JULY 9, 2019    JULY 23, 2019    19-399    19-436    ORDINANCE
FIRST READING    SECOND READING

(CARRIED______ LOST______ 3-4______ LAID OVER_______ WITHDRAWN_______)

PURPOSE: CREATE CHAPTER 21 OF THE OSHKOSH MUNICIPAL CODE PERTAINING TO PUBLIC CONSTRUCTION AND SERVICES / METHODS OF PAYMENT / SPECIAL CHARGES / SPECIAL ASSESSMENTS / TRANSPORTATION UTILITY FEE AND AMENDING PORTIONS OF CHAPTER 14 STORM WATER MANAGEMENT, CHAPTER 24 WASTEWATER SYSTEMS, CHAPTER 25 STREETS AND SIDEWALK AND CHAPTER 28 WATER PERTAINING TO PUBLIC CONSTRUCTION AND SERVICES AND METHODS OF PAYMENT

INITIATED BY: CITY ADMINISTRATION

A GENERAL ORDINANCE OF THE CITY OF OSHKOSH CREATING CHAPTER 21 OF THE OSHKOSH MUNICIPAL CODE PERTAINING TO PUBLIC CONSTRUCTION AND SERVICES / METHODS OF PAYMENT / SPECIAL CHARGES / SPECIAL ASSESSMENTS / TRANSPORTATION UTILITY FEE AND AMENDING PORTIONS OF CHAPTER 14 STORM WATER MANAGEMENT, CHAPTER 24 WASTEWATER SYSTEMS, CHAPTER 25 STREETS AND SIDEWALK AND CHAPTER 28 WATER PERTAINING TO PUBLIC CONSTRUCTION AND SERVICES AND METHODS OF PAYMENT

The Common Council of the City of Oshkosh do ordain as follows:

SECTION 1. That Section 14-3 of the Oshkosh Municipal Code pertaining to Storm Water Management is hereby repealed and recreated to read as follows:

SECTION 14-3     CREATION

There is hereby established a Storm Water Utility in the City of Oshkosh. The operation of the Storm Water Utility shall be under the supervision of the Director of Public Works.
SECTION 2. That Section 14-3.1 of the Oshkosh Municipal Code pertaining to Storm Water Management is created to read as follows:

SECTION 14-3.1 PUBLIC CONSTRUCTION AND SERVICES / METHODS OF PAYMENT / SPECIAL CHARGES / SPECIAL ASSESSMENTS

The city, acting through the Storm Water Utility, may without limitation due to enumeration, acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage and finance such facilities, operations and activities, as are deemed by the city to be proper and reasonably necessary for a system of storm and surface water management and the public health, safety and welfare. These facilities may include, without limitation due to enumeration, surface and underground drainage facilities, sewers, watercourses, retaining walls, detention basins, streets, roads, ditches and such other facilities as will support a storm water management system.

The Board of Public Works shall supervise actual construction work, shall report on same to the Common Council and shall follow its instruction.

The cost of installing, constructing or maintaining any public work or improvement or providing any current service may be charged in whole or in part to properties benefitting from the installation, construction or maintenance of the public improvements or current service as provided within Chapter 21 of this Municipal Code.

SECTION 3. That Section 24-3 of the Oshkosh Municipal Code pertaining to Wastewater Systems is hereby repealed and recreated to read as follows:

SECTION 24-3 CREATION

There is hereby established a Wastewater Utility in the City of Oshkosh. The operation of the Wastewater Utility shall be under the supervision of the Director of Public Works.
SECTION 4. That Section 24-3.1 of the Oshkosh Municipal Code pertaining to Wastewater Systems is created to read as follows:

SECTION 24-3.1 PUBLIC CONSTRUCTION AND SERVICES / METHODS OF PAYMENT / SPECIAL CHARGES / SPECIAL ASSESSMENTS

The city, acting through the Wastewater Utility, may without limitation due to enumeration, acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, repair, conduct, manage and finance such facilities, operations and activities, as are deemed by the city to be proper and reasonably necessary for a wastewater management system and the public health, safety and welfare. These facilities may include, without limitation due to enumeration, surface and underground facilities, sewers and such other facilities as will support the wastewater management system.

The Board of Public Works shall supervise actual construction work, shall report on same to the Common Council and shall follow its instruction.

