

## ORDINANCE NO. 17-1013

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### AN ORDINANCE OF THE CITY OF OREGON CITY AMENDING OREGON CITY MUNICIPAL CODE TITLE 13, PUBLIC SERVICES, SECTION 13.20, SYSTEM DEVELOPMENT CHARGE FOR CAPITAL IMPROVEMENTS

**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 has worked with a financial consultant to review its system development charge (SDC) code and to recommend revisions; and

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

**WHEREAS**, OCMC 13.20.020 states that "most recent structure or use" is defined as "the most recent legally approved use conducted on the subject property within the previous ten years from the date of permit application;" and

**WHEREAS**, OCMC 13.20.050.A states "for redevelopment occurring within ten years of the most recent structure or use;" and

**WHEREAS**, the City finds that ten years is an insufficient window of time to provide for redevelopment and this time period should be increased; and

**WHEREAS**, the City finds that clarifications can be made to the determination of value for qualified public improvements; and

**WHEREAS**, OCMC 13.20.040(C)3 states that SDC credit carry-forwards are void and of no value if not redeemed within five years; and

**WHEREAS**, the City finds that ORS 223.307.5.d states credits can be allowed to be used not later than ten years from the date the credit is given.

### **NOW, THEREFORE, OREGON CITY ORDAINS AS FOLLOWS:**

**Section 1.** Oregon City Municipal Code Chapter 13.20 is amended as shown below, with the changes **highlighted** and additions shown in underline and deletions shown as ~~strike through~~.

### **Chapter 13.20 - SYSTEM DEVELOPMENT CHARGE FOR CAPITAL IMPROVEMENTS**

#### **13.20.020 - Definitions.**

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

"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.

"Most recent structure or use" for residential structures means any residential structure documented to exist using the City's record of historic aerial photos for year 1994 and after; for non-residential structures means the most recent legally approved use conducted on the subject property within the previous ten years from the date of permit application after January 1, 2000. A property upon which there has been no residential development since the 1994 aerial photo or upon which there has been no non-residential development after January 1, 2000 within the previous ten years does not have a most recent structure or use.

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

"Qualified public improvement" means a capital improvement 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 development approval; or
2. Is located in whole or in part on or contiguous to the property that is the subject of development approval and, in the opinion of the director, is required to be built larger or

with greater capacity than is necessary 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 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.

### **13.20.040 - SDC credit.**

The city shall grant to an applicant a credit against any improvement fee 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 approved by director, based upon a detailed cost estimate for the anticipated cost of construction including supporting cost documentation. Any such cost estimates shall be based on industry standard and prepared and certified by a professional architect or engineer or with supporting cost documentation based on a fixed detailed price bid from a contractor ready and able to construct the improvement(s) for which SDC credit is sought or current prices from at least two contractors' detailed price bid for similar public improvements;
  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;~~

43. 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~~ **ten** years of the date of issuance.

#### **13.20.050 - SDC reduction or reimbursement.**

In the event an applicant's development involves the redevelopment of property, the applicant may be eligible for a reduced SDC. In that event, the amount of the SDC assessed upon the development shall be calculated by the director as follows:

- A. ~~For redevelopment occurring within ten years of the most recent structure or use, it is~~  
~~the~~ The SDC required under the current methodology minus the SDC that would be attributable to the ~~already existing most recent~~ structure or use ~~(if one exists)~~ for all adopted SDC types.

If the SDC attributable to the most recent structure or use exceeds the SDC assessed upon the applicant's development, then no SDC shall be owed and no refund or reimbursement shall be granted.

All other provisions contained in Section 13.20 shall remain unchanged.

Read for the first time at a regular meeting of the City Commission held on the 6<sup>th</sup> day of December, 2017, and the City Commission finally enacted the foregoing ordinance this 20<sup>th</sup> day of December, 2017.

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DAN HOLLADAY, Mayor

Attested to this 20th day of December 2017:

Approved as to legal sufficiency:

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Kattie Riggs, City Recorder

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City Attorney