ORDINANCE NO. 2250

AN ORDINANCE ESTABLISHING A METHODOLOGY FOR PARKS AND RECREATION SYSTEM DEVELOPMENT CHARGES; AND SETTING AN EFFECTIVE DATE.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. The following definitions apply:

(A) "Applicant" shall mean the owner or other person who applies for a building permit or development permit.

(B) "Bancroft Bond" shall mean a bond issued by the city to finance a capital improvement in accordance with ORS 223.205 - 223.295.

(C) "Building" shall mean any structure, either temporary or permanent, built for the support, shelter or enclosure of persons, chattels or property of any kind. This term shall include tents, trailers, mobile homes or any vehicles serving in any way the function of a building. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a building permit.

(D) "Building Permit" shall mean an official document or certificate authorizing the construction or siting of any building. For purposes of this ordinance, the term "Building Permit" shall also include any construction or installation permits which may be required for those structures or buildings, such as a mobile home, that do not require a building permit in order to be occupied.

(E) "Capital Improvements" shall mean public facilities or assets used for Parks and Recreation.

(F) "Citizen or Other Interested Person" shall mean any person who is a legal resident of the City of Woodburn as evidenced by registration as a voter in the city, or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within the city limits or is otherwise subject to the imposition of system development charges, as outlined in Section 3 of this ordinance.

(G) "City" shall mean the City of Woodburn, Oregon.

(H) "Credit" shall mean the amount of money by which the SDC for a specific development may be reduced because of construction of eligible capital facilities as outlined in this ordinance.

(I) "Development" shall mean a building or other land construction, or **making a change in the use** of a structure or land, in a manner which increases the usage of any capital improvements or which will contribute to the need for additional or enlarged capital improvements.

(J) "Development Permit" shall mean an official document or certificate, other than a building permit, authorizing development.

(K) "Dwelling Unit" shall mean a building or a portion of a building designed for residential occupancy, consisting of one or more rooms which are arranged, designed or used as living quarters for one family only.

(L) "Encumbered" shall mean monies committed by contract or purchase order in a manner that obligates the city to expend the encumbered amount upon delivery of goods, the rendering of services, or the conveyance of real property provided by a vendor, supplier, contractor or Owner.

(M) "Improvement Fee" shall mean a fee for costs associated with capital improvements to be constructed after the effective date of this ordinance. Notwithstanding anything in this ordinance to the contrary, it is an incurred charge or cost based upon the use of or the availability for use of the systems and capital improvements required to provide services and facilities necessary to meet the routine obligations of the use and ownership of property, and to provide for the public health and safety upon development.

(N) "Off-site" shall mean not located on or contiguous to property that is the subject of development approval.

(O) "On-site" shall mean located on or contiguous to property that is the subject of developmental approval.

(P) "Owner" shall mean the person holding legal title to the real property upon which development is to occur.

(Q) "Person" shall mean an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(R) "Prime Rate of Interest" shall mean the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks as posted in the Wall Street Journal.

(S) "Qualified Public Improvement" shall mean a capital improvement that is:

1) Required as a condition of development approval;

2) Identified in the adopted capital improvement plan (CIP);and either

3) a) Not located on or contiguous to property that is the subject of development approval; or

a) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related

(T) "Reimbursement fee" shall mean a fee for costs associated with capital improvements already constructed or under construction on the effective date of this ordinance.

(U) "Right-of-Way" shall mean that portion of land that is dedicated for public use.

(V) "System Development Charges" shall mean an improvement fee or reimbursement fee assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit or building permit. System Development Charges are separate from and in addition to any applicable tax, assessment, fee in lieu of assessment, or other fee or charge provided by law or imposed as a condition of development.
(Section 1 as amended by Ordinance 2536 passed September 12, 2016.)

Section 2. Rules of Construction. For the purposes of administration and enforcement of this ordinance, unless otherwise stated in this ordinance, the following rules of construction shall apply:

(A) In case of any difference of meaning or implication between the text of this ordinance and any caption, illustration, summary table, or illustrative table, the text shall control.

(B) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

(C) Words used in the present tense shall include the future; words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; and use of the masculine gender shall include the feminine gender.

(D) The phrase "used for" includes "arranged for", "designed for", "maintained for", or "occupied for".

