

ORDINANCE NO. 14-1011

AN ORDINANCE OF THE CITY OF OREGON CITY AMENDING CHAPTER 13.20, SYSTEM DEVELOPMENT CHARGE FOR CAPITAL IMPROVEMENTS, RELATING TO SDC CREDITS OR REDUCTIONS BASED ON A DEVELOPMENT'S MOST RECENT STRUCTURE OR USE.

WHEREAS, ORS 223.299(4)(a) defines a "system development charge" as a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit, building permit, or connection to the capital improvement; and

WHEREAS, the City hired a financial consultant to review its system development charge (SDC) code and to recommend revisions; and

WHEREAS, the City's consultant has determined that terminology in Oregon City Municipal Code (OCMC) 13.20 can be better aligned with current statutory language; and

WHEREAS, OCMC 13.20.050 provides for "a reduced SDC or a reimbursement" when a "development involves the redevelopment of an already existing structure or use" and OCMC 13.20.020 defines "already existing structure or use" as "the most intensive use conducted on the subject property within the previous eighteen months from the date of permit application"; and

WHEREAS, the City finds that eighteen months is an insufficient window of time to provide for rapid development and this time period should be increased; and

WHEREAS, OCMC 13.20.030(E) exempts "publicly owned recreational facilities" from payment of SDCs which is not reflective of said uses' demands on public infrastructure ; and

WHEREAS, OCMC 13.20.050 allows "an SDC credit carry-forward" for a property whose redeveloped use is less intense than its already existing or most recent use leading to an SDC reduction or reimbursement which exceeds statutory requirements and increases financial risk to the City; and

WHEREAS, OCMC 13.30.090 was previously added to address a specific, short-term issue which is no longer relevant.

NOW, THEREFORE, OREGON CITY ORDAINS AS FOLLOWS:

Section 1. Chapter 13.20 of the Oregon City Municipal Code shall be modified as follows:

13.20.010 Purpose and applicability.

The purpose of this chapter is to create a system development charge (SDC) to be assessed on development including a new connection or increased size connection to an already existing structure or use that increases the usage or demand on the city's sewer, water, stormwater drainage, parks and transportation systems. SDCs are intended to pay for the cost of constructing or providing capacity in these city systems sufficient to accommodate new development. SDCs are imposed in addition to any assessments,

exactions, dedications, charges, fees and any other conditions of development approval imposed by the city on development. SDCs shall be assessed at the time of building permit application and shall be due and payable at the time of issuance of a building permit. Building permits include new connection or increased size water and sanitary sewer connection permits for an already existing structure or use. SDCs assessed pursuant to this chapter are not within the limits imposed under the Oregon Constitution, Article XI, Section 1**1**b.

13.20.020 Definitions.

For purposes of this chapter, the following definitions shall control:

~~"Already existing~~**Most recent** structure or use" means the most intensive **recent legally approved** use conducted on the subject property within the previous ~~eighteen months~~**eight years** from the date of permit application. **A property upon which there has been no development within the previous eight years does not have a most recent structure or use.**

"Applicant" means the party who applies for a building permit that is subject to a system development charge under this chapter.

"Capital improvement" means facilities or assets used for the following systems, but does not include the costs of operation or routine maintenance:

1. Water supply, treatment or distribution;
2. Waste water collection, transmission, treatment and disposal;
3. Drainage and flood control;
4. Transportation; or
5. Parks and recreation.

"Capital improvement plan" and "facility master plan" mean any plan adopted by the city pursuant to ORS 223.309.

"Condition of development approval" means any requirement imposed by the planning manager, planning commission, city commission or any other city decision-maker on a development.

"Connection" means making a new connection or increased size connection to an existing structure or use for city water, sanitary sewer, or stormwater.

"Developer" means the successful applicant for any land use, limited land use, expedited land division, planned unit development or permit approved pursuant to Title 16 or 17 of this code. It also means the successful applicant of any building permit that will result in increased usage of a capital improvement.

