

## **ORDINANCE NO. 11-2017**

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

This matter coming before the Clackamas County Board of County Commissioners as the governing body of the North Clackamas Park and Recreation District at its regularly scheduled public meeting on December 21, 2017 to consider changes to the existing ordinance pertaining to the parks and recreations system development charge on new development and the administration of the funds collected for park acquisition and park road frontage construction in the Sunnyside Village area.

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

WHEREAS, the Sunnyside Village includes all of that area that is depicted on Map X-SV-1 of the Clackamas County Comprehensive Plan as of the date of this Order; and

WHEREAS, Clackamas County Zoning and Development Ordinance (ZDO) Chapter 1011.06 contains general provisions related to the collection and administration of funds from development of property in the Sunnyside Village area that are to be used for park acquisition and park road frontage improvements; and

WHEREAS, all of the parkland in the Sunnyside Village area identified on Map X-SV-4 of the Clackamas County Comprehensive Plan, as of the date of this Order, has been acquired, eliminating the need for much of ZDO Chapter 1011.06; and

WHEREAS, Clackamas County desires to repeal ZDO Chapter 1011.06 to eliminate these unnecessary provisions from the County Code; and

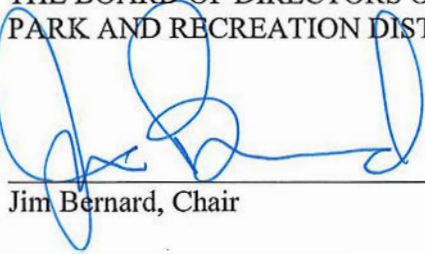
WHEREAS, both Clackamas County and North Clackamas Parks and Recreation District acknowledge that it is appropriate to continue to collect funds from new development in the Sunnyside Village area and that there are funds left in the Park Acquisition Fund and the Park Road Frontage Construction Fund of Sunnyside Village and that the use of these funds are restricted and may be utilized only for the purpose of providing capital improvements in Zone 3, as that area is defined in the Ordinance and as provided in NCPRD's Parks and Recreation System Development Charges Updated Methodology Report, dated September 28, 2007; now, therefore;

The Board of Directors of North Clackamas Park and Recreation District ordains as follows:

- Section 1:** Sections 3 and 5 of the Ordinance are hereby amended as shown in Exhibit A, hereto attached.
- Section 2:** The Board of Directors of North Clackamas Park and Recreation District finds that all of the parkland in the Sunnyside Village area identified on Map X-SV-4 of the Clackamas County Comprehensive Plan, as of the date of this Order, has been acquired. The funds currently held in the NCPRD Zone 3 SDC Fund and segregated as "Sunnyside Village Zone 3A" that were collected based on Sunnyside Village area Comprehensive Plan to be used for park acquisition and park road frontage improvements shall be unsegregated and used only for the purpose of providing capital improvements in Zone 3, as that area is defined in the Ordinance and as provided in NCPRD's Parks and Recreation System Development Charges Updated Methodology Report, dated September 28, 2007.
- Section 3:** System Development Charges in the Sunnyside Village Plan Area shall be collected at the rate adopted by the Board of Directors of North Clackamas Park and Recreation District by resolution.
- Section 4:** This ordinance shall be effective on January 20, 2018.

ADOPTED this 21st day of December, 2017

THE BOARD OF DIRECTORS OF NORTH CLACKAMAS  
PARK AND RECREATION DISTRICT



Jim Bernard, Chair



Recording Secretary

## EXHIBIT A

### AN ORDINANCE ESTABLISHING A PARKS AND RECREATION SYSTEM DEVELOPMENT CHARGE ON NEW DEVELOPMENT

The Board of Directors of North Clackamas Park and Recreation District, Oregon finds, determines, and declares that:

#### Section 1 - Short Title

This Ordinance shall be known as "An Ordinance Establishing a Parks and Recreation System Development Charge On New Development" and may be so pleaded.

