

# TIGARD MUNICIPAL CODE

## Chapter 3.24 SYSTEM DEVELOPMENT CHARGE PROGRAM

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### 3.24.010 Purpose

This chapter is intended to implement the authority provided in ORS 223.297 through 223.314 by adopting and imposing system development charges (SDCs) to pay for the installation, construction, extension, and expansion of the city’s water, sanitary sewer, stormwater, park, and transportation systems. The purpose of SDCs is to impose a portion of the cost of capital improvements for these systems upon those developments that create the need for or increase the demands on these systems. (Ord. 18-06 §1)

### 3.24.020 System Development Charge

An SDC is a reimbursement fee, an improvement fee, or a combination thereof imposed on a subject property at the time of increased usage of a capital improvement or connection to a capital improvement. The SDCs

created and imposed by this chapter are 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. The SDC Administrative Procedures Guide provides additional detail on implementation of SDCs. (Ord. 18-06 §1)

### 3.24.030 Definitions

For purposes of this chapter, the following definitions apply:

“Administrator” means the 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 land use decision or building permit.

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

“Building permit” means the permit issued by a building official, as required by the State of Oregon Structural Specialty Code Section 105.1 or the Oregon Residential Specialty Code Section 105.1. In addition, “building permit” means a manufactured home installation permit issued by the building official, relating to the placement of manufactured homes in the city.

“Capital improvements” mean facilities, real property, or assets used for the following:

1. Water: supply, treatment, or distribution;
2. Sanitary sewer: wastewater collection, transmission, treatment, or disposal;

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3. Stormwater: water quality or quantity management, drainage, or flood control;

4. Parks: active or passive parks, open space, or recreational trails; or

5. Transportation.

“City” means the City of Tigard, Oregon.

“Condition of development approval” means any requirement imposed on an applicant by the city or county as part of a land use decision or building permit approval.

“County” means Washington County, Oregon.

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

“Development” means a building or other land construction, including a physical change in the use of a structure or land, in a manner which increases the demand on or creates the need for new or enlarged capital improvements.

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

“Improvement fee” means the SDC for costs associated with capital improvements to be constructed.

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

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

“Previous use” means the most intensive use conducted at the subject property within the past 18 months prior to the date of application for a building permit, or land use decision if no building permit is required. Where the subject property was used simultaneously for several different uses (mixed-use) then all of the specific use categories will be considered for purposes of this chapter. Where the previous use was composed of a primary use with one or more ancillary uses that supported the primary use and were owned and operated in common, the primary use will be deemed to be the sole previous use of the subject property for purposes of this chapter.

“Project list” means the list adopted by the city pursuant to Section 3.24.060.

“Proposed use” means the use proposed by the applicant for the subject property. Where the applicant proposes several different uses (mixed-use) then all of the specific use categories will be considered for purposes of this chapter. 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, the primary use will be deemed to be the sole proposed use of the subject property for purposes of this chapter.

“Qualified public improvement” means any capital improvement that increases the capacity of the city’s system and is:

1. Required as a condition of development approval;
2. Identified as a need and included on the project list; and
3. Not located on or contiguous to the subject property; or
4. Located contiguous to or in whole or in part on the subject property and, in the

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opinion of the administrator, is required to be built larger or with greater capacity (over-capacity) than is necessary to serve the development of the subject property or to mitigate for system impacts attributable to the development of the subject property. There is a rebuttable presumption that improvements built to the city's minimum standards are required to serve the development and to mitigate for system impacts attributable to the development.

“Regulated affordable housing” means housing that is made affordable through public subsidies or statutory regulations that restrict or limit resident income levels or rents. To be considered regulated affordable housing, units must:

1. Have a local, state, or federal compliance agreement or contract;
2. Be affordable to households at or below 80% median family income as defined annually by Housing and Urban Development (HUD) for the Portland-Vancouver Metropolitan Statistical Area (MSA); and
3. Remain regulated affordable housing units for a minimum of 20 years from the date of occupancy.

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

“Residential dwelling unit” means a building or a portion of a building consisting of one or more rooms that includes 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 Administrative Procedures Guide” means the administrative rules adopted by the city for the implementation of this chapter.