"Development" means any land use, limited land use, expedited land division, planned unit development or permit approved pursuant to Title 16 or 17 of this code. It also means any building permit resulting in increased usage of capital improvements and any new connection or increased size connection for a capital improvement. For purposes

of this section, capital improvements include the city's transportation system, water system, sanitary sewer system, parks system, or stormwater drainage system.

"Director" means the director of public works or that person's designee.

"Improvement fee" means a fee for costs associated with capital improvements yet to be constructed.

"Permit application" means an application for a building permit.

"Qualified public improvement" means ~~the construction or financing of a capital improvement or the conveyance of an interest in real property~~ that is required by the city as a condition of the development approval, is identified in a capital improvement plan or facility master plan adopted pursuant to ORS 223.309 and either:

1. Is not located on or contiguous to the property that is the subject of ~~the permit application~~ development approval; or
2. Is located in whole or in part on or contiguous to the property that is the subject of a ~~permit application~~ development approval and, in the opinion of the director, is required to be built larger or with greater capacity ~~(over capacity)~~ than is necessary ~~to serve for~~ the development. There is a rebuttable presumption that improvements built to the city's minimum adopted standards are required to serve the applicant's development and to mitigate for system impacts attributable to the applicant's development.

"Reimbursement fee" means a fee for ~~the costs~~ associated with capital improvements already constructed, or under construction when the fee is established, for which the city determines that capacity exists.

"Standard legal rate" means the rate of interest specified in ORS 82.010(1).

"System development charge" or "SDC" means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of issuance of a building permit. System development charge includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the city for its average cost of inspecting and installing connections with water and sewer facilities. System development charge does not include any 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 upon a land use decision, expedited land division or limited land use decision.

(Ord. 06-1013, 2006; Ord. 04-1000 (part), 2004: Ord. 97-1032 § 1(part), 1997)

13.20.030 Charge imposed

- A. The city commission may establish and modify SDCs from time to time by resolution ~~an SDC for any capital improvement~~.
- B. When an SDC has been established, unless otherwise exempted by the provisions of this chapter or other applicable law, it shall be imposed upon all development within the city, and upon all development outside the boundary of the city that connects to or otherwise uses the capital improvements of the city. The SDC shall

be calculated and assessed at the time the city receives a complete building permit application or, if a building permit is not required, at the time of connection to the city's systems. The SDC shall be due and payable at the time the city issues a building permit or, if a building permit is not required, at the time of actual connection to the city's systems. Building permits shall not be issued nor shall connection to the city systems be allowed until the required SDCs are paid in full or a binding payment plan entered into pursuant to Section 13.20.080.

- C. Any resolution establishing or modifying a reimbursement SDCfee shall contain a methodology which considers the cost of existing facilities, prior contributions by existing users, the value of unused capacity, rate-making principles employed to finance publicly owned capital improvements, and any other factors deemed relevant by the city commission. The methodology shall promote the objective that future system users shall contribute no more than an equitable share of the costs of existing facilities. The city's adoption or modification of an SDC shall comply with the procedural requirements of ORS 223.304(5), and any such decision shall not be a land use or limited land use decision.
- D. Any resolution establishing or modifying an improvement SDCfee shall contain a methodology which considers the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related in order to accommodate new development. The city's adoption or modification of an SDC shall comply with the procedural requirements of ORS 223.304(5), and any such decision shall not be a land use or limited land use decision.
- ~~E. Exemption. Publicly owned recreational facilities, used and maintained for public use, including restrooms, locker rooms, storage building, parking lots and the like, shall not be subject to SDCs imposed pursuant to this chapter.~~

(Ord. 97-1032 §1(part), 1997)

13.20.040 SDC credit.

The city shall grant to an applicant a credit against any improvement SDCfee assessed when the applicant, or the developer from whom the applicant purchased a lot, constructs or dedicates a qualified public improvement as part of a development. The initial determination on all credit requests shall be a decision by the director, and the applicant bears the burden of evidence and persuasion in establishing entitlement to an SDC credit and the amount of SDC credit in accordance with the requirements of this chapter.

