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Chapter 3.24 SYSTEM DEVELOPMENT CHARGE PROGRAM

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3.24.010 Purpose

This chapter is intended to implement the authority provided by ORS 223.297 through 223.314 adopting and imposing system development charges (SDC) for capital improvements for the purpose of creating a fund to pay for the installation, construction, extension, and expansion of capital improvements. The purpose of the system development charge is to impose a portion of the cost of capital improvements for water, wastewater drainage, streets, flood control, and parks upon those developments and redevelopments that create the need for or increase the demands on the system. (Ord. 15-08 §2)

3.24.020 Scope

The SDC created and imposed by this chapter is separate from, and in addition to, any applicable tax, assessment, charge, fee in lieu of assessment, or fee otherwise provided by law or imposed as a condition of development. (Ord. 15-08 §2)

3.24.030 Definitions

For purposes of this chapter, the following definitions apply:

“Accessory dwelling unit” means a second residential dwelling unit created on a single lot with a single-family or a manufactured housing dwelling unit. The second unit is created auxiliary to, and is always smaller than, the single-family or manufactured housing residential dwelling unit.

“Administrator” means that person, or persons, appointed by the city to manage and implement the SDC program or portions thereof.

“Applicant” means the person who applies for a building permit.

“Building official” means that person, or designee, certified by the state and designated as such to administer the state building codes for the city.

“Building permit” means that permit issued by a building official pursuant to the State of Oregon Structural Specialty Code Section 301 or as amended, and the State of Oregon One and Two Family Dwelling Code Section R-109 or as amended. In addition, “building permit” shall mean a manufactured home installation permit issued by the building official, relating to the placement of manufactured homes in the city.

“Capital improvements” means facilities or assets used for the following:

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1. Water supply, treatment, distribution, or any combination;
2. Sewage and wastewater collection, transmission, and disposal;
3. Drainage or flood control;
4. Transportation; or
5. Parks and recreation.

“Capital improvements plan,” also called the CIP, means the city program that identifies facilities and improvements projected to be funded, in whole or in part, with SDC revenues.

“City” means the City of Tigard, Oregon.

“Condition of development approval” is any requirement imposed on an applicant by the city, a city or county land use or limited land use decision, or site plan approval.

“Construction Cost Index” means the Engineering News Record (Seattle) Construction Cost Index.

“County” means Washington County, Oregon.

“Credit” means the amount by which an applicant may be able to reduce the SDC fee as provided in this chapter.

“Development” means a building or other land construction, or making a physical change in the use of a structure or land, in a manner which increases the usage of capital improvements or which may contribute to the need for additional or enlarged capital facilities.

“Duplex” means two attached single-family dwelling units on a single lot.

“Improvement fee” means a fee for costs associated with capital improvements to be constructed after the effective date of the ordinance codified in this chapter.

“Multi-family housing” means three or more attached residential dwelling units located on a single lot.

“New development” means development for which a building permit is required.

“Over-capacity” means that portion of an improvement that is built larger or with greater capacity than is necessary to serve the applicant’s new development or mitigate for system impacts attributable to the applicant’s new development.

“Parks SDC Methodology Report” means the report entitled Parks and Recreation System Development Charge Methodology Report, dated April 27, 2015.

“Permit” means a building permit.

“Permittee” means the person to whom a building permit, development permit, a permit or plan approval to connect to the sewer or water system, or right-of-way access permit is issued.

“Previous use” means the most intensive use conducted at a particular property within the past 18 months prior to the date of application for a building permit. Where the site was used simultaneously for several different uses (mixed use) then, for the purposes of this chapter, all of the specific use categories shall be considered. Where the previous use is composed of a primary use with one or more ancillary uses that support the primary use and are owned and operated in common, that primary use shall be deemed to be the sole use of the property for purposes of this chapter.

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“Proposed use” means the use proposed by the applicant for the new development. Where the applicant proposes several different uses (mixed use) for the new development then, for purposes of this chapter, all of the specific use categories shall be considered. Where the proposed use is composed of a primary use with one or more ancillary uses that support the primary proposed use and are owned and operated in common, that primary use shall be deemed to be the sole proposed use of the property for purposes of this chapter.

