition of “special benefits” as “an uncommon advantage” aligns with the text of both statutes.

In Goodger, the court of appeals addressed whether a special benefit was conferred for purposes of determining the validity of a special assessment. 134 Wis. 2d at 352, 396 N.W.2d 778. It adopted a plain meaning definition of “special benefits” to denote “uncommon advantage” because “[a]bsent a legislative definition, the ordinary and accepted meaning of a word used by the legislature can be established by reference to a recognized dictionary.” Id. (citation omitted).

The legislature uses the term “special benefits” in each statute differently. In Wis. Stat. § 32.09(3), the term begins the subsection and is qualified by the words that follow: “Special benefits accruing to the property and affecting its market value because of the planned improvement.” In Wis. Stat. § 66.0703(1)(a), the term is embedded in the middle of a sentence and is not qualified by an effect on the property's market value: “for special benefits conferred upon the property by any municipal work or improvement.” Although the meaning of the term “special benefits” itself remains the same in both statutes, how it is used and applied in the eminent domain and special assessment contexts is textually different.

In the eminent domain statute, “special benefits” are restricted to those local improvements that affect the market value of the property for purposes of determining whether to offset compensation to the owner of property taken for a planned public improvement. If the improvement project necessitating the taking does not affect the market value of the property, then the City is not entitled to an offset for any special benefits accruing to the property because of the planned improvement. An assertion of “special benefits” in eminent domain actions acts as an affirmative defense for the condemnor; the governmental body has the burden of showing it is entitled to an offset when property immediately increases or imminently will increase in market value. Hietpas v. State, 24 Wis. 2d 650, 656-57, 130 N.W.2d 248 (1964); see also Molbreak v. Vill. of Shorewood Hills, 66 Wis. 2d 687, 703, 225 N.W.2d 894 (1975) (“special benefits accruing to land not taken in eminent domain may be set off against damages if they enhance the market value immediately” (emphasis added) (citing Hietpas, 24 Wis. 2d at 656-57, 130 N.W.2d 248)).

The statutory qualification in Wis. Stat. § 32.09(3) links special benefits to an effect on the market value of the property. When the property's market value remains unaffected by the planned improvement, a particular taking may not require an offset against compensation owed to the property owner. Regardless, the improvement project may nevertheless confer special benefits on the property owner within the meaning of ch. 66.

Wisconsin Stat. § 66.0703(1)(a) does not condition special assessments on the conferral of special benefits affecting the market value of the property. The work or improvement must only provide an
uncommon advantage specific to that property. See Genrich, 268 Wis. 2d 233, ¶¶ 13-14, 673 N.W.2d 361; Goodger, 134 Wis. 2d at 352, 396 N.W.2d 778. Under § 66.0703(1)(a), “special benefits” can include an increase in market value following the improvement. Molbreak, 66 Wis. 2d at 703, 225 N.W.2d 894. But the text does not require it.

¶31 CED argues that the word “shall” in Wis. Stat. § 32.09(3) is mandatory language requiring the City to consider and use any special benefits to offset compensation to the property owner in an eminent domain action; therefore, CED argues, failing to raise special benefits in an eminent domain action forecloses a municipality from later assessing the property for special benefits purportedly conferred. This argument ignores the narrowing of § 32.09(3)'s mandate to only those special benefits affecting a property's market value. In the absence of an immediate or imminent increase in a property's fair market value triggered by the planned public improvement, the municipality need not consider or use special benefits to offset the value of property taken under § 32.09.

¶32 In the eminent domain proceeding involving CED’s property, the City's expert witness testified that he did not believe CED’s property received any special benefits from the improvement project:

Q. Okay. In your appraisal here, did you find any special benefits to the subject property?
A. No.

Q. Okay. Are there any special benefits to the property in this case?
A. I don't believe so.

This testimony does not resolve the issue of special benefits in the context of a special assessment because the record is unclear regarding whether the City's expert identified no special benefits that affected the property's market value or if he identified no special benefits whatsoever.

¶33 We conclude that “special benefits” has the same meaning in each statute, but the failure to raise the issue of special benefits in an eminent domain action does not necessarily preclude a municipality from levying and collecting “special benefits” via a subsequent special assessment. Notably, in an eminent domain action, only special benefits accruing to the property that affect its market value because of the planned improvement are required to be considered and used to offset the value of the property taken. Wis. Stat. § 32.09(3). In contrast, special assessments upon property may be levied and collected for special benefits conferred on the property by the improvement, regardless of the impact on the property's market value; Wis. Stat. § 66.0703 is silent on the subject.

¶34 CED decries the inefficiency and burden of forcing property owners to “endure” two proceedings; however, the remedy lies not with the judiciary but with the legislature, which produced the ostensible problem. Perhaps, as CED contends, the legislature did not intend this result but this court does not divine the legislature's intentions; it interprets what the legislature actually enacted.

B. Prerequisites to Police Power Special Assessments

¶35 While the City's denial of special benefits in the eminent domain action does not foreclose its assertion of special benefits in a subsequent special assessment, the City must satisfy certain requirements in order for its assessment to be valid. In order for the City to exercise its police power to levy a special assessment on property to pay for public improvements, three requirements must be met: (1) the improvement must be local rather than general; (2) the improvement must confer special benefits on the property; and (3) the assessment must be fair and equitable and in proportion to the benefits accruing. First State Bank, 366 Wis. 2d 219, ¶ 9, 873 N.W.2d 247 (citations omitted). These three requirements are interdependent. If the improvement is deemed general, the inquiry stops and the special assessment is not permissible. If the improvement is local, the analysis shifts to whether the property received special benefits. If not, the special assessment is invalid. If special benefits are found, the review moves to the assessment's reasonableness. Each requirement is addressed in turn.
1. Local versus general improvements

