ORDINANCE NO. 3654

AN ORDINANCE declaring the existing street system of the City of Kent to be a public utility, setting forth the classification of customers subject to charges, providing for the levying and collection of such charges and creating the Street Utility Fund, from which monies shall be spent for the construction, maintenance, operation and preservation of the street utility.

WHEREAS, traffic congestion in the City of Kent is a significant and serious problem which results in accidents involving both personal injury and property damage; and

WHEREAS, in addition to the fact that many streets and intersections in the City are operating at or beyond their maximum capacity, future traffic projections indicate that essential transportation system improvements must be constructed or traffic congestion will be significantly exacerbated;

WHEREAS, the Kent City Council, as the legislative body responsible for the health, safety and general welfare of the people of Kent, has made resolution of the City's traffic congestion problem their number one target issue;

WHEREAS, the Washington State Legislature, in recognition of this growing problem throughout the state, authorized cities to utilize several options in order to address the financial needs of local transportation systems such as the
establishment of a street utility under the Revised Code of Washington (RCW), Section 82.80.040 et seq.,;

WHEREAS, the Council, in Resolution 1270, authorized the establishment of a street utility in the City and to provide for the levying and collection of such charges, and the creation of a street utility fund, from which monies shall be spent for the construction, maintenance, operation and preservation of the streets as a public utility; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Street System a Public Utility. The City of Kent hereby declares that its existing street system, including all street lighting, traffic control devices, sidewalks, curbs, gutters, parking facilities and drainage facilities, together with such extensions, additions and betterments thereto as may be authorized from time to time, shall be constructed, maintained, operated and preserved as a public utility of the City, beginning June 1, 1992, all as authorized and pursuant to RCW 82.80.040.

Section 2. Definitions. As used in this ordinance:

A. "Business" means all activities, occupations, trades, pursuits, professions and matters engaged in or located within the City limits with the object of gain, benefit, advantage or profit to the business enterprise or to another person, directly or indirectly.
B. "Business enterprise" means each location at which a person engages in business within the City.

C. "Employee" means any person employed at any business enterprise in the City, except casual laborers not employed in the usual course of business. A sole proprietor is not an "employee" when the business enterprise is located within a housing unit. All officers, agents, dealers, franchisees, etc., of a corporation or business trust, and all partners of a partnership (except limited partners) are "employees" within this definition.

D. "Full-time equivalent employee" means the calculated number of employees derived by dividing the total yearly number of hours reported on the preceding quarterly State of Washington Labor and Industries Reports by one thousand nine hundred twenty (1,920) hours.

E. "Housing Unit" means a building or portion thereof designed for or used as the residence or living quarters of one or more persons living together, or of one family.

F. "Low-income disabled" means those persons eligible for a reduction in utility rates as described in Resolution 980 of the City of Kent.

G. "Low-income seniors" means those persons eligible for a reduction in utility rates as described in Resolution 980 of the City of Kent.
Section 3. Administration of Utility. The Director of Public Works, through the Department of Public Works, shall operate and administer such public utility and enforce this ordinance; and there shall be kept a classified system of accounts or revenues and disbursements as prescribed by the State Auditor, in conjunction with the City Finance Director and Finance Department, all as required by law.

Section 4. Rates and Charges -- Purpose. The City shall levy charges for the use and availability of its streets in a total annual amount of up to fifty percent of the actual costs of maintenance, operation and preservation of facilities under the jurisdiction of the street utility, all authorized by and pursuant to Chapter 82.80 RCW.

Section 5. Street Utility Customer Charge -- Residential. As of June 1, 1992, the Public Works Director shall impose upon each residential housing unit served by the street utility, a uniform customer charge of one dollar and ninety cents ($1.90) per month; provided that the residential housing units described in Section 7 shall be exempt from this charge.


A. Amount of Charge. As of June 1, 1992, the Public Works Director shall impose upon each business enterprise served by the street utility, a uniform business customer charge of one dollar and ninety cents ($1.90) per full-time equivalent employee per month.
B. Calculation of Charge. The monthly business customer charge shall be calculated by multiplying the number of hours reported during the preceding quarter of the year on the quarterly State of Washington Labor and Industries Reports by $0.003958 per hour. This figure will be approximately one dollar and ninety cents ($1.90) per full-time equivalent employee per month when based upon one thousand nine hundred twenty (1,920) hours of employment per calendar year.

C. Under-reporting of Employees. Upon the City's request, a business shall provide copies to the City of its quarterly reports as submitted to the State Department of Labor and Industries, reporting employee hours worked. If at any time during the year it appears that the number of employees in a particular business enterprise have been under-reported for the purposes of this ordinance, an additional charge in the amount of such under-reporting shall be due.