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

“Temporary water use” means a water service connection to the city water system for limited periods of time or duration that has minimal, if any, permanent impact on system capacity, such as service to temporary buildings, temporary irrigation systems, or special events. (Ord. 18-25 §1; Ord. 18-06 §1)

## **3.24.040 Charge Imposed**

A. SDCs may be established and revised by resolution of the City Council. The resolution must include 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, an SDC is hereby imposed upon all development within the city or outside the city boundaries pursuant to an intergovernmental agreement. SDCs are imposed where development makes a connection to the city's systems or where development increases the demand on the city's systems.

C. Any fee imposed or required to be paid, assessed, or collected as part of a local improvement district or in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions

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imposed by a building permit or land use decision, are separate from and in addition to SDCs and may not be used as a credit against any SDC. (Ord. 18-06 §1)

## **3.24.050 Methodology**

A. The city will adopt an SDC methodology by resolution of the City Council for each SDC imposed. The methodology establishes the improvement fee or reimbursement fee and the method for calculating a development's proportional share of the city's capital improvement costs.

B. The methodology used to establish the reimbursement fee must be based on ratemaking principles employed to finance publicly-owned capital improvements; prior contributions by existing system users; gifts or grants from federal or state government or private persons; the value of unused capacity available to future system users; the cost of existing capital improvements; or other relevant factors identified by the City Council. Future system users will contribute an equitable share of the cost of existing capital improvements.

C. The methodology used to establish the improvement fee must be based on the projected cost of capital improvements identified in the project list adopted pursuant to Section 3.24.060 that are needed to increase the capacity of the system 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 system users.

D. The methodology may also provide for periodic indexing of system development charges for inflation, as long as the index is:

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. (Ord. 18-06 §1)

## **3.24.060 Project List**

A. The project list adopted by City Council must:

1. List the capital improvement projects that may be funded with improvement fees; and

2. List the estimated cost, percentage of costs eligible for improvement fee funding, and timing of construction for each capital improvement project.

B. The administrator may, at any time, amend the project list, including adding or removing projects or changing the estimated cost, percentage of cost eligible for improvement fee funding, or timing of construction for each capital improvement project on the list. Amendments must be consistent with the city's adopted goals, policies, and system master plans or as otherwise determined by the administrator to be necessary for the public's health, safety, and welfare.

C. If an SDC will be increased by a proposed project list amendment to include a capacity-increasing capital improvement, the city must provide notice of the proposed amendment to the persons who have requested written notice under Section 3.24.120 at least 30 days prior to the adoption of the proposed amendment. The city

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will hold a public hearing if a written request for a hearing on the proposed amendment is received at least seven days prior to the date the proposed amendment is scheduled for adoption. (Ord. 18-06 §1)

## **3.24.070 Expenditures**

A. Reimbursement Fees. Reimbursement fees may be spent only on capital improvements to which the fees are related, including expenditures relating to repayment of indebtedness.

### **B. Improvement Fees.**

1. Improvement fees may be spent only on capacity-increasing capital improvements to which the fees are related, including expenditures relating to repayment of indebtedness. A capital improvement increases capacity when it increases the level of performance or service provided by an existing facility or provides a new facility. The portion of the improvement funded by the improvement fee must be related to the need for increased capacity to provide service for future users.

2. A capital improvement funded in whole or in part by an improvement fee must be included on the project list adopted by the city pursuant to Section 3.24.060.

3. Notwithstanding subsections B.1 and B.2 of this section, SDCs may be spent on the costs of complying with the provisions of this chapter, including the costs of developing SDC methodologies and providing an annual accounting of SDC funds.

C. SDCs may not be spent on the following:

1. Costs associated with the construction of administrative office facilities that

are more than an incidental part of a capital improvement; or

2. Costs associated with the operation or routine maintenance of capital improvements. (Ord. 18-06 §1)

## **3.24.080 Payment**

A. SDCs are calculated and are due and payable as follows:

1. Calculation. SDCs are calculated based on the fees in effect at the time of submittal of the complete building or plumbing permit application to which the fees relate. If a building or plumbing permit is not required and a land use decision is required, SDCs are calculated based on the fees in effect at the time of submittal of the complete land use application to which the fees relate.

2. Due and Payable. Water SDCs are due and payable upon purchase of a water meter. All other SDCs are due and payable upon issuance of the building or plumbing permit to which the fees relate. If a building or plumbing permit is not required and a land use decision is required, all other SDCs are due and payable upon issuance of the land use decision to which the fees relate.