Paragraph 36 Because special assessments can be levied only for local improvements, the character of the improvement must first be determined before the propriety of the assessment is considered. Genrich, 268 Wis. 2d 233, ¶ 9, 673 N.W.2d 361. A public improvement is general in character if it “confers a substantially equal benefit and advantage on the property of the whole community or benefits the public at large.” Duncan Dev. Corp. v. Crestview Sanitary Dist., 22 Wis. 2d 258, 264, 125 N.W.2d 617 (1964). Typically, general improvements are “financed by general taxes.” Id. Because a general improvement benefits the whole community, it may naturally provide a benefit of some degree to the affected property. In contrast, although a local improvement “may incidentally benefit all the property in the municipality and the public at large” it “is made primarily for the accommodation and convenience of inhabitants of a particular area in the community whose property receives a special benefit from the improvement.” Id. (emphasis added). “The fact that an improvement confers a general benefit on the community does not mean that certain property cannot benefit specially.” Molbreak, 66 Wis. 2d at 699, 225 N.W.2d 894 (first citing Brock v. Lemke, 51 Haw. 175, 455 P.2d 1, 3 (1969); then citing 63 C.J.S. Municipal Corps. § 1314) (special assessment); see also Red Top Farms, 177 Wis. 2d at 829, 503 N.W.2d 354 (“special benefit . accrues to a property owner in addition to the benefit enjoyed by other property owners in the community”).

Paragraph 37 Because special assessments can be levied only “for local improvements . the circuit court must examine whether the improvement was local, that is, whether the purpose was to accommodate particular property owners and confer a special benefit.” Park Ave. Plaza v. City of Mequon, 2008 WI App 39, ¶ 20, 308 Wis. 2d 439, 747 N.W.2d 703 (citations omitted). In order to be considered local rather than general, the special benefit must also have the “effect of furnishing an uncommon advantage to a property differing in kind, rather than in degree, from the benefits enjoyed by the general public.” Id., ¶ 17 (citations omitted); Genrich, 268 Wis. 2d 233, ¶ 14, 673 N.W.2d 361; Petkus v. State, 24 Wis. 2d 643, 648, 130 N.W.2d 253 (1964). This concept dates back to 1851, when this court held that “common advantages to the neighborhood were not chargeable as benefits . but only such as were peculiar to [the particular parcel].” Red Top Farms, 177 Wis. 2d at 826, 503 N.W.2d 354 (citing Milwaukee & Miss. R.R. v. Eble, 3 Pin. 334, 358 (1851)). The test is whether the property upon which the special assessment is levied “has gained a benefit not shared by any other parcel.” Id. at 832, 503 N.W.2d 354.

2. Special benefits

Paragraph 38 If an improvement is local in character, the next consideration is whether the improvement conferred special benefits on the subject property. Section III.A comprehensively examines the meaning of “special benefits.” Additionally, we note that “a benefit could accrue without any actual use of the improvement.” Molbreak, 66 Wis. 2d at 701, 225 N.W.2d 894. Commercial property may receive special benefits from improved traffic safety and aesthetic improvements to an adjacent public road. Id. at 699, 225 N.W.2d 894. Finally, “the benefits necessary to sustain a special assessment must be substantial, certain, and capable of being realized within a reasonable time.” Wm. H. Heinemann Creameries, Inc. v. Vill. of Kewaskum, 275 Wis. 636, 641, 82 N.W.2d 902 (1957) (citation omitted).

Paragraph 39 We also address CED’s argument that this court incorrectly expanded “special benefits” to mean not only an improvement, but also to encompass a “service.” Duncan, 22 Wis. 2d at 264, 125 N.W.2d 617 (first citing 14 McQuillin, Municipal Corporations § 38.11 (3d ed.); then citing 48 Am. Jur. 2d Special or Local Assessments § 1 (1964)). The expansion of “special benefits” in Duncan ostensibly to include services was repeated but not applied by the court of appeals in Genrich, 268 Wis. 2d 233, ¶ 13, 673 N.W.2d 361, and First State Bank, 366 Wis. 2d 219, ¶ 20, 873 N.W.2d 247 (“[a]n uncommon advantage will either increase services to property or enhance its value”). Notably, Duncan involved an assessment based on enhanced value of the property as a result of the improvement. 22 Wis. 2d at 268, 125 N.W.2d 617.

Paragraph 40 Accepting CED’s argument could require us to overrule Duncan, a step we need not analyze. While it is questionable whether services constitute “special benefits” for which a special assessment potentially could be levied, the issue is irrelevant in this case because a roundabout is an improvement, not a service. “Service” as defined in § 66.0627(1)(c) includes:
snow and ice removal, weed elimination, street sprinkling, oiling and tarring, repair of sidewalks or curb and gutter, garbage and refuse disposal, recycling, storm water management, including construction of storm water management facilities, tree care, removal and disposition of dead animals under s. 60.23 (20), loan repayment under s. 70.57 (4) (b), soil conservation work under s. 92.115, and snow removal under s. 86.105.

Construction of a roundabout is not mentioned in the statutory definition of services and nothing in the list of services is analogous to a roundabout. While use of the word “includes” indicates that what follows are examples rather than an exhaustive list, the associated-words canon instructs that associated words bear on one another’s meaning. Brown v. Chi. & N.W. Ry. Co., 102 Wis. 137, 156, 78 N.W. 771 (1899) (“You may know the meaning of a term by its associates,—what precedes and what follows it. When? Not in every case; but when not apparent from the language itself.”); Scalia & Garner, supra ¶24, at 195. The statutory examples of “services” have in common the removal or rectification of temporary but recurring occurrences, such as snow, weeds, and dead animals, along with repair of sidewalks, curbs, or gutters—but not the construction of a permanent structure like a roundabout. Contrary to the City’s characterization, infrastructure is not a service. Improved infrastructure may facilitate the delivery of services to a property but it is not, in and of itself, a service.

3. Reasonableness

¶41 The third prerequisite to the exercise of the police power to levy a special assessment requires a reasonable basis for the assessment. An assessment made under the police power is not limited to the value of the benefits conferred on the property but must be made on a reasonable basis. Steinbach v. Green Lake Sanitary Dist., 2006 WI 63, ¶13, 291 Wis. 2d 11, 715 N.W.2d 195. Reasonableness in this context requires (1) uniformity—the assessment must be fairly and equitably apportioned among all affected properties; and (2) uniqueness—the assessment on a particular property must be in proportion to the benefits conferred. Genrich, 268 Wis. 2d 233, ¶¶20-21, 673 N.W.2d 361.

