

ORDINANCE BILL NO. 3 FOR 2004

ORDINANCE NO. _____

AN ORDINANCE REGARDING SYSTEMS DEVELOPMENT CHARGES, CONNECTION, AND REIMBURSEMENT FEES FOR THE WATER, WASTEWATER, AND STORM WATER UTILITIES; PROVIDING PENALTIES FOR VIOLATIONS THEREOF IN THE CITY OF SWEET HOME, COUNTY OF LINN, STATE OF OREGON; REPEALING SWEET HOME ORDINANCE NO 1029.

THE CITY OF SWEET HOME DOES ORDAIN AS FOLLOWS:

13.12.010 Purpose. The purpose of the system development charge is to impose a portion of the cost of capital improvements for water, wastewater, and storm water upon those development(s) that create the need for or increase the demands on the City's water, wastewater, and/or storm water systems.

13.12.020 Definitions. For purposes of this ordinance, the following mean:

- 1) Capital improvements. Public Facilities or assets used for:
 - a) Water supply, treatment or distribution, or any combination;
 - b) Wastewater collection, transmission, treatment or disposal or any combination;
 - c) Storm water collection, transmission, treatment or disposal or any combination.
- 2) Development means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities. Development includes redevelopment of property. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved lands.
- 3) Improvement fee. A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to section 13.12.030 of this ordinance.
- 4) Land area. The area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or for a public scenic or preservation purpose.
- 5) Owner. The owner or owners of record title or the purchaser or purchasers under a recorded land sales agreement, and other persons having an interest of record in the described real property.
- 6) Parcel of land. A lot, parcel, block or other tract of land that in accordance with city regulations is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.
- 7) Permittee. The person to whom a building permit, development permit, a permit or plan approval to connect to the sanitary sewer, storm sewer, or water system, or right-of-way access permit is issued.
- 8) Qualified public improvements. A capital improvement that is:
 - a) Required as a condition of development approval;
 - b) Identified in the plan adopted pursuant to "Improvement Plan" of this ordinance; and either:
 - 1) Not located on or contiguous to a parcel of land that is the subject of the development approval; or
 - 2) 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.

- 3) For purposes of this definition, contiguous means in a public way which abuts the parcel.
- 9) Reimbursement fee. A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to section 13.12.030 of this ordinance, and for which the council determines capacity to exist.
- 10) System development charge. A reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of capital improvement of the water, wastewater, or storm water systems, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement to the City's water, wastewater, and/or storm water systems.
 - a) A system development charge includes that portion of a sanitary sewer, storm sewer, or water system connection charge that is greater than the amount necessary to reimburse the city for its average cost of inspecting and installing connections with water, wastewater, and/or storm sewer facilities.
 - b) A system development charge does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision.

13.12.030 System Development Charge Established.

- 1) System development charges shall be established and may be revised by resolution of the City council. The council shall set by resolution the amount of the charge, the type of permit to which the charge applies, and, if the charge applies to a geographic area smaller than the entire city, the geographic area subject to the charge.
- 2) Unless otherwise exempted by the provisions of this ordinance or the other local or state law, a system development charge is hereby imposed upon all development within the city, upon the act of making a connection to the city water or sewer system within the city, and upon all development outside the boundary of the city that connects to or otherwise uses the water or wastewater facilities of the city.

13.12.040 Methodology

- 1) The methodology used to establish or modify the reimbursement fee shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.
- 2) The methodology used to establish or modify the improvement fee shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future system users.
- 3) The methodology used to establish or modify the improvement fee or the reimbursement fee, or both, shall be contained in a resolution adopted by the City council.

13.12.050 Authorized Expenditures

- (1) Reimbursement fees shall be applied only to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness.
- (2) Improvement fees shall be spent only on capacity increasing capital improvements associated with the system for which the fee is assessed, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the

level of performance or service provided by existing facilities or providing new facilities.

- a) The portion of the capital improvements funded by improvement fees must be related to demands created by current or projected development. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the city pursuant to section 13.12.070 of this ordinance.
- (3) Notwithstanding subsections (1) and (2) of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing system development charge methodologies and providing an annual accounting of system development expenditures.