*[Adopted by Ord. 94-1152 (10/6/94)]*

#### Section 2 - Scope and Purpose

- A. Future growth within the North Clackamas Park and Recreation District should contribute its fair share to the cost of improvements and additions to parks and recreation facilities required to accommodate such growth.
- B. The imposition of system development charges will provide a source of revenue to fund the construction or improvement of the North Clackamas Park and Recreation District's facilities necessitated by growth.
- C. ORS 223.297-223.314, adopted in 1989, authorizes local governments to impose system development charges.
- D. The District includes land which is developed to urban densities and land which is in a rural or semi-rural level of development. The demand for new capital facilities throughout the district varies in part due to the availability of land for new development and the location of existing District facilities. The District Board, if it deems it advisable, may create SDC charges which apply by zone, and may be used, only in those limited geographic areas. If created such charges may vary between the zones, understanding that some facilities may be needed to meet a District-wide demand with some or all geographic areas of the District contributing to the growth related cost of such District- wide facilities.
- E. The SDC methodology document report adopted by subsection J of this section contains a calculation of the total maximum amount of money that may be imposed through the SDC charge to help recover the growth related cost component of new capital facilities as development

occurs in the District. The District Board may not impose a charge structure that recovers more than that total amount, adjusted over time as allowed by law, but may in its discretion impose a charge structure that recovers less than that total amount. In addition, the District Board may in its discretion impose a charge on classes of development types that is less than the maximum allowed by law or may exempt classes of development from the charge in order to promote other public policy considerations.

- F. System development charges are separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment, or other fee provided by law or imposed as a condition of development.
- G. System development charges are fees for services because they are based upon a development's receipt of services considering the specific nature of the development.
- H. System development charges are imposed on the activity of development, not on the land, owner, or property, and, therefore, are not taxes 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.
- I. This Ordinance is intended only to be a financing mechanism for needed extra capacity parks and recreation facilities associated with new development and does not represent the consideration of land use planning issues, funding for maintenance of existing facilities, or elimination of existing capacity deficiencies.
- 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.

*[Adopted by Ord. 94-1152 (10/6/94); amended by Ord.02-2004 (03/25/04); amended by Ord. 09-2007 (10/25/07)]*

### 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, 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.
- BB. "Zone" shall mean, as of November 29th, 2014, one of three zones for the collection of SDCs. Notwithstanding anything else to the contrary stated or adopted herein or elsewhere, such zones shall be constituted as set forth in Section 3.CC, DD, and EE herein.
- CC. "Zone 1" shall mean that area within the District containing the City of Milwaukie and all unincorporated areas within the City of Milwaukie's urban growth management area as defined by agreement between the City of Milwaukie and Clackamas County, as may be amended from time to time.
- DD. "Zone 2" shall mean all areas west of I-205 that are not part of Zone 1.
- EE. "Zone 3" shall mean the City of Happy Valley, all unincorporated areas within the City of Happy Valley's urban growth management area as defined by

agreement between the City of Happy Valley and Clackamas County, as may be amended from time to time, and that portion of the City of Damascus within the boundaries of the district.

- FF. "Zone Projects" shall mean the expenditure of system development charges received by the District pursuant to this Ordinance within the zone in which it was generated, whether designated "zone" or "neighborhood" or "district" or "community" elsewhere in this Ordinance, a capital improvement plan or other document.

*[Adopted by Ord. 94-1152 (10/6/94); amended by Ord.02-2004 (03/25/04); amended by Ord. 09-2007 (10/25/07); amended by Ord. 06-2014 (10/30/14)]*

#### Section 4 - Rules of Construction

- 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 words "shall" and "must" are always mandatory and not discretionary; the word "may" is permissive.
- C. Words used in the present tense shall include the future; words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; and use of the masculine gender shall include the feminine gender.
- D. The phrase "used for" includes "arranged for", "designed for", "maintained for", or "occupied for".
- E. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and", "or" or "either...or", the conjunction shall be interpreted as follows:
1. "And" indicates that all the connected terms, conditions, provisions or events shall apply.
  2. "Or" indicates that the connected items, conditions, or provisions or events may apply singly or in any combination.
  3. "Either...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in 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 or circumstances of like kind or character.

*[Adopted by Ord. 94-1152 (10/6/94); amended by Ord.02-2004 (03/25/04)]*

#### 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.

- 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 (G)(2).
  4. If the Director determines that the data, 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 SB. 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.

