

ORDINANCE NO. 382**AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF SYSTEM DEVELOPMENT CHARGES (SDCs), AND PROCEDURES FOR COLLECTING AND EXPENDING SDCs**

The City of Coos Bay ordains as follows:

Section 1. Purpose. The purpose of the system development charge (“SDC”) is to impose a portion of the cost of capital improvements for waste water collection, transmission, treatment and disposal (hereinafter sanitary sewer system); drainage and flood control; transportation; and parks and recreation upon those developments and redevelopments that create the need for, or increase the demands on capital improvements.

Section 2. Scope. The SDC imposed by this ordinance is separate from and in addition to any applicable tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development.

Section 3. Definitions. For purposes of this ordinance, the following mean:

- (1) “Capital improvements” means public facilities or assets used for waste water collection, transmission, treatment and disposal; drainage and flood control; transportation; and parks and recreation.
- (2) “Development” means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities. Development includes redevelopment of property, dividing of land into two or more parcels, and creating or termination of a right of access. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved lands.
- (3) “Improvement fee” means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 4 of this ordinance.
- (4) “Land area” means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or for a public scenic or preservation purpose.
- (5) “Owner” means the owner or owners of record title or the purchaser(s) under a recorded land sales agreement, and other persons having an interest of record in the described real property.
- (6) “Parcel of land” means a lot, parcel, block, or other tract of land that, in accordance with County regulations, is occupied or may be occupied by a structure, or structures, or other use, and that includes the yards and other open spaces required under the zoning, subdivision, and other development ordinances.

- (7) “Permittee” means the person to whom a building permit, development permit, a permit or plan approval to connect to the sanitary sewer system, or right-of-way access permit is issued.
- (8) “Qualified public improvement,” means a capital improvement that is:
- (a) Required as a condition of development approval;
 - (b) Identified in the plan as adopted pursuant to Section 8 of this ordinance, and;
 - (1) Not located on or contiguous to a parcel of land this is the subject of the development approval; or
 - (2) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.
 - (3) For the purposes of this definition, “contiguous” includes improvements to, located in, a public way that abuts the parcel.
- (9) “Reimbursement fee” means a fee for costs associated with capital improvements constructed or under construction on the date the fee is established pursuant to Section 4 of this ordinance, and for which the City determines that capacity exists.
- (10) “System development charge” means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement.
- (a) System development charge includes that portion of a sanitary sewer system connection that is greater than the amount necessary to reimburse the City for its average cost of inspecting and installing connections with sanitary sewer facilities.
 - (b) A system development charge does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision.

Section 4. System Development Charges Established

- (1) System development charges shall be established and may be revised by resolution of the City Council.
- (2) Unless otherwise exempted by the provisions of this ordinance, or other local or state law, an SDC is hereby imposed upon all development within the City and shall be assessed or collected at the time of issuance of building permit or development permit.
- (3) An SDC is hereby imposed upon all development outside the boundary of the City that connects to the sanitary sewer and/or drainage and flood control facilities of the City and

will also be assessed or collected at the time of issuance of a permit for connection to the sanitary sewer system.

Section 5. Methodology

- (1) The methodology used to establish or modify the reimbursement fee shall, where applicable, be based on the cost of then-existing facilities including without limitation, design, financing and construction costs; prior contributions by then-existing users; gifts or grants from federal or state government or private persons; the value of unused capacity available to future system users, rate-making principles employed to finance publicly owned capital improvements; and other relevant factors identified by the City Council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.
- (2) The methodology used to establish or modify the improvement fee shall, where applicable, demonstrate consideration of the projected cost of the capital improvements identified in the plan that are needed to increase the capacity of the systems to which the fee is related. The methodology shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.
- (3) The methodology used to establish or modify improvement fees or reimbursement fees, or both, shall be adopted by resolution of the City Council.
- (4) The methodology may be amended only as provided in Section 9.

Section 6. Authorized Expenditures

- (1) Reimbursement fees shall be applied only to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of debt for such improvements.
- (2) Improvement fees shall be spent only on capacity increasing capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or providing new facilities.
 - (a) The portion of the capital improvements funded by improvement fees must be related to demands created by current or projected development.
 - (b) A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the City pursuant to Section 8 of this ordinance.
- (3) Notwithstanding subsections (1) and (2) of this section, SDC revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing SDC methodologies and providing an annual accounting of SDC expenditures.

