

ORDINANCE NO. NS-2494

AN ORDINANCE ADOPTING A NEW BEND MUNICIPAL CODE CHAPTER 3.110, TRANSPORTATION FEE

Findings

A. The City of Bend is responsible for maintaining, operating, and constructing roads and other facilities for people traveling by different modes of transportation, including drivers, bicyclists, pedestrians, transit riders, and others. Funding for the transportation system comes from state gas tax revenues, franchise fees, the City's General Fund, and other sources. These revenue sources are not keeping up with expenses and costs to maintain the transportation system and provide the transportation services the community is asking for. A transportation fee was recommended to Council by community stakeholder committees in 2009 and 2011, but was not adopted by City Council at those times. A transportation fee was again recommended by the Citywide Transportation Advisory Committee and included in the Transportation System Plan Funding Strategy adopted by City Council as part of the City's Comprehensive Plan in 2020.

B. City Council's adopted goals for the 2023-2025 biennium included implementing a transportation fee, and Council has discussed the fee at public meetings throughout 2023. The Transportation Fee created by this code will be implemented in three phases, through fee resolutions adopted by Council. The code says Phase 1 fees should raise \$5 million in fiscal year 2024-2025. Phase 2 fees should raise \$10 million in fiscal year 2025-2026, and Phase 3 should raise \$15 million in fiscal year 2026-2027 and beyond.

C. Fees will be set annually in resolutions adopted by Council at a public meeting, where the public will have an opportunity to comment. All resolutions and fee amounts are subject to approval by City Council. Revenue must only be spent on the transportation system, as provided in the code.

D. The budget for spending Transportation Fee revenues will be set by the City Council following public meetings of the City's Budget Committee, and public hearings of the City Council at which the public can comment on proposed expenditures.

E. Phase 1 non-residential fees are based on building square footage. Phase 2 and 3 non-residential fees will be based on square footage and the transportation impact of the use in the building as gathered through the business license renewal process. The methods for allocating cost by impact will be discussed in public meetings by City Council and the Bend Economic Development Advisory Board with opportunities for public involvement.

F. In order to build public trust and increase financial transparency, the City Manager is directed to establish new ways to inform the community of planned expenditures of the Transportation Fee revenue and provide annual reporting on Transportation Fee activities, including public-facing data dashboards that highlight key operational and financial metrics that are updated on a quarterly basis at a minimum.

G. The City intends to update the 2020 Transportation System Plan in the 2025-27 biennium for a scheduled 5-year update and to guide future development and infrastructure needs. There is also a planned update to the City's Standards and Specifications for how roads are built, which may impact costs and projects going forward. Additionally, it is anticipated that the 2025 State of Oregon Legislative Session will be focused on transportation funding. The outcome of these processes may influence future Transportation Fee implementation phases and associated expense and revenue targets.

H. Before adoption of fees in Phase 3, it is the express intent of Council for the City to hold further discussions about the other revenue sources recommended in the Funding Strategy of the Transportation System Plan. The discussion should include how to increase revenue from individuals who do not live in Bend but come to the city and use the transportation system, whether to refer a gas tax to Bend voters, and whether or how these additional revenue sources should affect the revenue targets and rates for Phase 3 of the Transportation Fee implementation plan.

Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. In addition to the findings set forth above, Council adopts and incorporates the Additional Findings in support of BMC Chapter 3.110, Transportation Fee, attached as Exhibit A, and the Findings in Support of the Resolution Amending Resolution No. 3340, to Set Rates for the Transportation Fee, which are part of the packet for this code adoption.

Section 2. A new chapter 3.110, Transportation Fee, as shown on the attached Exhibit B, is adopted into the Bend Municipal Code.

Section 3. The City Manager is directed to take steps to implement the intent of Council as outlined in Findings E, F, G, and H of this Resolution and present to Council no later than March 30, 2026, or between the Transportation Fee implementation of phases 2 and 3, whichever comes first.

Section 4. If any provision, section, phrase, or word of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

Section 5. All other provisions of the Bend Municipal Code remain unchanged by this ordinance and remain in effect.

