

ORDINANCE NO. 1335

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF SYSTEM DEVELOPMENT CHARGES, IN ALL INFRASTRUCTURE CATEGORIES (WATER, WASTEWATER, STORM DRAINAGE, TRANSPORTATION, AND PARKS); PROCEDURES AND METHODOLOGY FOR IMPOSING, COLLECTING AND EXPENDING SYSTEM DEVELOPMENT CHARGES; PROVIDING FOR EXEMPTIONS, CREDITS AND APPEAL PROCEDURE; AND REPEALING TOLEDO CITY ORDINANCE 1227 DATED NOVEMBER 7, 1994.

WHEREAS, the City Charter and Oregon Revised Statutes grant the City of Toledo authority to impose system development charges; and,

WHEREAS, system development charges equitably spread to new developments the cost of essential capital improvements as a result of new development; and,

WHEREAS, the City desires to establish a procedure and methodology for updating its current system development charges and imposing new system development charges for water, wastewater, storm drainage, transportation, and park capital improvements;

NOW, THEREFORE, the City of Toledo, Oregon, ordains as follows:

SECTION 1:

Ordinance 1227 and the Toledo Municipal Code Chapter 13.24 are hereby repealed in their entirety.

SECTION 2:

Sections 3 through 22 of this Ordinance are added to and made a part of the Toledo Municipal Code, Chapter 13.24, as indicated.

SECTION 3:

**13.24.010 Purpose**

This Chapter is intended to provide authorization for system development charges for capital improvements pursuant to ORS Revised Statutes 223.297 through 223.314 for the purpose of creating a source of funds to pay for the installation, construction, and extension of capital improvements for water, wastewater, storm drainage, transportation, and parks. These charges shall be collected at the time of the development and redevelopment of properties which increase the use of capital improvements and generate a need for those facilities.

SECTION 4:

**13.24.020 Scope**

The system development charge imposed by this ordinance is separate from and in addition to any applicable tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development or based upon the ownership of property. The system development charge imposed by this section is not classified by the City, or intended to be, 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 the legislation implementing that Section. The system development charge imposed herein is also found to be an incurred charge within the meaning of Section 11b and Article XI of the Oregon Constitution and the statutes implementing it.

## SECTION 5:

### **13.24.030 Definitions**

For purposes of this ordinance, the following mean:

“Applicant” shall mean the owner or other person who applies for a residential, commercial, industrial, or other connection to the City’s water supply system or sanitary sewer system and/or who develops property within the City’s Urban Growth Boundary.

“Building” shall mean any structure, either temporary or permanent, built for the support, shelter, or enclosure of persons or property of any kind and for any public, commercial, industrial, or other use. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintenance during the term of a building permit.

“Capital improvements” means public facilities or assets used for:

- (a) Wastewater collection, transmission, treatment and disposal, or any combination.
- (b) Water supply, treatment, distribution, storage, metering, fire protection, or any combination.
- (c) Drainage and flood control.
- (d) Transportation facilities including vehicle and pedestrian.
- (e) Parks and recreation.

“Citizen or other interested person” shall mean any person whose legal residence is within the service area of the City, as evidenced by registration as a voter within 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 service area; or a person who owns, occupies, or otherwise has an interest in real property which is served by the City’s water supply system or sanitary sewer systems; or is otherwise subject to the imposition of systems development charges, as outlined in this chapter.

“City” means the City of Toledo.

“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, dividing of land into two or more parcels (including partitions and subdivisions), and creating or termination of a right of access. Development includes improved open areas such as plazas and walkways, but does not

include natural geologic forms or unimproved lands. Development also includes making any physical change in the use of a structure or land which increases the usage of any capital improvements or which may contribute to the need for additional or enlarged capital improvements, as determined by City.

“Improvement fee” means a fee for costs associated with capital improvements to be constructed after the date fee is established pursuant to Section 13.24.040 of this ordinance..

“Land area” means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of any portion of the parcel within a recorded right-of-way or easement subject to servitude for a public street or for a public scenic or preservation purpose.

“Methodology” shall mean the system development charge methodology required by ORS 223.304 (1) and(2).

“Owner” means the owner or owners of record title or the purchaser(s) under a recorded land sales agreement, and other persons having an interest of record in the described real property.

“Parcel of land” means a lot, parcel, block, or other tract of land that 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, and other development ordinances.

“Permittee” means the owner to whom a building permit, development permit, a permit or plan approval to connect to the sewer system, or right-of-way access permit is issued.

“Qualified public improvement,” means a capital improvement that is:

- (a) Required as a condition of development approval;
- (b) Identified in the plan adopted pursuant to Section 13.24.080 of this chapter, and is either:
  - (1) Not located on or contiguous to a parcel of land this 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.

“Reimbursement fee” means a fee for costs associated with capital improvements constructed or under construction on the date the fee is established pursuant to Section 13.24.040 of this ordinance.

“System development charge” means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. "System development charge" includes that portion of a 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 and sewer facilities. "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.