The cost of installing, constructing or maintaining any public work or improvement or providing any current service may be charged in whole or in part to properties benefitting from the installation, construction or maintenance of the public improvements or current service as provided within Chapter 21 of this Municipal Code.

SECTION 5. That the following sections of Chapter 25 of the Oshkosh Municipal Code pertaining to Streets and Sidewalks are hereby repealed:

Sections 25-10, 25-11, 25-44, 25-61 and article X of chapter 25 (sections 25-83 through 25-90)

SECTION 6. That Section 28-3 of the Oshkosh Municipal Code pertaining to the Water Utility is hereby repealed and recreated to read as follows:
SECTION 28-3     CREATION

There is hereby established a Water Utility in the City of Oshkosh. The operation of the Water Utility shall be under the supervision of the Director of Public Works.

SECTION 7. That Section 28-3.1 of the Oshkosh Municipal Code pertaining to the Water Utility is created to read as follows:

SECTION 28-3.1  PUBLIC CONSTRUCTION AND SERVICES / METHODS OF PAYMENT / SPECIAL CHARGES / SPECIAL ASSESSMENTS

The city, acting through the Water Utility, may without limitation due to enumeration, acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, repair, conduct, manage and finance such facilities, operations and activities, as are deemed by the city to be proper and reasonably necessary for a water system and the public health, safety and welfare. These facilities may include, without limitation due to enumeration, surface and underground facilities, water mains, laterals, and such other facilities as will support the water system.

The Board of Public Works shall supervise actual construction work, shall report on same to the Common Council and shall follow its instruction.

The cost of installing, constructing or maintaining any public work or improvement or providing any current service may be charged in whole or in part to properties benefitting from the installation, construction or maintenance of the public improvements or current service as provided within Chapter 21 of this Municipal Code.

SECTION 8. That Chapter 21 of the Oshkosh Municipal Code pertaining to public construction and services / methods of payment / special charges / special assessments and creating a Transportation Utility and Fee is hereby created to read as shown on the attachment to this ordinance.
SECTION 9. This ordinance shall be in full force and effect from and after its passage, and publication.

SECTION 10. Publication Notice

Please take notice that the City of Oshkosh enacted ordinance #19-436 CREATE CHAPTER 21 OF THE OSHKOSH MUNICIPAL CODE PERTAINING TO PUBLIC CONSTRUCTION AND SERVICES / METHODS OF PAYMENT / SPECIAL CHARGES / SPECIAL ASSESSMENTS / TRANSPORTATION UTILITY AND FEE (A GENERAL ORDINANCE OF THE CITY OF OSHKOSH CREATING CHAPTER 21 OF THE OSHKOSH MUNICIPAL CODE PERTAINING TO PUBLIC CONSTRUCTION AND SERVICES / METHODS OF PAYMENT / SPECIAL CHARGES / SPECIAL ASSESSMENTS / TRANSPORTATION UTILITY AND FEE) on July 23, 2019. The ordinance amends ordinances pertaining to public construction and special assessments and special charges related to Streets and Sidewalks and the Storm Water, Water and Wastewater Utilities to clarify existing provisions and to reference current State Statutes and to consolidate those provisions into one chapter of the Municipal Code. The ordinance also creates a Transportation Utility for the City of Oshkosh for the purpose of paying costs associated with concrete paving, asphalt paving, construction or reconstruction of driveway aprons, and installation and rehabilitation of sidewalk as an alternative to special assessments for these costs.

The full text of the ordinance may be obtained at the Office of the City Clerk, 215 Church Avenue and through the City’s website at www.ci.oshkosh.wi.us. Clerk’s phone: 920/236-5011.
CHAPTER 21

PUBLIC CONSTRUCTION AND SERVICES / METHODS OF PAYMENT / SPECIAL CHARGES / SPECIAL ASSESSMENTS / TRANSPORTATION UTILITY AND FEE

The City of Oshkosh finds that it is necessary to protect the health, safety, welfare and property of its residents and business owners through the installation, construction, reconstruction and maintenance of public works and facilities including but not limited to public water services, sanitary sewers and appurtenances, storm sewers and appurtenances, public streets and sidewalk, bike and pedestrian ways, landscaping, street lighting and associated amenities.

