



211 Walnut Street
Neenah, WI 54956

AN ORDINANCE: By Finance & Personnel Committee
Re: Amending §17-123, Definitions, and Creating Chapter 17, Article VIII, Transportation Infrastructure Utility and Transportation Assessment Replacement Fee ("TARF")

ORDINANCE NO. 2018-17
Introduced: November 7, 2018
Committee/Commission Action:
COMMITTEE SUBSTITUTE
RECOMMENDED FOR PASSAGE

AN ORDINANCE

The Common Council of the City of Neenah, Wisconsin, do ordain as follows:

Section 1. Section 17-123 - Definitions (introductory paragraph) of the Code of Ordinances of the City of Neenah is amended by deleting the stricken language and adding the highlighted language to read as follows:

Sec. 17-123 – Definitions

For the purpose of this article [and Article VIII](#), the following definitions shall apply; words used in the singular shall include the plural, and the plural, the singular; words used in the present tense shall include the future tense; the word "shall" is mandatory and not discretionary; the word "may" is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

Section 2. Chapter 17, Article VIII of the Code of Ordinances of the City of Neenah is created to read as follows:

Chapter 17, Art VIII,

TRANSPORTATION ASSESSMENT REPLACEMENT FEE

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| Sec. 17-201 | Findings and Purpose |
| Sec. 17-202 | Fee Established |
| Sec. 17-203 | Transportation Assessment Replacement Fee Dedicated |
| Sec. 17-204 | City to maintain local streets - Exclusions |
| Sec. 17-205 | Definitions |

Sec. 17-206	Fee Charges
Sec. 17-207	TARF Calculation
Sec. 17-208	New construction
Sec. 17-209	Method of appeal
Sec. 17-210	Special assessment authority
Sec. 17-211	Disposition of fees and charges
Sec. 17-212	Exemptions

Sec. 17-201. - Findings and Purpose.

- (1) *Findings.* The Common Council finds, determines and declares the necessity of providing improvement of the city's streets and related facilities within the right-of-way, street including resurfacing and reconstruction and sidewalk installation. Improvement includes such activities as are necessary in order that streets and related facilities may be properly operated and maintained to safeguard the health, safety, and welfare of the city and its inhabitants and visitors. In addition, the Common Council finds that the traditional method for partially funding street resurfacing, street reconstruction and sidewalk installation through special assessments places an undue financial burden on city residents, while not including all who benefit from the improvements in the funding of those improvements. Furthermore, the Common Council finds and determines that there is a correlation between the amount of impervious surface on a property parcel and the traffic generated from that parcel. As a result, the basis for determining the Storm Water fee in Article IV of this chapter provides a reasonable and rational method for determining the fee authorized by this Article.
- (2) *Funding purposes.* The following activities are to be funded by the Transportation Assessment Replacement Fee: costs of administering construction projects, pavement overlays including minor widening, street reconstruction, installing sidewalks repairing and installing curb and gutter, and related operations of the public works department on city streets and intersections with city streets. The Common Council further finds that bicycle and pedestrian facilities, including access for the disabled or handicapped, are an integral part of the transportation network. A portion of funds may be used for installation of bicycle and pedestrian facilities within public right of way.
- (3) *Transportation Utility Established.* The cost of operating and maintaining the City right-of-way, including streets, sidewalks and trails, and financing necessary repairs, replacements, improvements and extension thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom. In order to protect the health, safety and welfare of the public, the Common Council is exercising its authority to establish a Transportation Utility and set the rates for transportation management services. The City is acting under the authority of Chapters 62 and 66 of the Wisconsin Statutes, and particularly at least the following statutes: §§62.04, 62.11, 66.0621, 66.0207, 66.0809, 66.0811 and 66.0813.

Sec. 17-202. - Fee Established.

Based on the Findings and Purpose of the Transportation Assessment Replacement Fee (“TARF”) outlined above, there is created a charge for the purpose of providing funds for the improvement of local streets and related facilities under the jurisdiction of the City of Neenah.

Sec. 17-203 - Transportation Assessment Replacement Fee – Dedicated.