¶42 Multiple methods may be used to achieve uniformity. Id., ¶21. The City’s selected method must be fair and equitable and produce an assessment in proportion to the benefits accruing to the property. Berkvam v. City of Glendale, 79 Wis. 2d 279, 287, 255 N.W.2d 521 (1977). In examining uniqueness, the circuit court must consider the degree, effect, and consequences of the special benefits. Id. “Whether the facts relating to a special assessment made pursuant to the police power fulfill the ‘reasonableness’ standard is a question of law.” Steinbach, 291 Wis. 2d 11, ¶11, 715 N.W.2d 195. A special assessment in substantial excess of special benefits accruing to the property is an unlawful taking without compensation. Wm. H. Heinemann Creameries, 275 Wis. at 640-41, 82 N.W.2d 902 (citing Vill. of Norwood v. Baker, 172 U.S. 269, 279, 19 S.Ct. 187, 43 L.Ed. 443 (1898)).

C. Genuine Issues of Material Fact Exist Regarding the Validity of the Special Assessment Levied on CED’s Property.

¶43 Having set forth the law governing the validity of assessments, we now apply it to the City’s assessment of CED’s property. CED argues the court of appeals erred in affirming the circuit court’s grant of summary judgment because CED presented sufficient evidence demonstrating disputed issues of material fact. The City responds that CED failed to overcome the presumption of correctness and therefore summary judgment was proper. In the case of a special assessment appeal, “where the assessing body did consider what property would be benefited by the improvement and assessed according to the amount of the benefit .. in the absence of evidence to the contrary there is a conclusive presumption that the assessment was on the basis of benefits actually accrued.” Molbreak, 66 Wis. 2d at 606, 225 N.W.2d 894 (emphasis added) (first citing Hennessy v. Douglas Cty., 99 Wis. 129, 139, 74 N.W. 683 (1898); then citing Friedrich v. Milwaukee, 118 Wis. 254, 256, 95 N.W. 126 (1903) ). To overcome this presumption on appeal to the circuit court,

the burden is on the objector to show either that:

(1) The statutory procedure was not followed, or
that the assessment was not based on benefits, or

that the assessing authority did not view the premises to make such a determination, or (4) for the
objector to produce competent evidence that the assessment is in error.

Id. Significantly, the presumption of correctness exists only in the absence of evidence to the contrary. Molbreak, 66 Wis. 2d at 696, 225 N.W.2d 894.

¶44 CED contends the affidavit of its expert witness, James C. Johnson, raises genuine issues of material fact regarding whether the improvement plan was general or local, whether the project conferred special benefits on CED's property, and whether the assessment was reasonable. The City dismisses the Johnson affidavit as insufficient to overcome the presumption of correctness and asserts this matter is controlled by Park Ave. Plaza, 308 Wis. 2d 439, 747 N.W.2d 703, in which the court of appeals upheld a grant of summary judgment in favor of the City because the new road project resulted in increased traffic flow. We hold that CED overcame any presumption of correctness and presented sufficient evidence to raise genuine issues of material fact regarding whether the improvement was general or local and whether the project conferred special benefits on CED's property. Resolution of these issues will determine whether the circuit court reaches the reasonableness of the assessment on remand.

¶45 With respect to the first issue, the City's Initial Resolution Declaring Intent to Reassess CED's property declares "[t]he purpose of the project is to reduce congestion at the intersection, increase traffic safety, renew utilities and enhance aesthetics." Generally, the City identifies the sidewalk replacement and repair, concrete paving, new and re-laid sewer laterals, concrete driveway approaches, and streetscape/landscape improvements as providing local and specific benefits to CED's property. The City also points to the improved traffic flow, a substantial increase in accessibility, and reduced congestion as local and specific benefits.

¶46 In response, CED generally argues the roundabout was constructed not to benefit nearby businesses, but for the primary purpose of benefiting the traveling public. Specifically, CED proffers Johnson's affidavit as evidence contradicting the City's assertion of local benefits. In his affidavit, Johnson denies the purpose of the roundabout was local, points to a decreased value of CED's property as a result of its construction, and opines that the project did not improve the convenience of CED's property or its customers, noting the safety issues created by the reconfiguration of the intersection. CED also points to evidence indicating that increased accessibility was not an effect of the reconstruction project, citing testimony in the affidavit of the City's Assistant Director of Public Works/City Engineer that "[t]he CED property has the exact same access after completion of the project as it did prior to the project. The driveway access is in the same location. The driveway access has the same configuration."

¶47 "[T]he inquiry into the nature of an improvement"—that is, whether a special benefit is local or general—"presents a question of fact." Genrich, 268 Wis. 2d 233, ¶ 2, 673 N.W.2d 361. "What may be called a local improvement under one set of facts may well constitute a general improvement in the context of different facts." Duncan, 22 Wis. 2d at 265, 125 N.W.2d 617. On remand the finder of fact must determine whether the purpose was to accommodate CED's property in particular, along with the other property owners, with the effect of conferring special benefits on CED's property.

¶48 Whether a special benefit has been conferred is also a question of fact. First State Bank, 366 Wis. 2d 219, ¶ 20, 873 N.W.2d 247 (citing Park Ave. Plaza, 308 Wis. 2d 439, ¶ 20, 747 N.W.2d 703). "Summary judgment is improper if specific facts could support a finding by a reasonable jury that a special benefit does not exist." Id. In this case, the testimony of the City's expert witness during the eminent domain proceeding regarding the absence of special benefits, coupled with the comparable testimony of CED's expert witness, who opined that "[t]here is absolutely no benefit to [CED's property] let alone a special benefit" from the improvement, contradict the City's position in the special assessment proceeding. The existence or absence of a special benefit presents a question for the factfinder to decide. Hietpas, 24 Wis. 2d at 656, 130 N.W.2d 248.

