

# Wauwatosa Proposed Transportation Utility Ordinance

DRAFT- 3/9/2023

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## Chapter 19 TRANSPORTATION UTILITY

### Sec. 19.02.010. Purpose and intent.

- A. The City of Wauwatosa finds that the management of the transportation system within the City is a matter that affects the health, safety and welfare of the City, its residents and businesses, and others in the surrounding area. Timely maintenance, construction and reconstruction of the City's transportation system ensures safe and efficient travel throughout the City. A sound transportation system enhances livability, property values, and economic vitality.
- B. A transportation utility provides an equitable, sustainable source of funds for the maintenance, construction, and reconstruction of transportation infrastructure under the jurisdiction of the City of Wauwatosa. The Common Council has reviewed funding options for transportation system funding, including a transportation utility and determined that establishment of a transportation utility with fees based on trips generated by property uses is the most appropriate method to provide the necessary funds. The Common Council further concluded that a transportation utility is the most equitable means to apportion the cost of transportation system improvements as it requires those who make the greatest use of the City transportation system to be the most responsible for the cost of said system. In creating this chapter, the City is acting pursuant to authority granted by Chapters 61 and 66 of the Wisconsin Statutes, including but not limited to [Wis. Stats.] §§ 61.34 and 66.0621.

### Sec. 19.02.020. Definitions.

As used in this chapter, the following terms, phrases, words and their derivatives shall have the meaning given herein:

- A. *Developed parcel.* A parcel or legal 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, outside storage, and other uses that impact the transportation system.
- B. *Developed use.* The use of a parcel based on how the owner or occupant(s) uses the improvements on the parcel.
- C. *ITE manual.* The most recently-published edition of the International Traffic Engineer's Trip Generation Manual, published by the Institute of Transportation Engineers, as may be amended from time to time, as adopted by the City.
- D. *Property owner.* The party who owns the property being charged the fee, and who is responsible for payment of charges for said property.
- E. *Trip.* A single one direction vehicle movement with either the origin or destination inside a study area. A trip has an origin and a destination at its respective ends.
- F. *Trip generation rate.* The number of vehicle trips on an average weekday, as determined by reference to the ITE manual.
- G. *Undeveloped property.* An unimproved property, having no assessed improvements or built infrastructure.
- H. *User.* Individual properties or portions of a property that generate trips or have the ability to generate trips according to the methodology utilized in this chapter.

#### **Sec. 19.02.030 Transportation Utility fund.**

- A. Revenue generated by the transportation utility shall be used only for the following: 1) related administration costs; 2) pavement preservation activities (grind/inlay, slurry seal, crack seal, chip seal, or other generally accepted means of maintenance); 3) street construction and/or reconstruction activities on City streets; 4) street lighting and appurtenances; 5) traffic control and signalization maintenance, construction or reconstruction; and 6) pedestrian and bicycle facilities necessitated by street interfaces.
- B. All fees collected pursuant to this chapter shall be deposited in the City's Transportation Utility fund. The Transportation Utility Fund will be considered a Special Revenue Fund per Governmental Accounting Standards with fund balance designated for the purposes described above. Monies may be transferred to other funds for eligible expenses.

#### **Sec. 19.02.040. Transportation user fee.**

- A. Every developed property shall pay a transportation user fee.
- B. The fee shall be based on the developed property's direct and indirect uses of, or benefits derived from the use of the transportation system. The jurisdictional authority of the roadway a property utilizes for access shall not affect the fee in any way.
- C. The fee imposed under this chapter shall become due and payable from and after the effective date of this chapter, and for property developed after the effective date of this chapter, from and after the date the property becomes developed.
- D. The transportation user fee imposed under subsection (a) of this section may be paid by the owner, occupant, business or anyone designated by the owner; however, if the transportation user fee is not paid promptly, when due, the City shall proceed to collect such charges from the property owner in any manner provided by law, or seek imposition of the charges on the property tax bill for the benefitted property.
- E. The fees imposed under this chapter shall begin January 1, 2024.

#### **Sec. 19.02.050. Exceptions to transportation user fee.**

The following shall not be subject to the transportation user fee:

- A. Parking lots, which are not associated with any services or uses other than parking.
- B. Undeveloped publicly owned parkland, open spaces, and greenways, unless public off-street parking designed to accommodate the use of such areas is provided.
- C. Undeveloped properties.

#### **Sec. 19.02.060. Determination of transportation user fee.**

- A. The transportation user fee shall be comprised of a base fee and a usage fee:
  - 1. *Base fee*—A fee that is equal for all properties that recognizes that each property is receiving a uniform benefit of access to the transportation system and includes administrative costs and those fixed capital, operating and maintenance costs of the transportation system that are not recoverable by the usage fee or other confirmed revenue source. The base fee is determined by dividing the total amount of fixed base costs by the total number of Users.
  - 2. *Usage fee*—A fee on each property determined by multiplying the trips the property generates by a per-trip charge. The per-trip charge is determined by dividing the target budget (not

including the fixed base costs budget) by the total trips generated by all properties in the transportation utility. The trips generated for each property are calculated as outlined in Sec. 19.02.060 (C).

