ORDINANCE NO. 09-2007

An Ordinance Amending the North Clackamas Park and Recreation District's System Development Charge Ordinance

WHEREAS, the North Clackamas Park and Recreation District adopted a system development charge ordinance in October 1994 as amended in 2004 (the "Ordinance"), authorized by ORS 223.297-223.314; and

WHEREAS, due to the expansion of the Metro area urban growth boundary the District may be expanding and facing the challenge of providing new capital facilities to meet the service demands created by new urban level growth and density; and

WHEREAS, with the changing nature of the District, it is advisable to allow for the creation of geographic zones that may have different SDC charges due to the differing needs for capital improvements created by growth in each zone, while recognizing that some facilities are demanded by needs that transcend zone boundaries; and

WHEREAS, the District now recognizes the impact of employees of businesses in the District on the need for new capital facilities and has determined that it is in the best interest of the District to seek some contribution to those needs from this source of demand; and

WHEREAS, the Board of County Commissioners acting in its capacity as the Board of Directors for the North Clackamas Parks and Recreation District finds it appropriate to amend the Ordinance to reflect these changing circumstances and to respond to the statutory changes; now, therefore;

The Board of Commissioners of Clackamas County acting in their capacity as the Board of Directors for the North Clackamas Parks and Recreation District ordains as follows:

Section 1: Subsection 2(J) of the Ordinance is hereby amended to read as follows:

J. The Board hereby adopts the methodology report entitled "Parks and Recreation System Development Charges Update Methodology Report; draft as of September 28, 2007", and incorporates by reference the assumptions, conclusions and findings in said report which refer to the determination of anticipated costs of capital improvements required to accommodate growth, and the rates for the parks and recreation system development charges to finance these capital improvements.

Section 2: Section 3, Definitions, of the Ordinance is hereby amended in its entirety to read as follows:

Section 3 - Definitions

A. "Accessory Dwelling Unit" shall mean a secondary, self-contained dwelling unit that may be allowed only in conjunction with a single family detached dwelling unit. An accessory dwelling unit is subordinate in size, location, and appearance to the primary single family detached dwelling. An accessory dwelling unit generally has its own outside entrance and typically has separate living, sleeping, eating, cooking, and sanitation facilities. An accessory dwelling unit may be located within but distinct from, attached to, or detached from the primary single family dwelling unit.

B. "Applicant" shall mean the owner or other person who applies for a building permit within the boundaries of North Clackamas Park and Recreation District.

C. "Board" shall mean the North Clackamas Park and Recreation District Board of Directors.

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

E. "Building Permit" shall mean an official document or certificate authorizing the construction or siting of any building.

F. "Capital Improvements" shall mean public facilities or assets intended for use for park and/or recreation purposes. "Capital Improvement" shall not include costs of the operation or routine maintenance of capital improvements.

G. "Citizen or Other Interested Person" shall mean any person whose legal residence is within the boundaries of the North Clackamas Park and Recreation District, as evidenced by registration as a voter within the District, or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within District boundaries or is otherwise subject to the imposition of system development charges, as outlined in Section 5 of this ordinance.

H. "Director" shall mean the Director of the North Clackamas Park and Recreation District.

I. "District" shall mean the North Clackamas Park and Recreation District, Oregon, a municipal corporation.

J. "Development" shall mean a building or other land construction, or making a physical change in the use of a structure or land, in a manner which increases the usage of any capital improvements or which may contribute to the need for additional or enlarged capital improvements, as determined by the Board.

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

L. "Dwelling Unit" shall mean a building or a portion of a building designed for residential occupancy, consisting of one or more rooms including permanent provisions for living, sleeping, eating, cooking, and sanitation; and which are arranged, designed or used as living quarters for one family only.

M. "Employee" means any person who received remuneration for services, and whose services are directed and controlled either by the employee (self-employed) or by another person or organization.

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

O. "Improvement Fee" shall mean a fee for costs associated with capital improvements to be constructed after the effective date of this ordinance.

P. "Lot" shall mean an area of land in one ownership with definitive boundaries ascertainable from a recorded deed or recorded plat.

Q. "Manufactured Housing" shall mean a dwelling unit which is constructed primarily at one location and is then transported to another location for either permanent or temporary siting.

R. "Multi-Family Dwelling Unit" shall mean a portion of a building consisting of one or more rooms including living, sleeping, eating, cooking, and sanitation facilities arranged and designed as permanent living quarters for one family or household; attached to two or more dwelling units by one or more common vertical walls; and with more than one dwelling unit on one lot. This term shall include, but is not limited to, triplex, quadraplex, condominium ownership, and apartment structures containing three (3) or more dwelling units.