The City of Oshkosh also finds that it is necessary to provide reasonable, equitable and sustainable funding sources for these purposes which may include public financing through bonding or other means, special assessments, special charges and financing through utilities. The City has created and maintains separate utilities for water (chapter 28 of this Municipal Code), wastewater (chapter 24 of this Municipal Code), storm water (Chapter 14 of this Municipal Code) and Transportation (Article III of this Chapter).

ARTICLE I. SPECIAL CHARGES

SECTION 21-1  SPECIAL CHARGES

Special Charges may be imposed against real property for current services rendered by allocating all or part of the cost of the service to the property benefited as provided in Sec. 66.0627 of the Wisconsin Statutes. Where such charge is specifically authorized by a specific provision within this Municipal Code, such provision shall constitute notice of the special charge, except as additional notice may be required by statute or ordinance.

ARTICLE II. SPECIAL ASSESSMENTS

SECTION 21-2  SPECIAL ASSESSMENTS POLICY

The City of Oshkosh “Policy for Special Assessments” as adopted by the Common Council shall be kept on file in the Office of the City Clerk and in the Office of the City Engineer within the Department of Public Works for the City of Oshkosh. Copies of the Policy shall be available for public inspection during usual business hours.
SECTION 21-3   SPECIAL ASSESSMENTS AUTHORIZED

(A) In addition to any other methods provided by law, the cost of installing, constructing or maintaining any public work or improvement or providing any current service may be charged in whole or in part to properties benefitting from the installation, construction or maintenance of the public improvements or current service and special assessments may be levied against the properties benefited in accordance with Subchapter VII of Chapter 66 of the Wisconsin Statutes and the City’s Special Assessment Policy. Any assessments not provided for within the policy or deviations from the provisions of the Special Assessment Policy shall be specifically approved by the Common Council. Upon certification, property owners may pay the assessment in accordance with the following sections.

(B) Any special assessment levied under this ordinance shall be a lien against the property assessed from the date of the final resolution determining the amount of the levy.

(C) Any person against whose property a special assessment is levied may appeal therefrom in the manner prescribed by Section 66.0703 of the Wisconsin Statutes within forty (40) days of the date of the final resolution.

SECTION 21-4   CERTIFICATION ON FINAL ASSESSMENTS / NOTICE OF ELECTION OF INSTALLMENT PAYMENTS

(A) Upon acceptance of the particular public improvement involved, the Board of Public Works shall issue a Certification of Final Levy of Special Assessments similar to the Certificate specified in Section 66.0713 of the Wisconsin Statutes.

(B) The City Clerk upon certification of the project by the Board of Public Works shall:

1. publish a Class 1 Notice, an Installment Assessment Notice similar to the notice specified in Section 66.0715(7)(e) of the Wisconsin Statutes stating that the City has determined to permit collection of the same in annual installments as specified in this Article and the initial and final resolutions of Council.

2. notify all property owners who are eligible to make an election for payment under the provisions of this Article that they shall have thirty (30) days from the date of the notification to select a payment option.
(C) The election to utilize an installment plan as provided in Sections 21-6 through 21-8 below shall be made in writing by the property owner on forms supplied by the City.

SECTION 21-5  PAYMENT IN FULL

(A) Assessments of less than five hundred dollars ($500.00) shall be paid in full prior to the next succeeding November 1.

(B) For Assessments of five hundred dollars ($500.00) or greater, upon notification by the City Clerk pursuant to Section 21-4 above, an owner may file a notice that the owner elects to pay the special assessments in full prior to the next succeeding November 1 as provided for in Section 66.0715(7)(e) of the Wisconsin Statutes or with the next succeeding tax roll.

(C) For those assessments to be paid in full as provided above, the Treasurer shall notify the owner: (1) that the amount is due, (2) that if paid on or before the next succeeding tax roll interest will not be charged, otherwise interest shall accrue at the rate of six (6) percent per year from the date of Certification.

SECTION 21-6  TEN-YEAR INSTALLMENT PLAN

(A) The provisions for this installment payment plan option shall apply only to assessments Five Hundred Dollars ($500.00) or more. When the City has determined to permit collection of the same in ten annual installments as specified in this Article and the initial and final resolutions of Council, the property owner shall be deemed to accept this plan unless the property owner files with the Clerk an election to pay the special assessments in full as provided in Section 21-5 above.