First Reading: March 20, 2024

Second Reading and adopted by roll call vote: April 3, 2024

YES: Mayor Melanie Kebler
Mayor Pro Tem Megan Perkins
Councilor Barb Campbell
Councilor Anthony Broadman
Councilor Ariel Méndez
Councilor Mike Riley
Councilor Megan Norris

NO: none



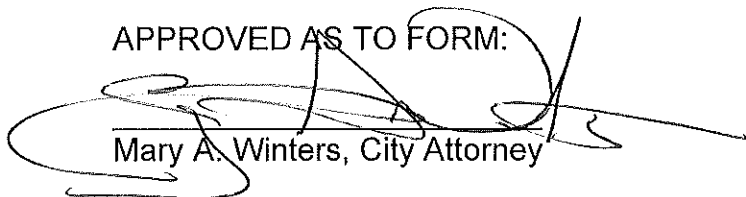
Melanie Kebler, Mayor

ATTEST:



Robyn Christie, City Recorder

APPROVED AS TO FORM:



Mary A. Winters, City Attorney

Exhibit A to
AN ORDINANCE ADOPTING A NEW BEND MUNICIPAL CODE
CHAPTER 3.110, TRANSPORTATION FEE



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Additional Findings in support of BMC Chapter 3.110, Transportation Fee

1. The City is implementing a Transportation Fee to be used in conjunction with one or more additional sources to fund transportation programs and the maintenance, operation, repair, preservation, reconstruction, administration, safety enhancements, and capital alteration of the City's transportation system for all users, including vehicle lanes for all street classifications, pedestrian, bicycle, and other modes of travel.
2. The transportation system is necessary for all people in Bend to go about their daily lives. A connected, well-maintained transportation system allows people—and the goods and services they depend on—to move around safely and efficiently. The transportation system is a public investment that needs regular maintenance to ensure mobility, public safety, economic activity and quality of life.
3. Maintenance and operations of the City's transportation system is funded by the Oregon state gas tax revenues, franchise fees from utilities that use the City's roads to provide utility services, and the City's general fund, among other sources. The State of Oregon continues to predict gas tax revenues will decline. While the City of Bend and its tax base are growing, restrictions on increasing property taxes and assessed value mean property taxes are not sufficient to support City services, including transportation. Increases to costs to provide transportation maintenance and operation continue to outpace revenue growth.
4. The Transportation Fee will help the City maintain its current level of service for its growing transportation network, comprised of over 900 lane miles, 516 sidewalk miles, and 111 miles of striped, separated, and buffered bike lanes. The Transportation Fee is needed to fund services such as snow plowing, street sweeping, clearing debris from bicycle lanes and sidewalks, sidewalk infill, safety equipment like speed radars, street pavement preservation and traffic signal upgrades. Additionally, this funding can be used to enhance transportation options, levels of service, and safety for people of all ages and abilities who drive, walk, roll, or ride. The Transportation Fee can help support programs recommended in the Transportation System Plan to improve and maintain the City's transportation infrastructure.
5. Poor pavement conditions can be damaging on vehicle and bicycle tires, deter business investment, and cost the community more in the long run if not addressed. A well-maintained transportation system allows for safe and efficient movement of community members, emergency responders, goods and services.

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Maintaining the transportation system is crucial to protecting the City's investments. Not investing in repairs means it becomes more expensive the longer we wait. Delaying maintenance until a road is failing can cost four to five times more than performing timely preventative maintenance. Without consistent funding for operations and maintenance, we will fall behind and the cost of repairs will increase. Preventative maintenance saves money and extends the life of streets by almost 50% – a significant return on the public's investment.