“Qualified public improvement” means any system capital facility or conveyance or an interest in real property that increases the capacity of the city’s system and is:

1. Required as a condition of development approval;
2. Identified as a need in the SDC Methodology Report; and
3. Not located on or contiguous to property that is the subject of development approval; or
4. Located in whole or in part on or contiguous to property that is the subject of development approval and, in the opinion of the administrator, is required to be built larger or with greater capacity (over-capacity) than is necessary for the applicant’s new development or mitigate for system impacts attributable to the applicant’s new development. There is a rebuttable presumption that improvements built to the city’s minimum standards are required to serve the applicant’s new development and to mitigate for system impacts attributable to the applicant’s new development.

“Reimbursement fee” means a fee for costs associated with capital improvements that have

been constructed or were under construction prior to the effective date of this chapter.

“Remodel” or “remodeling” means to alter, expand or replace an existing structure.

“Residential dwelling unit” means a building or a portion of a building consisting of one or more rooms, which include sleeping, cooking, and plumbing facilities and are arranged and designed as permanent living quarters for one family or household.

“Row house” means an attached single-family residential dwelling unit on a single lot.

“SDC Administration Procedures Guide” means that report entitled System Development Charges Administration Procedures Guide, dated April 27, 2015.

“Single-family dwelling unit” means one detached residential dwelling unit, or one-half of a duplex, or one row house.

“Transportation SDC Methodology Report” means the report entitled Transportation System Development Charge Methodology Report, dated April 27, 2015. (Ord. 15-08 §2)

3.24.040 System Development Charge Established

A. SDCs shall be established and may be revised from time to time by resolution of the council. The resolution shall set the amount of the charge, the type of permit to which the charge applies, the methodology used to set the amount of the charge, and if the charge applies to a geographic area smaller than the entire city, the geographic area subject to the charge.

B. Unless otherwise exempted by the provisions of this chapter or any other applicable local or state law, a SDC is hereby imposed upon

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all development within the city. SDCs are imposed upon the act of making a connection to the city water or sewer system within the city, upon all development outside the boundary of the city that connects to or otherwise uses the sewer or water facilities of the city, and whenever the city council has authorized an intergovernmental agreement which permits the city to impose a parks SDC outside the city limits. (Ord. 15-08 §2)

3.24.050 Methodology

A. The methodology used to establish the reimbursement fee shall be based on ratemaking principles employed to finance publicly owned capital improvements, 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 or the cost of the existing facilities, 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 and shall be available for public inspection.

B. The methodology used to establish the improvement fee shall consider the projected cost of capital improvements identified in the plan and list adopted pursuant to Section 3.24.080 that are needed to increase the capacity of the systems to which the fee is related and for which the need for increased system capacity will be required to serve the demands placed on the system by future users. Improvement fees shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.

C. The methodology shall also provide for periodic indexing of system development charges for inflation, as long as the index used satisfies the following criteria:

1. A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;

2. Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and

3. Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order.

D. Except when authorized in methodology adopted under this section, any fees imposed or required to be paid, 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 are separate from and in addition to the SDC and shall not be used as a credit against an SDC.

E. The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be adopted by resolution by the council. (Ord. 15-08 §2)

3.24.060 Authorized Expenditures

A. Reimbursement Fees. Reimbursement fees shall be applied only to capital improvements (and not operating expenses) associated with the system for which the fees are associated, including expenditures relating to repayment of indebtedness.

B. Improvement Fees.

1. Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for the improvements. An increase in system capacity may be established if a capital

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improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to the need for increased capacity to provide service for future users.

2. 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 3.24.080.

3. Notwithstanding preceding paragraphs 1 and 2, SDC revenues may be expended on the costs of complying with the provisions of this chapter, including the costs of developing systems development charge methodologies and providing an annual accounting of systems development charge funds. (Ord. 15-08 §2)

3.24.070 Expenditure Restrictions

SDCs shall not be expended for the following:

A. Costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements; or

B. Costs of the operation or routine maintenance of capital improvements. (Ord. 15-08 §2)

3.24.080 Capital Improvement Plan

The council shall adopt a capital improvement plan that:

A. Lists the capital improvements that may be funded with improvement fee revenues; and

B. Lists the estimated cost, percentage of costs eligible to be funded with revenues from the improvement fee for each improvement, and time of construction; and

