

ORDINANCE NO. 35-2018

AN ORDINANCE AMENDING CHAPTER 29, STREETS AND SIDEWALKS, OF THE CODE OF THE CITY OF ABILENE BY ADDING ARTICLE X, STREET MAINTENANCE FEE, SECTION 29-172, STREET MAINTENANCE FEE, AS SET OUT BELOW, PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

WHEREAS, Chapter 29, Code of Ordinances, City of Abilene, regulates various aspects of city streets and sidewalks; and

WHEREAS, the condition and maintenance of city streets has been a major topic of concern among the residents of the City of Abilene; and

WHEREAS, on September 8, 2016, the City Council authorized a third-party Pavement Management Study to be completed on the current condition and proposed maintenance of the streets within the City of Abilene; and

WHEREAS, the City Council was briefed on the concept of a Street Maintenance Fee during its meeting on June 21, 2016; and

WHEREAS, on March 23, 2017, the completed Pavement Management Study was presented to the City Council, and the study found that, moving forward, necessary funding to maintain its city street system at a “good” Pavement Condition Index (PCI) will be \$10 million annually; and

WHEREAS, during its June 20, 2017 meeting, the City Council further discussed the concept of a Street Maintenance Fee program; and

WHEREAS, throughout the summer of 2017, city staff and administration engaged the public and business stakeholders on the concept of a Street Maintenance Fee by conducting numerous public meetings and gatherings; and

WHEREAS, the city received the public’s and business owner’s feedback regarding implementation of a Street Maintenance Fee, including the topics of a sunset provision, a fee dispute process, and exemptions from the fee; and

WHEREAS, the city has incorporated those items of discussion into a proposed Street Maintenance Fee program; and

WHEREAS, the City Council further discussed the concept of a Street Maintenance Fee program during its August 3, 2017 meeting; and

WHEREAS, a street maintenance fee program will charge a street user fee for residential and commercial business owners within the city limits in order to charge for their proportional use

of the City's transportation system and collected fees will be deposited into an annual fund to be used exclusively to maintain the city streets; and

WHEREAS, a Street Maintenance Advisory and Appeals Board shall be created to monitor the implementation and success of a street maintenance fee program; and

WHEREAS, a street maintenance fee will be a part of an overall approach utilized in maintaining the City of Abilene streets; and

WHEREAS, on May 5, 2018, a non-binding referendum election was held and a majority of City of Abilene, Texas residents voted in favor of the implementation of a street maintenance fee; and

WHEREAS, the City of Abilene City Council finds it in the public's best interest to create and implement a street maintenance fee program in the City of Abilene, to dedicate necessary funds for the future maintenance of the city streets.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS

PART 1: That Chapter 29, Streets and Sidewalks, of the Code of Ordinances, City of Abilene, Texas, is hereby amended to add Article X, Section 29-172, Street Maintenance Fee, as set out in Exhibit A, attached and made a part of this ordinance for all purposes.

PART 2: That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.

PASSED ON FIRST READING this 24TH day of May, 2018.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 10th day of June, 2018, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 AM on the 14th day of June, 2018, to permit the public to be heard.

PASSED ON SECOND AND FINAL READING this 14th day of June, 2018.

ATTEST:



A handwritten signature in blue ink, appearing to read "L. J. ...", written over a horizontal line.

CITY SECRETARY



A handwritten signature in blue ink, appearing to read "A. ...", written over a horizontal line.

MAYOR



A handwritten signature in blue ink, consisting of stylized initials "SS", written over a horizontal line.

CITY ATTORNEY



ORDINANCE NO. 35-2018
EXHIBIT A

Sec. 29-172. – Street Maintenance Fee.

(a) *Definitions.*

Benefitted property, or property means a property located within the city limits that reasonably benefits from vehicular or pedestrian traffic or use.

Category or categories means one of 63 categories, or as many categories as may be modified from time to time, recognized in the trip factor index determined from the land uses of the nonresidential customers.

City limits means the corporate boundaries of the City of Abilene, Texas.

Municipal Services Statement means the monthly invoice that residences and businesses receive for services provided by the City, which may include water and wastewater, solid waste, drainage, and other municipal services and charges.

