

ORDINANCE NO. MC____
CITY OF WISCONSIN RAPIDS

A GENERAL ORDINANCE CREATING CHAPTER 51 AND AMENDING CHAPTER 6 OF THE WISCONSIN RAPIDS MUNICIPAL CODE REGARDING CREATION OF A TRANSPORTATION UTILITY

WHEREAS Wisconsin Rapids has reviewed funding options to develop a sustainable model for its transportation system funding, including a Transportation Utility, during 2020 and 2021 and determined that establishment of a Transportation Utility with fees based on trips generated by property uses is the most appropriate method to address all three issues; and

WHEREAS, the City Council 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's transportation system the most responsible for the cost of said system; and

WHEREAS, the Common Council held a public comment period on the draft ordinance at its meeting on September 21, 2021.

NOW, THEREFORE, the Common Council of the City of Wisconsin Rapids does ordain as follows:

SECTION I Chapter 51 of the Wisconsin Rapids Municipal Code is hereby created to read as follows:

- 51.01 Findings And Declarations Of Policy
- 51.02 Establishment
- 51.03 Authority
- 51.04 Interpretation
- 51.05 Severability Of Ordinance Provisions
- 51.06 Definitions.
- 51.07 Transportation Utility Fund.
- 51.08 Transportation User Fee
- 51.09 Credits And Adjustments
- 51.10 Determination Of Transportation User Fee
- 51.11 Appeal
- 51.12 Billing And Collection Of Fees

51.01 FINDINGS AND DECLARATIONS OF POLICY

The City of Wisconsin Rapids finds that the management of the transportation system within the City of Wisconsin Rapids is a matter that affects the health, safety and welfare of the City, its citizens 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. 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 Wisconsin Rapids. The Common Council has reviewed funding options to develop a sustainable model for its transportation system funding, including a Transportation Utility, during 2020 and 2021 and determined that establishment of a Transportation Utility with fees based on trips generated by property uses is the most appropriate method to address all three issues. In order to protect the health, safety and welfare of the public, the City of Wisconsin Rapids is exercising its authority to establish a Transportation Utility for transportation management services. The City is acting under the authority granted by Chapters 62 and 66 of the Wisconsin Statutes, including but not limited to Sections 62.04, 62.11, 66.0101, 66.0621, 66.0627, 66.0628, 66.0809, and 66.0811.

51.02 ESTABLISHMENT

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

51.03 AUTHORITY

- (1) The City, acting through the Transportation Utility, may acquire, construct, lease, own, operate, maintain, extend, expand, replace, repair, conduct, manage and finance such facilities, operations and activities, as are deemed by the City to be proper and reasonably necessary for a transportation system. These facilities may include, without limitation due to enumeration, roads, streets, sidewalks and such other facilities as will support the management of a transportation system.
- (2) Street sweeping, snow removal, and stormwater management activities are hereby excluded from the financial and operational authority of the Transportation Utility.
- (3) The common council hereby designates the Director of Public Works to administer and enforce the provisions of this ordinance.

51.04 INTERPRETATION

In their interpretation and application, the provisions of this ordinance shall be interpreted liberally to secure the ends sought hereby and shall not be deemed a limitation or repeal of any other power granted to the City by Wisconsin Statutes.

51.05 SEVERABILITY OF ORDINANCE PROVISIONS

If any section, provision, paragraph, word, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby and shall continue in full force and effect.

51.06 DEFINITIONS.

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

- (1) **ASSESSED PARTY:** Person or entity who received a special assessment from the City with a designated period of time wherein payment for assessments could be made and who still owns the same parcel.
- (2) **DIRECTOR OF PUBLIC WORKS:** The person appointed by the City Common Council to oversee the various public works operations, or his or her designee.
- (3) **DEVELOPED PARCEL:** A parcel or legal portion of real property, on which an improvement exists or is in the process of being constructed. Improvement on developed property includes, but is not limited to buildings, parking lots, outside storage, and other uses that impact the transportation system.
- (4) **DEVELOPED USE:** The use of a parcel based on how the owner or occupant(s) uses the improvements on the parcel.
- (5) **GROSS SQUARE FOOTAGE:** The area of all structures located on a site, measured along the exterior walls of such structures, and including but not limited to enclosed courtyards and stairwells, but not including fences and parking areas which are not enclosed within a building.

- (6) ITE MANUAL: International Traffic Engineer's Manual, 10th Edition September 2017, published by the Institute of Transportation Engineers as may be amended from time to time.
- (7) TRIP: A single one-direction person or vehicle movement with either the origin or destination inside a study area. A trip has an origin and a destination at its respective ends.
- (8) TRIP GENERATION RATE: The number of vehicle trips on an average weekday, as determined by reference to the ITE Manual.
- (9) UNOCCUPIED: Completely empty, uninhabited and unused, including no janitorial, maintenance, or other regular activities.
- (10) UTILITY ACCOUNT CUSTOMER: The entity in whose name a water, sanitary sewer and/or stormwater account exists and who is responsible for payment of charges for said account.
- (11) UTILITY ACCOUNT: The entity to which the Transportation User Fee will be charged.
- (12) VACANT: A residential building that is not occupied by any inhabitants, or a commercial building that is completely empty, UNOCCUPIED and/or unused continuously for at least 3 months.
- (13) UNDEVELOPED PROPERTY: An unimproved property, having no assessed improvements or built infrastructure.