- (1) *Segregated Fund.* All fees collected by the city shall be paid into a segregated fund. Such revenues shall only be used for the purposes described in Section 17-201.
- (2) *Other Funds.* To the extent that the fees collected are insufficient to properly reconstruct or resurface streets, the cost of the same may be paid from such other city funds as may be determined by the Common Council. The Common Council may order reimbursement to such fund as additional fees are thereafter collected. Funds shall not be imposed in amounts greater than that which is necessary, in the judgment of the Common Council, to provide sufficient funds to properly improve streets and related transportation facilities.

Sec. 17-204 - City to maintain local streets – Exclusions.

The city shall maintain all accepted local streets within city rights-of-way and city easements. The city may improve other accepted local streets, bicycle and pedestrian facilities, and intersections with county roads or state highways within or adjacent to the city. Local streets to be improved exclude private streets and streets or any other facilities not yet accepted by the city for maintenance. In addition, the cost of initial construction of local streets within City right-of-way in new subdivisions constructed after the effective date of this article or subject to a developer’s agreement approved by the Common Council shall not be funded by the TARF.

Sec. 17-205. - Definitions.

For the purpose of this article, the definitions listed at Sec. 17-123 shall apply to this Article; words used in the singular shall include the plural, and the plural, the singular; words used in the present tense shall include the future tense; the word "shall" is mandatory and not discretionary; the word "may" is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary:

Sec. 17-206. - Fee Charges.

- (1) By this article, the Common Council is establishing the charge upon each lot and parcel within the City for the TARF. The actual charges to be imposed, the establishment of formulas for calculations of the charges, the establishment of specific customer classifications and any future changes in those rates, formulas, rate charges, and customer classifications, shall be established annually through a separate resolution. All rates established pursuant to this article will be fair and reasonable. The current rates will be on file with the City Clerk.
- (2) The Fee charged shall be issued to share the costs of the historic level of special assessment for street resurfacing, street reconstruction and sidewalk installation. This charge may be imposed on all property that has any developed impervious area. The ERU charge will be designed on the basis of a typical residential unit of property. Other units of property will be charged multiples of the ERU based on the impervious area.
- (3) The Council may make such other customer classifications as will be likely to provide reasonable and fair distribution of the costs of the TARF.
- (4) The City Water Utility as staffed and supervised by the Department of Finance is hereby appointed as the collection agency for the TARF. Bills shall be prepared by the City Water Utility and sent to the owner or occupant of each property subject to the TARF. The Department of Finance shall allocate the actual cost of billing and collecting.
- (5) If there is neither city water nor city sewer service to an improved parcel, a quarterly bill shall be rendered and shall become due and payable within twenty days of issuance.
- (6) The bills for TARF charges may be mailed to the designated utility bill recipient, but this mailing shall not relieve the owner of the property from liability for rental property in the event payment is not made as required in this article. The owner of any property served which is occupied by tenants shall have the right to examine collection records of the City for the purpose of determining whether such rates and charges have been paid for such tenants, provided that such examination shall be made at the office at which the records are kept and during the hours that such office is open for business.
- (7) TARF charges shall not be payable in installments. If charges remain unpaid after a period of 20 days from the date of utility bill, such bill shall become a delinquent special charge, pursuant to § 66.0627, Wis. Stats., and shall become a lien as provided in §§ 66.0809 and 66.0821, Wis. Stats. Said charges shall automatically be extended upon the current or next tax roll as a delinquent tax against the property, and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such special charges. Unpaid charges shall be assessed a one-

percent per month late payment charge to bills not paid within 20 days of issuance.

- (8) All delinquent special charges shall be subject to a ten percent penalty in addition to all other charges and prior penalties or interest when the delinquent special charge is extended upon the tax roll.

Sec. 17-207. – TARF Calculation.