¶49 Here, Johnson's affidavit contains evidence contradicting the City's position; he insists the property received no special benefits whatsoever. Johnson's affidavit and appraisal assert that the placement of the
roundabout actually impairs rather than benefits CED’s property for a variety of reasons, including reduced congestion discouraging impulse stops at fast food restaurants, the removal of landscaping that obscured drive-thru traffic for diners inside, and the lack of direct access to the property for traffic coming from three directions, potentially causing unsafe lane changes to access it. Johnson opines that the roundabout’s construction overall reduced the value of CED’s property. The City disagrees with Johnson’s assessment and points out that the roundabout improved traffic flow through the area, improved existing sidewalks and landscaping, and made the area safer. In his affidavit, Johnson refutes the notion that the landscaping on the central island of the roundabout increases the value of CED’s property, noting that CED possesses no property rights in landscaping, which could be changed at any time.

¶50 Johnson’s affidavit “cuts to the heart of the matter and creates a genuine issue of material fact” rendering summary judgment inappropriate. Genrich, 268 Wis. 2d 233, ¶ 17, 673 N.W.2d 361. A reasonable jury could find that CED’s property received no benefits at all from the reconfigured intersection or it could find that CED received the exact same benefits as the public at large. Park Ave. Plaza is distinguishable because the property owner presented “nothing to rebut the City’s conclusion that commercial properties received special benefits.” Id., ¶ 26. Here, CED presented Johnson’s evidentiary affidavit. Because disputed issues of material fact must be resolved by the factfinder, summary judgment was improper.

¶51 Additionally, CED contends that the assessment imposed upon it was unreasonable because it was unfairly and inequitably apportioned among similarly situated property owners. CED’s $40,103.03 assessment was twice as much as any other assessment. The City responds that it performed a “per lineal foot” assessment and justifies the higher assessment on CED’s property because it sits on the corner. Accordingly, it has footage on both Murdock and Jackson Streets. While the reasonableness of the assessment presents a question of law, the analysis depends upon resolution of the first two issues. Because “[r]easonableness’ turns on the totality of the facts and circumstances” this issue “is not easily disposed of on summary judgment.” Preloznik v. City of Madison, 113 Wis. 2d 112, 122 n.3, 334 N.W.2d 580 (1983) (citation omitted). In this case, the issue of reasonableness cannot be disposed of on summary judgment because issues of fact related to the character of the improvement and whether it conferred any special benefits on CED's property must first be resolved. Specifically, the trier of fact must determine what, if any, benefits CED’s property received in order to determine if the assessment is proportionate to those benefits compared with the benefits accruing to all benefited properties. Steinbach, 291 Wis. 2d 11, ¶ 20, 715 N.W.2d 195.

IV. CONCLUSION

¶52 The term “special benefits” means the same in both the eminent domain statute, Wis. Stat. § 32.09(3), and the special assessments statute, Wis. Stat. § 66.0703(1)(a): “uncommon advantage.” Under § 32.09(3), only those special benefits that affect the market value of a property because of a planned improvement must be considered and used to offset the compensation owed to the owner of property taken for the improvement. Section 66.0703(1) permits a municipality to levy and collect a special assessment upon property for special benefits conferred upon the property by an improvement, regardless of the improvement’s effect on the property’s market value. Because of this distinction, a governmental body's failure to raise special benefits in the eminent domain action does not foreclose its ability to levy and collect a special assessment upon a property for special benefits conferred.

¶53 The circuit court improperly entered summary judgment in the City's favor in light of CED's submission of evidence challenging the validity of the special assessment, which showed a genuine dispute regarding whether the improvement plan was general or local and whether the project conferred special benefits on CED. Each of these issues must be decided by the trier of fact. If the factfinder on remand finds the improvement was local and conferred a special benefit on CED's property, the circuit court will then determine whether the assessment was reasonable as a matter of law.

By the Court.—The decision of the court of appeals is reversed and the cause is remanded to the circuit court.

¶54 The court of appeals got it right. The majority errs.
¶55 I write separately to make two points.

¶56 First, the court of appeals (correctly) made clear that although “[s]pecial benefits’ in the eminent domain context and the special assessment context [are] similar in definition, they are distinct and different considerations under distinct and different governmental actions.”¹ The majority recognizes that unlike in condemnation proceedings, “special benefits” in eminent domain proceedings must affect the market value of the property. Majority op., ¶33.

¶57 Second, the majority stumbles by failing to acknowledge that CED has not overcome the presumption of correctness of the City’s actions and has not established a genuine issue of material fact to overcome summary judgment.

¶58 I agree with Chief Judge Lisa Neubauer, who emphasized these points in her concurrence in the court of appeals: “[CED] has failed to show by ‘strong . clear and positive proof’ that the $20,000 special assessments are not reasonable—given that it is undisputed that improvements to the sidewalks, curb and gutters, etc. have been made—and the reasonableness analysis requires only that CED’s property be ‘benefited to some extent’ and that the amount of the assessment can exceed the value of the special benefits.”²

¶59 The City is entitled to summary judgment.

¶60 For these reasons, I dissent.

FOOTNOTES

¹. The City imposed the special assessment on other affected commercial property owners, but this case involves only CED’s challenge to the special assessment.


³. The Honorable John A. Jorgensen, Winnebago County, presiding.

⁴. All subsequent references to the Wisconsin Statutes are to the 2015-16 version unless otherwise indicated. Wisconsin Stat. § 32.09(3) provides: Special benefits accruing to the property and affecting its market value because of the planned improvement shall be considered and used to offset the value of property taken or damages under [Wis. Stat. § 32.09(6)], but in no event shall such special benefits be allowed in excess of damages described under sub. (6).

⁵. Wisconsin Stat. § 66.0703(1)(a) provides: (a) Except as provided in s. 66.0721, as a complete alternative to all other methods provided by law, any city, town or village may, by resolution of its governing body, levy and collect special assessments upon property in a limited and determinable area for special benefits conferred upon the property by any municipal work or improvement; and may provide for the payment of all or any part of the cost of the work or improvement out of the proceeds of the special assessments. Paragraph (b) provides where “an assessment represents an exercise of the police power, the assessment shall be upon a reasonable basis as determined by the governing body of the city, town or village.”