(B) First installment shall include one-tenth (1/10) portion of the principal of the assessment together with interest thereto at the rate of six (6) percent per year from the date of acceptance by the City of such public improvement to the succeeding December 31, providing such acceptance was prior to November of such year, otherwise the interest shall accrue to the next succeeding tax roll. Each subsequent installment shall include a like portion of the principal and one (1) year's interest upon the unpaid portion of such assessment. The City Clerk shall maintain a schedule of all ten (10) year installment assessment plans and the payments made thereon.
SECTION 21-7  FIFTEEN-YEAR INSTALLMENT PLAN

(A) The provisions for this installment payment plan option shall apply only to assessments One Thousand Dollars ($1,000.00) or more. When the City has determined to permit collection of the same in fifteen annual installments as specified in this Article and the initial and final resolutions of Council, the property owner shall be deemed to accept a ten-year installment plan as provided in Sections 21-5 and 21-6 above unless the property owner files with the Clerk an election to either pay according to a fifteen-year installment plan or pay in full.

(B) First installment shall include one-fifteenth (1/15) portion of the principal of the assessment together with interest thereto at the rate of six (6) per cent per year from the date of acceptance by the City of such public improvement to the succeeding December 31, providing such acceptance was prior to November of such year, otherwise the interest shall accrue to the next succeeding tax roll. Each subsequent installment shall include a like portion of the principal and one (1) year’s interest upon the unpaid portion of such assessment. The City Clerk shall maintain a schedule of all fifteen (15) year installment assessment plans and the payments made thereon.

SECTION 21-8  PRORATED INTEREST

After the time for making the election shall have expired, any property owner on an installment basis may pay all remaining installments, or any part thereof, together with interest at the rate of six (6) percent per year through the month of the payment, provided, however, that between November 1 and December 31 of each year the one (1) installment with interest which is placed on the current tax roll must be paid as shown on the tax roll, and the remaining principal installments may be paid without interest.

SECTION 21-9  PAYMENT OF HOOK-ON CHARGES

(A) Property annexing to the City shall pay a hook-up charge, which is calculated at rates equal to the special assessments previously levied against benefiting properties located within the City limits for public storm sewer, public sanitary sewer main and/or public water main, at such time as the annexation procedure is officially completed.

(B) Such charge may be prorated upon request of the property owner as though it were originally under the ten (10) year assessment plan: One-tenth (1/10) of the charge shall be paid for each year after the original assessment to a total of ten (10)
and the balance paid annually in one-tenth (1/10) installments with interest at the rate of six (6) percent per year.

SECTION 21-10 SPECIAL ASSESSMENTS - DEFERRED PAYMENT

The Common Council may by resolution direct the City Treasurer to pay all, or any portion of special assessments or special charges extended upon the current or next tax roll for any property the Council determines shall be eligible for deferment for payment. The Council may provide for annual interest upon any amounts deferred under this provision.

ARTICLE III. TRANSPORTATION UTILITY

SECTION 21-11 FINDINGS, AUTHORITY AND APPLICABILITY

FINDINGS: The City of Oshkosh Common Council finds that the timely reconstruction of City streets to ensure safe and efficient travel throughout the City is a fundamental City responsibility. A structurally sound and well-maintained street system enhances livability, property values and economic vitality of the entire City. In the past, the cost of street reconstruction has been financed, in large part, by levying special assessments against abutting properties on a project by project basis. This localized perspective for street reconstruction arises out of the nature and legal limitations for special assessments. It can result in abutting property owners paying significant sums for benefits to their property and beyond. It can result in significant financial hardship. As a lien on property, the special assessment may limit financing and refinancing opportunities. For these reasons and others, the Common Council finds that a community wide transportation utility fee applicable to all properties on a community wide basis, paid in monthly installments to a specially designated account for street reconstruction is a more equitable and less burdensome approach to financing street reconstruction in the City.

In order to protect the health, safety and welfare of the public, the Common Council is exercising its authority to establish a Transportation Utility and set the rates for transportation management services. The City is acting under the authority of Chapters 62 and 66 of the Wisconsin Statutes, and particularly at least the following statutes: §§62.04, 62.11, 66.0621, 66.0807, 66.0809, 66.0811 and 66.0813 Wisconsin Statutes.

The provisions of this Article shall apply to all (developed and undeveloped) property located within the City of Oshkosh, including without limitation all property owned by local, state and federal governments, non-profit organizations and all other property
whether subject to real property taxes or exempt therefrom.