B. The city may not issue a required building permit or allow a connection to the city's systems until all applicable SDCs have been paid in full; deferral has been approved pursuant to subsection D; exemption has been granted pursuant to Section 3.24.100; or installment payment arrangements have been made pursuant to Section 3.24.090.

C. If development commences or a connection is made to the city's water, sanitary sewer, or stormwater systems without the required building permit or land use approval, all

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applicable SDCs will be immediately due and payable.

D. Notwithstanding subsection A.2 of this section, the applicant may apply for a deferral of payment of transportation or park SDCs to occupancy. The administrator may only grant a deferral in cases where the amount due exceeds the amount of a transportation or park SDC on a single-family dwelling unit. The request must be made in writing to the administrator no later than the time of building permit application or, if no building permit is required, then upon land use application. Any deferred SDC must be paid in full prior to the issuance of an occupancy permit. The amount of transportation or park SDC due on deferred obligation will be the amount in effect at the time of issuance of the building permit. (Ord. 18-06 §1)

## **3.24.090            Installment Payments**

A. When an SDC is due and payable, the applicant 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; and

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

B. An applicant requesting installment payments has the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the property and that the property

interest of the applicant is adequate to secure payment of the lien.

C. The administrator will record the lien with the county as a lien on the property for the amount of the SDC together with the costs in subsections A.1 and A.2 of this section. The lien is enforceable in the manner provided in ORS Chapter 223 and is superior to all other liens pursuant to ORS 223.230. (Ord. 18-06 §1)

## **3.24.100            Exemptions**

The following types of development are exempt from payment of SDCs:

A. Structures and uses existing on or before the effective date of the resolution that sets the amount of an SDC, except for connections to the city's water or sanitary sewer systems made after such date.

B. Additions to single-family dwelling units that do not constitute the addition of a dwelling unit, as defined by the building code adopted pursuant to TMC 14.04.

C. Alterations, additions, replacements or changes in use that do not increase the development's use of a capital improvement.

D. Regulated affordable housing, from city transportation and park SDCs only.

E. Temporary water use, from city water SDCs only. (Ord. 18-25 §2; Ord. 18-06 §1)

## **3.24.110            Credits**

A. Reimbursement Fee Credits. No credits may be given for reimbursement fees.

B. Improvement Fee Credits. The following activities are eligible for improvement fee credits:

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1. Change of Use. Credits will be issued in an amount equal to the existing SDC attributable to the previous use when a change of use occurs. The credit so computed may not exceed the calculated SDC. The applicant is not entitled to a refund if an SDC for the proposed use is less than the same SDC attributable to the previous use. Previous use credits will be automatically calculated and applied by the administrator.

2. Property Donation. Credits will be issued in an amount up to the county market value of real property donated to the city for a future park improvement that is on the project list. In lieu of county market value, the city may require a written appraisal as the basis for determining value at the discretion of the administrator. Real property donations become eligible for credits upon recording of the signed deed with the county.

3. Capital Improvement Construction. Credits will be issued for certain capital improvements as described in subsection E of this section.

C. General Provisions for Improvement Fee Credits. Improvement fee credits are subject to the following:

1. Credits must be used within 10 years from the date the credit is issued. Credits expire after 10 years without the need for any further action by the city.

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

3. Credits may only be used for obligations relating to the specific SDC for which the credit was issued.

D. Improvement Fee Credits for Capital Improvements. In addition to the provisions in

subsection C, improvement fee credits for capital improvements are subject to the following:

1. Credits will only be issued for an eligible bonded or completed capital improvement, or for a fee paid in lieu of construction of an eligible capital improvement, for the specific SDC to which the improvement relates. A completed capital improvement becomes eligible for credits upon final inspection and conditional acceptance by the city, regardless of any ongoing maintenance needs or agreements associated with the improvement.

2. Credit requests must be filed in writing with the administrator on forms provided by the city no later than 60 days after acceptance of the improvement by the city, with the exception of change of use credits as described in subsection B.1.

3. When construction of a capital improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the development, the excess credit may be applied against improvement fees that accrue in subsequent phases of the development, if any.