Street maintenance fee means a fee that is established by this section and which is assessed against, and collected from, owners or occupants of a property for the purpose of funding the planning, construction, operation, monitoring and maintaining of the transportation system of the City.

Transportation system means the structures, traffic controls, streets and other facilities in the public right-of-way, including but not limited to bridges, sidewalks and alleys, which are dedicated to the use of vehicular and pedestrian traffic, all of which are owned and/or controlled by the City, and including provisions for additions, improvements and extensions to the system.

Trip factor means a principle basis of service measurement, principally derived from the average weekday trip rates calculated using the Institute of Transportation Engineers Trip Generation Manual Edition 9 as modified by the City.

Trip factor index means the table of applied land uses recognized by the City for purposes of implementing the Street maintenance fee.

Utility account means an account or accounts between a customer and the City for services provided by the City, which may include water and wastewater, solid waste, drainage, street maintenance, and other municipal services and charges.

Utility customer ("Customer") means the holder of a utility account or the person who is responsible for the payment of charges of a utility account.

(b) *Establishment and revision of street maintenance fee.*

- (1) The City has established a street maintenance fee to be paid by utility customers within the city limits. Such fee shall be set in amounts which will provide funds to properly maintain the transportation system.
- (2) Collection of the fee shall be made by a monthly charge to be added to the city Municipal Account Statement.
- (3) There is established a street maintenance fee schedule based upon the cost of properly maintaining the transportation system as shown in item (p) below and which may be changed or modified as set forth in item (o) below.

(c) *Street Maintenance Fund*

- (1) A separate and dedicated fund shall be created effective October 1, 2018, to be known as the Street Maintenance Fund. All fees collected by the City for the purpose of construction and maintenance of the transportation system shall be deposited in the Street Maintenance Fund. It shall not be necessary or required for the expenditures from the fund to specifically relate to any particular property from which the fees were collected.

(a) Billing will begin for commercial and residential accounts on January 1, 2019.

- (2) A report of the Street Maintenance Fund and the street maintenance fee program will be provided to the City Council on an annual basis.

(d) *Street Maintenance Advisory and Appeals Board.*

- (1) The Board shall, (a) advise the Director of Public Works, as may be necessary from time to time, to identify and determine the sequencing of street maintenance projects, and thoroughfare alignments; (b) recommend a list of projects for funding to the City Manager for incorporation into the city's annual budget; (c) advise the Director of Public Works in determining accountability criteria to measure the performance of the City's street maintenance program; (d) submit an accountability report to the City Council on an annual basis; (e) in the event the City Council adopts a Street Maintenance Fee, serve as a final appeals board for any land use category classification disputes arising from the administration of the street maintenance fee program; and (f) aid the Director of Public Works in establishing new land use categories, amending land use categories, and determining trip factors based on the ITE Trip generation Manual 9th Edition to the same.
- (2) That the Board shall be comprised of seven (7) voting members, who will be appointed by the Mayor and confirmed by an affirmative vote of at least four members of the City Council. All voting members of the board shall be residents of the City of Abilene.

- (3) That the Board shall follow the Rules of Procedure adopted by the City Council, as applicable, for its rules of procedure.
 - (4) That the Director of Public Works for the City of Abilene, shall be an ex officio, non-voting member of the Board and may act in an advisory capacity to the Board.
- (e) *Imposition of fee.* There is hereby imposed upon the utility customers within the city limits, a street maintenance fee. This fee is deemed reasonable and necessary to pay for the operation, administration and maintenance of the transportation system.
- (f) *Findings.*
- (1) The number of motor vehicle trips generated by a benefitted property may reasonably be used to estimate the prorated cost of the street system attributable to a benefitted property.
 - (2) The size and use of a benefitted property may reasonably be used to estimate the number of motor vehicles trips generated by the property.
 - (3) Based on the best available data, the method of imposing the street maintenance fee reasonably prorates the cost of the transportation system among the benefitted properties.
 - (4) It is reasonable and equitable to impose a set monthly fee per each residential and nonresidential benefitted property in order to avoid a disproportionate burden on any residential or nonresidential benefitted property.
 - (5) If available, appraisal district property tax records may be relied upon to determine the size of nonresidential benefitted property.
 - (6) It is reasonable and equitable to consider trip generation rates for nonresidential property from the Institute of Transportation Engineers in determining the trip factor used for benefitted properties.
- (g) *Determination of street maintenance fee.*
- (1) The street maintenance fee for **residential** property shall be charged monthly to a utility customer within the city limits, or to the person or entity responsible for the Municipal Account Statement for such lot, unit, tract, or parcel used for a residential purpose. Residential property is defined on the Street Maintenance Fee Schedule as Rate Codes R1, MF, LM1, and R65.

