

ORDINANCE NO. A - 214

AN ORDINANCE ESTABLISHING A STREET TREE MAINTENANCE UTILITY, SETTING A STREET TREE UTILITY SURCHARGE AMOUNT, AND DECLARING AN EFFECTIVE DATE.

Whereas, the trees growing in the public-right of-way shared with City-owned streets of the City of Coburg are a community resource, and

Whereas, these street trees provide all citizens of Coburg with a visually appealing environment, and

Whereas, these street trees provide considerable shade, and other amenities to the citizens of Coburg, and

Whereas, the visual appeal of the City of Coburg attracts visitors to Coburg for community events, and

Whereas, for the above reasons, street trees add value to all real property in Coburg, and

Whereas, the value of these trees is directly dependent on their proper care and maintenance.

Now, Therefore, for these stated reasons, the Coburg City Council desires a dedicated source of funds to fulfill this objective.

THE CITY OF COBURG ORDAINS AS FOLLOWS:

Section 1. Title.

- (a) This ordinance shall be known and cited as the Street Tree Funding Act of Coburg.

Section 2. Purpose and Intent.

(a) **Purpose.** There is hereby created a Street Tree Maintenance Utility for the purposes of providing funds for the maintenance of street trees under the jurisdiction of Coburg. The Coburg City Council hereby finds, determines, and declares the necessity of maintaining street trees to be a vital public function and declares a Street Tree Maintenance Surcharge to be the primary means of financing this function. The City is hereby empowered to use the funds created by a Street Tree Maintenance Surcharge to promote and protect public health, safety, and general welfare by providing for the planting, maintenance, and removal of trees in and upon City right-of-ways within Coburg, to the best of its ability within financial limitations.

(b) **Intent.** It is the intent of the City Council of Coburg that the terms of this ordinance shall be construed as to promote the visual and physical environment of the streets of Coburg by generating revenue to be used exclusively for the planting, maintenance, restoration, and survival of desirable street trees within the City. The Street Tree Maintenance Surcharge is intended to be a surcharge for Street Tree Maintenance services provided by the City of Coburg within the City of Coburg. This Surcharge supplements other revenues devoted to this purpose and is insufficient alone to provide adequate resources to properly fulfill this function.

Section 3. Definitions. As used within this ordinance, the following terms shall have the meanings set forth in this section:

(a) **Street Trees.** Trees, shrubs, or bushes, and all other woody vegetation, the trunk(s) or stems of which are growing in public right-of-ways adjacent to City-owned streets within the City.

(b) **Responsible Party.** The person or persons who by usage, occupancy, or contractual arrangement are responsible to pay the water utility bill for a developed property. In the event a developed property is not served by a domestic water meter, the persons having the right to occupy the property.

(c) **Developed Property.** A parcel or portion of real property on which an improvement exists. Improvements on developed property include, but are not limited to buildings, parking lots, utilities infrastructure, and outside storage.

(d) **Non-residential Unit.** A use of property such as a business or commercial enterprise that is primarily not for personal, domestic accommodation. A non-residential structure that provides facilities for one or more businesses shall have each distinct business facility considered as a separate non-residential unit.

(e) **Residential Unit.** A residential structure that provides complete living facilities for one or more persons including, but not limited to, permanent provisions for living, sleeping, and sanitation. Each separate rental unit in a multifamily structure, whether occupied or not, shall be considered a residential unit. A home occupation business in a residential zone will be regarded concurrently with the one residential unit in which it is located. An accessory dwelling unit, a condominium, or an individual mobile or manufactured home shall each be considered as a separate residential unit.

(f) **Recreational Vehicle Park or Campground.** An area designated to accommodate recreational vehicles and/or tent campers and provide related and needed facilities and services. The Surcharge assessed for such facilities shall be based on the number of spaces established for this purpose, whether occupied or not, with ten spaces equaling one residential unit.

Section 4. Imposition of Street Tree Maintenance Surcharge

(a) **Creation.** There is hereby created a Street Tree Maintenance Surcharge to accomplish the above stated purposes.

(b) **Amount.** There is hereby imposed upon the responsible party for each developed property receiving water service from the City of Coburg a Street Tree Maintenance Surcharge of two dollars (\$2.00) per unit per month for each residential unit and non-residential unit existing on that property. This Surcharge is deemed reasonable and is necessary to pay for the maintenance of Street Trees within the City of Coburg.

(c) **Obligation.** Except as Surcharges may be reduced or eliminated under Section 9 below, the obligation to pay a Street Tree Maintenance Surcharge arises when a responsible party benefits from City of Coburg Street Trees. It is presumed that all developed properties benefit from City of Coburg Street Trees through the enhanced visual appeal and enhanced property values they provide to the City as a whole.

Section 5. Dedication of Funds

All surcharge revenues collected pursuant to this Act shall be distinctly and clearly noted in both the revenue and expenditure sections of the City's Street Fund budget and shall be used only for maintenance of Street Trees. The Surcharge paid and collected under the authority of

this act shall not be used for any general or any other governmental or proprietary purposes of the City except to pay for the equitable share of the cost of accounting, management, and government that is attributable to the fund, which shall not exceed five (5%) of the gross Street Tree Maintenance Surcharge collected.

Section 6. Initiation and Collection

(a) **Effective Date.** The effective date of this surcharge will be December 1, 2007 and it will first appear on utility bills mailed out in January, 2008.

(b) **Frequency.** The Street Tree Maintenance Surcharge shall be collected on the same frequency as the City's water utility billing. Statements for the Surcharge shall be included as a separate line item on the monthly utility billing.