E. Eligible Capital Improvements. The following types of capital improvements are eligible for improvement fee credits:

1. Qualified Public Improvement. Credits for a qualified public improvement, other than a park improvement, will be issued for the actual cost of the improvement as approved by the administrator. Credits for a qualified public improvement will be issued only for the cost of that portion of the improvement that exceeds the city's minimum standard facility size or capacity needed to serve the development. The applicant has the burden of demonstrating that a particular improvement is a qualified public improvement.

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2. Park Improvement. Credits for a park improvement on the project list, regardless of whether the improvement is considered a qualified public improvement, will be issued for up to the full cost of the improvement. Credits are limited to costs approved by the administrator based on park size and features.

3. Bicycle and Pedestrian Improvement. Credits for a bicycle or pedestrian improvement on the project list, regardless of whether the improvement is considered a qualified public improvement, will be issued for up to the full cost of the improvement. Credits are limited to costs approved by the administrator based on facility size and materials.

F. Relationship Between Transportation Development Tax and SDC Credits. For any transportation capital improvement that is eligible for credits from both county Transportation Development Tax (TDT) and city transportation SDC, the amount of SDC credit issued will be reduced by the amount of TDT credit issued.

G. Relationship Between Citywide and Overlay SDC Credits. For any transportation capital improvement that is eligible for credits from both a citywide and overlay SDC, the amount of overlay SDC credit issued will be reduced by the amount of citywide SDC credit issued.

H. In addition to subsection E.1, credits will be issued in an amount of up to half the cost of any non-qualified public improvement street elements of River Terrace Boulevard. Credits are limited to costs approved by the administrator based on the adopted River Terrace Boulevard cross section. (Ord. 18-06 §1)

## 3.24.120 Notice

A. The city will maintain a list of persons who have made a written request for notification

prior to adoption or amendment of any SDC or SDC methodology. Written notice will be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify an SDC or SDC methodology. The methodology supporting the adoption or amendment of an SDC must be available at least 60 days prior to the first hearing on the proposal. The failure of a person on the list to receive a notice that was mailed does not invalidate the city's subsequent action.

B. The city may periodically remove persons from the notification list. At least 30 days prior to removing a person from the list, the city must notify the person 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 improvement fee is not an amendment of the SDC or SDC methodology if the change in amount is based on a change in cost of materials, labor or real property as set forth on the project list adopted pursuant to Section 3.24.060 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. 18-06 §1)

## 3.24.130 Accounting

A. The city will utilize standard accounting practices to segregate all SDCs into separate capital improvement system funds, and keep such funds separate from all other city funds.

B. The city will provide an annual accounting of all SDCs funds showing the total amount of all SDC revenues collected for each type of system and expended for each capital improvement or other costs allowed by this chapter. (Ord. 18-06 §1)



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## **3.24.140 Appeals**

A person may file an appeal in writing for the following actions or decisions:

A. Appeal of an Expenditure. Appeal of an SDC expenditure must be filed with the city within two years of the date of the alleged improper expenditure. The City Council will determine whether the expenditure was in accordance with this chapter and the provisions of ORS 223.297 to 223.314. If the City Council determines that there was an improper SDC expenditure, the City Council will direct that a sum equal to the misspent amount be deposited to the account or fund from which it was spent within one year of the council's decision.

B. Appeal of an SDC Methodology. Appeal of an SDC methodology adopted by the City Council pursuant to Section 3.24.050 must be filed no later than 60 days after the date of adoption and must be contested according to the procedure set forth in ORS 34.010 to 34.100.

C. Appeal of Other Decisions. Appeals of other decisions, including calculation of an SDC charge or credit, must be filed with the city within 30 days of the administrator's decision that is being contested. The City Council decides all such appeals. (Ord. 18-06 §1)

## **3.24.150 Prohibited Connection**

No person may connect to the water, sanitary sewer, or stormwater systems of the city unless the applicable SDC has been paid. (Ord. 18-06 §1)

## **3.24.160 Penalty**

Violation of this chapter is a Class A infraction punishable by a fine not to exceed \$500. (Ord. 18-06 §1)

## **3.24.170 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 is declared unconstitutional or invalid for any reason or cause, the remaining portion of this chapter will 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 City Council's intent that this chapter would have been adopted had such an unconstitutional provision not been included herein. (Ord. 18-06 §1)■