The calculation of the street maintenance fee for **residential** property is determined by multiplying the per month fee for the Rate Code by the multiplier identified in the Street Maintenance Fee Schedule, and further defined as follows: R1, R65, and LM1 units are charged per non-irrigation meter, MF units are charged per dwelling unit.

- a) For example, a single family residence (Rate Code R1) with one non-irrigation meter is charged \$6.75 per month ($\$6.75 \times 1 = \6.75).
 - b) For example, a multi-family residential property (Rate Code MF) with 100 dwelling units is charged \$600.00 per month ($\$6.00 \times 100 = \600.00).
- (2) The street maintenance fee for **nonresidential** property shall be charged monthly to a utility customer within the city limits, or to the person or entity responsible for the Municipal Account Statement for such lot, unit, tract, or parcel used for a nonresidential purpose. The monthly fee for the nonresidential property is determined by its base trip rate range as shown in the attached Street Maintenance Fee Schedule Rate Codes (C1-C6), and further defined as follows:

RATE CODE	BASE TRIP RATE RANGE
C1	0 to 4.99
C2	5.00 to 14.99
C3	15.00 to 49.99
C4	50.00 to 199.99
C5	200.00 to 999.99
C6	1,000.00 or greater

The calculation of the base trip rate for nonresidential property is determined by identifying the appropriate land use category on the Trip Factor Index for the property, multiplying the trip factor for that land use category by the unit of measure for that land use category, and dividing by two.

The land use categories, trip factors, and units of measure listed on the Trip Factor Index are based on the Institute of Transportation Engineers Trip Generation Manual, 9th Edition, as modified by the City, and are the number of trips anticipated to and from a benefitted property per its land use and established units, as amended for local conditions.

The Trip Factor Index shall be created by separate resolution of the City Council, and may be amended or modified as determined by the City Council with or without recommendation of the Street Maintenance Advisory and Appeals Board. The current Trip Factor Index shall be kept on file with the city secretary.

- (3) The following mathematical formula shall be used to determine the base trip rating for the street maintenance fee program:

$$\text{Base Trip Rate} = (\text{Unit of Measure} \times \text{Trip Factor}) \div 2$$

Base Trip Rates are calculated to the nearest hundredths of a decimal point, and are not rounded up.

(a) For example, a 2,500 square foot general office has a Trip Factor of 11.03 per 1,000 square feet of building area. In this example, the general office would have a Base Trip Rating of 13.78. $[(2,500 \text{ square feet} \div 1,000) \times 11.03 \div 2 = 13.78]$. This general office would be charged Rate Code C2.

(b) For example, a Gas Service Station, with a Market has 24 fueling stations, and has a Trip Factor of 162.78. In this example, the gas station would have a Base Trip Rating of 1,953.36. $[(24 \times 162.78) \div 2 = 1953.36]$. This gas station would be charged Rate Code C6.

(4) Collection of the street maintenance fee contribution from McMurry University, Hardin-Simmons University, and Abilene Christian University properties shall be charged pursuant to a Memorandum of Understanding between the Universities and the City of Abilene.

(h) *Billing and collection of fee.* The fee shall be billed and collected with the monthly municipal account statement, and shall be due upon receipt.

(i) *Recovery of unpaid fee.* Any fee due hereunder which shall not be paid when due may be recovered in action at law by the City. In addition to any other remedies or penalties provided by this section or this Code, failure of any customer of the city utilities to pay the fees promptly when due shall subject such customer to the discontinuance of utility services provided by the City.

(j) *Request for Modification or Adjustment.* The city manager, or his or her designee, shall consider a written request for a modification or adjustment of the payment of a street maintenance fee only for the following reasons:

(1) the customer believes the street maintenance fee was charged in error; or

(2) the customer disputes the category of land use used in calculating the fee for the owner's benefitted property.