(c) **Responsibility.** Unless another person responsible has properly agreed in writing to pay, and a copy of that writing is properly filed with the City, the person(s) normally responsible for paying the City's water utility charges are responsible for paying the Street Tree Maintenance Surcharge.

(d) **Lack of Utility Service.** In the event a developed property is not served by a domestic water meter, or if water service is discontinued, the persons having the right to occupy the property shall pay the Street Tree Maintenance Surcharge.

(e) **Billing Initiation.** The connection of a water meter or the issuance of a building permit will automatically initiate appropriate billing to the responsible party for surcharges under this Act. There shall be no charge for persons who have the right to occupy an undeveloped property until such time as a water meter is connected to the property.

(f) **Basis of Charge.** The imposition of surcharges shall be calculated on the basis of the number of residential or non-residential units supported, without regard for the number of water meters serving the property.

(g) **Priority.** In the event a responsible party's payment is less than the total amount due on the party's utility bill, the payment shall be applied first to fully satisfy all outstanding Street Tree Maintenance Surcharges, and then the remainder to water utility system charges.

Section 7. Exemptions

The only exemption to this Ordinance shall be schools and irrigation-exclusive accounts. The City Council may, by Ordinance, exempt any additional class of users when it determines that the public interest deems it necessary.

Section 8. Administration

(a) **Responsibility.** The City Administrator is responsible for the administration of this Ordinance.

(b) **Monitoring & Changes.** The City Administrator is authorized and directed to review the operation of this Ordinance and, where appropriate, recommend changes thereto in the form of administrative procedures for adoption by the City Council by Resolution. Such procedures, if adopted by the Council shall be given full force and effect, and unless clearly inconsistent with this Ordinance, shall apply uniformly throughout the City.

Section 9. Appeal Process.

(a) **Criteria.** A Street Tree Maintenance Surcharge may be appealed for change or relief in accordance with the following criteria.

(i) **Property Classification.** Any responsible party who disputes any interpretation given by the City as to property classification may appeal such interpretation. IF the appeal is successful, appropriate relief will be granted. In such instances reimbursement will be given for any overpayment, retroactive to the filing date of the appeal. Factors to be taken into consideration include, but are not limited to availability of more accurate information ; equity relative to billing classifications assigned to other developments of a similar nature; changed circumstances; and situations uniquely affecting the party filing the appeal.

(ii) **Financial Hardship.** Any responsible party may claim a financial hardship. The City will determine financial hardship based on established guidelines. Any relief will be secondary to all other financial resources available to the responsible party. to be presumptively eligible for relief, the responsible party's total family assets must not exceed fifteen thousand dollars (\$15,000), and the responsible party's gross family income must not be more than the Federal Poverty Level. The City may request verification of income, including, but not necessarily limited to W-2 employment wage forms, payroll stubs, and tax returns. The City may also request verification of assets, including but not limited to bank statements, mortgage statements, and other information useful to the City to determine net assets.

(b) **Application Contents.** An application for appeal shall state the reasons(s) for appeal and must include supporting documentation to justify the requested change or relief. An application will not be deemed complete until all information requested by the City has been provided.

(c) **Evaluation.** The City Administrator shall be responsible for evaluating appeals.

(d) **Resolution.** The City Administrator will make all reasonable attempts to resolve appeals utilizing available existing information, including supporting documentation filed with the appeal, within thirty (30) days of the date the appeal was filed. If, however, more detailed site specific information is necessary, the City Administrator may request the applicant to provide additional information.

(e) **Deadline.** In any event, the City Administrator will render a decision within ninety (90) days of the date the appeal was filed explaining the disposition of the appeal, along with the rationale and supporting documentation for the decision reached.

(f) **Continuity.** The Appellant is required to pay the Street Tree Maintenance Surcharge during the term of any appeal. Successful appeals will result in refunding of appropriate Surcharges paid.

(g) **Decision.** Decision of the City Administrator may be appealed to the City Council, and shall be heard at a public meeting. Upon such appeal, the City council shall at its first regular meeting thereafter, set a hearing date. The matter shall be heard solely upon the record. In no event shall a final decision be made later than ninety (90) days after the matter was formally appealed to the City Council

(h) **Filing Surcharge.** Appeals filed within one hundred twenty days of this effective date of this Ordinance shall not be subject to a filing Surcharge. For new residents the payment of a filing Surcharge for an appeal will begin 120 days after establishing a water service

account. A filing Surcharge for an appeal shall be sixty dollars (\$60). This Surcharge amount may be adjusted annually by administrative action. Should the appellant adequately justify and secure the requested change or relief no filing Surcharge will be assessed. If a decision is not in favor of the appellant, the filing Surcharge shall be assessed and may be added to the utility bill.

Section 10. Enforcement.

In addition to other lawful enforcement procedures, the City may enforce the collection of charges required by this Ordinance by withholding delivery of water to any premises where the Street Tree Maintenance Surcharges are delinquent or unpaid. Notwithstanding any provision herein to the contrary, the City may institute any necessary legal proceedings to enforce the provisions of the Ordinance, including, but not limited to injunctive relief and collection of charges owing. The City's enforcement rights shall be cumulative.

The foregoing ordinance was, by City Council consent, after public notice and Council deliberations, read by title only in accordance with the City Charter on the 9th day of October, 2007, whereupon it was put to a vote, the results of which were:

YES: 3

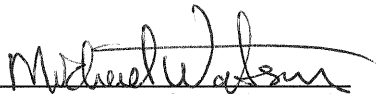
NO: 1 (Councilor John Thiel)

ABSTAIN: 0

PASSED: Yes

REJECTED: ___

SIGNED AND APPROVED this 9th day of October, 2007


Mike Watson, Council President

ATTEST:


Sammy L. Egbert, Assistant City Recorder