- A. To obtain an SDC credit, the applicant must make the request in writing prior to the city's issuance of the first building permit for the development in question. In the request, the applicant must identify the improvement for which credit is sought, explain how the improvement is a qualified public improvement, and document, with credible evidence, the value of the improvement for which credit is sought. If, in the opinion of the director, the improvement is a qualified public improvement, the city shall allow an SDC credit to the applicant against the SDC to which the improvement is related in an amount equal to the fair market value of the improvement. Fair market value shall be determined by the director based on credible evidence of the following:

1. For dedicated lands, value shall be based upon a written appraisal of fair market value by a qualified, professional appraiser based upon comparable sales of similar property between unrelated parties in an arms-length transaction;
 2. For a qualified public improvement yet to be constructed, value shall be based upon the anticipated cost of construction. Any such cost estimates shall be certified by a professional architect or engineer or based on a fixed price bid from a contractor ready and able to construct the improvement(s) for which SDC credit is sought;
 3. For a qualified public improvement already constructed, value shall be based on the actual cost of construction as verified by receipts submitted by the applicant;
 4. For a qualified public improvement located on, or contiguous to, the site of the development, only the over-capacity portion as described in the definition of qualified public improvement is eligible for SDC credit. There is a rebuttable presumption that the over-capacity portion of such a qualified public improvement is limited to the portion constructed larger, or of greater capacity, than the city's minimum standard facility capacity or size needed to serve the particular development.
- B. Form of Credit and Limitation On Use. When given, SDC credits shall be for a particular dollar value as a credit against an SDC assessed on a development. Credits may only be used to defray or pay the SDC for the particular capital improvement system to which the qualified public improvement related, e.g., credit from a qualified public improvement for sewer may only be used to pay or defray a sewer SDC.
- C. Credit Carry-Forward. Where the amount of an SDC credit approved under this section exceeds the amount of an SDC assessed on a development for a particular capital improvement system, the excess credit may be carried forward pursuant to the following rules:
1. An SDC credit carry-forward shall be issued by the Director for a particular dollar value to the developer who earned the SDC credit and may be used by the developer to satisfy SDC requirements for any other development applied for by the developer within the city. SDC credit carry-forwards are not negotiable or transferable to any party other than the one to whom they are issued.
 2. The city shall accept an SDC credit carry-forward presented by a developer as full or partial payment for the SDC due on any of the developer's developments.
 3. SDC credit carry-forwards are void and of no value if not redeemed with the city for payment of an SDC of the same type of capital improvement system for which the credit was issued within five years of the date of issuance.

(Ord. 00-1003 §4, 2000; Ord. 97-1032 §1 (part), 1997)

13.20.050 SDC reduction or reimbursement.

In the event an applicant's development involves the redevelopment of property ~~an already~~, the applicant may be eligible for a reduced SDC ~~or a reimbursement~~. The

amount of the SDC assessed upon the development shall be calculated by the director as **follows:**

- A. **For redevelopment occurring within four years of the most recent structure or use, it is** the SDC required under the current methodology, minus the SDC that would be attributable to the already existing structure or use.
- B. **For redevelopment occurring after four years and within eight years of the most recent structure or use, the SDC will be reduced by one-half of the SDC that would be attributable to the most recent structure or use.**

If the SDC attributable to the ~~already existing~~ **most recent** structure or use exceeds the SDC assessed upon the applicant's development, ~~the city shall reimburse the difference to the applicant as an SDC credit carry forward, the use of which is governed by Section 13.20.040~~ **then no SDC shall be owed and no refund or reimbursement shall be granted.**

(Ord. 97-1032 §1 (part), 1997)