Such written request for modification or adjustment must be received by the city manager no later than ten (10) Business Days from the date of delivery of the municipal account statement which is being disputed. The city manager shall make his or her decision based upon the information provided in the written request. The city manager may also, in his or her sole discretion, contact the customer directly for additional information. It is the responsibility of the customer to provide such documentation as may be necessary to prove the sufficiency of their request for an adjustment or modification.

The city manager shall determine and inform the customer in writing of his or her decision within 30 days from receipt of the written request for modification of adjustment.

Appeals of Requests. In matters relating to item (j)(1) above, the decision of the city manager shall be final, and no appeal may be taken therefrom. In matters relating to item

(j)(2) above, the customer may file a written appeal to the street maintenance advisory and appeals board. Such written appeal must be received by the city manager no later than 10 business days from the delivery of the city manager's determination letter. The street maintenance advisory and appeals board shall hear the appeal at a public meeting within 60 days from the date of receipt of the written appeal. The decision of the street maintenance advisory board shall be final, and no further appeal may be taken.

During all periods of the request for modification or adjustment process, including any appeal, the customer shall be responsible for the payment of the street maintenance fee in full.

A customer appealing the street maintenance fee may not receive a refund resulting from the modification or adjustment except for a street maintenance fee billed within six months of the date of the customer's original written request for modification or adjustment to the city manager.

- (k) *Disposition of fees and charges.* The fees paid and collected by this section shall not be used for the general government administrative purposes of the city, except to pay for the equitable share of the cost of accounting, management and government thereof. Other than as described above, the fees and charges shall be used solely to pay for the actual costs of operation, planning, engineering, development of guidelines and controls, inspection, maintenance, repair, improvement, additions, extensions, renewal, replacement and reconstruction of the transportation system and costs incidental thereto.
- (l) *General Exemption.* Properties owned by the United States of America, the State of Texas, an agency, or institution created by the State of Texas, or a political subdivision of the State of Texas are exempt from the payment of the street maintenance fee.
- (m) *New Business Exemption.* A property that establishes a new Utility Account for the purposes of starting a new business within the City of Abilene on or after January 1, 2019, is exempt from the Street Maintenance Fee until the third anniversary of their utility start of service. This exemption shall not be applied to the same Utility Account more than once. The City Manager shall determine if the business constitutes a new business. The decision of the City Manager may be appealed to the Street Maintenance Advisory and Appeals Board.
- (n) *Fee Reduction.*
 - (1) Those persons who make 50% or less of the Median Family Income as defined by the City of Abilene Office of Neighborhood Services are eligible to pay the reduced "LM1" rate as provided in the Street Maintenance Fee Schedule. The city manager, or his or her designee, shall administer this application process, and such applications shall be on file with the city secretary.

(o) *Periodic “sunset” review.* The street maintenance advisory and appeals board shall review the street maintenance fee program in the first month following the fourth anniversary date of the ordinance from which this section is derived, or as may be requested by the City Council, and shall recommend to the City Council whether the street maintenance fee program should be continued or discontinued, or if a reduction or increase in fees are necessary to properly maintain the transportation system. The City Council shall consider the recommendations of the street maintenance advisory and appeals board and shall take such actions as they deem necessary in regard to the street maintenance fee program. Nothing herein shall limit or restrict the City Council from increasing or decreasing the street maintenance fee sooner than the periodic “sunset” review cycle.

(p) Street maintenance fee schedule.

Street Maintenance Fee Schedule

STREET MAINTENANCE FEE SCHEDULE		
RATE CODE	RATE	MULTIPLIER
R1	\$6.75	per non-irrigation meter
MF	\$6.00	per dwelling unit
U1	\$1.75	per item (g)(4) above
LM1	\$1.75	per non-irrigation meter
R65	\$1.75	per non-irrigation meter
RATE CODE	RATE	BASE TRIP RATE
C1	\$25.00	0.00 to 4.99
C2	\$35.00	5.00 to 14.99
C3	\$45.00	15.00 to 49.99
C4	\$55.00	50.00 to 199.99
C5	\$65.00	200.00 to 999.99
C6	\$75.00	1,000 or greater