⁶. CED asserted in CED I that the improvement project had not conferred special benefits under Wis. Stat. § 66.0703(1)(a), but this substantive issue was not addressed or resolved. See CED Properties, LLC v. City of Oshkosh, 2014 WI 10, 352 Wis. 2d 613, 843 N.W.2d 382.

⁷. Wisconsin Stat. § 66.0703(10) provides: If the actual cost of any project, upon completion or after the receipt of bids, is found to vary materially from the estimates, if any assessment is void or invalid, or if the governing body decides to reconsider and reopen any assessment, it may, after giving notice as provided in sub. (7)(a) and after a public hearing, amend, cancel or confirm the prior assessment. A notice of the resolution amending, canceling or confirming the prior assessment shall be given by the clerk as
provided in sub. (8)(d). If the assessments are amended to provide for the refunding of special assessment B bonds under s. 66.0713(6), all direct and indirect costs reasonably attributable to the refunding of the bonds may be included in the cost of the public improvements being financed.

8. The entire project cost $4,060,000. The Wisconsin Department of Transportation paid $2,610,750. The City paid $1,449,250, but specially assessed the affected property owners $307,118.72 of that amount. The $40,103.03 charged to CED equaled 0.99 percent of the total entire project cost.

9. CED does not make this argument before this court.

10. Wisconsin Stat. § 32.09(6) provides the method to determine the amount a property owner shall be compensated in the case of a partial taking of property.

11. Wisconsin Stat. § 66.0721, entitled “Special assessments on certain farmland or camps for construction of sewerage or water system,” is not relevant to the analysis of this case.

12. “The presumption of consistent usage applies also when different sections of an act or code are at issue” and “the more connection the cited statute has with the statute under consideration, the more plausible the argument becomes.” Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Text 172-73 (2012).

13. This court expanded the scope of special benefits to include “imminent adaptability of the land to a higher and better use from an economic standpoint because of proximity to the public improvement.” Hietpas v. State, 24 Wis. 2d 650, 656, 130 N.W.2d 248 (1964). Concomitantly, this court also extended the meaning of special benefits “to include enhanced value because of more advantageous adaptability for use.” Petkus v. State, 24 Wis. 2d 643, 648, 130 N.W.2d 253 (1964).

14. CED asserted at oral argument before this court that the City is judicially estopped from specially assessing CED for “special benefits” because it conceded no special benefits arose in the condemnation action. We disagree. Judicial estoppel “precludes a party from asserting a position in a legal proceeding and then subsequently asserting an inconsistent position.” State v. Petty, 201 Wis. 2d 337, 347, 548 N.W.2d 817 (1996)(citations omitted). The doctrine is equitable in nature, intended to protect the proceedings against “cold manipulation” rather than “unthinking or confused blunder[s].” Id. (citations omitted). Accordingly, “[t]he doctrine is only applied when the positions taken by a party are truly inconsistent.” Id. at 350 n.5, 548 N.W.2d 817. The City’s position in each proceeding is not clearly inconsistent. “Special benefits” in condemnation actions are limited to immediate or imminent increases to a property’s fair market value. The City is not specially assessing CED on the basis of an increase in the fair market value of CED’s property. If the City successfully establishes the conferral of special benefits on CED’s property, based on the asserted “substantial increase[s] in accessibility, which includes safer, lower cost, and shorter travel times for customers, deliveries and employees,” then the City may levy and collect a special assessment upon CED’s property, provided the other prerequisites—the improvement is local and the special assessment is reasonable—are met.

15. It is undisputed that the City exercised its police power in imposing the special assessments to fund the improvement project.

16. Because a roundabout is unquestionably an improvement and not a service, we defer a thorough analysis of Duncan Development Corp. v. Crestview Sanitary District, 22 Wis. 2d 258, 125 N.W.2d 617 (1964).

17. Under Wis. Stat. § 66.0627(2), a municipality “may impose a special charge against real property for current services rendered.” Section 66.0627(1)(c) defines “service.” In contrast, Wis. Stat. § 66.0703 governs the levying and collection of “special assessments” for “special benefits” conferred on property by an improvement. Because special charges are imposed for services, whereas special assessments are levied and collected for improvements, the legislature regards services and improvements as distinct things subjecting property owners to different taxes: charges for services and assessments for improvements.
18. “The verb to include introduces examples, not an exhaustive list.” Scalia & Garner, supra note 12, at 132; State v. James P., 2005 WI 80, ¶ 26, 281 Wis. 2d 685, 698, 698 N.W.2d 95, 102 (quoting Wis. Citizens Concerned for Cranes and Doves v. DNR, 2004 WI 40, ¶ 17 n.11, 270 Wis. 2d 318, 677 N.W.2d 612) (“Generally, the word “includes” is to be given an expansive meaning, indicating that which follows is but a part of the whole.’ While courts may sometimes read the word ‘includes’ as a term of limitation or enumeration under the doctrine of expressio unius est exclusio alterius, there must be some textual evidence that the legislature intended this doctrine to apply.”).

19. The reconstruction of the intersection included the replacement and repair of sidewalks: According to the report of the Public Works Director and City Manager, “[d]efective sidewalks section include those with open cracks, offset joints or other defects that create a hazard to those using the sidewalk. Removal of the hazards provides a safe corridor for pedestrians to access the site.” “[R]epair of sidewalks” is specifically enumerated as a service for which the City may impose a special charge on real property under Wis. Stat. § 66.0627(2).


2. CED Props., unpublished slip op., ¶ 29.

REBECCA GRASSL BRADLEY, J.
DIVISION 3. MOTOR VEHICLE REGISTRATION FEE

Sec. 18-80. Authority.

This division is adopted pursuant to the authority granted by Wisconsin Statutes §341.35, as from time to time amended.

Sec. 18-81. Purpose.

The purpose of this ordinance is to provide the City of Appleton a source of revenue to be used to assist with existing road construction replacement.

Sec. 18-82. Definitions.

In this section, a “motor vehicle” means an automobile or motor truck registered under §341.25(1)(c) at a gross weight of not more than 8,000 lbs.