13.12.060 Expenditure Restrictions.

- 1) Systems development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- 2) System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

13.12.070 Improvement Plan.

- (1) Prior to the establishment of a system development charge, the council shall adopt a plan that includes a list of:
 - a) The capital improvements that the City council intends to fund in whole or in part with improvement fee revenues;
 - b) The estimated cost and time of construction of each improvement and the percentage of that cost eligible to be funded with improvement fee revenues; and
 - c) A description of the process for modifying the plan.
- (2) In adopting this plan, the City council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section.
- (3) The council may modify such plan and list at any time. If a system development charge will be increased by a proposed modification to the list to include a capacity increasing public improvement the City council will:
 - a) at least 30 days prior to adoption of the proposed modification, provide written notice to persons who have requested notice pursuant to section 13.12.120 of this Ordinance;
 - b) hold a public hearing if a written request for a hearing is received within seven days of the date of the proposed modification.
- (4) A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge if the change in amount is based on the periodic application of the construction cost index published by the Engineering News Record, or a similar index if the construction cost index is no longer published or representative of the cost for the City, or a modification to any of the factors related to the rate that are incorporated in the established methodology.

13.12.080 Collection of Charge.

- (1) The system development charge is payable upon the issuance of:
 - a) A building permit;
 - b) A development permit;
 - c) A development permit for development not requiring the issuance of a building permit;
 - d) A permit or approval to connect to the water system;

- e) A permit or approval to connect to the sewer system; or
 - f) A right-of-way access (public works) permit.
- (2) If no building, development, or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased based on changes in the use of the property unrelated to seasonal or ordinary fluctuations in usage.
 - (3) If development is commenced or connection is made to the water or sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.
 - (4) The Public Works Director or his or her designee shall collect the applicable system development charge from the permittee when a permit that allows building or development of a parcel is issued or when a connection to the water or sewer system of the city is made.
 - (5) The Public Works Director or his or her designee shall not issue such permit or allow such connection until the charge has been paid in full, or until provision for installment payments has been made pursuant to section 13.12.090 of this ordinance, or unless an exemption is granted pursuant to section 13.12.100 of this ordinance.

13.12.090 Installment Payment.

- (1) When a system development charge is due and collectible, the owner of the parcel of land subject to the development charge may apply for payment in 20 semi-annual installments, to include interest on the unpaid balance, in accordance with ORS 223.208.
- (2) The Public Works Director or his or her designee shall provide application forms for installment payments, which shall include a waiver of all rights to contest validity of the lien, except for the correction of computational errors.
- (3) An applicant for installment payments shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that the property interest of the applicant is adequate to secure payment of the lien.
- (4) The Public Works Director or his or her designee shall report to the Finance Director or his or her designee the amount of the system development charge, the dates on which payments are due, the name of the owner, and the description of the parcel.
- (5) The Finance Director or his or her designee shall docket the lien in the lien docket. From that time the city shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the council. The lien shall be enforceable in the manner provided in ORS Chapter 223.
- (6) Upon written request of the Public Works Department, the Finance Director or his or her designee is authorized to cancel assessments of SDC's, without further Council action, where the new development approved by the building permit is not constructed and the building permit is cancelled.
- (7) For property that has been subject to a cancellation of assessment of SDC's, a new installment payment contract shall be subject to the code provisions applicable to SDC's and installment payment contracts on file on the date the new contract is received by the city.

13.12.100 Exemptions

- (1) Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge.
- (2) An alteration, addition, replacement or change in use that does not increase the parcels or structures use of the public improvement facility are exempt from all portions of the system development charge.

13.12.110 Credits

- (1) When a development occurs that is subject to a system development charge, the system development charge for the existing use, if applicable, shall be calculated and if it is less than the system development charge for the use that will result from the development, the difference between the system development charge for the existing use and the system development charge for the proposed use shall be the system development charge. If the change in the use results in the system development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required. No refund or credit shall be given unless provided for by another subsection of this Section.
- (2) A credit shall be given to the permittee for the cost of a qualified public improvement upon acceptance by the city of the public improvement. The credit shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee and shall only be for the improvement fee charged for the type of improvement being constructed.
- (3) If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the city's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the city.
 - (a) The city may deny the credit provided for in this section if the city demonstrates that the application does not meet the requirements of this section or if the improvement for which credit is sought was not included in the improvement plan pursuant to section 13.12.070 of this Ordinance.
- (4) When the construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project.
- (5) Notwithstanding subsections 1-4, when establishing a methodology for a system development charge, the city may provide for a credit against the improvement fee, the reimbursement fee, or both, for capital improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the council finds reasonable.
- (6) Credits shall not be transferable from one development to another.
- (7) Credits shall not be transferable from type of system development charge to another.
- (8) Credits shall be used within 10 years from the date the credit is given.

13.12.120 Notice.

- (1) The city shall maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for any system development charge. Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a system development charge. The methodology supporting the system development charge shall be available at least 60 days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the city.
- (2) The city may periodically delete names from the list, but at least 30 days prior to removing a name from the list, the city must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

13.12.130 Segregation and Use of Revenue.

- (1) All funds derived from a particular type of system development charge are to be segregated by accounting practices from all funds of the city. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than set forth in section 13.12.050 of this ordinance.
- (2) The appropriate city official shall provide the city council with an annual accounting, by January 1 of each year, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amount spent on each project funded in whole or in part, with system development charge revenues shall be included in the annual accounting.

