

ORDINANCE BILL NO. 5 FOR 1991

ORDINANCE NO. 1029

AN ORDINANCE REGARDING SYSTEMS DEVELOPMENT CHARGES, CONNECTION AND IN LIEU OF ASSESSMENT FEES, REPEALING ORDINANCE NOS. 839, 883, 888, 911, AND DECLARING AN EMERGENCY,

THE CITY OF SWEET HOME DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS. The Council hereby finds:

(a) The systems development charge established herein is intended to be a charge upon the act of development by whomever seeks the development. It is a fee for service because it contemplates the development to receive essential municipal services based upon the nature of the development. When the development occurs and the extent of the development is within the control and discretion of the developer.

(b) The systems development charge imposed by this ordinance is not intended to be a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Section 11b, Article XI of the Oregon Constitution or the legislation implementing that section.

(c) Even if the systems development charge herein imposed is viewed under Section 11b, Article XI of the Oregon Constitution as a tax against property or against a property owner as a direct consequence of ownership of that property, it is an incurred charge within the meaning of that Section and the statutes implementing it because:

(1) It allows the owner to control the quantity of the service by determining the extent of development to occur upon the property.

(2) It allows the owner to determine when the service is to be initiated or increased by controlling when the development occurs.

(3) State law and the ordinances of this City require the owner to provide certain basic utility services to the property when it is developed for human occupancy. The provision of these basic utility services are a routine obligation of the owner of the affected property and essential to the health and safety of the community.

(d) Among the basic utility services required of every property with a structure designed for human occupancy, except ancillary buildings, are water and sanitary sewer services.

(e) The system development charge imposed by this ordinance is based upon the actual costs of providing existing or planned for capital improvements and does not impose charges on persons not receiving a service and imposing a burden upon the City's existing capital improvements.

SECTION 2. DEFINITION. As used in this ordinance, except where the context otherwise requires the words and phrases have the following meaning:

(a) Capital Improvement(s). Facilities or assets used for any of the following:

- (1) Water supply, treatment, distribution and storage; or
- (2) Sanitary sewers, including collection, transmission, treatment and disposal.
- (3) Storm sewers, including drainage and flood control.

(b) Development. The act of conducting a building or mining operation, making a design change, or making a physical change in the use or appearance of a structure or land, which increases the usage of any capital improvements, or which creates the need for additional capital improvements.

(c) Improvement Fee. A fee for costs associated with capital improvements to be constructed after the date this ordinance becomes effective.

(d) Qualified Public Improvements. A capital improvement that is:

- (1) Required as a condition of residential development approval;
- (2) Identified in the plan adopted pursuant to subsection 6(b); and
- (3) Not located on or contiguous to a parcel of land that is the subject of the development approval. As used in this definition "contiguous" means in a public way (public owned land, easement or right-of-way) which abuts.

(e) Reimbursement Fee. A fee for costs associated with capital improvements constructed or under construction on the effective date of this ordinance.

(f) Systems Development Charge. A reimbursement fee, an improvement fee, or a combination thereof, assessed or collected at any of the times specified in Section 7 hereof. It shall also include that portion of a water or sanitary sewer connection charge that is greater than the amount necessary to reimburse the City for its average cost of inspecting and installing connections with the water system or the sanitary sewer system. "Systems Development

Charge" does not include:

- (1) Any fees assessed or collected as part of a local improvement district;
- (2) A charge in lieu of a local improvement district assessment; or
- (3) The cost of complying with requirements or conditions imposed upon a land use decision.

SECTION 3. PURPOSE. The purpose of the systems development charge is to impose a portion of the public cost of capital improvements upon those developments that create the need for, or increase the demands on capital improvements.

SECTION 4. SCOPE. The systems development charge imposed by this ordinance, with the exception of Section 12, 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. A systems development charge is to be considered in the nature of a charge for service to be rendered or a service hookup charge.

SECTION 5. SYSTEMS DEVELOPMENT CHARGE ESTABLISHED.

(a) Unless otherwise exempted by the provisions of this ordinance or other local or state law, effective July 1, 1991, a systems development charge is hereby imposed upon all new development within the City, and all development outside the boundary of the City that connects to, or otherwise uses the water, storm sewer, or sanitary sewer systems of the City.

(b) When the Council determines to establish a systems development charge for any capital improvement it shall do so by Council resolution.

(c) The Systems Development Charges will be an improvement fee until such time as construction contracts are awarded as per Section 6(b) of this ordinance. Upon award the Systems Development Charges will be change to a reimbursement fee. Both fees are calculated in the same manner, based on Section 6(b).

SECTION 6. COMPLIANCE WITH STATE LAW.

(a) The revenues received from the systems development charges shall be deposited to the water and sewer reserve funds, budgeted and expended as provided by state law. The accounting of such revenues and expenditures required by state law shall be included in the City's annual financial audit required by ORS Chapter 294.