SECTION 21-12 TRANSPORTATION UTILITY

There is hereby established a Transportation Utility in the City of Oshkosh. The operation of the Transportation Utility shall be under the day to day management and supervision of the Director of Public Works.

The City, acting through the Transportation Utility, may without limitation due to enumeration, acquire, construct, lease, own, operate, maintain, extend, expand, replace, repair, manage and finance such transportation facilities, operations and activities, as are deemed by the city to be proper and reasonably necessary to provide safe and efficient transportation facilities within the City. These facilities may include, without limitation due to enumeration, concrete paving, asphalt paving, construction or reconstruction of driveway aprons, and installation and rehabilitation of sidewalk.

SECTION 21-13 TRANSPORTATION UTILITY FEE ESTABLISHED

The Common Council hereby finds that it is reasonable to charge property owners for their share of transportation facilities costs based on their estimated use of and impact to the transportation system.

(A) Every Owner of a parcel within the City of Oshkosh shall pay a Transportation Utility Fee.

(1) Residential Parcels. Based upon the volume, size and type of vehicle traffic reasonably anticipated for typical residential parcels, residential properties (properties used exclusively for residential purposes including single family homes, duplexes, residential condominiums, and multi-family units) shall be charged a single uniform fee for each dwelling unit located upon the parcel.

(2) Commercial, Mixed-Use, Industrial and Institutional Parcels. Considering the volume, size and type of vehicle traffic reasonably anticipated for non-residential parcels and considering the standards of construction necessary for commercial vehicle traffic commercial, mixed-use, industrial and institutional parcels shall be charged a fee based upon the amount of impervious surface located on the parcel which the Common Council finds provides a reasonable correlation to the estimated use of and impact to the transportation system.
(3) **Undeveloped Parcels.** Undeveloped parcels shall be charged a fee based upon the amount of impervious surface located on the parcel which the Common Council finds provides a reasonable correlation to the estimated use of and impact to the transportation system.

(B) The Common Council shall determine the annual amount to be funded by the Transportation Utility Fee, and shall by resolution establish the formulas for the calculation of the fee and fee. All fees established pursuant to this Section shall be fair and reasonable. A schedule of current fees shall be maintained and on file in the office of the City Clerk.

(C) Special charge or Special Assessment. Separate and in addition to any fees charged under this Article, a special charge or special assessment may be imposed on property that is specially benefited by a particular transportation project or facility. This charge will be developed to reflect the benefits in a particular area that may not be appropriate to allocate to property throughout the city and shall follow the special charge or special assessment processes defined within this Chapter and the relevant provisions of the Wisconsin State Statutes.

SECTION 21-14 TRANSPORTATION UTILITY FEE / SEGREGATED FUND

(1) Segregated Fund. All fees collected by the city shall be paid into a segregated fund. Such revenues shall only be used for the purposes described within this Article. Any excess of revenues over expenditures in a year will be retained by the Fund for subsequent years’ needs.

(2) Other Funds. To the extent that the fees collected are insufficient to properly reconstruct or resurface streets, the cost of the same may be paid from such other city funds as may be determined by the Common Council. The Common Council may order reimbursement to such fund as additional fees are thereafter collected. Funds shall not be imposed in amounts greater than that which is necessary, in the judgment of the Common Council, to provide sufficient funds to properly improve streets and related transportation facilities.

SECTION 21-15 USE OF FUNDS TO MAINTAIN LOCAL STREETS – EXCLUSIONS

The city may use the Funds within the Transportation Utility to repair, replace, construct, reconstruct and/or maintain all accepted local streets within city rights-of-way and city easements. The city may improve other accepted local streets, bicycle and pedestrian facilities, and intersections with county roads or state highways within or adjacent to the
The cost of initial construction of local streets within City right-of-way to serve new developments or subdivisions constructed after the effective date of this article or subject to a developer's agreement approved by the Common Council shall not be funded by the Transportation Utility Fee.

SECTION 21-16 COLLECTION OF TRANSPORTATION UTILITY FEES

The City Water Utility as staffed and supervised by the Department of Finance is hereby appointed as the collection agency for the Transportation Utility Fee. Bills shall be prepared by the City Water Utility and sent to the owner of each property subject to the fee. The Department of Finance shall allocate the actual cost of billing and collecting.

If there is neither city water nor city sewer service to an improved parcel, a monthly bill shall be rendered and shall become due and payable within twenty days of issuance.