13.12.140 Refunds.

- (1) Refunds may be given by the Public Works Department upon finding that there was a clerical error in the calculation of the SDC.
- (2) Refunds shall not be allowed for failure to timely claim credit or for failure to timely seek an alternative SDC rate calculation at the time of submission of an application for a building permit.
- (3) The city shall refund to the applicant any SDC revenues not expended within ten (10) years of receipt.

13.12.150 Implementing Regulations; Amendments.

The city council delegates authority to the City Manager or designee to adopt necessary procedures to implement provisions of this ordinance including the appointment of an SDC program administrator. All rules pursuant to this delegated authority shall be filed with the office of City Manager and be available for public inspection.

13.12.160 Appeal Procedure.

A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the city council by filing a written request with the Public Works Director describing with particularity the decision of the Public Works Director and the expenditure from which the person appeals. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure.

Appeals of any other decision required or permitted to be made by the Public Works Director under this ordinance must be filed in writing with Public Works Director within 10 days of the decision.

After providing notice to the appellant, the council shall determine whether the Public Works Director's decision or the expenditure is in accordance with this ordinance and the provisions of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decisions. If the council determines that there has been an improper expenditure of system development charge revenues, the council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the council shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.

A legal action challenging the methodology adopted by the council pursuant to section 13.12.040 shall not be filed later than 60 days after adoption. A person shall contest the methodology used for calculating a system development charge only as provided in ORS 34.010 to ORS 34.100, and not otherwise.

A person who wishes to challenge the calculation of a system development charge must make a written challenge to the calculation of the system development charge and file the challenge with the Public Works Director within 30 days of receiving the calculation. The written challenge must describe with particularity the calculation which the person appeals.

- (a) The written challenge shall state:

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

A person who fails to file such a written challenge within the time permitted waives his/her objections, and his/her objections shall be dismissed.

- (b) After providing timely notice to the challenger, the Public Works Director shall determine whether the calculation is in accordance with the resolution containing the methodology used to establish or modify the system development charge adopted by the city council.
- (c) Unless the challenger and the city agree to a longer period, a written challenge to the calculation of the system development charge shall be heard by a hearings officer within 40 working days of the receipt of the written challenge. At least 15 working days prior to the hearing, the city shall mail notice of the time and location thereof to the person who made the written challenge.
- (d) The hearings officer shall hear and determine the challenge on the basis of the person's written challenge and any additional evidence he/she deems appropriate. At the hearing the challenger may present testimony and oral argument personally or by counsel. The rules of evidence as used by courts of law do not apply.
- (e) The person challenging the calculation shall carry the burden of proving that the calculation being appealed is incorrect and what the correct calculation should be or how a correct calculation should be derived.
- (f) After exhausting the city's administrative review procedure pursuant to section 13.12.160 of this ordinance, the person challenging the calculation of the system development charge may then petition for review of the city official's/hearings officer or council's determination pursuant to ORS 34.010 to 34.100.

13.12.170 Prohibited Connection. No person may connect to the water or sewer systems of the city unless the appropriate system development charge has been paid or the lien or installment payment method has been applied for and approved.

13.12.180 Penalty. Violation of this Ordinance constitutes a violation under the provisions of Chapter 9.36 of the Sweet Home Municipal Code as amended by Sweet Home Ordinance 1128 and may be prosecuted under the provisions thereof 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. Each day that a violation exists is a separate offense. Violation Enforcement Officer authorized to issue citations for commission of violation(s) of this Ordinance shall include City Code Enforcement Officer, Sweet Home Police Officer, and Public Works Director.

13.12.190 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; and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- D. The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."

- E. Where a regulation involves two or more connected items, conditions, provisions, or events:
- 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.

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

13.12.200 Severability. The provisions of this ordinance 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 ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. It is hereby declared to be the council's intent that this ordinance would have been adopted had such an unconstitutional provision not been included herein.

13.12.210 Classification. The city council determines that any fee, rates or charges imposed by this ordinance are not a tax subject to the property tax limitations of Article XI, section 11(b) of the Oregon Constitution.

13.12.220 Repeal/Savings. Ordinance No.1029 is hereby repealed. The repeal of an ordinance, or part thereof, shall not preclude action against a person or property that is in violation of said ordinance before the effective date of the repeal. The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance, which can be given effect without such invalid part or parts.

Passed by the Council and approved by the Mayor this 25th day of January, 2005.

Mayor

ATTEST:

City Manager – Ex Officio City Recorder