(E) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and", "or" or "either...or", the conjunction shall be interpreted as follows:

1) "And" indicates that all the connected terms, conditions, provisions or events shall apply.

2) "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

3) "Either"...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(F) The word "includes" shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

Section 3. Imposition of System Development Charges. System development charges are hereby imposed, subject to the following conditions:

(A) Development Subject to Charges. System development charges are imposed on all new development within the city for capital improvements for transportation . The system development charges shall be paid in addition to all other fees, charges and assessments due for development, and are intended to provide funds only for capital improvements necessitated by new development.

(B) Rates of Charges.

(1) The City hereby adopts and incorporates by reference the report entitled "Methodology Report - Parks and Recreation System Development Charges" dated July 11, 2016, particularly the assumptions, conclusions and findings in such study as to the determination of anticipated costs of capital improvements required to accommodate growth and the rates for system.

(2) System Development Charges are imposed on all new development in the City for capital improvements for parks and recreation. The System Development Charges shall be paid in addition to all other fees, charges and assessments due for development, and are intended to provide funds only for capital improvements necessitated by new development.

(3) The City shall, based upon the report referred to in subsection (1) above, adopt by resolution the amounts of System Development Charges.

(4) Additional System Development Charges may be assessed by the City if the demand placed on the City's capital facilities exceeds the amount initially estimated at the time System Development Charges are paid. The additional charge shall be for the increased demand or for the demand above the underestimate, and it shall be based upon the fee that is in effect at the time the additional demand impact is determined, and not upon the fee structure that may have been in effect at the time the initial System Development Charges were paid. This provision does not apply to single family or other residential units unless additional rental units are created.

(5) Notwithstanding any other provision, the System Development Charge rates adopted pursuant to this ordinance may on January 1st of each year, after the first year that the ordinance is effective, be adjusted by the City Council to account for changes in the cost of constructing facilities. The adjustment factor shall equal the change in

construction costs according to the Engineering News Record (ENR) Northwest (Seattle, Washington) Construction Cost Index.

The System Development Charge Adjustment Factor shall be used to adjust the System Development Charge rates, unless they are otherwise adjusted by action of the City Council based on adoption of an updated methodology or capital improvements plan (master plan). (Section 3 (B) as amended by Ordinance 2536 passed September 12, 2016.)

(C) Payment of Charges. Applicants for building permits or development permits shall pay the applicable system development charges prior to the issuance of the permits by the city unless charges are financed pursuant to a City approved installment or deferral program.

(Section 3 (C) as amended by Ordinance 2457 passed June 22, 2009, effective June 24, 2009.)

(D) Alternative Rate Calculation. Applicants may submit alternative rates for system development charges, subject to the following conditions:

1) In the event an applicant believes that the impact on city capital improvements resulting from a development is less than the fee established in Section (3)(B), the applicant may submit alternative system development charge rate calculations, accompanied by the alternative rate review fee established by resolution for this purpose, to the City Administrator. The city may hire a consultant to review the alternative system development charge rate calculations, and may pay the consulting fees from system development charges revenues.

2) The alternative system development charge rate calculations shall be based on data, information and assumptions contained in this ordinance and the adopted system development charges study or an independent source, provided that the independent source is a local study supported by a data base adequate for the conclusions contained in such study performed pursuant to a generally accepted methodology and based upon generally accepted standard sources of information relating to facilities planning, cost analysis and demographics.

3) If the city council determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates comply with the requirements of this section by using a generally

accepted methodology, the alternative system development charges rates shall be paid in lieu of the rates set forth in Section (3)(B).

4) If the city council determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates do not comply with the requirements of this section or were not calculated by a generally accepted methodology, then the city council shall provide to the applicant (by certified mail, return receipt requested) written notification of the rejection of the alternative system development charges rates and the reason therefor.

5) Any applicant who has submitted a proposed alternative system development charges rate pursuant to this section and desires the immediate issuance of a building permit or development permit shall pay the applicable system development charges rates pursuant to Section (3)(B). Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any right of review. Any difference between the amount paid and the amount due, as determined by the city council, shall be refunded to the applicant.