Sec. 18-83. Imposition of motor vehicle registration fee.

(a) Pursuant to §341.35 of the Wisconsin Statutes, an annual flat city registration fee as set forth herein, in the amount of twenty dollars ($20.00) is hereby imposed on all motor vehicles registered in the state of Wisconsin that are customarily kept in the city of Appleton.

(b) This fee shall be paid by the registration applicant at the time that a motor vehicle is first registered and at each time of registration renewal.

(c) The City registration fee shall be paid as provided in Wisconsin Statutes §341.35(5).

(d) The City registration fee shall be in addition to State registration fees.

Sec. 18-84. Administrative costs.

The Wisconsin Department of Transportation shall retain a portion of monies collected equal to the actual administrative costs related to the collection of these fees. The method for computing the administrative costs will be reviewed annually by the Wisconsin Department of Transportation, as provided in Wisconsin Statutes §341.35.

Sec. 18-85. Exemptions.

The following motor vehicles are exempt from the annual City of Appleton vehicle registration fee:

(a) All vehicles exempted by Wisconsin Statutes Chapter 341 from payment of a state vehicle registration fee.

(b) All vehicles registered by the State of Wisconsin under §341.26 for a fee of five dollars ($5.00).

(c) No City vehicle registration fee may be imposed on a motor vehicle which is a replacement for a motor vehicle for which a current City vehicle registration fee has been paid.

Sec. 18-86. Deposit of fee revenues.

All monies under the applicable statute and this chapter remitted to the City by the Wisconsin Department of Transportation or other applicable agency shall be deposited into the City’s general fund and be used solely for assisting with existing road construction replacement.

Sects. 18-87 – 18-100. Reserved.

Editor’s Note: Article III, Division 3, generally known as the ‘Wheel Tax’ ordinance was adopted by the Appleton Common Council on October 1, 2014 and became effective for vehicles registered on or after January 1, 2015.
October 7, 2014

Administrator
Division of Motor Vehicles
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 255
P.O. Box 7911
Madison, WI 53707-7911

Dear Administrator:

This notification is being provided to you to advise the department that the City of Appleton Common Council has passed an ordinance establishing a municipal vehicle registration fee for vehicles house in the city of Appleton, pursuant to §341.35 of the Wisconsin Statutes. The following information is provided:

a. The name of the municipal governing body enacting the ordinance is the City of Appleton Common Council.
b. The date on which the ordinance was enacted was October 1, 2014.
c. The effective date the ordinance was published was October 6, 2014, with a commencement date for the registration fee of January 1, 2015.
d. The amount of the municipal registration fee is $20.
e. The name, address and telephone number of the person in the municipality responsible for the administration of the ordinance is Tony Saucerman, Finance Director, 100 North Appleton Street, Appleton, Wisconsin 54911.

If you have any questions in this regard, please do not hesitate to contact me.

Sincerely,

James P. Walsh
City Attorney

Enclosure

JPW:nak
Chapter Trans 126

MUNICIPAL OR COUNTY VEHICLE REGISTRATION FEE

Trans 126.01 Purpose and scope.
Trans 126.02 Notice of enactment, amendment, or repeal.
Trans 126.03 Evidence of payment to be shown on registration certificate.
Trans 126.04 Computation of administrative costs and collection and distribution of monies.

Note: Chapter Trans 126 as it existed on April 30, 1983, was repealed and a new chapter Trans 126 was created effective May 1, 1983.

Trans 126.01 Purpose and scope.

(1) STATUTORY AUTHORITY. As authorized by ss. 227.11, and 341.35 (4), (6), (6m) and (8), Stats., the purpose of this chapter is to establish the department of transportation's administrative interpretation of s. 341.35, Stats., relating to a municipal or county vehicle registration fee.

(2) APPLICABILITY.

(a) This chapter applies to any municipality or county which enacts, amends, or repeals a vehicle registration fee ordinance.

(b) As provided in s. 341.35 (1), Stats., vehicles subject to the municipal or county vehicle registration fee are automobiles or motor trucks registered under s. 341.25 (1) (c), Stats., at a gross weight of not more than 8,000 pounds.

(c) For purposes of determining where a vehicle is customarily kept, the municipality or county of domicile as indicated by the vehicle owner and contained in the department's title database shall be used. In the absence of an indicated municipality or county of domicile, the owner or lessee's post office address shall be used to determine municipality or county of domicile.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; am. Register, October, 1985, No. 358, eff. 11-1-85; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1987, No. 384; CR 08-113: renum. (2) to be (2) (a), cr. (2) (b) and (c) Register May 2009 No. 641, eff. 6-1-09.

Trans 126.02 Notice of enactment, amendment, or repeal.

(1) WHEN NOTIFICATION REQUIRED. A municipal or county governing body which enacts, amends, or repeals a municipal or county vehicle registration fee ordinance under s. 341.35, Stats., shall notify the department of transportation, as required by s. 341.35 (4), Stats.
(2) NOTIFICATION TO BE MAILED TO DEPARTMENT. The notification of enactment, amendment, or repeal from the municipality or county shall be sent to:

Administrator
Division of Motor Vehicles
Wisconsin Department of Transportation
4802 Sheboygan Avenue
Room 255
P.O. Box 7911
Madison, Wisconsin 53707-7911

(3) CONTENTS OF ENACTMENT NOTIFICATION. A notification of enactment shall include:

(a) The name of the municipal or county governing body enacting the ordinance.
(b) The date on which the ordinance was enacted.
(c) The effective date of the ordinance.
(d) The amount of the municipal or county vehicle registration fee.
(e) The name, address and telephone number of the person in the municipality or county responsible for the administration of the ordinance.
(f) The signature of an authorized party of the municipal or county governing body.
(g) The date the notification of enactment was signed.

(4) ENACTMENT NOTIFICATION REQUIREMENTS. A municipality or county shall provide the notification of enactment as described in subs. (1), (2) and (3) at least 90 days prior to the first day of the month in which the ordinance is effective.

