
ORDINANCE NO. 2438**AN ORDINANCE IMPOSING TRANSPORTATION SYSTEM DEVELOPMENT CHARGES BASED UPON AN ESTABLISHED METHODOLOGY; PROVIDING PROCESSES FOR ALTERNATIVE CALCULATIONS; AND REQUIRING THAT FUNDS BE ACCOUNTED FOR AND USED PURSUANT TO STATE LAW; AND REPEALING ORDINANCE 2248**

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. General Findings. The City Council makes the following General Findings regarding Transportation SDCs.

A. Development within the City contributes to the need for capacity increases for roads, multi-modal transportation and related transportation improvements.

B. Development should pay its fair share for the cost of these improvements and additions to transportation facilities necessary to accommodate the capacity needs created by growth.

C. ORS 223.297 *et. seq.* grants to the City the authority to impose Transportation SDCs to equitably spread the costs of essential capacity increasing Capital Improvements.

D. Transportation SDCs are incurred upon application to develop property for a specific use or at a specific density and are collected by the City when a building permit is issued. The decision regarding uses, densities, and/or intensities causes direct and proportional changes in the amount of the incurred charge.

E. Transportation SDCs are separate from other fees provided by law or imposed as a condition of development.

F. Transportation SDCs are fees for service because they contemplate a development's receipt of transportation services based upon the nature of that development.

G. Transportation SDCs are imposed by this Ordinance not as a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Article XI, Section 11b of the Oregon Constitution or legislation implementing that section.

Section 2. Findings for Interchange Development Charge. The City Council makes the following Findings regarding the IDC:

A. In 2005, the cost of the needed improvements to the Woodburn Interchange was estimated to be \$50 million.

B. Pursuant to Intergovernmental Agreement No. 23,240, which serves as a funding plan for completion of the Woodburn Interchange modernization, the City must provide a total of \$8 million towards completion of this project.

C. The IDC is established under this Ordinance under the authority of ORS 223.297-223.314.

D. The City Council finds that developing properties within the IDC boundary will create a greater impact on the Woodburn Interchange than similarly zoned developing properties located in the City but outside of the IDC boundary.

E. The City Council finds that developing properties within the IDC boundary will receive greater benefit by an improved Woodburn Interchange than similarly zoned developing properties located in the City but outside of the IDC boundary.

F. Based upon their greater developmental impact on the Woodburn Interchange and the greater benefit that they will receive when the Woodburn Interchange is improved, the City Council, consistent with ORS 223.297-223.314, makes the determination that it is fair and equitable to impose the IDC.

G. The IDC is an "improvement fee" as defined in ORS 223.299 since the charge to the developer is for costs associated with Capital Improvements yet to be constructed.

H. An argument was raised before the City Council that the IDC is unlawful because it "represents the effective establishment of a transportation special district without undergoing the adoption methods required by ORS Chapter 267.510 *et seq.*" The City Council finds that this argument is not well founded in law because the City is asserting no jurisdictional authority outside of its corporate boundary.

I. Pursuant to ORS Chapter 267.510 *et seq.*, a transportation district, like other special districts, exercises jurisdictional authority within the area of its boundary. By establishing the IDC boundary, the City Council, consistent with ORS 223.297-223.314, is merely establishing a charge that is collectible within the City. A Transportation SDC must be paid only: (1) if the involved property is annexed to the City, and (2) if the involved property develops. This is legal and within the City's jurisdiction.

J. Another argument was raised before the City Council that the IDC charge is inequitable. As stated above, the City Council finds that this is not the case because developing properties within the IDC boundary will create a greater developmental impact and also will receive a greater benefit by an improved Woodburn Interchange.

K. Finally, an argument was raised before the City Council that the IDC charge violates constitutional principles. The City Council finds that this argument is also not well founded in law. In *Roger's Machinery v. Washington County*, 181 Or.App 369, 45 P.3d 966 (2002), the Court addressed the argument that traffic impact fees imposed under ORS 223.297-223.314 constituted an unconstitutional taking in violation of the Fifth

Amendment. The Court ruled that the traffic impact fees were not physical exactions and were not subject to *Dolan's* heightened scrutiny test, which is used to determine

whether a property development condition constitutes an improper taking under the Fifth Amendment. The Court stated that no individualized determination was required before assessing the fee against a particular property in compliance with the Oregon SDC statutes.