*[Adopted by Ord. 94-1152 (10/6/94); amended by Ord.02-2004 (03/25/04); amended by Ord. 09-2007 (10/25/07)]*

#### Section 6 - Collection

- A. The Parks and Recreation System Development Charge is due and payable at the time of issuance of a building permit. The person paying the charge shall be notified of their right pursuant to Section 8 of this ordinance to appeal the calculation of the amount of the charge.
- B. Payment of the SDC Charge by a person who is also eligible for a credit certificate pursuant to Section 7 may be delayed until a date certain to be set by the Director at the time of building permit issuance, but not later than 10 days after the issuance of the credit certificate. A person eligible for delay of payment of the SDC Charge pursuant to this section shall make application to delay payment on a form provided by the Director prior to issuance of the building permit. Payment of the SDC Charge may only be delayed for the same development which is associated with the construction of the capital improvement for which credit is given. If a person applies for delay of payment of the SDC Charge pursuant to this section, the person shall provide the Director with security to secure payment of the Charge. The security shall be in an amount determined by the Director, and must be in a form approved by the County Counsel.
- C. When a SDC Charge is due and payable, the person may apply for payment in (20) semiannual installments, secured by a lien on the property upon which the development is to occur, to include interest on the unpaid balance, if that payment option is required to be made available to the person by ORS 223.207.
  1. The Director 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. The application fee for this option shall be in an amount set by resolution of the District Board.

2. The applicable interest rate shall be fixed at the current prime lending rate plus three percentage points. Should the District exercise its option to issue long term financing for the amount owed, the interest rate charged the applicant shall be fixed at the interest rate on the bonds issued plus two percentage points (not to exceed the maximum interest rate allowed by State law).
3. An applicant requesting installment payments shall have the burden of demonstrating the authority to assent to the imposition of a lien on the property and that the interest of the permittee is adequate to secure payment of the lien.
4. The Director shall cause the lien to be recorded in the lien docket kept by the county Clerk. From that time the district shall have a lien upon the described parcel for the amount of the SDC Charge, together with interest on the unpaid balance at the rate established by the board. 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. Upon satisfaction of the obligation the Director shall request the County Clerk to release the lien.

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.

*[Adopted by Ord. 94-1152 (10/6/94); amended by Ord.02-2004 (03/25/04)]*

#### Section 7 - Credit

- A. The person responsible for providing a qualified public improvement shall be entitled to receive a credit certificate that may be used to satisfy a SDC Charge obligation. A credit certificate may also be given for an off-site increased capacity facility which is not a qualified public improvement, if the facility is identified in the plan and list adopted pursuant to Section 9 of this Ordinance. An application for credit must be received no later than ninety (90) days after the date the improvement has been accepted by the District.
- B. The credit amount shall not exceed the portion of the actual cost of the project that is eligible for system development charge funding as shown in the methodology report adopted by Section 2(J).

- C. The "actual cost" of the project or improvement means the cost of materials, land and construction directly attributable to the construction of an increased capacity facility. These costs include design and engineering, construction materials and equipment, labor and land. Land value shall be calculated at a per square foot value using the then current real market value for the real property shown in the records of the County Tax Assessor.
- D. Any credit provided for by this section shall be applied only to the system development charge that applies to the geographic area zone in which the credit eligible improvement is located, unless the credit is for an increased capacity facility that is identified in the methodology report as a project with district wide impact.
- E. Credit will be given for the value of real property donated as a part of the increased capacity facility. The land value shall be calculated at a per square foot value using the then current real market value for the real property shown in the records of the County Tax Assessor.
- F. Any credit certificate provided for in this Ordinance is transferable to any person. No credit may be redeemed for cash. The District shall implement a system to insure the authenticity of the credit documents submitted.
- G. A credit certificate may not be redeemed more than seven (7) years after the date it was issued by the District.
- H. The person requesting the credit has the burden of establishing that the request meets the requirements of this Ordinance. The District may deny the credit provided for in this section if the District demonstrates:
  - 1. That the application does not meet the requirements of this Ordinance; or
  - 2. That the improvement for which credit is sought was not included in the plan and list adopted pursuant to Section 9.

*[Adopted by Ord. 94-1152 (10/6/94); amended by Ord.02-2004 (03/25/04)]*

#### Section 8 -Appeals and Review Hearings

- 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.
- B. Such hearing shall be requested by the applicant within thirty (30) days of the date of decision. Failure to request a hearing within the time provided shall be deemed a waiver of such right.
  - C. The request for hearing shall be filed with the Board of Directors and shall contain the following:
    1. The name and address of applicant;
    2. The legal description of the property in question;
    3. If issued, the date of the building permit;
    4. A brief description of the nature of the development being undertaken pursuant to the building permit;
    5. If paid, the date the system development charges were paid; and
    6. A statement of the reasons why the applicant is requesting the hearing.
  - D. Upon receipt of such request, the District shall schedule a hearing before the Board of Directors at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the applicant written notice of the time and place of the hearing. Such hearing shall be held within forty-five (45) days of the date the request for hearing was filed.
  - E. Such hearing shall be before the Board of Directors and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedures and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.
  - F. Any applicant who requests hearing pursuant to this Section and desires the immediate issuance of a building permit shall pay prior to or at the time the request for hearing is filed the applicable SDC Charges pursuant to Section S(B). Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights.
  - G. An applicant may request a hearing under this Section without paying the applicable SDC Charges, but no building permit shall be issued until such SDC Charges are paid in the amount initially calculated or the amount approved upon completion of the review provided in this Section.
  - H. The decision of the District Board shall be reviewable solely under ORS 34.010 through 34.100. The person who has appealed a decision shall be notified of this right to review of the decision.