6. A transportation fee has been discussed by the City Council for over a decade. The budget for operations and maintenance of City streets was cut following the recession in 2007-2008. Multiple Council advisory bodies made up of community members have recommended a transportation fee as a revenue source for transportation maintenance and operations. In 2009, City Council created a Street Maintenance Funding Group, which recommended a transportation fee to support street maintenance and operations. City Council did not enact the fee at that time. In 2010-2011, the Council-created Public Safety Funding Committee also recommended a transportation fee. City Council opted in January 2011 to send to the voters a general obligation bond for construction of new transportation infrastructure, instead of a transportation fee. This bond was approved by voters. In 2016, the City Council referred a local gas tax to the voters to fund road repairs and improvements; voters rejected this tax.
7. From 2018-2020, a Citywide Transportation Advisory Committee met to recommend a new Transportation System Plan (TSP) for the City's Comprehensive Plan, including a funding strategy that considered different funding options for funding construction and maintenance of needed transportation improvements. The funding strategy recommended consideration of additional general obligation bonds for construction, updates to the system development charges for new development, and a transportation fee, gas tax, and a prepared food and beverage tax, among other options for additional revenue to meet the transportation system needs identified in the TSP. The TSP also envisions a number of new programs and initiatives to increase services provided by the City, including enhanced pedestrian and bicycle facilities and maintenance, which require a revenue source to implement. City Council has taken steps to follow the financial strategy from the TSP since its adoption. In 2020, the voters approved a general obligation bond for construction of new transportation infrastructure. Updates to the SDC methodology and rates are anticipated to be adopted by Council in 2024.
8. In 2023, the City began a project to consider a transportation fee to fund maintenance and operations of the City transportation system, and programs

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identified in the 2020 Transportation System Plan. The City engaged Galardi Rothstein Group to assist in evaluating methods for assigning costs to system users based on transportation impacts.

9. The City Council discussed a Transportation Fee at work sessions on February 15, 2023, March 15, 2023, July 19, 2023, and August 2, 2023. Council held three Roundtable Meetings in August, September and October of 2023 to hear from invited stakeholders representing a wide variety of community groups and interests. Council has received direct communication from many community members. Council advisory committees also provided feedback to the Council regarding the fee, including the Bend Economic Development Advisory Board (BEDAB), which met five times from October to December 2023 to provide feedback on the non-residential Transportation Fee. Council held two additional work sessions on January 3, 2024, and February 7, 2024, to discuss the code and fee schedule prepared in response to Council direction and community input provided over the preceding year. Following the February 7, 2024, meeting, the proposed code and fee schedule were released for public review and comment. On February 26, 2024, and February 29, 2024, Council held listening sessions to provide information to the community on the proposed Transportation Fee and to take public comment on the proposal. Council discussed public input received and provided further direction to staff at a work session on March 6, 2024. Comments on the proposed fee and code were taken at the City Council meeting on March 20, 2024. In addition, Council considered written comments submitted before the vote on this Ordinance.
10. The Transportation Fee is a fee for the transportation system services provided by the City. It is not a sales tax, and is not subject to a vote by the electors of Bend under Section 40 of the Bend Charter. It is not a property tax under Oregon law, and is not subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution. The Transportation Fee is a fee or charge 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.

Exhibit B to
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CHAPTER 3.110, TRANSPORTATION FEE



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Note: Underlined text is new since the prior draft published 2/7/24

Chapter 3.110 TRANSPORTATION FEE

- 3.110.010 Purpose
- 3.110.020 Definitions
- 3.110.030 Applicability and Classification of Charges
- 3.110.040 Segregation of Revenue and Use of Funds
- 3.110.050 Rate Structure
- 3.110.060 Unit Rate Established
- 3.110.070 Charge Adjustment and Appeals
- 3.110.080 Payment Due Date and Enforcement

3.110.010 Purpose. The purpose of the Transportation Fee created by this Chapter is to fund transportation programs and the maintenance, operation, repair, preservation, reconstruction, administration, safety enhancements, and capital alteration of the City's transportation system for all users, including vehicle lanes for all street classifications, pedestrian, bicycle, and other modes of travel.

3.110.020 Definitions.

The following words and phrases whenever used in this Chapter shall be construed as defined in this Section unless from the context a different meaning is intended. Definitions may be supplemented by definitions in the Fee Resolution setting rates for the Transportation Fee.

- A. **City** means the City of Bend, Oregon, or as indicated by the context, may mean any official, officer, employee or agency authorized to act on behalf of the City.
- B. **City Manager** means the City Manager or their designee.
- C. **City transportation system** means all public roads, excluding state and county roads, within the city limits of Bend, including vehicle travel lanes, bicycle and pedestrian facilities in the public right-of-way, and all other transportation facilities the City is responsible for operating and maintaining by operation of law, practice, or agreement between the City and another public entity. The "City transportation system" does not include private roads with public access easements.
- D. **Developed property** means a parcel of real property that has been connected to the sewer system of the City, is served by water service by any water provider including the City, or is connected to the City's stormwater system and charged a stormwater utility fee.
- E. **Multi-unit** means more than one dwelling unit served by one water meter.
- F. **Non-residential property** means property classified as non-residential in the City's utility billing system, including property with any use other than a residential use, including without limitation all commercial, industrial, mixed-use, school, hotel/motel or

other tourist accommodation uses, and properties with both residential and non-residential uses.