C. Describes the process for modifying the plan. If a SDC will be increased by a proposed modification of the list to include a capacity increasing capital improvement, the city shall provide, at least 30 days prior to the adoption of the modification, notice of the proposed modification to the persons who have requested written notice under Section 3.24.130. The city shall hold a public hearing if a written request for a hearing on the proposed modification is received within seven days of the date the proposed modification is scheduled for adoption. (Ord. 15-08 §2)

3.24.090 Collection of Charge

A. The SDC is payable upon issuance of:

1. A building or construction permit of any kind, including any permit or permits issued in connection with the set-up or installation of any trailer, mobile or manufactured home;

2. A development permit;

3. A development permit for development not requiring the issuance of a building permit;

4. A permit to connect to the sewer system; or

5. A permit to connect to the water system.

B. If development is commenced or connection is made to the water system, sewer system, or storm system without an appropriate permit, the SDC shall be immediately due and

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payable upon the earliest date that a permit was required.

C. The administrator shall collect the applicable SDC from the permittee. The administrator shall not issue such permit or allow such connection until the charge has been paid in full; deferral has been approved pursuant to Section 3.24.090.D; exemption has been granted pursuant to Section 3.24.110; or unless provision for installment payments has been made, pursuant to Section 3.24.100, which follows.

D. Notwithstanding subsection A of this section, the permittee may apply for a deferral of payment of the transportation SDC to occupancy. Deferral may only be granted in cases where the amount due exceeds the amount of transportation SDC on a single-family detached residence. The request must be made in writing to the administrator no later than the time of application for a building permit. The administrator shall grant deferral of the transportation SDC; however, any deferred charge shall be paid in full prior to the issuance of an occupancy permit. The amount of transportation SDC due on deferred obligations shall be the amount in effect at the time of issuance of the occupancy permit. (Ord. 16-10 §1; Ord. 15-08 §2)

3.24.100 Installment Payment

A. When a SDC is due and payable, the permittee may apply for payment in 20 semi-annual installments, secured by a lien on the property upon which the development is to occur or to which the utility connection is to be made, to include the SDC along with the following:

1. Interest on the obligation at the rate stated in the city's master fees and charges. If no rate is set, then the interest on the obligation will default to prime rate as published by the Wall Street Journal the day of application plus four percent;

2. Any and all costs, as determined by the administrator, incurred in establishing payment schedules and administering the collections process.

B. The intent of this section is to recognize that the payment of an SDC by installments increases the administrative expense to the city. It is the intent of this subsection to shift that added expense to the applicant, so that the city will not lose SDC revenue by accepting installment payments on such charges. Subject to the provisions of this section, all costs added to the SDC will be determined by the administrator.

C. An applicant requesting installment payments shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the property and that the interest of the applicant is adequate to secure payment of the lien.

D. The administrator 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 the costs in paragraphs A.1 and 2. The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall be superior to all other liens pursuant to ORS 223.230. (Ord. 15-08 §2)

3.24.110 Exemptions

The following are exempt from a SDC:

A. Structures and uses established and existing on or before the effective date of the resolution which sets the amount of the SDC are exempt from the charge, except water and sewer charges, to the extent of the structure or use existing on that date and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of

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this chapter upon the receipt of a permit to connect to the water or sewer system.

B. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the building code adopted pursuant to Chapter 14.04 of this code, are exempt from all portions of the SDC.

C. An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of a capital improvement are exempt from all portions of the SDC. (Ord. 15-08 §2)

3.24.120 Credits

A. A SDC shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given in an amount equal to the existing SDC as applied to the pre-existing type and level use. The credit so computed shall not exceed the calculated SDC. No refund or credit shall be made on account of such credit.

B. An improvement fee credit shall be given for the cost of a bonded or completed qualified public improvement associated with a development upon acceptance by the city of the improvement, subject to the following conditions:

1. Such credit shall be only for the improvement fee charged for the type of improvement being constructed, and credit for qualified public improvements under Section 3.24.030 may be granted only for the actual, estimated, or agreed-upon cost of that portion of such improvement that exceeds the city's minimum standard facility size or capacity needed to serve the particular development property or project. The applicant shall have the burden of demonstrating that a particular improvement qualifies as a Section 3.24.030 qualified public improvement. The request for credit shall be filed

in writing no later than 60 days after acceptance of the improvement by the city.

2. When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project, if any.

C. Credits shall be used within 10 years from the date the credit is given, after which the credit shall expire, and be null and void, without the need for the city to take any further action.