Section 7. Expenditure Restrictions

- (1) SDCs shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- (2) SDCs shall not be expended for costs of the operation or routine maintenance of capital improvements.

Section 8. Improvement Plan

- (1) Prior to the establishment of an SDC by resolution, the City Council shall adopt a plan that includes a list of:
 - (a) The capital improvements that the City intends to fund in whole or in part with the improvement fee revenues; and
 - (b) The estimated cost and time of construction of each improvement and the percentage of that cost eligible to be funded with improvement fee revenues.
- (2) In adopting this plan, the City may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section.
- (3) The City may modify such plan and list at any time. If an SDC will be increased by a proposed modification to the list to include a capacity increasing public improvement the Council will:
 - (a) Order the methodology to be amended as necessary. Amendments to the methodology shall be made pursuant to Section 9.
 - (b) Provide at least 30 days' notice prior to adopting the modification to those who have requested notice pursuant to Section 15; and
 - (c) Hold a public hearing if a written request for a hearing is received within seven days of the date of the proposed modification.
- (4) A change in the amount of a reimbursement fee or an improvement fee is not a modification of the SDC if the change in amount is based on:
 - (a) A change in the cost of labor, materials, or real property applied to projects or project capacity as set forth in the capital improvement plan.
 - (b) A periodic application of the Engineering News Record Construction Cost Index.

Section 9. Adopting and Amending the Methodology

- (1) Before adopting or amending the methodology, the Council shall:

- (a) At least 90 days prior to adoption of the proposed methodology, or amendment to the methodology, provide written notice to persons who have requested notice pursuant to Section 15;
- (b) Make the revised methodology available to the public at least 60 days prior to the first public hearing of the adoption or amendment.

Section 10. Collection of Charge

- (1) The SDC is payable upon issuance of at least one of the following activities:
 - (a) A building permit or other permit that allows development of a parcel;
 - (b) A permit or approval to connect to the sanitary sewer system;
- (2) SDCs shall be assessed pursuant to the basis adopted by resolution.
- (3) If development is commenced or connection is made to the sanitary sewer system without an appropriate permit, the SDC is immediately payable upon the earliest date that a permit was required.
- (4) If no building, development, or connection permit is required, the SDC is payable at the time the usage of the capital improvement is increased based on changes in the use of the property unrelated to seasonal or ordinary fluctuations in usage.
- (5) The City Manager, or his/her designee, shall collect the applicable SDC(s) from the permittee when a permit that allows building or development of a parcel is issued or when application for connection to the sanitary sewer system is made.
- (6) The City Manager, or his/her designee, shall not issue such permit or allow such connection until the charge has been paid in full, or until provision for installment payments has been made pursuant to Section 12, or unless an exemption is granted pursuant to Section 13 of this ordinance.

Section 11. Delinquent Charges – Hearings

- (1) When, for any reason, the SDC has not been paid, the City Manager shall report to the City Council the amount of the uncollected charge, the description of the real property to which the charge is attributable, the date upon which the charge was due, and the name of the person responsible for the payment of the fee.
- (2) The City shall schedule a public hearing on the matter and direct that notice of the hearing be given to each owner or person responsible for payment of the fee, with a copy of the City Manager's report concerning the unpaid charge. Notice of the hearing shall be given either personally, or by certified mail, return receipt requested, or by both personal and mailed notice and by posting notice on the parcel at least ten (10) days before the date set for the hearing.

- (3) At the hearing, the Council may accept, reject, or modify the determination of the City Manager as set forth in the report.

Section 12. Installment Payments

- (1) When a SDC of \$2,500 or more is due and collectable, the owner of the parcel of land subject to the development charge may apply for payments up to ten (10) semi-annual installments, to include interest on the unpaid balance, in accordance with Oregon Revised Statutes (ORS) 223.208.
- (2) The City Manager shall provide application forms for installment payments which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.
- (3) An applicant for installment payment shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that the property interest of the applicant is adequate to secure payment of the lien.
- (4) The City Manager shall report to the Council the amount of the SDC, the dates on which payments are due, the name of the owner, and the description of the parcel.
- (5) The City Manager shall docket the lien in the lien docket. From that time the City shall have a lien upon the described parcel for the amount of the SDC, together with interest on the unpaid balance at the rate established by resolution of the City Council. The lien shall be enforceable in the manner provided in ORS Chapter 223.
- (6) Upon written notification from the permittee and with written evidence from the County, where new development is not constructed and the building permit is cancelled, the City Manager is authorized to cancel assessments of SDCs. For property that has been subject to a cancellation of assessment of SDCs, application for any subsequent installment payment contract shall be subject to the code provisions applicable to SDCs and installment payment contracts on file the date the new contract is received by the City.