Section 3 **Definitions.** The following definitions apply:

A. APPLICANT. A person seeking to obtain a Building Permit or to develop property within the City.

B. BUILDING. 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.

C. BUILDING PERMIT. A permit issued by the Building Department for the construction, alteration, repair or placement of any Building under the state building code.

D. CAPITAL IMPROVEMENT PLAN. A plan prepared by the City pursuant to ORS 223.309.

E. CAPITAL IMPROVEMENTS. Public facilities or assets used for transportation.

F. CITY. The City of Woodburn, Oregon.

G. CREDIT. The amount of money by which the charge for a specific development may be reduced because of construction of eligible capital facilities as outlined in this Ordinance.

H. DEVELOPMENT. Any man-made change to improved or unimproved real estate which has the effect of generating additional weekday or weekend trips.

I. DIRECTOR. The Woodburn Public Works Director or designee.

J. DWELLING UNIT. 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.

K. IMPROVEMENT FEE. A fee for costs associated with Capital Improvements to be constructed after the date the fee is adopted pursuant to this Ordinance.

L. INTERESTED PERSON. 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 charges under this Ordinance.

M. OWNER. The owner or owners of record title or the purchaser or purchasers under a recorded land sale agreement.

N. PERSON. Any natural person, firm, partnership, association or corporation.

O. QUALIFIED PUBLIC IMPROVEMENT. A Capital Improvement that is:

1. Required as a condition of development approval;

2. Identified in the Capital Improvement Plan and is either:

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

b. 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.

P. REIMBURSEMENT FEE. A fee for costs associated with Capital Improvements already constructed or under construction when the fee is adopted pursuant to this Ordinance for which the City determines that capacity exists.

Q. TRANSPORTATION SYSTEM DEVELOPMENT CHARGE ("Transportation SDC") or SYSTEM DEVELOPMENT CHARGE ("SDC"). An improvement fee and/or a reimbursement fee and/or the IDC assessed or collected at the time of increased usage of a Capital Improvement or issuance of a 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 4. Imposition of Transportation System Development Charges.

A. Unless otherwise exempted by this Ordinance or state law, a Transportation SDC is hereby imposed on all Development within the City.

B. Unless otherwise exempted by this Ordinance or state law, an Interchange Development Charge is hereby imposed on all Development within the City and located within the Interchange Development Charge boundary. The Interchange Development Charge boundary is depicted on Exhibit B, which is attached to this Ordinance and incorporated.

Section 5. Methodology.

A. The methodology used to calculate Transportation System Development Charges and the Interchange Development Charge is set forth in the "Transportation System Development Charge Study" ("the Methodology") dated March 2008, which is attached as Exhibit "A" to this Ordinance and incorporated.

Section 6. System Development Charge Rate Schedule.

A. A Rate Schedule for Transportation System Development Charges and the Interchange Development Charge shall be adopted by resolution based on the Methodology attached as Exhibit "A" and incorporated into this Ordinance.

B. The Rate Schedule may on January 1st of each year, after the first year that the resolution adopting it is effective, be adjusted by the Director to account for changes in the costs of acquiring and constructing facilities. The adjustment factor shall be based on the change in construction costs according to the Engineering News Record (ENR) Northwest (Seattle, Washington) Construction Cost Index.

Section 7. Collection.

A. System Development Charges are due and payable at the time that the City issues the Building Permit unless charges are financed pursuant to a City approved installment or deferral program. (Section 7 (A) as amended by Ordinance 2457 passed June 22, 2009.)

Section 8. Exemptions.

- A. The following development is exempt from System Development Charges:
1. Remodeling or replacement of any single family structure, including mobile homes.
 2. Multifamily structure remodeling or replacement if no additional Dwelling Units are added.
 3. Remodeling or replacement of office, business and commercial, industrial or institutional structures if such remodeling or replacement does not result in additional peak hour trips.

Section 9. Credits for Qualified Public Improvements.

A. The City shall grant a credit, not to exceed 100% of the applicable System Development Charges for the construction of any Qualified Public Improvements.

B. Prior to issuance of a Building Permit, the Applicant shall submit to the Director a proposed plan and estimate of cost for contributions of Qualified Public Improvements. The proposed plan and estimate shall include:

1. A designation of the Development for which the proposed plan is being submitted.
2. A list of the contemplated Capital Improvements contained within the plan;
3. An estimate of proposed construction costs certified by a professional architect or engineer; and
4. A proposed time schedule for completion of the proposed plan.