D. Credit shall not be transferable from one type of capital improvement to another.

E. Credits may be transferable from one development to another.

F. Credits for any SDC, or for the Washington County Transportation Development Tax, shall only be used for obligations relating to the charge and capital improvement type for which the credit was issued.

G. In calculating improvement fee credits for the River Terrace Overlay portion of the city's park SDC only, an improvement fee credit shall be given as follows:

1. For the cost of a bonded or completed qualified public improvement, pursuant to Section 3.24.120.B.

2. Notwithstanding Section 3.24.120.B.1, for a neighborhood park that is accepted by the city; shown in the River Terrace Park System Master Plan; and determined to meet the city's minimum level of service standards and design guidelines as described in the Tigard Park System Master Plan, regardless of whether the

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park was imposed as a condition of development approval. The credit shall include both the costs of meeting and exceeding the city's minimum standards to the extent needed to serve the applicant's new development. The amount of the credit shall be limited to the actual reasonable costs approved by the city based upon the location of the park, level of service, park features, and consistency with the city's adopted park system master plans.

H. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the city.

I. Section 3.24.120.G shall apply to parks completed after January 1, 2016.

J. A credit issued under Section 3.24.120.G may be applied only to the River Terrace Overlay SDC, is not a credit against the citywide park SDC, and is not transferable to properties outside of the River Terrace Community Plan area.

K. In addition to Section 3.24.120.B.1, the cost of constructing River Terrace Boulevard is 50% credit eligible for city-approved local street elements and 100% credit eligible for city-approved over-capacity street elements. (Ord. 16-10 §1; Ord. 15-08 §2)

3.24.130 Notice

A. After the effective date of the ordinance codified in this chapter, the city shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any SDC. Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a SDC, and the methodology supporting the adoption or amendment shall be available at least 60 days prior to the first hearing to adopt or amend. The failure of a person on the list to

receive a notice that was mailed shall not invalidate the city's subsequent action.

B. 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.

C. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the SDC methodology if the change in amount is based on a change in cost of materials, labor or real property applied to projects or project capacity as set forth on the list adopted pursuant to Section 3.24.080 or the periodic application of one or more specific cost indices published by a recognized organization or agency and is incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution, or order. (Ord. 15-08 §2)

3.24.140 Segregation and Use of SDC Revenue

A. All funds derived from a particular type of 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 this chapter.

B. The administrator shall provide an annual accounting of SDCs showing the total amount of system development charge revenues collected for each type of facility and the projects funded from the account. (Ord. 15-08 §2)

3.24.150 Appeals and Procedure

A. A person aggrieved by a decision required or allowed to be made by the city

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recorder under this chapter or a person challenging the propriety of an expenditure of SDC revenues may appeal the decision or the expenditure to the city council by filing a written request with the administrator describing with particularity the decision of the administrator or the expenditure from which the person appeals.

B. Appeal of an Expenditure. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure. The council shall determine whether the administrator's decision or the expenditure is in accordance with this chapter and the provisions 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.

C. Appeal of an SDC Methodology. Legal action challenging the methodology adopted by the council pursuant to Section 3.24.050 shall not be filed later than 60 days after the date of adoption, and shall be contested according to the procedure set forth in ORS 34.010 to 34.100, and not otherwise.

D. Appeal of an SDC Calculation or Credit Determination.

1. A person aggrieved by a decision made by the administrator relating to the calculation of SDCs may file an appeal within 10 days of the administrator's action.

2. Appeals must be made by filing a written request with the administrator and must include a recommended solution to the issue that has initiated the appeal.

3. Appeals may be filed to challenge only the trip generation rate or land use category that is applicable to the project.

4. The city council shall consider all appeals and shall render a decision to affirm, modify, or overrule the decision of the administrator.

5. The city council's decision shall be made in accord with the intent of the provisions of this chapter. (Ord. 15-08 §2)

3.24.160 Prohibited Connection

No person may connect to the water or sewer or storm systems of the city unless the appropriate SDC has been paid. (Ord. 15-08 §2)

3.24.170 Penalty

Violation of this chapter is a Class A infraction punishable by a fine not to exceed \$500.00. (Ord. 15-08 §2)

3.24.180 Severability

The provisions of this chapter 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 chapter shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this chapter shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. It is hereby declared to be the council's intent that this chapter would have been adopted had such an unconstitutional provision not been included herein. (Ord. 15-08 §2) ■