D. Applicability.

1. For purposes of this ordinance, any business operating within the City limits of the City of Kent shall be subject to this business customer charge, regardless of whether the business' employees work within or without the Kent city limits.

2. For any employees whose nominal place of business is within the City limits of the City of Kent, all hours will be subject to the street utility charge. Any employee regularly reporting to work within the City limits shall have all of that employee's time subject to this charge, even if portions
of the employee's time are spent outside the City of Kent, for example, a realtor or outside salesperson. For an employee normally employed within the City of Kent, who for extended periods of time reports to work outside the City of Kent, (for example, a contractor's employees reporting directly to job sites,) then the employer may by affidavit report the number of hours actually worked within the City or the percentage of time worked within the City based upon one thousand nine hundred twenty (1,920) hours annually, and pay the charge based upon those figures.

Section 7. Exemptions from Street Utility Customer Service Charges. Charges imposed by this ordinance shall not be applicable to:

A. Public property exempt from property taxes under RCW 84.36.010;

B. Public property subject to leasehold interests and exempt from the leasehold tax under Chapter 82.29A RCW; and

C. Property used for nonprofit or sectarian purposes, which if said property were owned by such organization would qualify for an exemption under Chapter 84.36 RCW; and

D. Residential housing units to the extent of their occupancy by low-income senior citizens and low-income disabled citizens as provided in RCW 74.38.070(1).
Section 8. **Credits against Street Utility Customer Charge.** All business enterprises subject to this ordinance shall be credited the full amount of any commuter or employer tax paid for transportation purposes by the business, against the street utility customer charge. In no case, however, shall the credit exceed the street utility business customer charge.

Section 9. **Adjustment of Street Utility Customer Charge.** Requests for adjustments of the monthly business street utility customer charge shall be filed with the Finance Department and must be accompanied by a copy of the preceding quarterly report to the State Department of Labor and Industries, reporting the employee hours worked. For businesses that did not file the report with the State, an affidavit can be filed with the Finance Department reporting the hours worked or the number of equivalent full-time employees.

Section 10. **Billing of Street Utility Charges.** The rates and charges set out in this ordinance shall be effective and shall be computed and billed from time to time by the Director of Public Works through the Finance Department as a separate charge on the utility bill or in a separate bill, and shall become due and payable to the City as stated in such billing. Any street utility charge which becomes delinquent shall become a lien upon the premises and be enforced in the same manner as rates and charges for the use of systems of sewerage under Chapter 35.67 RCW. Delinquent charges shall bear interest at eight percent (8%) per annum.
Section 11. Street Utility Fund Created. There is created in the City Treasury a special fund to be known as the "Street Utility Fund." Any and all revenues collected and received for the use of the street system as set forth in this ordinance, or in connection therewith, shall be credited to the fund and all revenues collected shall be used for the construction, maintenance, operation and preservation of all facilities and improvements of the street utility, including all additions thereto, as set forth in Section 1, and for transportation purposes, including but not limited to: the operation and preservation of roads, streets and other transportation improvements; new construction, reconstruction and expansion of city streets, and other transportation improvements; development and implementation of public transportation and high capacity transit improvements and programs and planning design; acquisition of right-of-way and sites for such transportation purposes.

Section 12. Refunds of Street Utility Charges. The Director of Public Works, in operating and administering the municipal street system as a public utility, is authorized to make refunds where any charges paid under said ordinance are found to be erroneous, or to require adjustment; and the Finance Director is authorized to give the appropriate credit or to make the appropriate payment from the Street Utility Fund, upon certification by the Director of Public Works that the refund is authorized.

Section 13. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision,
section or portion of this ordinance, or the invalidity of the
application thereof to any person or circumstance shall not
affect the validity of the remainder of this ordinance, or the
validity of its application to other persons or circumstances.

Section 14. Termination of Street Utility. Ten years
from the adoption of the ordinance codified in this chapter, said
ordinance and all of its provisions shall terminate and the
street utility shall thereby expire unless the Council by
ordinance extends the period for expiration of the street
utility.

Section 15. Effective date. This ordinance shall take
effect and be in force and effect thirty (30) days from the time
of its final approval and passage as provided by law.

DAN KELLEHER, MAYOR

ATTEST:

BRENTDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

ROGER A. LUBOVICH, CITY ATTORNEY
PASSED the _____ day of _____, 1992.
APPROVED the _____ day of _____, 1992.
PUBLISHED the _____ day of _____, 1992.

I hereby certify that this is a true and correct copy of Ordinance No. _____, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

(Brenda JACOBER) (SEAL)
BRENDA JACOBER, CITY CLERK