51.07 TRANSPORTATION UTILITY FUND.

- (1) Revenue generated by the Transportation Utility shall be used only for the following:
 - (a) Transportation related administration costs
 - (b) Street pavement preservation activities (grind/inlay, slurry seal, crack seal, chip seal, or other generally accepted means of maintenance)
 - (c) Street construction and/or reconstruction activities on City streets
 - (d) Sidewalk construction, or reconstruction of sidewalks identified on the official street map
 - (e) Street lighting and appurtenances
 - (f) Traffic control and signalization maintenance, construction or reconstruction
 - (g) Structures used for the storage, maintenance, and repair of transportation related operational equipment.

All fees collected pursuant to this Chapter shall be deposited in the City's Transportation Utility Fund.. The Director of Public Works shall prepare an annual budget, which is to include costs related to the operation of the Utility. The budget is subject to approval by the Common Council.

51.08 TRANSPORTATION USER FEE

- (1) Every owner of developed property shall pay a Transportation User Fee
- (2) 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.

- (3) 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.
- (4) The Transportation User Fee imposed under subsection (1) 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 utility account customer in any manner provided by law, including a levy on the property as a special charge pursuant to Wis. Stats. Section 66.0627. The mailing of a bill for such charges 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 authority of Wis. Stats. Section 66.0672, which may result in the unpaid charges to be placed on the tax roll of the benefitted property..
- (5) The fee imposed under this Chapter shall begin with utility bills issued on or after the effective date of the adoption of this ordinance.

51.09 DETERMINATION OF TRANSPORTATION USER FEE

- (1) The Transportation User Fee shall be comprised of a base fee and a trip fee as identified in Table A:
 - (a) Base Fee — a fee that is equal for all utility accounts that recognizes that each utility account 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 utility accounts.
 - (b) Trip Fee — a fee on each utility account that is determined by multiplying the number of trips assigned to the utility account by the per-trip rate. The per-trip rate is determined by dividing the total utility budget as identified in Table A (not including the fixed base costs budget) by the total number of trips generated by all utility accounts. The number of trips assigned to each utility account is calculated using land use trip generation rates from the ITE Manual as amended multiplied by a scale factor (i.e. square foot, etc.) and adjusted where appropriate by a deduction factor (i.e. seasonal land uses, K-12 school year, seasonal park properties, direct State or County road access and partial State or County road access).
- (2) The base fee and per-trip rate shall be in an amount set forth from time to time by resolution of the City Common Council and is described in Table A. Staff shall present the City Common Council with a draft resolution proposing an adjustment based on the proposed transportation system improvements budget for the projected improvement

program time frame. Any adjustment of the charge shall be effective on the date determined in the resolution.

- (3) For each utility account, the Director of Public Works shall determine the category of use from the ITE Manual that shall apply to each developed utility account within the City. In the absence of a specific use category from within the ITE Manual for a particular developed use, the Director of Public Works shall determine the appropriate category by interpreting the ITE Manual and assigning the category that most accurately reflects the traffic generated by the particular developed use. After determining the appropriate use category for a developed parcel, the Director of Public Works shall use the trip generation figures for the assigned use category from the ITE Manual to calculate the usage fee using the per-trip rate in the most current resolution. The Director of Public Works may require and consider the results of a traffic study, provided that such study shall be conducted by a registered professional engineer in conformance with the methodology outlined in the WisDOT Bureau of Traffic Operations Traffic Impact Analysis Guidelines, latest edition, Chapter 3, part B titled "Traffic Volumes." The determination of a use category shall not be considered a land use decision for land use planning.
- (4) If the use of a property changes such that its use category either increases or decreases trips, the person responsible for the property must notify the Director of Public Works 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 utility account customer 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 back to the time the change was made and apply that to the next City services billing.
- (5) The model shall be reviewed periodically as determined by the Common Council and if there is any significant change in the ITE Manual.

51.10 EXCEPTIONS, CREDITS AND WAIVERS.

- (1) Exceptions to 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 public 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.
- (2) VACANCY FEE CREDIT.