C. The Director shall determine if the proposed Qualified Public Improvement is:

1. Required as a condition of development approval;
2. Identified in the Capital Improvement Plan and is either:
 - a. Not located on or contiguous to property that is the subject of development approval; or
 - b. 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

D. The decision of the Director as to whether to accept the proposed plan of contribution and the value of such contribution shall be in writing and issued by the Director within 30 days after the Applicant submits the proposed plan.

E. Any Applicant who submits a proposed plan pursuant to this Section and desires the immediate issuance of a Building 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 Director, 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.

Section 10. Alternative Calculation for SDC Rate, Credit or Exemption.

A. Pursuant to this Ordinance, an Applicant may request an alternative SDC calculation, alternative SDC credit determination or alternative SDC exemption, but only under the following circumstances:

1. The Applicant believes the number of vehicle trips resulting from the development is, or will be, less than the number of trips established in the Methodology, and for that reason the Applicant's SDC should be lower than that calculated by the City.

2. The Applicant believes the City improperly excluded from consideration a Qualified Public Improvement that would qualify for credit, or the City accepted for credit a Qualified Public Improvement, but undervalued that improvement and therefore undervalued the credit.

3. The Applicant believes the City improperly rejected a request for an exemption for which the Applicant believes it is eligible.

B. Alternative SDC Rate Request:

1. If an Applicant believes the number of trips resulting from the Development is less than the number of trips established in the Methodology, the Applicant must request an alternative SDC rate calculation, under this Section, within 90 days after Building Permit issuance for the Development. The City shall not consider such a request filed after 90 days after Building Permit issuance for the Development. Upon the timely request for an alternative SDC rate calculation, the Director shall review the Applicant's calculations and supporting evidence and make a determination within 30 days of submittal as to whether the Applicant's request satisfies the requirements of this Section.

2. In support of the Alternative SDC rate request, the Applicant must provide complete and detailed documentation, including verifiable trip generation data, analyzed and certified to by a Professional Traffic Engineer. The Applicant's supporting documentation must rely upon generally accepted sampling methods, sources of information, cost analysis, traffic and growth projections and techniques of analysis as a means of supporting the proposed alternative SDC rate. The proposed Alternative SDC Rate calculation shall include an explanation by a registered engineer explaining with particularity why the rate established in the City methodology does not accurately reflect the Development's impact on the City's Capital Improvements

3. The Director shall apply the Alternative SDC Rate if, in the Director's opinion, the following are found:

a. The evidence and assumptions underlying the Alternative SDC Rate are reasonable, correct and credible and were gathered and analyzed by a suitable, competent professional in compliance with generally accepted engineering principles and methodologies and consistent with this Section, and

b. The calculation of the proposed Alternative SDC rate was by a generally accepted methodology, and

c. The proposed alternative SDC rate better or more realistically reflects the actual traffic impact of the Development than the rate set forth in the Methodology.

4. If, in the Director's opinion, all of the above criteria are not met, the Director shall provide to the Applicant by certified mail, return receipt requested, a written decision explaining the basis for rejecting the proposed alternative SDC rate.

C. Alternative SDC Credit Request:

1. If an Applicant has requested an SDC Credit and that request has either been denied by the City or approved but at a lower value than desired, the Applicant may request an Alternative SDC Credit calculation, under this Section. Any request for an Alternative SDC Credit calculation must be filed with the Director in writing within 10 calendar days of the written decision on the initial credit request. The City shall not consider such a request filed after 10 calendar days of the written decision on the initial credit request. Upon the timely request for an Alternative SDC Credit calculation, the Director shall review the Applicant's calculations and supporting evidence and make a determination within 30 days of submittal as to whether the Applicant's request satisfies the requirements of this Section.

2. In support of the Alternative SDC credit request, the Applicant must provide complete and detailed documentation, including appraisals, cost analysis or other estimates of value, analyzed and certified to by an appropriate professional, for the improvements for which the Applicant is seeking credit. The Applicant's supporting documentation must rely upon generally accepted sources of information, cost analysis and techniques of analysis as a means of supporting the proposed Alternative SDC credit.