13.20.060 Authorized expenditures.

- A. General. SDC proceeds may only be expended on capital improvements included on a ~~capital improvement plan or facility master plan~~ **list of capital improvements that the city intends to fund, in whole or in part, with SDC revenues**, including the cost of compliance with this chapter, development of capital improvement plans or facility master plans, development of methodologies, annual accounting of SDC expenditures, debt repayment, engineering, design and construction and related expenses.
- B. Reimbursement ~~SDC fee~~. Proceeds from reimbursement ~~SDCs~~ **fees** shall be spent only on capital improvements associated with the systems for which the fees are assessed.
- C. Improvement ~~SDC fee~~. Proceeds from improvement ~~SDCs~~ **fees** shall be spent only on capacity increasing capital improvements. An increase in system capacity is presumed to exist if a capital improvement increases the capacity or level of performance or service provided by the existing facilities or provides new facilities to meet increased demand. **The portion of the capital improvements funded by improvement fees must be related to the need for increased capacity to provide service for future users.**
- D. Limitations. SDC proceeds shall not be used to pay the costs of, or associated with, the construction of administrative office facilities that are more than an incidental part of other capital improvements nor for operation or routine maintenance of capital improvements.

(Ord. 97-1032 §1 (part), 1997)

13.20.070 Appeals.

Any party aggrieved by a decision rendered by the city pursuant to this chapter may appeal that decision according to this section. An appeal under this section is a mandatory administrative step required before any aggrieved party may seek redress through the court system.

- A. SDC Assessment, Reduction and Reimbursement Appeals. An applicant may appeal the director's decision as to the amount of an SDC or the amount of an SDC reduction or reimbursement to the city commission by filing with the city recorder a notice of appeal within fourteen days of the date of the director's decision. The notice of appeal shall explain how the applicant is aggrieved and shall set forth with particularity the basis for the appeal. In response to a timely-filed appeal, the city commission shall hold an evidentiary hearing during which the applicant may substantiate with additional evidence its claim for a different SDC assessment, reduction or reimbursement. The city commission shall make a de novo review of the director's decision and issue its own decision in writing, which shall be final when signed by the mayor. The city shall withhold the issuance of building and other permits relating to the property for which an appeal has been filed until all such appeals are conclusively resolved.
- B. Credit Appeals. An applicant may appeal the director's decision on an SDC credit request to the city commission by filing with the city recorder a notice of appeal within fourteen days of when the director's decision is signed. The notice of appeal shall explain how the applicant is aggrieved and shall set forth with particularity the basis for the appeal. In response to a timely-filed SDC credit appeal, the city commission shall hold an evidentiary hearing during which the applicant may substantiate with additional evidence its claim for the credit request and the amount of that claim. The city commission shall make a de novo review of the director's decision and issue its own decision in writing, which shall be final when signed by the mayor. The city shall withhold the issuance of building and other permits relating to the property for which an appeal has been filed until all such appeals are conclusively resolved.
- C. Expenditure Appeals. Any aggrieved party may appeal an expenditure of SDC funds by filing with the city recorder a notice of appeal within two years of the date of the challenged expenditure. In response to a timely-filed SDC expenditure appeal, the city commission shall hold an evidentiary hearing to determine whether the challenged expenditure was in accordance with ORS 223.297 to 223.314 and the requirements of this chapter. If the city commission determines there was an improper expenditure of SDC funds, the city commission shall direct that a sum equal to the misspent amount be deposited within one year to the credit of the account of the fund from which it was spent.

(Ord. 97-1032 §1 (part), 1997)

13.20.080 Deferred SDC payment allowed.

- A. SDCs must either be paid in full upon issuance of building permits or ~~payment may be deferred through two alternative methods pursuant to this section.~~
- ~~B. Short-Term Deferral. An applicant may defer payment of all or part of an SDC until the time of issuance of an occupancy permit by executing a promissory note and authorization to impose lien on forms supplied by the city. Under this option, the applicant may defer the SDC payment up to, but no later than, the time occupancy permits are issued for the property that is the subject of the development. The city has the right to withhold issuance of occupancy permits if the SDCs are not paid in full prior to that point. Prior to the time of final payment of the SDCs under this~~

~~deferral option, an applicant may elect the long term deferral option described below.~~