The Transportation Utility Fee shall not be payable in installments. If charges remain unpaid after a period of 20 days from the date of utility bill, such bill shall become a delinquent special charge, pursuant to §66.0627, Wis. Stats., and shall become a lien as provided in §§66.0809 and 66.0821, Wis. Stats. Said charges shall automatically be extended upon the current or next tax roll as a delinquent tax against the property, and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such special charges. Unpaid charges shall be assessed a one- percent per month late payment charge to bills not paid within 20 days of issuance.

All delinquent special charges shall be subject to a ten percent penalty in addition to all other charges and prior penalties or interest when the delinquent special charge is extended upon the tax roll.

SECTION 21-17 NEW DEVELOPMENT / ANNEXATION / ATTACHMENT

(A) For new development, the owner shall be liable for the Transportation Utility Fee, under this article, for the improvement from the date of building permit issuance or the date of establishment of impermeable surface for undeveloped parcels.

(B) Areas annexed or attached to the city of Oshkosh shall become subject to the Fee on the effective date of annexation or attachment.
SECTION 21-18    METHOD OF APPEAL

(A) The City of Oshkosh elects not to be subject to the administrative review provisions contained within Chapter 68 of the Wisconsin Statutes, and establishes the following as a complete and final review procedure.

As a condition precedent to challenging the Transportation Utility Fee, the charge, if due, must be timely paid in full under protest to the City. An appeal can be undertaken only by filing a written appeal with the City Clerk. The written appeal shall specify all grounds for challenge to the amount of the charge and shall state the amount of charge that the appellant considers to be appropriate. Failure to timely and properly appeal shall deprive the Director and/or Board of Public Works of jurisdiction to hear the appeal.

(B) Procedure for Appeal.

Appeals shall be in writing and filed with the City Clerk and shall specify all grounds for the appeal and shall state the amount of charge that the appellant considers to be appropriate. Failure to timely and properly appeal shall deprive the Board of Public Works and Circuit Court in Certiorari of jurisdiction to hear the appeal.

(1) Director of Public Works / Classification of Property or Calculation of Fee.

The Director of Public Works shall make determinations regarding adjustments and shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made pertaining to the classification of the property or calculation of the Transportation Utility Fee. Reclassifications and appeals on the basis of alleged errors in the determination of the fee as applied to a specific parcel may be filed at any time, however, once determined no additional request for reclassification or review may be filed for the same parcel unless there has been a significant change from the prior determination. The decision of the Director of Public Works is final except if the property owner appeals the decision to the Board of Public Works by filing a written appeal with the City Clerk no later than thirty (30) calendar days after the date of mailing the decision of the Director of Public Works.
(2) Board of Public Works.

The Board of Public Works shall hear and decide appeals made on any basis other than an alleged error in the determination of the classification of the property or calculation of the Transportation Utility Fee and shall hear appeals from determinations made by the Director of Public Works under paragraph (1) above.

(C) An appeal may be taken within 30 days of any of the following events:

(a) The determination of the Director or Board of Public Works as provided in Sections (A) and (B) above
(b) The establishment of the Transportation Fee by Resolution of the Common Council each year
(c) Splitting, combining, or other substantial change in the size, zoning, or use of a parcel.

In considering an appeal, the Board of Public Works shall determine whether the Transportation Utility charge is fair and reasonable and, in the event the appeal is granted, whether or not a refund is due the appellant and the amount of the refund. The Board shall conduct a formal or informal hearing at such time and place as designated in a hearing notice to the appellant, providing at least five (5) business days’ notice to the appellant. The Board shall obtain sufficient facts upon which to make a determination and the decision shall be based upon the evidence presented. The Board shall notify the appellant in writing of the determination by first class mail addressed to the individual and at the address listed within the appeal. Service is conclusive upon mailing.

The decision of the Board of Public Works is final except if the property owner appeals the decision to a court of competent jurisdiction. Such appeal shall be filed no later than thirty (30) calendar days after the date of mailing the decision of the Board. Such appeal shall be by writ of certiorari and the reviewing court shall be limited solely to the record created before the Board. Costs, but not attorney fees, shall be awarded to the prevailing party, at the sole discretion of the court.