(5) CONTENTS OF AMENDMENT NOTIFICATION. A notification of amendment shall include:

(a) The name of the municipal or county governing body amending the ordinance.
(b) The date on which the ordinance was amended.
(c) The effective date of the amendment.
(d) A description of the amendment, or a copy of the amended ordinance.
(e) The signature of an authorized party of the municipal or county governing body.
(f) The date the notification of amendment was signed.

(6) AMENDMENT NOTIFICATION REQUIREMENTS. A municipality or county which amends a municipal or county vehicle registration fee ordinance shall notify the department of the amendment at least 90 days prior to the first day of the month in which the amendment is effective.

(7) CONTENTS OF REPEAL NOTIFICATION. A notification of repeal shall include:

(a) The name of the municipal or county governing body repealing the ordinance.
(b) The date on which the ordinance was repealed.
(c) The effective date of the repeal.
(d) The signature of an authorized party of the municipal or county governing body.
(e) The date the notification of repeal was signed.

(8) REPEAL NOTIFICATION REQUIREMENTS. A municipality or county which repeals a municipal or county vehicle registration fee ordinance shall notify the department of the repeal at least 90 days prior to the first day of the month in which the repeal is effective.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; renum. (intro.), (1) and (2) to be (1), (2) and (4) and am., cr. (3) and (5) to (8), Register, October, 1985, No. 358, eff. 11-1-85; CR 08-
113: am. (2), (3) (d), (4), (6) and (8) Register May 2009 No. 641, eff. 6-1-09.
Trans 126.03  Evidence of payment to be shown on registration certificate.

(1) TOTAL AMOUNT PAID TO BE DESIGNATED. The total amount paid to the department for the municipal or county vehicle registration fee may be designated on the registration certificate by words similar to “municipal fee,” or by the total amount paid.

(2) MULTIPLE FEES NOT ITEMIZED. If separate fees are collected for one vehicle for a municipality and a county, no itemization will be made on the registration certificate for the individual municipality or county.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83; r. and recr. Register, October, 1985, No. 358, eff. 11-1-85.

Trans 126.04  Computation of administrative costs and collection and distribution of monies.

(1) REIMBURSEMENT FOR ADMINISTRATIVE COSTS. In accordance with s. 341.35 (6m), Stats., the department shall capture and recover the administrative costs related to the collection of the municipal or county vehicle registration fee as follows:

(a) The administrative costs shall be computed and recovered as an administrative fee per vehicle application.

(b) The administrative fee per vehicle application shall be based on the direct costs of operation, including employee salaries and fringe benefits, office space, office supplies and equipment, postage, computer charges, printing and forms, and other necessary or indirect expenses.

(c) The department shall review the administrative fee per vehicle application annually and any over or under recovery shall become a component in the next fiscal year administrative fee.

(2) NOTICE OF CHANGES IN THE ADMINISTRATIVE FEE PER VEHICLE APPLICATION. The department shall notify any participating municipality or county of changes in the administrative fee per vehicle application at least 30 days prior to the effective date of the change.

(2m) APPLICATION OF MUNICIPAL OR COUNTY VEHICLE REGISTRATION FEE. The department shall apply a municipal or county registration fee to a vehicle covered by this chapter when the registration of the vehicle is made for the first time after the effective date of the applicable enacted municipal or county vehicle registration fee ordinance and for each renewal of the registration for the vehicle due on or after the effective date of the ordinance.

(3) DISTRIBUTION OF MONIES TO MUNICIPALITY OR COUNTY.

(a) The amount of the municipal or county registration fees returned to a municipality or county shall be the total amount collected less the administrative costs described in sub. (1).

(b) The department shall pay municipal or county vehicle registration fees collected during any month to the municipality or county no later than 30 days after the end of that month.

(4) REFUNDS.

(a) The department may not refund a municipal or county vehicle registration fee to an applicant.

(b) An applicant shall request a refund of a municipal or county vehicle registration fee from the appropriate municipality or county.

History: Cr. Register, October, 1985, No. 358, eff. 11-1-85; CR 08-113: am. (title), (1), (2) and (3) (title), cr. (2m) Register May 2009 No. 641, eff. 6-1-09.
Artist Leif Larson works on a music-themed mural outside New Moon Cafe downtown last week.

Downtown mural depicts harmony for community

By Tom Ekvall
Herald contributor

It's called a "collage of musical instruments."

Leif Larson, a professional mural artist, has been spending the last week creating an artwork on the New Moon Cafe's outside wall at 401 N. Main St. as a celebration of music in the city.

Larson is a musician himself who plays with cafe owner Aaron Baer in a band known as the Dr. Kickbutts Orchestra.

"The mural is meant to be fun, joyful and celebratory," he said while painting away on the massive canvas.

His mural is the first authorized under a city ordinance approved last month. The Downtown Oshkosh Business Improvement District Board voted to contribute $1,000 toward the painting. The board plans to award grants for up to five other mural projects next year.

The mural features a guitar, banjo, piano, cymbal, drums, saxophone and other instruments with "Oshkosh" at the top.

Larson has been painting murals since 2009 and majored in fine arts with a painting emphasis at the University of Wisconsin-Oshkosh.

He said one mural he did several years ago had to be taken down because of problems with the paint adhering to the building surface, one of the challenges that outdoor artists have to consider.

Larson said he spent several months planning the mural painting event and wanted to do something that would be appropriate to the downtown area.

The mural features a guitar, banjo, piano, cymbal, drums, saxophone and other instruments with "Oshkosh" at the top.

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Larson said he spent several months planning the mural painting event and wanted to do something that would be appropriate to the downtown area.

There's nothing wrong with "sounding the right signs," and the right signs are very important. Not hit anyone. If people holler, "slow down" real loud. I don't care, but they do slow down. People are hollering to me and I don't care, but they do slow down.

Area law enforcement appreciate Wagner's efforts. He was the recipient of a citizen award from the City Department in 2017 for helping traffic in city school zones.

"There's nothing wrong with being wiggly," Wagner said.

He shows up for his self-appointed duties decked out in a color that can be seen for miles: blaze orange.

His hat, shirt, gloves and sign all bear the safety color. If it's moving and colored orange in an Oshkosh school district, it's probably the 67-year-old Wagner, a retired welder and 1970 Omro High School graduate.