G. **Parcel** means the smallest separately segregated unit or plot of land having an identified owner, boundaries, and surface area which constitutes a separate lot or tract capable of being conveyed without further subdivision.

H. **Park** means an active or passive recreation facility owned by the State of Oregon or Bend Park and Recreation District (i.e., neighborhood, community, or regional parks).

I. **Residential property** means property with one or more dwelling units, classified as residential in the City's utility billing system, including accessory uses permitted under the Bend Development Code such as home-based business or in-home childcare.

J. **Responsible party** means, when the Transportation Fee is charged to a utility bill for a property, the person or entity responsible for the utility bill or other person who has notified the City of their intent to be responsible for the Transportation Fee for a property. When the Transportation Fee is charged to a short-term rental license, "responsible party" means the short-term rental licensee.

K. **Schools** means a public facility that provides teaching or learning. Typical uses include elementary, middle/junior, and senior high schools and related uses, and public vocational and trade schools, academies, colleges, and universities.

L. **Single-unit** means one dwelling unit served by one water meter.

M. **Square footage** means all areas inside of a building or buildings located on a single lot or parcel, or served by a single City water meter, as measured from the exterior walls of the building(s). "Square footage" includes enclosed courtyards and stairwells but does not include areas enclosed by a fence only or parking areas that are not enclosed within a building.

M. **Tourist Accommodation** means a property or portion thereof designed for and/or used for occupancy on a short-term or transient basis for a fee (i.e., a hotel, motel, bed and breakfast, or short-term rental).

3.110.030 Applicability and Classification of Charges.

A. The requirements of this Chapter apply to all developed property in the city of Bend, including publicly and privately owned property.

B. The Transportation Fee created by this Chapter is not 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 II(b), Article XI, of the Oregon Constitution, and is classified as such for the purposes of ORS 310.145. It 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.

C. The Transportation Fee is imposed upon all developed property within the corporate limits within the city of Bend. The responsible party is required to make payment of the Transportation Fee under this Chapter. Discounts on the Transportation Fee will be available consistent with the City's Utility Billing Assistance Program, as

reflected in the adopted Fee Resolution.

D. The City Manager may adopt and amend rules and policies to administer this Chapter.

3.110.040 Segregation of Revenue and Use of Funds.

A. Revenue collected under this Chapter shall be deposited into the City's transportation fund and must be used consistent with the purposes of that fund and this Chapter.

B. Revenues may be used for any operations, administration, and maintenance work contracted for or performed by the City on the City transportation system, including partnerships with other entities that enhance the City transportation system, consistent with the provisions of this Chapter. The primary use of the funds shall be operations and maintenance of the City transportation system, including pavement restoration, street preservation, signs, striping, sidewalk and other concrete work, bicycle and multi-modal system enhancements, street sweeping and cleaning, winter operations such as snow removal, and implementation of programs identified in the 2020 Transportation System Plan, including administrative costs related to any allowable expense.

C. It is not necessary that the expenditures of the Transportation Fee revenues specifically relate to the parcel or property from which the fees are collected.

D. Every five years, beginning in 2029, or at other times as requested by Council, Council will consider adjustments or changes to the fee and rate structure, and may take into consideration estimates of the cost of operations, administration, and maintenance of the City's transportation system, revisions to the categories of use for non-residential properties, revised estimates of impact to the transportation system, or other factors the Council finds are relevant to the fee. Council may also direct the City Manager to provide annual reports or other transparency and accountability measures related to the City's use of the Transportation Fee revenue.

3.110.050 Rate Structure.

A. Revenue collection between residential and non-residential accounts shall be made according to the revenue targets in this Chapter and the residential and non-residential share of trips on the City transportation system according to the Bend/Redmond Travel Demand Model, consistent with the assumptions made in the 2020 Transportation System Plan. Based on these assumptions, the initial rates established in 2024 will be structured so that rates for residential accounts provide approximately 53% of revenue and rates for non-residential accounts provide approximately 47% of revenue.