- (a) When any property within the City becomes vacant, a credit in the amount of the trip fee may be granted if the utility account customer notifies the Director of Public Works in writing 30 days prior to the anticipated date of vacancy, and continues said notification every month thereafter of vacancy, and shall sign an affidavit each month affirming said vacancy for that month. All outstanding water, sanitary sewer, stormwater and Transportation User Fee charges must be paid before a credit will be granted. The minimum vacancy to qualify for a trip fee credit shall be three (3) months. No credit will be granted for the base fee.
 - (b) Fees shall be credited in accordance with this section only while the property remains vacant. Providing the City has been notified and the customer has so affirmed, after 3 consecutive months of vacancy, a trip fee credit shall be granted and made retroactive to the first day of vacancy. The customer shall continually notify and affirm continued vacancy to the Director of Public Works each month. The person responsible shall notify the Director of Public Works within 5 days of the premises being re-occupied, partially occupied or used, regardless of whether water service is restored. The person responsible shall reimburse the City for any fees credited during a period of non-vacancy.
- (3) ASSESSED PARTY FEE CREDIT
- (a) Within 30 days of the commencement of the Transportation Utility, each Assessed Party will be issued a credit towards their Transportation Utility account in a sum equal to:
 - The Transportation Utility Fee as calculated for said property as of the date the credit is given, as extrapolated and accrued to the date the Assessed Party's assessment payments would have ended had the Assessed Party (or if the Assessed Party) deferred payments and paid installments as allowed in the original notice of assessment
 - (b) Assessed Party Fee Credits shall be limited to no more than the amount of the Assessed Party's total special assessment for the street portion of the project.
 - (c) Notwithstanding the credit above, the Assessed Party will be charged the Transportation Utility Fees as outlined in this Chapter

51.11 APPEAL

- (1) Any utility account customer may appeal their category of use determination by filing a written appeal to the Director of Public Works and submitting the appeal administrative fee as described in Table A. All outstanding water, sanitary sewer, stormwater and Transportation User Fee charges must be paid before an appeal can be made. The written appeal shall specify the grounds for challenge to category of use and shall state the category of use that the appellant considers to be appropriate.
- (2) The appeal shall be made in writing and be filed with the Director of Public Works within 30 days of the date on the utility bill. The appeal submittal must be complete and all fees paid in order for it to be reviewed.

- (3) The appeal must specify the basis for the appeal and may include a traffic study prepared as noted in Section 51.09(3) 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. An appeal must be based on actual use, and not categorized directly from a land use zoning category of use.
- (4) The Director of Public Works shall review the petition and make a determination if there is an error in any order, decision or determination made pertaining to the category of use of the property or calculation of the usage fee. If the trip generation rate is within 10% 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 category of use/change of category of use and/or fee, no additional request may be filed for the same parcel unless there has been a significant material change from the prior determination. The decision of the Director of Public Works shall be provided in writing to the applicant.
- (5) A utility account customer may appeal the decision of the Director of Public Works to the Public Works Committee. The appeal must be filed in writing to the Director of Public Works within 30 calendar days from the date that the decision of the Director of Public Works was mailed to the utility account customer.
- (6) The Public Works Committee shall hear and decide appeals made on the basis of an alleged error in the determination of the category of use of the property or calculation of the Transportation User Fee. The Public Works Committee shall determine whether the category of use of the property is fair 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. The Public Works Committee shall conduct a hearing and provide notice to the appellant at least five business days prior to the hearing. The Public Works Committee shall obtain sufficient facts upon which to make a determination, and the decision shall be based upon the evidence presented. The Public Works Committee shall inform the customer of its decision by certified mail and shall notify the Common Council. The decision of the Public Works Committee shall be final.

51.12 BILLING AND COLLECTION OF FEES

- (1) The Transportation User Fee shall be billed and collected monthly with and as part of the combined City utility billing which includes electric, water, wastewater, and stormwater fees through the city's Water Works and Lighting utility. The property owner shall ultimately be responsible for payment of the Transportation Utility fee.
- (2) In the event payments received from the City's billings, described in subsection (1) of this section, are inadequate to satisfy in full all of the electric, water, sanitary sewer, stormwater, and Transportation User Fees, credit shall be given first to penalty fees and interest, and then divided evenly between the funds.
- (3) Failure to pay the charges within 20 days of the billing date will be subject to a late payment charge of three (3) percent of the most recent past due charge.

- (4) 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.

51.13 INSPECTION OF PREMISES

Upon presentation of credentials, a representative of the City shall have the right to request entry at any reasonable time to examine any property for the purpose of conducting any studies or collecting information bearing upon the determination of the appropriate category use or Transportation User Fee in accordance with this Chapter. If entry is refused, such representative may obtain a special inspection warrant under Wis. Stats. Section 66.0199; 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.

SECTION II Section 6.03 of the Municipal Code is hereby amended to read as follows:

[NEED LANGUAGE FROM CHAPTER 6

SECTION III All ordinances, or parts of ordinances, in conflict herewith are hereby repealed.

SECTION IV The several sections of this ordinance shall be considered severable. If any section shall be considered by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other portions of the ordinance.

SECTION V This ordinance shall take effect on January 1, 2022.

Shane E. Blaser, Mayor

Jennifer M. Gossick, City Clerk

ADOPTED:

APPROVED:

PUBLISHED:

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DRAFT

Table A:

Year: 2022

Utility Budget:

Street Reconstruction: \$1,692,609

Pavement Replacement Program: \$450,000

Total Utility Budget: \$2,142,609 (Study s2+=\$2,237,737)

Costs Allocated to Base Fee (10%)=\$223,738

Number of customers: 7,400

Base Fee (10% of total): \$30.24/year = \$2.52/month

Costs Allocated to Trip Fee (90%)=\$2,013,999

Number of trips: 340,000/day

Trip Rate (90% of total):\$ 5.92/trip annually = \$0.016/trip

Appeal Administrative Fee: \$150