#### SECTION 6:

##### **13.24.040 System Development Charge Established**

A. The system development charges shall be established and may be revised by resolution of the council relying on an approved methodology and system development charge project plan. The system development charge project plan, methodology and amount of charge may be adopted in a single resolution, and more than one type of SDC (water, sewer, storm, transportation and park) can be included in a single resolution.

B. Unless otherwise exempted by the provisions of this chapter, or other local or state law, a system development charge is imposed upon all development within the City, upon connection to the water and/or sewer system, and upon all development outside the boundary of the City that connects to or which will other use or create a need for sewer facilities, water facilities, storm sewers, streets, or parks and open space of the City.

#### SECTION 7:

##### **13.24.050 Methodology**

A. The methodology used to establish the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the City Council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.

B. The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related.

C. The methodology used to establish improvement fees or reimbursement fees, or both, shall be adopted by resolution of the council.

#### SECTION 8:

##### **13.24.060 Authorized Expenditures**

A. Reimbursement fees shall only be applied to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness.

B. Improvement Fees.

1. Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of indebtedness. 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. The portion of the capital improvements funded by improvement fees must be related to demands created by current or projected development.

2. 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 13.24.080 of this ordinance.

C. Notwithstanding subsection B(1) and B(2) of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this chapter, including the costs of developing system development charge methodologies, and providing an annual accounting of system development charge expenditures and other costs directly related to or required for the administration and operation of this system development charge program.

#### SECTION 9:

##### **13.24.070 Expenditure Restrictions**

A. System 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.

B. System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

#### SECTION 10:

##### **13.24.080 Improvement Plan**

A. Prior to the establishment of a system development charge, the council shall adopt a capital improvement plan that includes a list of:

1. The capital improvements that the City intends to fund in whole or in part with the improvement fee revenues; and
2. The estimated cost and time of construction of each improvement.

B. In adopting this plan, the City 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.

C. The City may modify such plan and list at any time. If the amount of system development charges will be increased by a proposed modification to the list of capital improvements to the capital improvement plan, the city shall:

1. Provide at least 30 days' notice prior to adopting the modification to those who have requested notice; and
2. Hold a public hearing if a written request for a hearing is received at least seven days prior to the date scheduled for adoption of the proposed modification.

#### SECTION 11:

### **13.24.090 Amending The Methodology**

A. Before amending the methodology, the council shall:

1. At least 90 days prior to an amendment to the methodology, provide written notice to persons who have requested notice pursuant to Section 13.24.140;
2. Council shall hold a public hearing if the City receives a written request for a hearing on the proposed modification within seven days of the date of the proposed modification is scheduled for adoption;
3. Make the revised methodology available to the public at least 60 days prior to the first public hearing of the amendment;
4. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the City.

B. Legal action intended to contest the methodology use for calculating a system development charge may not be filed after 60 days following modification of the system development charge ordinance or resolution.

C. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge methodology if the change is based on a change in project costs, including cost of materials, labor and real property, or on a provision for a periodic adjustment included in the methodology or adopted by separate ordinance or resolution, consistent with state law.

### SECTION 12:

#### **13.24.100 Collection Of Charge**

A. The system development charge is payable upon issuance of:

1. A building permit;
2. A development permit for development not requiring the issuance of a building permit;
3. A permit to connect to the water system; or
4. A permit to connect to the sewer system.

B. The system development fee charge for subsection A shall be assessed at the rate in effect at the time of permit application. For property annexed to the City after application for but prior to issuance of a building permit, the system development charge shall be assessed at the rate payable in the City at the time of permit application.

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

D. The City Manager or the City Manager's designee shall collect the applicable system development charge(s) from the permittee.

E. The City Manager or the City Manager's 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 13.24.110, or unless an exemption is granted pursuant to Section 13.24.120 of this chapter.

## SECTION 13:

### **13.24.110 Installment Payment**

A. When a system development charge is due and collectable, the owner of the parcel of land subject to the development charge may apply for payment in twenty (20) semi-annual installments, to include interest on the unpaid balance, in accordance with Oregon Revised Statutes 223.208. A shorter payment plan is acceptable if approved by the council.

B. The City Manager shall provide application forms for installment payments which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.

C. An applicant for installment payment shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the property and that the interest of the applicant is adequate to secure payment of the lien.

D. The City Manager shall report to the council 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.

E. The City Manager 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 resolution of the council. The lien shall be enforceable in the manner provided in ORS Chapter 223 and shall be superior to all other liens pursuant to ORS 223.230.

## SECTION 14:

### **13.24.120 Exemptions**

A. Additions to single-family dwelling that do not constitute the addition of a dwelling unit, as defined by the Zoning Code pursuant to §17.04 of this Code are exempt from all portions of the system development charge.

B. An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of a capital improvement are exempt from all portions of the system development charge.