If the result of any appeal is that a refund is due the appellant, the refund will be applied as a credit on the appellant’s next utility bill.
SECTION 21-19   PLACEMENT OF UNPAID FEES AS A SPECIAL CHARGE ON TAX ROLL

In addition to any other method for collection of the Transportation Utility Fee established pursuant to this Article, the Common Council finds that any unpaid portion of the Transportation Utility Fee may be levied on property as a special charge pursuant to Section 66.0627 Wisconsin Statutes. The Transportation Fee established hereunder reasonably reflect the benefits conferred on property and may be assessed as special charges. The mailing of the utility bill to the owner will serve as notice to the owner that failure to pay the charges when due may result in them being charged pursuant to the property as a special charge under the authority granted by Section 66.0627 of the Wisconsin Statutes. In addition, the City may provide notice by publication on the City’s website, in the city’s official newspaper or otherwise during the month of October of any unpaid charges for the Transportation Utility Fee, which charges, if not paid by November 15, may be placed upon the tax roll under the authority granted by Section 66.0627 of the Wisconsin Statutes.

21-20 SEVERABILITY

In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.
TO: Honorable Mayor & Members of the Common Council
FROM: Mark A. Rohloff, City Manager
DATE: July 3, 2019
RE: Ordinance Creating Transportation Utility Fee to Replace Special Assessments

BACKGROUND
For several years, the Council has discussed alternatives to special assessing properties for street improvements. Some of the reasons for considering alternatives to special assessments include the rising costs of street construction expenses and the impact on individual properties that have to absorb large, one-time special assessment charges. Recently, several cities in the region, notably Appleton, Neenah, and Green Bay, have adopted alternative funding sources to eliminate special assessments for the reconstruction of roads.

Council asked the Long Range Finance Committee (LRFC) to investigate this issue and develop recommendations if the city were to consider an alternative to special assessments. This review has been ongoing since the LRFC took up the issue in summer 2018. In January 2019, after considering several alternatives, including, but not limited to, making no change to the special assessment policy, a vehicle Registration Fee (aka “Wheel Tax”) most recently adopted by the cities of Green Bay and Appleton, and a Transportation Assessment Replacement Fee (TARF) adopted by the city of Neenah, the LRFC recommended a Transportation Utility Fee similar to that adopted by Neenah. Council directed staff to develop a proposed ordinance and fee structure to enact such a fee to replace special assessments as a funding source for street reconstruction projects.

ANALYSIS
Staff has provided both the Council and LRFC with various analyses of the different approaches to a replacement for special assessments. A matrix comparing the different approaches is attached. The pros and cons to the different approaches are summarized as follows:
**Special Assessments**

**Pros:**
- Based on reasonable assumption of benefit to properties.
- Well established under state statutes.
- Commonly used by municipalities with a long history in Oshkosh.
- Assesses costs to both taxable and tax exempt properties.

**Cons:**
- Benefit can last much longer than length of individual ownership.
- Inflation in construction costs has resulted in larger assessment bills.
- City must borrow approximately $1 million annually to finance special assessments.
- Properties owners are not able to anticipate and budget for these expenditures.

**Vehicle Registration Fee**

**Pros:**
- Historical authority under statutes.
- Increasingly being used by cities, most recently to specifically replace special assessments.
- Easy to collect via State and annual vehicle registration.
- City would not have to borrow $1 million annually to finance special assessments.

**Cons:**
- Exempts vehicles > 8,000 lbs., so it exempts vehicles that cause the most damage.
- Does not collect from users who come from out of the city.
- Shifts costs to residents and small businesses.
- Institutions with minimal vehicle ownership but large traffic impact will pay little to nothing.
- Static amount of revenue dilutes buying power of fee over time.
- Elimination of special assessments would apply to projects started after January 1, 2019. Prior special assessments would still apply (similar to other cities).

**Transportation Utility Fee**

**Pros:**
- Basis of impervious area is a reasonable surrogate for vehicle impact.
- Easy to collect via utility bill.
- Fee applicable to both taxable and non-taxable properties.
- Cap on maximum fee, minimizes exposure for larger properties.
- City would not have to borrow $1 million annually to finance special assessments.
- Spreads costs of street improvements over an extended period.
- Creates predictable amount for property owners to budget – no surprises.
Cons:
- Limited use in Wisconsin.
- Two pronged approach to fee, although both based on impervious area.
- Maximum is per parcel; limited options to maintain fairness and reasonableness.
- Elimination of special assessments would apply to projects started after January 1, 2019. Prior special assessments would still apply (similar to other cities).