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

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

U. "Qualified Public Improvement" shall mean land and/or a capital improvement that:

1. Is required as a condition of development approval; and

2. Is identified in the plan and list adopted pursuant to Section 9 of the Ordinance; and

3. If located in a Planned Unit Development, is not designated in the development approval order as Open Space required pursuant to ZDO Section 1013.06.A.4; and

4. If located in the Sunnyside Village Plan Area, is required as a condition of a development approval that has a final decision date after the sunset date established by ZDO 1602.07 for the dedication or fee in lieu of dedication requirement established by ZDO Section 1602;

and, is either 1) not located on or contiguous to the property that is the subject of the development approval, or 2) if located in whole or in part on or contiguous to the property, is required to be larger or with greater capacity than is necessary for the particular development project as determined by District standards upon which the capital improvement plan is based.

V. "Reimbursement Fee" shall mean a fee for costs associated with capital improvements already constructed or under construction when the fee is established for which the District determines that capacity exists.

W. "Single-Family Dwelling Unit" shall mean a building or a portion of a building consisting of one or more rooms including living, sleeping, eating, cooking, and sanitation facilities arranged and designed as permanent living quarters for one family or household; may be attached to one or more than other dwelling units by one or more vertical walls; and may have no more than one dwelling unit on any one lot. In addition to detached single family dwelling units, this definition also includes duplex, zero-lot-line, townhouse, rowhouse, and manufactured housing dwelling units designed for one family or household.

X. "Single Room Occupancy Dwelling Unit" shall mean a portion of a building consisting of one or more rooms, including sleeping facilities, with a shared or private bath, shared cooking facilities, and shared living/activity area. This definition includes, but is not limited to "assisted living facility."

Y. "System Development Charge" shall mean a reimbursement fee, an improvement fee, or a combination thereof assessed or collected at the time of 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 the cost of complying with requirements or conditions imposed upon a land use decision, expedited land division or limited land use decision.

Z. "System Development Charges Methodology" shall mean the methodology report adopted pursuant to Section 2J, as amended and supplemented pursuant to Section 9.

AA. "ZDO" shall mean the Clackamas County Zoning and Development Ordinance.

Section 3: Section 5 of the Ordinance is hereby amended in its entirety to read as follows:

Section 5 - Application

A. A Parks and Recreation System Development Charge (herein after referred to as the SDC Charge) is imposed upon all new development within the District for which a building permit is required (as defined below, "New Development"). This shall include new construction and alteration, expansion or replacement of a building or dwelling unit if such activity results in an increase in the number of residential dwelling units on the site or provides the opportunity for an increase in the number of employees reporting to work on the site. For alterations, expansions and replacements, the amount of the SDC Charge to be paid shall be the difference between the rate for the proposed development and the rate that would be imposed for the development prior to the alteration, expansion or replacement.

B. The amount of the SDC Charge shall be determined using the methodology set forth in the methodology report adopted by Section 2J of this ordinance. Accessory Dwelling Units shall be charged at one-half the Single-Family Dwelling Unit rate. Single Room Occupancy Dwelling Units shall be charged at one-half the Multi-Family Dwelling Unit rate.

C. The SDC Charge shall be adopted and may from time to time be amended by resolution of the District Board so long as the adopted methodology is used. A change in methodology shall require an amendment to this ordinance to adopt the new methodology. The SDC charge may be adjusted by the periodic application of one or more specific cost indexes or other periodic data sources. A specific cost index or periodic data source must be:

1. A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;

2. Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and

3. Incorporated as part of the established methodology or identified and adopted in a separate resolution.

The resolution that adopts the SDC Charge shall identify the cost indexes to be used.

D. The amount of the SDC Charge in the Sunnyside Village Plan Area, as that area is defined by ZDO Section 1600B, shall be the SDC Charge as adopted by District Board resolution less the charge imposed pursuant to ZDO Section 1602. At such time as the charge imposed pursuant to ZDO Section 1602 sunsets pursuant to ZDO Section 1602.07F, the amount of the SDC Charge in the Sunnyside Village Plan Area shall be the SDC Charge as adopted by District Board resolution with no reduction.

E. The applicant shall at the time of application provide the information requested on a Parks SDC application form regarding the previous and proposed use(s) of the New Development, including a description of each of the previous and proposed uses for the property for which the building permit is being sought, with sufficient detail to enable the District to calculate the number of employees and residential dwelling units under the previous use and for the proposed use(s) of the New Development.

(1) For residential uses: the number and type of residential dwelling units for the previous and proposed use(s) of the New Development.