E) Exemptions. The following development shall be exempt from payment of the system development charges:

1) Alternations, expansion or replacement of an existing dwelling unit where no additional dwelling units are created.

2) The construction of accessory buildings or structures which will not create additional dwelling units and which do not create additional demands on the city's capital improvements.

3) The issuance of a permit for a mobile home on which applicable system development charges have previously been made as documented by receipts issued by the city for such prior payment.

(F) Credits for Developer Contributions of Qualified Public Improvements. The city shall grant a credit, not to exceed 100% of the applicable Parks and Recreation SDC, against the system development charges imposed pursuant to Section (3)(A) and (B) for the donation of land as permitted by Ordinance 1807, or for the construction of any qualified public improvements. Such land donation and construction shall be subject to the approval of the city.

1) The amount of developer contribution credit to be applied shall be determined according to the following standards of valuation:

a) The value of donated lands shall be based upon a written appraisal of fair market value by a qualified and professional appraiser based upon comparable sales of similar property between unrelated parties in a bargaining transaction; and

b) The cost of anticipated construction of qualified public improvements shall be based upon cost estimates certified by a professional architect or engineer.

2) Prior to issuance of a building permit or development permit, the applicant shall submit to the City Administrator a proposed plan and estimate of cost for contributions of qualified public improvements. The proposed plan and estimate shall include:

a) a designation of the development for which the proposed plan is being submitted.

b) a legal description of any land proposed to be donated pursuant to Chapter 39 of the Woodburn Zoning Ordinance, Ordinance 1807, and a written appraisal prepared in conformity with subsection (1)(a) of this section;

c) a list of the contemplated capital improvements contained within the plan;

d) an estimate of proposed construction costs certified by a professional architect or engineer; and

e) a proposed time schedule for completion of the proposed plan.

3) The City Administrator shall determine if the proposed qualified public improvement is:

a) Required as a condition of development approval;

b) Identified in the adopted capital improvement plan (CIP);and either

c) i) Not located on or contiguous to property that is the subject of development approval; or

ii) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related

4) The decision of the City Administrator as to whether to accept the proposed plan of contribution and the value of such contribution shall be in writing and issued within fifteen (15) working days of the review. A copy shall be provided to the applicant.

5) A proposed improvement which does not meet all three (3) of the criteria included in Section 3(F)(3) above shall not be considered a qualified public improvement and the city is not required ORS 223.297 - 223.314 to provide a credit for such an improvement. However, the city shall grant a credit, in an amount not to exceed fifty percent (50%) of the total amount of the applicable Parks and Recreation SDC, for certain other contributions of capital facilities under the following conditions:

a) The capital facilities being contributed must exceed the city standard required for the specific type of development (i.e., residential, industrial, etc.); and

b) Only the value of the contribution which exceeds the city standard required for the specific type of development (i.e., residential, industrial, etc.) shall be considered when calculating the credit; and

6) Any applicant who submits a proposed plan pursuant to this section and desires the immediate issuance of a building permit or development permit, shall pay the applicable system development charges. Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due, as determined by the City Administrator, shall be refunded to the applicant. In no event shall a refund by city under this subsection exceed the amount originally paid by the applicant.

(G) Appeals and Review Hearings.

1) An applicant who is required to pay system development charges shall have the right to request a hearing to review the denial by the City Administrator of a proposed credit for contribution of qualified public improvements pursuant to Section (3)(F).

2) Such hearing shall be requested by the applicant within fifteen (15) days of the date of first receipt of the denial by the City Administrator. Failure to request a hearing within the time provided shall be deemed a waiver of such right.

3) The request for hearing shall be filed with the City Administrator and shall contain the following:

a) The name and address of the applicant;

b) The legal description of the property in question;

c) If issued, the date the building permit or development permit was issued;

d) A brief description of the nature of the development being undertaken pursuant to the building permit or development permit;

e) If paid, the date the system development charges were paid; and

f) A statement of the reasons why the applicant is requesting the hearing.

4) Upon receipt of such request, the City Administrator shall schedule a hearing before the city council at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the applicant written notice of the time and place of the hearing. Such hearing shall be held within forty-five (45) days of the date the request for hearing was filed.

5) Such hearing shall be before the city council and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedures and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.