(b) The capital improvement plan required by state law as the basis for expending revenues from the improvement fee of the systems development charge shall be the July 1989 Wastewater Facilities Plan and the April 12, 1991, Water System Feasibility Study, with scheduled construction starts in April 1992 for both projects. The costs disbursements are shown in the following table:

	WATER TREATMENT	WASTEWATER
Capital Cost	\$1.585 million	\$2.918 million
Grants	N/A	\$1.918 million
Bonds	\$1.250 million	\$1.000 million
Other	\$ 0.34 million	N/A

SECTION 7. COLLECTION OF CHARGE.

(a) The systems development charge is payable upon issuance of a permit to connect to the water or sanitary sewer systems, and prior to the initiation of service, or upon an increase in usage of the water, sewer or storm sewer facilities.

(b) If development is commenced or connection is made to the water system or sanitary sewer system without an appropriate permit, the systems development charge is immediately payable upon the earliest date that a permit was required.

(c) The City Manager or the City Manager's designee shall collect the systems development charges from the person responsible for, or receiving the benefit of the development. The City Manager or the City Manager's designee shall not issue any permit or allow connection described in subsection 7(a) until the charge has been paid in full, or until provision for installment payments has been made within the limits prescribed in subsection 7(d).

(d) The obligation to pay the unpaid systems development charge and interest thereon shall be secured. Acceptable security to insure payment includes: property, bond, deposits, letter of credit, or the obligor may request a lien be placed against the property to be developed. Such a lien shall be enforced in the manner provided in ORS Chapter 223. The owner of the real property may execute an agreement with the City to pay Systems Development Charges, plus interest charges secured by lien over a term of 10 years, payable in twenty semi-annual installments, plus interest at a rate of 10% per annum on the deferred balance. There shall be a minimum semi-annual payment of \$50.00.

SECTION 8. DEFERRAL OF PAYMENT.

Properties which qualify under the City of Sweet Homes Enterprise Zone Resolution 3 for 1987 shall receive a deferral of System

- (1) The name and address of the appellant;
- (2) The nature of the determination being appealed;
- (3) The reason the determination is incorrect; and
- (4) What the correct determination of the appeal should be.

(c) An appellant who fails to file such a statement within the time permitted waives his/her objections, and his/her appeal shall be dismissed.

(d) Unless the appellant and the City agree to a longer period, an appeal shall be heard within 15 days of the receipt of the notice of intent to appeal. At least 7 days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

(e) The City Council shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the City Council deems appropriate. At the hearing the appellant may present testimony and oral argument personally or by counsel. The rules of evidence as used by courts of law do not apply.

(f) The appellant shall carry the burden of proving that the determination being appealed is incorrect and what the correct determination should be.

(g) The City Council shall issue a written decision by resolution within 20 days after the hearing date and that decision shall be final.

SECTION 11. PROHIBITED CONNECTION/REMEDIES.

No person may connect to the sanitary sewer, or water, or storm sewer system of the City unless the appropriate systems development charge has been paid, or the installment payment method has been applied for and approved. Violation of this ordinance constitutes an infraction and may be prosecuted under the provisions of Ordinance No. 876, as now enacted or hereafter amended. Said prosecution shall not be exclusive, but shall be in addition to any other remedy the City may have available to it to enforce compliance with this ordinance.

SECTION 12. IN LIEU OF ASSESSMENT. Hookup fees to water and sanitary sewer lines for property not assessed for main line costs.

(a) All hookups to water and sanitary sewer mains by properties not assessed for the main line costs shall pay an in lieu of assessment fee as set by City Council resolution.

(b) The in lieu of assessment fees are for the cost to install the mains only, the owner shall be required to (1) pay the City a water

connection fee for the water service and meter on a time and materials basis and (2) pay a licensed sewer contractor for the installation of the sewer service from the main line to the property line.

(c) All funds derived from the water in lieu of assessment fees shall be placed in the water development fund.

All funds derived from the sewer in lieu of assessment fees shall be placed in the sewer development fund.

(d) Fees shall be collected and secured by the same procedure as outlined in Section 7 of this ordinance.

SECTION 13. WATER CONNECTION FEES. Fees for the average time, materials and equipment of inspection and connection will be set by City Council resolution. The fees will include only the direct average costs of the said services. Fees shall be collected and secured by the same procedure as outlined in Section 7 of this ordinance.

SECTION 14. REPEAL/SAVINGS. Ordinance Nos. 839, 883, 888 and 911 are hereby repealed. This repeal does not affect the validity of any assessments, liens, agreements, or other charges or actions made under the repealed ordinance while it was in effect.

SECTION 15 AND 16 LEFT FOR EXPANSION.

SECTION 17. EMERGENCY CLAUSE. The City Council hereby determines the existing conditions are such that this ordinance is immediately necessary for the protection of the present health, safety and good of the City of Sweet Home, and the property owners and citizens thereof and, therefore, an emergency is hereby declared to exist and this ordinance shall be in full force and effect immediately after its passage by the Council and approval by the Mayor.

PASSED by the Council and approved by the Mayor this 25th day of June, 1991.



Mayor

ATTEST:



City Manager - Ex Officio City Recorder