(2) For non-residential uses: the square footage for each type of non-residential use (i.e., office, warehouse, industrial, retail, etc.) for the previous and proposed use(s) of the New Development.

F. The amount of the Parks SDC shall be determined by calculating the SDC amount that would have been imposed for the previous use(s) of the property and the SDC amount for the proposed use(s).

G. Applicants may submit alternative rates for system development charges, subject to the following conditions:

1. In the event an applicant believes that the impact on District capital improvements resulting from the development is less than the fee established in Section 5B, such applicant may submit a calculation of an alternative system development charge to the Director.

2. The alternative system development charges rate calculations shall be based on data, information and assumptions contained in this ordinance and the adopted methodology or an independent source, provided that the independent source is:

a. a local study supported by a data base adequate for the conclusions contained in such study, and

b. the study is performed using a generally accepted methodology and is based upon generally accepted standard sources of information relating to facilities planning, cost analysis and demographics.

3. If the Director determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates comply with the requirements of this Section by using a generally accepted methodology, the alternative system development charges rates shall be paid in lieu of the rates set forth in Section 5B.

4. If the Director determines that the date, information and assumptions utilized by the applicant to calculate the alternative system development charges rates do not comply with the requirements of this Section or were not calculated by a generally accepted methodology, then the Director shall provide to the Applicant (by Certified mail, return receipt requested) written notification of the rejection of the alternative system development charges rates and the reason therefore. The decision of the Director shall be in writing and issued within ten (10) working days from the date all data is received for review.

5. Any applicant who has submitted a proposed alternative system development charges rate pursuant to this Section and desires the immediate issuance of a building permit, development permit, or

connection shall pay the applicable system development charges rates pursuant to Section 5B. Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any right of review. Any difference between the amount paid and the amount due, as determined by the Director, shall be refunded to the applicant.

Section 4: Section 6(D) of the Ordinance is hereby amended to read as follows:

D. Notwithstanding Section 6A, the following development shall be exempt from payment of the Parks and Recreation System Development Charges:

1. Alterations, expansion or replacement of an existing non-residential structure where no opportunity is created for the location of additional employees reporting to work at the site.

2. Alterations, expansion or replacement of an existing dwelling unit where no additional dwelling units are created.

3. The construction of accessory buildings or structures which will not create additional dwelling units or which do not create additional demands on the District's capital facilities.

4. The issuance of a permit for a manufactured housing unit on which applicable system development charges have previously been made as documented by receipts issued by the District for such prior payment.

5. Development with vested rights, determined as follows:

a. Any owner of land which was the subject of a building permit issued prior to October 11, 2007 for non-residential construction may petition the District for a vested rights determination which would determine the SDC Charge to be paid. Such petition shall be evaluated by the Director and a decision made based on *all three* of the following criteria being met:

i. The existence of a valid, unexpired building permit authorizing the specific development for which a determination is sought; and

ii. Substantial expenditures or obligations made or incurred in reliance upon the authorizing governmental act; and

iii. Other factors that demonstrate it is highly inequitable to deny the owner the opportunity to complete the previously approved development under the conditions of approval by requiring the owner to comply with the requirements of this Ordinance. For the purposes of this paragraph, the following factors shall be considered in determining whether it is highly inequitable to deny the owner the opportunity to complete the previously approved development without payment of the SDC Charge:

a. Whether the injury suffered by the owner outweighs the public cost of allowing the development to go forward without payment of the system development charges required by this Ordinance; and

b. Whether the expenses or obligations for the development were made or incurred prior to October 11, 2007 for non-residential construction.

b. The Director shall make a written determination as to whether the owner has established a vested right in the development and, if so, whether the development would exempt the owner from the provisions of this Ordinance.

Section 5: Subsection 8(A) of the Ordinance is hereby amended to read as follows:

A. An applicant who is required to pay the SDC Charge shall have the right to request a hearing to review the denial of any of the following:

1. An alternative rate calculation pursuant to Section 5(D).

2. A petition for vested rights pursuant to Section 6(D)(5).

3. A proposed credit for contribution of qualified public improvements pursuant to Section 7.

4. The calculation of the amount of the SDC Charge.

Section 6: This Ordinance shall take effect as of February 1, 2008.

ADOPTED this _____ day of _____, 2007.

BOARD OF COUNTY COMMISSIONERS
ACTING IN THEIR CAPACITY AS THE BOARD
OF DIRECTORS OF THE NORTH CLACKAMAS
PARKS AND RECREATION DISTRICT

_____
Chair

_____
Recording Secretary