"Once you see me, you won't forget me," said Wagner with a chuckle. "I'm very famous."

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Green Wagner is seen with his Packers-themed 1957 Chevy pickup truck during the mid-1990s when he was known as “Gang Green” at Lambeau Field and elsewhere.

“I tried my best. I tried to get the fans to step up and get involved. I had my 15 minutes or more of fame. I had my own TV and radio show. I was the grand marshal in a few parades. I did a fashion show. I was a Halloween contest judge. Those times were pretty exceptional for me. I just tried to be myself.”

He may no longer wear the face paint and wig, but Wagner remains Gang Green to see what’s inside a man.

Students learn about manufacturing

Three busloads of students from Oshkosh North, West and Winneconne high schools had the opportunity Friday as part of the Manufacturing Month celebration to learn more about manufacturing careers.

Students were actively engaged in manufacturing tours and hands-on presentations at the Fox Valley Technical College Advanced Manufacturing Technology Center (AMTC), Spanbauer Center and at one of Oshkosh Corp.’s manufacturing facilities. In addition, a Muza Sheet Metal Co. representative presented an overview of working in the industry.

“Students really enjoyed the experience and learned a great deal from actually being able to ride in the Oshkosh Corporation vehicles as well as the chance to see what’s inside a manufacturing facility.” Said Dan Tsao, a technology instructor in the Oshkosh District.
OSHKOSH — Brigette and Tim Smith moved to Oshkosh in the fall of 2015.

They had found a house they liked — an old Victorian home within their budget — and closed on it in September.

A few weeks after taking on the cost of the house, they received a special assessment notice in the mail — they were on the hook for about $26,000 (later knocked down to $19,000) in road construction fees. The Smiths were shocked — this was their first experience with special assessments, a tax they said they didn't have in their last home in Washington state.

"When we came out here we bought a house that was within our budget, we researched on what would the power costs be, we researched on what would the insurance be — we
knew what we were getting into," Brigette Smith said. "What we didn't know was about the special assessment. And what family of six can afford another $300 (a month) that they didn't ask for?"

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Future construction fees could be more spread out among more than just property owners if the Oshkosh Common Council passes a proposed "wheel tax." Backed by the Long Range Finance Committee, the tax would add $30 to Oshkosh vehicle owners' yearly registration fee, if the council approves it.

The tax would strictly cover the costs of street and roadwork and would replace the special assessment fees levied on property owners along streets slated for roadwork. Under the current plan, business owners along streets slated for construction would still have to pay for part of the construction with special assessments.

Councilor Matt Mugerauer brought the tax up to the committee. Mugerauer expects the tally of vehicles in Oshkosh — 57,621, not counting semitrailers and motorcycles — to be wrong. He's expecting a slightly lower number.

"There are plenty of people who live in the town of Algoma (for example) who, when they go to the DMV or when they went there and did their registration, they marked they live in Oshkosh," he said.
Those who did so would need to contact the DOT to explain the difference between their street address and the municipality they actually live in in order to not pay the tax.

Mugerauer said staff is expecting a 10 percent cut in that total number based on similar implementations around the state, so the total number will likely be closer to 50,000-51,000.

How much would it bring in?

The Wisconsin Department of Transportation keeps 17 cents per vehicle for administrative costs and sends the rest to the issuing municipality. Here's a breakdown of the money the fees would generate, presuming the lower possible number of 50,000.

Since the state keeps 17 cents per vehicle, a citizen of Oshkosh with a vehicle would pay $29.83 to the city. That would bring in almost $1.5 million a year if 50,000 people registered their vehicles. At that number, $8,500 would go to the state in collected administrative fees.

Wisconsin leaves the implementation of a wheel tax up to municipalities. The fee can only apply to vehicles kept within the issuing municipality and that weigh less than 8,000 pounds, and it can only go toward roadwork, though the issuing municipality has leeway to decide what that roadwork is (sidewalks, sewers, etc.).

A fee of $30 would put Oshkosh on the same level as the three municipalities with the most-expensive wheel taxes. The city of Milton and Milwaukee County currently charge $30 wheel taxes. Eau Claire County will implement a $30 tax in January.

Mugerauer said some of the upcoming road development will be in more "economically depressed neighborhoods" in which residents may not have the funds to pay for the special assessments they will be charged.

"In the grand scheme of things I don't think some of the people in these neighborhoods have $5,000, $10,000, $15,000 just laying around," he said.

The Smiths said the extra fee they had not accounted for has hit them hard in terms of what they can do to their house, which they bought with the expectation they would be able to fix some of the damage time had done to it.

"We bought a big, old Victorian house that was in foreclosure and run-down for a reason — because that's what we could afford," Brigette Smith said.
Tim Smith drew parallels between their house in Oshkosh and their house in Washington state. The renovations the family was able to do on their last home are not possible in their new home currently due to the unforeseen expense of the assessment, he said.

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"Our last home in Washington was built in '28, and we came in and did a lot of remodeling to it. We enjoy taking something that's old and bringing it back to a standard that's respectable for what it is, and now we can't do that," he said. "And so then it makes you unhappy within a home that you thought you were going to be happy in."

Councilor Tom Pech Jr. said he understands the concern around the special assessments but has reservations about the fairness of a wheel tax.

"There's businesses that may actually end up paying a registration fee for vehicles that they have in their business. They'll also have to then go and pay for the special assessments," he said.

Pech also raised concerns about the amount of money the wheel tax may bring in. Unlike the special assessments, a wheel tax would lock the city into a set amount of money for projects. Without a substantial increase of vehicles in Oshkosh, Pech said he is concerned a wheel tax may have to increase in the future to keep up with the cost of roadwork.

Mugerauer said he understands the concern about the ordinance not applying to those who have already paid a special assessment, but he said things like this have to start somewhere.
"There's always been a first, there's always been a last," he said.

The first discussion of the issue with council will be 5 p.m. Wednesday. It will be held in Room 404 in City Hall directly following the discussion on the 2019 city budget. As it is a workshop, there will be no formal action on the ordinance taken at the meeting.