- B. The base fee and per-trip charge shall be in an amount set forth from time to time by resolution of the Common Council. Staff shall present the Common Council with a proposed adjustment based on the proposed transportation system improvements budget for the projected improvement program time frame. Any adjustment of the base fee and per-trip charge shall be effective on the date determined in the resolution.
- C. For each property, the Director of Public Works, or their designee, shall determine the category or categories of use from the ITE manual that shall apply to each developed property within the City. In the absence of specific use categories from within the ITE manual for a particular developed use, the Director of Public Works, or their designee, shall determine the appropriate category by interpreting the ITE manual and assigning the category which most accurately reflects the traffic generated by the particular developed use utilizing Engineering judgement. After determining the appropriate use category for a developed parcel, the Director of Public Works, or their designee, shall use the trip generation rates to calculate the number of trips assigned to each User. The number of trips may be multiplied by a scale factor and adjusted where appropriate by a deduction factor (e.g., seasonal land uses, K-12 school year, seasonal park properties). The usage fee is then determined by multiplying the resulting trips by the per-trip charge in the most current resolution. The Director of Public Works, or their designee, may require and consider the results of a traffic study, to be paid for by the property owner, provided that such study shall be conducted by a licensed Wisconsin Professional Engineer and ITE-certified Professional Traffic Operations Engineer in conformance with the methodology outlined in the WisDOT Bureau of Traffic Operations Traffic Impact Analysis Guidelines. The determination of a use category shall not be considered a land use decision for the purpose of land use planning.
- D. If the use of a property changes the property owner must notify the Director of Public Works, or their designee, within 30 days to obtain a new determination regarding the transportation user fee for that property. The request shall be made on forms provided by the City that the property owner will need to complete and submit with information pertinent to the request. The new fee will be applied with the next City services billing. If the property owner neglects to notify the City, and the change would result in a lower monthly transportation user fee, no refund will be made for the time between when the change was made and when the City became aware of the change. If the change would result in a higher monthly transportation user fee, the City will calculate the amount owed to the Utility, back to the time the change was made and apply that to the next City services bill.
- E. A User Fee Credit Policy shall be adopted from time to time by the Common Council. The User Fee Credit Policy shall provide for a reduction to the standard user fee for properties that complete required trip reduction techniques as outlined in the User Fee Credit Policy.
- F. An Income Based Credit Policy shall be adopted from time to time by the Common Council. The Income Based Credit Policy shall provide for a reduction to the standard user fee for property owners who qualify based on household income as described within the policy.

#### **Sec. 19.02.070. Billing and collection of fees.**

- A. The transportation user fee shall be billed and collected with and as part of the combined City utility billing which includes water, wastewater, and stormwater fees. The Transportation Utility shall pay a proportional administrative expense to the Water Utility associated with billing and collection activities.
- B. In the event payments received from the City's billings, described in subsection (a) of this section, are inadequate to satisfy in full all of the water, sanitary sewer, stormwater and transportation user fees, credit shall be given to each utility as outlined in accordance with administrative policies on file with the City's Finance Department.

- C. If the transportation user fee is not paid when due, the City shall proceed to collect such charges in any manner provided by law, or seek imposition of the charges in the property tax bill for the benefitted property.

#### **Sec. 19.02.080. Appeal.**

- A. Any property owner may appeal the amount of the usage fee charged to a property by filing a written appeal to the City Clerk. As more particularly described below, the written appeal shall specify the grounds for challenge to the amount of the fee, shall state the reasoning for such assertion, and shall state the amount of fee that the appellant considers to be appropriate based upon those fee calculation criteria.
- B. The appeal must specify the basis for the appeal and may include a traffic study prepared as noted in section 19.02.060 above, and shall be limited to the facts related to the developed property improvements, trip generation rates, category of use and other factors material to the calculation of the usage fee as described in this chapter.
- C. The Director of Public Works, or their designee, shall review the petition within 90 days of receipt and make a determination if there is an error in any order, decision or determination made pertaining to the classification of the property or calculation of the usage fee. If the trip generation rate is within ten percent of the rate used to generate the usage fee, no adjustments in the usage fee shall be made because this is within the expected margin for day to day variations. Once a determination has been made on a reclassification and/or fee, no additional request may be filed for the same parcel within twelve months of the date of the charge being appealed, unless there has been a significant material change from the prior determination or another demonstrable error in the calculation of the usage fee. The decision of the Director of Public Works, or their designee, shall be provided in writing to the applicant.
- E. The property owner may appeal the decision of the Director of Public Works, or their designee, to the Board of Public Works for a recommendation to the Common Council. The appeal must be filed in writing to the City Clerk within 30 calendar days from the date that the decision of the Director of Public Works, or their designee, was mailed to the property owner or other recipient designated by the property owner. The Board shall conduct a hearing and provide notice to the appellant at least five business days prior to the hearing. The Board shall obtain sufficient facts upon which to make a determination, and shall make a recommendation on disposition of the appeal to the Common Council. The recommendation shall be based upon the evidence presented to the Board.
- F. The Common Council shall review the recommendation of the Board of Public Works. The Council will decide the disposition of the appeal based upon the Board's recommendation and the record presented to the Board. The Council shall determine whether the user fee charged is appropriate and reasonable in accordance with the terms of this ordinance and, in the event the appeal is granted, whether or not a refund is due the appellant and the amount of the refund.

#### **Sec. 19.02.090. Inspection of premises.**

Upon presentation of credentials, a representative of the City may request entry at any reasonable time to examine any property for purposes of conducting any studies or collecting information bearing upon the determination of the appropriate use category or transportation user fee in accordance with this chapter. If entry is refused, such representative may obtain a special inspection warrant under Wis. Stats. § 66.0119, however if such access is not permitted by the property owner or occupant the existing fee shall be presumed correct unless substantial material evidence is presented to the contrary.

**Sec. 19.02.100. Severability.**

If any provision, paragraph, word, section, or article of this chapter is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and chapters shall not be affected and shall continue in full force and effect.