C. Any structure which is built to replace a structure that was destroyed, demolished or removed shall not be assessed systems development charges if construction of the new structure is completed within eighteen months of the time that the original structure was destroyed, demolished, or removed; provided, however, that any new structure does not increase the usage of any capital improvement.

D. The City of Toledo.

E. A building or other structure for which a building permit application was filed prior to the effective date of the charge or increase in the charge, providing the information accompanying the application was sufficiently complete to meet the requirements for issuance of a building permit for the entire structure, and substantial construction begins within one hundred-eighty days of the date the permit was issued. Accordingly, an owner shall otherwise remain responsible for those system development charges existing at the time charges are established and/or revised by resolution of the council pursuant to Section 13.24.040.

## SECTION 15:

### **13.24.130 Credits**

A. 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. If this amount 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 a change in 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.

B. A credit of the improvement fee portion of the system development charge only shall be given to the permittee against the cost of the system development charge charged, for the cost of a qualified public improvement, upon acceptance by the City of the public improvement. The credit shall not exceed the amount of the improvement fee even if the cost of the capital improvement exceeds the improvement fee.

C. 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 shall be filed in writing no later than 60 days after acceptance of the improvement by the City. 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 13.24.080 of this ordinance.

D. When 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.

- E. Credit shall not be transferable from one development to another.
- F. Credit shall not be transferable from one type of system development charge to another.
- G. Credits shall be used within 10 years from the date the credit was given.
- H. For all credits under any portion of this section, the property owner is responsible for providing the facts justifying a credit.

#### SECTION 16:

##### **13.24.140 Notice**

- A. 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 45 days prior to the first hearing to adopt or amend a system development charge, and the methodology supporting the adoption or amendment shall be available at least 30 days prior to the first hearing to adopt or amend. The failure of a person on the list to receive notice that was mailed does not invalidate the action of the City.
- B. 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.

#### SECTION 17:

##### **13.24.150 Segregation and Use Of Revenue**

- A. All funds derived from a system development charge are to be segregated by accounting practices from all other 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 those set forth in this chapter.
- B. The City Manager shall provide the City Council with an annual accounting, based on the City's fiscal year, for system development charges showing the total amount of system development charge revenues collected for each type of charge and the projects funded from each account in the previous fiscal year. A list of the amounts spent on each project funded in whole or in part, with system development charge revenues shall be included in the annual accounting.
- C. The moneys deposited into the system development charge account shall be used solely as allowed by this chapter and state law, including, but not limited to:
  - 1. Design and construction plan preparation;
  - 2. Permitting and fees;
  - 3. Land and materials acquisition, including any cost of acquisition or condemnation;
  - 4. Construction of capital improvements;

5. Design and construction of new facilities required by the construction of capital improvements and structures;
6. Relocating utilities required by the construction of improvements;
7. Landscaping;
8. Construction management and inspection;
9. Surveys, soils, and material testing;
10. Acquisition of capital equipment;
11. Repayment of moneys 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 cost of issuance under bonds or other indebtedness issued by the City to fund capital improvements.

#### SECTION 18:

##### **13.24.160 Refunds**

- A. Refunds may be given by the City upon finding that there was a clerical error in the calculation of the system development charge.
- B. Refunds shall not be allowed for failure to timely claim credit or for failure to timely seek an alternative system development charge rate calculation at the time of submission of an application for a building permit.

#### SECTION 19:

##### **13.24.170 Appeal Procedure**

- A. A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision of the expenditure to the council by filing a written request with the City Manager describing with particularity the decision and the expenditure from which the person appeals. An appeal of the expenditure must be filed within two (2) years of the date of the alleged improper expenditure.
- B. Appeals of any other decision required or permitted to be made by the City Manager under this ordinance must be filed in writing with the City Manager within ten (10) days of the decision.
- C. After providing notice to the appellant, the City Council shall determine whether the City Manager's decision or the expenditure is in accordance with this chapter and the provision of ORS 223.297 to 233.314 and may affirm, modify, or overrule the decision. 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.
- D. A legal action challenging the methodology adopted by the City Council pursuant to Section 13.24.050 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.

SECTION 20:

**13.24.180 Prohibited Connection**

No person may connect to the water or sewer system of the City or obtain a building permit unless the appropriate system development charges have been paid, or the installment payment method has been applied for and approved.

SECTION 21:

**13.24.190 Penalty**

Violation of this Chapter is a Class B infraction punishable by a fine not to exceed \$500.

SECTION 22:

**13.24.200 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 is such invalid portion thereof had not been incorporated herein.

APPROVED AND ADOPTED by the City Council of the City of Toledo, Oregon on this \_\_\_\_\_ day of \_\_\_\_\_, 2010:

APPROVED by the Mayor of the City of Toledo, Oregon, on this \_\_\_\_ day of \_\_\_\_\_, 2010.

APPROVED

\_\_\_\_\_  
Rodney L. Cross, Mayor

ATTEST:

\_\_\_\_\_  
Nancy Bryant, City Recorder