6) Any applicant who requests a hearing pursuant to this section and desires the immediate issuance of a building permit or development permit shall pay prior to or at the time the request for hearing is filed the applicable system development charges pursuant to Section (3)(B). Said payment shall be deemed paid under "protest" and shall not construed as a waiver of any review rights.

7) An applicant may request a hearing under this section without paying the applicable system development charges, but no building permit or development permit shall be issued until such system development charges are paid in the amount initially calculated or the amount approved upon completion of the review provided in this section.

(H) Review of Study and Rates. This ordinance and the Parks and Recreation System Development Charges Executive Summary, Methodology, and Rate Study shall be reviewed at least once every five (5) years. The review shall consider new estimates of population and other socioeconomic data, changes in the cost of construction and land acquisition, and adjustments to the assumptions, conclusions or findings set forth in the report adopted by Section (3)(B). The purpose of this review is to evaluate and revise, if necessary, the rates of the system development charges to assure that they do not exceed the reasonably anticipated costs of the city's capital improvements. In the event the review of the ordinance or the report alters or changes the assumptions, conclusions and findings of the report, or alters or changes the amount of system development charges, the report adopted by reference in Section (3)(B) shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and Section (3)(B) shall be amended to adopt by reference such updated reports.

Section 4. Receipt and Expenditure of System Development Charges.

(A) Trust Accounts. The City hereby establishes a separate trust account for each type of system development charge to be designated as the "Parks and Recreation SDC" which shall be maintained separate and apart from all other accounts of the city. All system development charge payments shall be deposited into the appropriate trust account immediately upon receipt.

(B) Use of System Development Charges. The monies deposited into the trust accounts shall be used solely for the purpose of providing capital improvements necessitated by development, including, but not limited to:

1) design and construction plan preparation;

2) permitting and fees;

3) land and materials acquisition, including any costs of acquisition or condemnation;

4) construction of improvements and structures;

5) design and construction of new drainage facilities required by the construction of capital improvements and structures;

6) relocating utilities required by the construction of improvements and structures;

7) landscaping;

8) construction management and inspection;

9) surveying, soils and material testing;

10) acquisition of capital equipment;

11) repayment of monies transferred or borrowed from any budgetary fund of the city which were used to fund any of the capital improvements as herein provided;

12) payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the city to fund capital improvements;

13) direct costs of complying with the provisions of ORS 223.297 to 223.314, including the costs of developing system development charges methodologies and providing an annual accounting of system development charges expenditures.

14) consulting costs for the review of alternative rates as provided for in Section (3)(D) of this ordinance.

(C) Prohibited Uses of System Development Charges. Funds on deposit in system development charge trust accounts shall not be used for:

1) any expenditure that would be classified as a routine maintenance or repair expense; or

2) costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

(D) Capital Improvements Authorized to be Financed by System Development Charges. Any capital improvement being funded wholly or in part with system development charges revenue shall be included in the city's capital improvement program. The capital improvement program shall:

1) list the specific capital improvement projects that may be funded with system development charges revenues;

2) provide the cost of each capital improvement project, and an estimate of the amounts of each revenue source, including system development charges, that will be used to fund each project;

3) provide the estimated timing of each capital improvement project; and

4) be updated at least once every five (5) years.

(E) Investment of Trust Account Revenue. Any funds on deposit in system development charges trust accounts which are not immediately necessary for expenditure shall be invested by the city. All income derived from such investments shall be deposited in the system development charges trust accounts and used as provided herein.

(F) Refunds of System Development Charges. System development charges shall be refunded in accordance with the following requirements:

1) An applicant or owner shall be eligible to apply for a full or partial refund if:

a) The building permit or development permit has expired and the development authorized by such permit is not complete;

b) An error was made in calculating the amount of the system development charges resulting in overpayment, and the error is discovered within three months of the date the SDC was paid. The amount of the refund will be limited to the amount collected in excess of the appropriate SDC.

c) The system development charges have not been expended or encumbered prior to the end of the fiscal year immediately following the ninth anniversary of the date upon which such charges were paid. For the purposes of this section, system development charges collected shall be deemed to be expended or encumbered on the basis of the first system development charges in shall be the first system development charges out.