- (1) For purposes of imposing the TARF charges, the Common Council may classify all lots and parcels within the City or in its discretion, treat all parcels within the city as a single class.
- (2) In the event that the Council determines multiple property classifications shall be applied, the Director shall prepare a list of lots and parcels within the City and assign a classification to each lot or parcel based on the direction of the Council.
- (3) The average square footage of impervious area of ERU is established to be equivalent to 3,138 square feet.
- (4) The charge imposed for single-family residential property shall be the rate for one (1) ERU.
- (5) The charges imposed for duplex residential properties shall be the rate for one-half of one ERU for each individual dwelling unit existing on the property ($\frac{1}{2}$ ERU rate multiplied by the number of dwelling units).
- (6) The charges imposed for manufactured home, residential-multifamily units, non-residential, and non-profit properties shall be the rate for one ERU, multiplied by the numerical factor obtained by dividing the total impervious area of a residential multifamily unit and non-residential property by the square footage of one ERU. The factor shall be rounded down to the nearest one-half ERU,

$$\text{ERU rate} \times \frac{\text{impervious area}}{\text{ERU}}$$

- (7) The charges imposed for undeveloped properties as defined herein shall be the rate for one ERU multiplied by a factor established by resolution and then divided by the square footage for one ERU established by resolution.
- (8) The Director shall be responsible for determining the impervious area based on the best available information, including, but not limited to, data supplied by the City Assessor, aerial photography, the property owner, tenant or developer. The Director may require additional information as necessary to make the determination. The billing amount shall be updated by the Director based on the building permit process.
- (9) The minimum charges for any non-residential parcel shall be equal to the rate for one ERU.

- (10) All unoccupied developed lots and parcels shall be subject to the TARF.

Sec. 17-208. - New customers.

- (1) For new development, the owner shall be liable for the TARF charges, under this article, for the improvement from the date of building permit or parking lot permit issuance.
- (2) Areas annexed to the city of Neenah or under contract to annex shall become subject to the Fee on the date of annexation or the date of the annexation contract, whichever comes first.

Sec. 17-209. - Method of appeal.

The TARF may be appealed as follows:

- (1) A written appeal shall be filed with the City Clerk prior to the charge due date; or
- (2) Within 30 days of payment, a written challenge to the charge must be filed with the City Clerk on behalf of the customer, specifying all bases for the challenge and the amount of the charge the customer asserts is appropriate. Failure to file a challenge within 30 days of payment waives all rights to later challenge the charge.
- (3) The Finance and Personnel Committee is assigned responsibility for hearing appeals under this article and shall determine whether the charge is fair and reasonable, or whether a refund is due the customer. The committee may act with or without a hearing, and will inform the customer in writing of its decision.
- (4) The customer has 30 days from the decision of the committee to file a written appeal to the Common Council.
- (5) If the Council or the committee determine that a refund is due the customer, the refund will be applied as a credit on the customer's next quarterly billing, if the refund will not exceed the customer's next quarterly billing, or will be refunded at the discretion of the Director of Finance.

Sec. 17-210. - Special assessment authority.

In addition to any other method for collection of the charges established pursuant to this article for the TARF costs, the Common Council finds that these charges may be levied on property as a special charge pursuant to Wis. Stats. § 66.0627. The charges established hereunder reasonably reflect the benefits conferred on property and may be assessed as special charges. The mailing of the 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 the authority of Wis. Stats. § 66.0627, In addition, the City may provide notice each October of any unpaid charges for the TARF, which charges, if not paid by November 15, may be placed upon the tax roll under Wis. Stats. § 66.0627.

Sec. 17-211 - Disposition of fees and charges.

The fees paid and collected pursuant to this ordinance shall not be used for general or other governmental proprietary purposes of the city, except to pay for the equitable share of the cost of replacement and reconstruction of the street network and related facilities for which the city has maintenance responsibility.

Sec. 17-212 - Exemptions.

The Common Council may, by resolution, exempt any class of user when they determine that the public interest deems it necessary and that the contribution to street use by said class is insignificant. Exemptions may be determined annually through Council action by resolution.

Section 3. Severability. In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Section 4. Repeal and Effective Date. All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed. This ordinance shall take effect from and after its passage and publication.

Moved by: Ald. Erickson/Kunz
Adopted: 9-0 November 7, 2018
Published: November 12, 2018

Approved:



Dean R. Kaufert, Mayor

Attest:



Patricia A. Sturn, City Clerk

THIS INSTRUMENT WAS DRAFTED BY:
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