- ~~C. Long Term Deferral. An applicant may defer payment of an SDC through installment payments under the state Bancroft Bonding Act in accordance with applicable state law.~~
- ~~DB.~~ For both methods, ~~t~~The city recorder**finance director** shall provide the applicant with the appropriate forms, which may include a requirement for security acceptable to the city for the unpaid balance and interest, or a valid consent to lien the affected property, a waiver of all rights to contest the validity of the lien, and the classification of the charge as not within the limits imposed under Oregon Constitution, Article XI, Section 11b.
- ~~EC.~~ The city recorder**finance director** shall ~~report~~**provide** to the city commission **annually**~~the amount of the SDC assessed, the dates on which the payments are due, the name of the owner, and the legal description of the property~~ **an accounting of the total deferred SDCs that are outstanding.**
- ~~FD.~~ The city recorder**finance director** shall docket any lien in the lien docket. From that time, the city shall have a lien upon the described parcel for the amount of the unpaid SDC, together with **both** interest on the unpaid balance at the **standard** legal rate **and any actual costs incurred as a result of the deferral.** The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall have priority over all other liens to the extent allowed by applicable law.

(Ord. 97-1032 §1 (part), 1997)

13.20.090 Undercharged transportation system development charge repayment program.

- ~~A. This section shall apply to undercharged transportation system development charges ("TSDC") that were paid as part of building permits issued between May 1, 2009 and December 5, 2012.~~
- ~~B. For purposes of this section "undercharged" or "undercharges" means a payment that is less than that provided under the city's TSDC methodology in place at the time the building permit was issued.~~
- ~~C. The repayment programs and options of this section are available to all applicants and developers that were impacted by the undercharged TSDC regardless of whether or not the applicant or developer has paid the full amount of the TSDC as of the date of the enactment of this chapter.~~
- ~~D. In cases where the city has issued a building permit but a certificate of occupancy permit had not been issued prior to December 5, 2012, an applicant or developer shall have the following repayment options:~~
 - ~~1. Pay the TSDC outstanding balance prior to receiving a certificate of occupancy and receive a twenty percent reduction of the TSDC undercharge; or~~
 - ~~2. Enter into a long term repayment of the total outstanding undercharged TSDC amount. The city will charge a zero percent interest rate on the principal for the first twenty four months. After twenty four months, the standard legal rate will apply.~~
- ~~E. In cases where the city has issued a certificate of occupancy prior to December 5, 2012, the city will not seek payment of the outstanding TSDC.~~

- ~~F. Applicants or developers that where undercharged TSDC are eligible for a long-term SOC deferral interest rate of two percent for the first twelve months for future development projects occurring within the city that are subject to SOC assessment prior to February 7, 2014. After the first twelve months of a deferred payment agreement, the standard legal rate will apply.~~
- ~~1. To qualify for the deferred interest rate under this section, the following criteria shall be met:~~
- ~~a. The long-term deferral of the SDCs at the reduced interest rate shall have been entered into prior to February 7, 2014; and~~
- ~~b. The applicant shall demonstrate that they were undercharged Transportation SDCs and have participated in the Undercharged Transportation System Development Charge Repayment Program in Section 13.20.090; and~~
- ~~c. The applicant shall be current on all undercharged SOC payments or shall have paid in full the outstanding balance due.~~
- ~~2. The city recorder shall provide the applicant or developer with the appropriate forms, which may include a requirement for security acceptable to the city for the unpaid balance and interest, or a valid consent to lien the affected property, a waiver of all rights to contest the validity of the lien, and the classification of the charge as not within the limits imposed under Oregon Constitution, Article XI, Section 11b.~~

~~(Ord. No. 13-1004, § 1, 2-6-2013)~~

Section 2. The effective date of this Ordinance shall be the effective date of the second reading of the ordinance by the City Commission.

Read for the first time at a regular meeting of the City Commission held on the 17th day of September, 2014 and the City Commission finally enacted the foregoing ordinance this 15th day of October, 2014.

DOUG NEELEY, Mayor

Attested to this 15th day of October, 2014:

Approved as to legal sufficiency:

Nancy Ide, City Recorder

City Attorney