2) The application for refund shall be filed with the City Administrator and contain the following:

a) The name and address of the applicant;

b) The location of the property which was the subject of the system development charges;

c) A notarized sworn statement that the petitioner is the then current owner of the property on behalf of which the system development charges were paid, including proof of ownership, such as a certified copy of the latest recorded deed;

d) The date the system development charges were paid;

e) A copy of the receipt of payment for the system development charges; and, if appropriate,

f) The date the building permit or development permit was issued and the date of expiration.

3) The application shall be filed within ninety (90) days of the expiration of the building permit or development permit or within ninety (90) days of the end of the fiscal year following the ninth anniversary of the date upon which the system development charges were paid. Failure to timely apply for a refund of the system development charges shall waive any right to a refund.

4) Within thirty (30) days from the date of receipt of a petition for refund, the City Administrator will advise the petitioner of the status of the request for refund, and if such request is valid, the system development charges shall be returned to the petitioner.

5) Refunds will not be granted based on a change in use of the property which results in a reduced impact on the city's capital facilities.

6) A building permit or development permit which is subsequently issued for a development on the same property which was the subject of a refund shall pay the systems development charges as required by Section (3).

(G) Annual Accounting Reports. The city shall prepare an annual report accounting for system development charges, including the total amount of system development charges revenue collected in each trust account, and the capital improvement projects that were funded.

(H) Challenge of Expenditures. Any citizen or other interested person may challenge an expenditure of system development charges revenues.

1) Such challenge shall be submitted, in writing, to the City Administrator for review within two years following the subject expenditure, and shall include the following information:

a) The name and address of the citizen or other interested person challenging the expenditure;

b) The amount of the expenditure, the project, payee or purpose, and the approximate date on which it was made; and

c) The reason why the expenditure is being challenged.

2) If the City Administrator determines that the expenditure was not made in accordance with the provisions of this ordinance and other relevant laws, a reimbursement of system development charges trust account revenues from other revenue sources shall be made within one year following the determination that the expenditures were not appropriate.

3) The City Administrator shall make written notification of the results of the expenditure review to the citizen or other interested person who requested the review with ten (10) days of completion of the review.

Section 5. Severability. If any clause, section, or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporate herein.

Section 6. Effective Date. This ordinance shall be legally effective on March 1, 2017. (Amended by ordinance 2540)

Passed by the Council and approved by the Mayor November 23, 1999.

ORDINANCE NO. 2405

AN ORDINANCE ESTABLISHING POLICY FOR THE PROVISION OF MUNICIPAL SEWER AND WATER SERVICE TO PROPERTIES LOCATED OUTSIDE CITY BOUNDARIES.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Municipal water and/or sewer service will not be provided to properties located outside City boundaries except as provided in this Ordinance.

Section 2. Property outside City boundaries that is not currently provided water and/or sewer service by the City may obtain a connection to municipal water and/or sewer service only if the property is first annexed into the City.

Section 3. Property outside City boundaries that is currently provided water and/or sewer service by the City shall continue to receive such service unless any of the following events occur:

A. Municipal water and/or sewer use on the property ceases for a continuous period of at least six (6) months; or

B. A change in use; or

C. A change in operations resulting in a material increase in the use of water and/or sewer service; or

D. A change in ownership or title to the property

Section 4. Municipal water and/or sewer service will not be discontinued until notice and an opportunity for a hearing have been given to the occupant and to the owner of record of the involved property. The notice shall be personally served or mailed by certified mail and shall state that thirty (30) days after the date of which the notice is given, service to the property will be discontinued. The notice shall also state that, before such date, a hearing may be requested on the matter, in which case service will not be discontinued until after the hearing is held. If a hearing is requested, a hearing date shall be set and all interested parties shall have the opportunity to address the City Council on the discontinuance of municipal water and/or sewer service. The City Council will then decide whether service shall be discontinued.

Section 5. Notwithstanding Section 2 above and consistent with state law, the City has the power and authority to provide municipal water and /or sewer service to property outside the corporate City boundaries in instances where an emergency is declared by the City Council and it makes a policy determination in a specific instance that it is in the interests of the City to provide these services. (As amended by Ordinance 2459, July 30, 2009)

Passed by the Council July 10, 2006 and approved by the Mayor July 12, 2006.