3. The Director shall grant the Alternative SDC Credit if, in the Director's opinion, the following are found:

a. The improvement(s) for which the SDC Credit is sought are Qualified Public Improvement(s), and

b. The evidence and assumptions underlying the Applicant's Alternative SDC Credit request are reasonable, correct and credible and were gathered and analyzed by an appropriate, competent professional in compliance with generally accepted principles and methodologies, and

c. The proposed alternative SDC Credit is based on realistic, credible valuation or benefit analysis.

4. If, in the Director's opinion, any one or more of the above criteria is not met, the Director shall deny the request and provide to the Applicant by certified mail, return receipt requested, a written decision explaining the basis for rejecting the Alternative SDC Credit proposal.

D. Alternative SDC Exemption Request:

1. If an Applicant has requested a full or partial exemption under this Ordinance, and that request has been denied, the Applicant may request an Alternative SDC Exemption under this Section. Any request for an Alternative SDC Exemption calculation must be filed with the Director in writing within 10 calendar days of the written decision on the initial credit request. The City shall not consider such a request filed after 10 calendar days of the written decision on the initial credit request. Upon the timely request for an Alternative SDC Exemption, the Director shall review the Applicant's request and supporting evidence and make a determination within 30 days of submittal as to whether the Applicant's request satisfies the requirements under this Ordinance for exemptions.

2. In support of the Alternative SDC Exemption request, the Applicant must provide complete and detailed documentation demonstrating that the Applicant is entitled to one of the exemptions described in this Ordinance.

3. The Director shall grant the exemption if, in the Director's opinion, the Applicant has demonstrated with credible, relevant evidence that it meets the pertinent criteria.

4. If, in the Director's opinion, any one or more of the above criteria is not met, the Director shall deny the request and provide to the Applicant by certified mail, return receipt requested, a written decision explaining the basis for rejecting the Alternative SDC Exemption proposal.

Section 11. Review of Methodology and Rates.

A. This Ordinance and the Methodology shall be reviewed at least once every five (5) years. 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.

Section 12. Authorized Expenditure of System Development Charges.

A. Reimbursement fees may be spent only on capital improvements associated with the systems for which the fees are assessed including expenditures relating to repayment of indebtedness.

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

C. System development charges may not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements or for the expenses of the operation or maintenance of the facilities constructed with system development charge revenues.

D. Any capital improvement being funded wholly or in part with system development charge revenues must be included in the Capital Improvement Plan.

E. System Development Charge revenues may be expended on the costs of complying with the provisions of ORS 223.297-223.314, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.

Section 13. Deposit of System Development Charge Revenues; Annual Accounting.

A. System development charge revenues must be deposited in accounts designated for such moneys. The City shall provide an annual accounting, to be completed by January 1 of each year, for system development charges showing the total amount of system development charge revenues collected for each system and the projects that were funded in the previous fiscal year.

B. The annual accounting shall include:

1. A list of the amount spent on each project funded, in whole or in part, with system development charge revenues; and

2. The amount of revenue collected by the local government from system development charges and attributed to the costs of complying with the provisions of ORS 223.297-223.314, as described in ORS 223.307.

Section 14. Challenge of Expenditures. In accordance with ORS 223.302, any interested person may challenge an expenditure of SDC revenues.

A. Such challenge shall be submitted, in writing, to the Director for review within two years following the subject expenditure, and shall include the following information:

1. The name and address of the interested person challenging the expenditure;

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

3. The reason why the expenditure is being challenged.

B. If the Director 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.

C. The Director shall make written notification of the results of the expenditure review to the interested person who requested the review with ten (10) days of completion of the review.

Section 15. Institution of Legal Proceedings. The City Attorney, acting in the name of the City, may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Ordinance as an additional remedy.

Section 16. Exclusive Review in Marion County Circuit Court. All determinations made under this Ordinance shall be final and subject only to Writ of Review in the Marion County Circuit Court pursuant to ORS Chapter 34.

Section 17. Effect on Monies Previously Collected. The provisions of this Ordinance do not apply to System Development Charges collected prior to its effective date. SDCs previously collected shall be governed by the law in effect at the time of collection.

Section 18. Severability. If any clause, section, or provision of this Ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporate herein.

Section 19. Repeal. Ordinance 2248 is hereby repealed.

Passed by the Council April 28, 2008 and approved by the Mayor April 30, 2008.