B. Revenue targets are as follows:

1. \$5 million in fiscal year 2024-2025 (Phase 1)
2. \$10 million in fiscal year 2025-2026 (Phase 2)
3. \$15 million in fiscal year 2026-2027 (Phase 3)

C. Revenue targets and the initial rate structure are targets, not minimums or maximums, and rates may be adjusted following the regular rate structure review as

provided in this Code, by resolution by the City Council as it sets the fee schedule, or by ordinance by the City Council as necessary or desired. The revenue targets set forth in this Section do not limit the authority of Council to set rates at levels that would raise more or less revenue than stated in the revenue targets, including adjusting revenue needs to account for inflation or other factors.

3.110.060 Unit Rate Established

A. The rate and frequency of charge of the Transportation Fee shall be established by Council resolution, in amounts designed to reach the revenue targets of this Chapter or other amounts determined by Council. The Transportation Fee may be adjusted annually in the City of Bend Fee Resolution to account for inflation and revenue targets. For most accounts, the Transportation Fee will be billed on the same frequency as other City utility bills.

B. The residential rate will be per dwelling unit.

C. The structure for non-residential rates will be implemented in phases. Except as otherwise set forth in the Fee Resolution adopted by Council, for the 2024-2025 Fee Resolution (Phase 1), most non-residential rates will be by the building square footage on a property or parcel. Other units of assessment for non-residential rates may be per student for schools (public K-12 and higher education), per acre for parks, and per room for tourist accommodations, or other units that take into account the impact of the use on the City transportation system. Initial determination of square footage will be made by reference to the real property records of Deschutes County, or other source of data in the reasonable discretion of the City, and may be appealed or contested as provided in this Chapter.

D. The intensity of the use on most non-residential property will be considered in the rates set by resolution by Council for fiscal year 2025-2026 (Phase 2), or at other time(s) deemed appropriate by the City Council.

3.110.070 Charge Adjustments and Appeals

A. Unless otherwise provided in City administrative policies, the following process applies to appeals of the Transportation Fee.

B. Any person billed for the Transportation Fee may file a "Request for Fee Review and Adjustment" with the City Manager within thirty (30) days of the date of the bill; however, submittal of such a request does not extend the period of payment for the charge.

C. A Request for Fee Review and Adjustment may be granted or approved by the City Manager only when one or more of the following conditions exist:

1. The amount charged is in error, including assignment of the property to a residential or non-residential category, the square footage or other unit base of a non-residential property, and the use categorization for non-residential property.
2. The parcel exists in its natural unimproved condition, is not connected to the City's stormwater or sewer system, is not connected to any domestic or irrigation water service, and will remain in its natural unimproved condition with no allowable human activities or improvements that would generate trips,

whether automobile, or by any other means of conveyance over the City transportation system, to or from the parcel.

D. Fee reviews and adjustments only apply to bills issued after determination of the appeal. No refunds or adjustments to prior payments or bills will be made, except as otherwise determined necessary or appropriate in the sole discretion of the City. The responsible party has the burden of proving that the Request for Fee Review and Adjustment should be granted.

E. Decisions on Requests for Fee Review and Adjustment shall be made by the City Manager or their designee based on information submitted by the requestor and by the City within thirty (30) days of the request, except when additional information is needed. The requestor shall be notified in writing of the City's decision.

F. Decisions of the City on Requests for Fee Review and Adjustment are final.

3.110.080 Payment Due Date and Enforcement.

A. For Transportation Fee charged on the utility bill, payment is due thirteen (13) days after the billing date. Charges billed on other cycles are due as set forth in the billing notice, fee resolution, or as otherwise provided in the invoice to the responsible party. The City may combine billing for the Transportation Fee with water, sewer, stormwater, and other utilities and services. If less than full payment is received, payment will be applied as provided in Section 14.10.070 of this Code.

B. The City will not lien a property for nonpayment of the Transportation Fee. The City may use any other legal means available to collect delinquent fees.

C. The City shall, at all reasonable times, have access to any parcel subject to this Chapter for enforcement of the provisions of this Chapter.