Based on an evaluation of the various pros and cons of the different proposals, the LRFC and staff agreed that a Transportation Utility Fee remains the most reasonable alternative to special assessments. The proposed ordinance creates a new chapter in the Municipal Code (Chapter 21). Articles I and II of the Ordinance would update current provisions of the Code regarding Special Charges and Special Assessments, reflect changes required based on the establishment of the new Transportation Utility, update statutory references, and consolidate provisions pertaining to special charges and special assessments. Article III will create the Transportation Utility, adopt findings to be made by Council that are necessary for the establishment of the fee, and cites relevant provisions in Wisconsin Statutes that give the city authority to establish such a fee, including Sections 62.04, 62.11, 66.0621, 66.0807, 66.0809, 66.0811, and 66.0813.

Should the Ordinance be adopted by Council, staff will provide Council with the applicable resolutions to adopt the annual fee, proposed at $4.50 per month/Developed Area Unit (DAU), establish a DAU of 2,817 sq. ft., set a cap of 100 DAUs per parcel, and other provisions that have been previously provided to Council.

**FISCAL IMPACT**

As reported to Council in the staff report, the proposed monthly fee of $4.50 will generate approximately $3.25 million in annual revenue. The $3.25 million will enable Council to eliminate the street special assessments for the following costs of street reconstruction, with the corresponding portion of the monthly fee:

- Concrete Paving, $1,750,000 ($2.42 of monthly fee)
- Asphalt Paving, $400,000 ($0.55)
- Driveway Aprons, $250,000 ($0.35)
- New Sidewalk, $50,000 ($0.07)
- Sidewalk Rehabilitation, $800,000 ($1.11)

In addition to eliminating the street reconstruction special assessments to property owners, the City will not have to borrow approximately $1 million annually to finance the special assessments of those property owners who choose to finance repayment of their special assessments through the City. This will allow the city to reduce its own annual borrowing, or allow it to redirect this debt to other capital uses.
Upon the creation of this fee, the city will also create a segregated Transportation Utility Fund to manage the revenues and expenditures. This will ensure transparency for the use of all funds so that the proceeds of the fee will go towards their intended purpose.

For property owners, the fee replaces special assessments that will occur at some time over the life of their street. This fee effectively serves as insurance for an unknown special assessment(s) that may come up over the years. Additionally, when compared to a large one-time special assessment cost, property owners will discover that the cost of a street special assessment will far exceed the monthly fee over the life of the road improvement. For example, a residential property with an $8,100 street assessment will have to pay the Transportation Fee for 150 years before the fee costs more than the special assessment. A commercial/industrial property with a $216,000 special assessment versus a maximum Transportation Fee of $5,400 annually will have to pay the fee over 40 years before the fee costs more than the special assessment. In both cases, it makes more economic sense for these properties to pay the Transportation Fee rather than be subject to special assessments.

RECOMMENDATION
Staff and the Long Range Finance Committee recommend the replacement of special assessments with a Transportation Fee as a more reasonable method of having property owners share in the costs of street replacement costs.

Respectfully Submitted,

Mark Rohloff
City Manager

Attachment
## Comparison of Alternatives to Special Assessments as Funding Source for Street Projects

<table>
<thead>
<tr>
<th>Feature</th>
<th>Special Assessments</th>
<th>Vehicle Registration Fee $65/vehicle/year</th>
<th>Transportation Fee $54/DAU/year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Raises needed revenue of $3.25 million annually?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Out of town students contribute directly/indirectly?</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Tenants pay directly/indirectly</td>
<td>Yes</td>
<td>Yes (if residents)</td>
<td>Yes</td>
</tr>
<tr>
<td>Residents pay directly/indirectly</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Visitors/customers pay directly/indirectly</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Payable by businesses in multiple jurisdictions?</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Tax exempt properties pay?</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Payable by governmental entities?</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Cost less over extended period?</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Reduces city borrowing?</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Considers impact of large vehicles over 8,000 lbs.?</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Easy to collect?</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Affordable for residents and small businesses?</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Cap for larger properties?</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Spreads costs over an extended period?</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Predictable amount?</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Considers inflation of construction costs?</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Accounts for multiple parcels?</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Considers prior special assessments paid?</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Commonly used in WI?</td>
<td>Yes</td>
<td>(limited)</td>
<td>No</td>
</tr>
</tbody>
</table>