Section 13. Exemptions

- (1) Additions to a single-family dwelling that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the SDC.
- (2) An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the public improvement facility is exempt from all portions of the SDC.

Section 14. Credits

- (1) When a development occurs that is subject to an SDC, the SDC for the existing use, if applicable, shall be calculated. If this amount is less than the SDC for the use that will result from the development, the difference between the SDC for the existing use and the SDC for the proposed use shall be the SDC. If a change in use results in the SDC for the proposed use being less than the SDC for the existing use, no SDC shall be required. No refund or credit shall be given.

- (2) A credit of the improvement fee portion of the SDC only shall be given to the permittee against the cost of the SDC charged, for the cost of a qualified public improvement, upon acceptance by the City of the public improvement. The credit shall not exceed the amount of the improvement fee even if the cost of the capital improvement exceeds the improvement fee.
- (3) If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the City's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request shall be filed in writing no later than 60 days after acceptance of the improvement by the City. The City may deny the credit provided for in this section if the City demonstrates that the application does not meet the requirements of this section or if the improvement for which credit is sought was not included in the improvement plan pursuant to Section 8 of this ordinance.
- (4) When construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project.
- (5) Credit shall not be transferable from one development to another.
- (6) Credit shall not be transferable from one type of capital improvement to another.
- (7) Credits shall be used within 10 years from the date the credit was given.

Section 15. Notice

- (1) The City shall maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for any SDC. Written notice shall be mailed to persons on the list as provided in Section 9. The failure of a person on the list to receive notice that was mailed does not invalidate the action of the City.
- (2) The City may periodically delete names from the list, but at least 30 days prior to removing a name from the list, the City must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

Section 16. Segregation and Use of Revenue

- (1) All funds derived from a SDC are to be segregated by accounting practices from all other funds of the City. That portion of the SDC calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in Section 6 of this ordinance.

- (2) The City Manager shall provide the City Council with an annual accounting, based on the City's fiscal year, for SDCs showing the total amount of SDC revenues collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amounts spent on each project funded in whole or in part, with SDC revenues shall be included in the annual accounting.

Section 17. Refunds

- (1) Refunds may be given by the City upon finding that there was a clerical error in the calculation of the SDC.
- (2) Refunds shall not be allowed for failure to timely claim credit or for failure to timely seek an alternative SDC rate calculation at the time of submission of an application for a building permit.

Section 18. Appeal Procedure

- (1) A person challenging the propriety of an expenditure of SDC revenues may appeal the decision of the expenditure to the City Council by filing a written request with the City Manager describing with particularity the decision and the expenditure from which the person appeals. An appeal of the expenditure must be filed within two (2) years of the date of the alleged improper expenditure.
- (2) Appeals of any other decision required or permitted to be made by the City Manager under this ordinance must be filed in writing with the City Manager within ten (10) days of the decision.
- (3) After providing notice to the appellant, the City Council shall determine whether the City Manager's decision or the expenditure is in accordance with this ordinance and the provision of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decision. If the Council determines that there has been an improper expenditure of SDC revenues, the Council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the Council shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.
- (4) A legal action challenging the methodology adopted by the City Council pursuant to Section 5 shall not be filed later than 60 days after adoption. A person shall contest the methodology used for calculating an SDC only as provided in ORS 34.010 to ORS 34.100, and not otherwise.

Section 19. Prohibited Connection. No person may connect to the sanitary sewer system of the City or obtain a building permit unless the appropriate SDCs have been paid, or the installment payment method has been applied for and approved.

Section 20. Severability. The provisions of this ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this ordinance shall be in full force and effect and be valid as is such invalid portion

thereof had not been incorporated herein. It is hereby declared to be the City Council's intent that this ordinance would have been adopted had such an unconstitutional provision not been included herein.

Section 21. Classification. The City Council determines that any fee, rates or charges imposed by this ordinance and/or future enabling resolutions are not a tax subject to the property tax limitations of Article XI, section 11(b) of the Oregon Constitution.

Section 22. Effective Date. This ordinance will become effective on the 30th day after the enactment.

Passed by the City Council and Approved by the Mayor April 18, 2006.