*[Adopted by Ord. 94-1152 (10/6/94); amended by Ord. 04-2004, 3/24/04; amended by*

Section 9 - Plan Adoption. Review of Rates and Plan

- A. The SDC Charge Rates and Plan shall be reviewed by the Board at least once every five years. The review shall consider new estimates of population and other socioeconomic data, changes in the cost of construction and land acquisition. The purpose of this review is to evaluate and revise the projects in the Plan and, if necessary, the rates of the SDC Charge to assure that they do not exceed the reasonably anticipated growth related costs of the District's planned capital improvements.
- B. In the event the review of the Ordinance or the methodology leads to alterations or changes the assumptions, conclusions and findings of the methodology the methodology adopted by reference in Section 2J shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and Section 2J shall be amended to adopt by reference the updated document.
- C. Notice of the intention to modify the SDC Charge, if the change is based on modifications to the methodology, must be provided ninety (90) days prior to the first hearing to at least the list of persons who have made a written request for notification of such actions. The methodology supporting the charge must be available sixty (60) days prior to the first hearing. A change is not a modification to the SDC Charge, if the change is based on:
  - 1. A change in the cost of materials, labor or real property applied to projects or project capacity as set forth on the list adopted pursuant to this section; or
  - 2. The periodic application of one or more specific cost indexes or other periodic data sources.
- D. A person wishing to challenge the establishment or modification of the District's system development charge methodology may do so pursuant to ORS 34.010 to 34.100.
- E. Any capital improvement being funded wholly or in part with system development charge revenue must be included in the District's capital improvement plan. The plan shall be adopted by District Board resolution. The capital improvement plan may be modified by Board resolution at any time and shall:
  - 1. list the specific capital improvement projects, or portion of a project, that may be funded with system development charge revenue;
  - 2. provide the estimated cost of each capital improvement project and percentage of that cost that may be paid by system development charge revenues; and



3. provide the estimated timing of each capital improvement project.
- F. If the SDC Charge will be increased by a proposed modification of the plan list to include capacity increasing capital improvements:
1. The District shall provide notice of the proposed modification at least thirty (30) days prior to the adoption of the modification.
  2. The District shall hold a public hearing if it receives a written request for a hearing on the proposed modification within seven (7) days of the date of adoption of the modification.
  3. Any person wishing to challenge the decision of the District to increase a system development charge by modifying the plan list may do so pursuant to ORS 34.010 to 34.100.

*[Adopted by Ord. 94-1152 (10/6/94); amended by Ord.02-2004 (03/25/04)]*

#### Section 10- Receipt and Expenditure of System Development Charges

- A. The District hereby establishes a separate trust account to be designated as the "Parks and Recreation SDC Account," which must be maintained separate and apart from all other accounts of the District. A trust account shall also be established for each zone ("Zone Trust Accounts"). Funds in these Zone Trust Accounts, which shall include deposits of both zone-specific SDC charges and any District-wide SDC charges generated within that zone, may only be used for Zone Projects in the zone from which the money was collected except as provided below. Each Zone Trust Account shall be assessed annually, based on a pro rata percentage of collections for the prior fiscal year, a share of (i) the current year SDC-eligible debt service payment as of October 1, 2014, until the SDC-eligible portion of such debt is repaid and (ii) any SDC-eligible expenditures on district-wide planning efforts such as master planning, charges for collection, and other system costs relating to SDC administration. All system development charge payments must be deposited into the appropriate trust account immediately upon receipt.
- B. The monies deposited into the trust account must be used solely for the purpose of providing capital improvements which provide for the increased capacity necessitated by development, including, but not limited to:
1. design and construction plan preparation;
  2. permitting and fees;
  3. land and materials acquisition, including any costs of acquisition or condemnation;
  4. construction of capital improvements;
  5. design and construction of new drainage 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. surveying, soils and material testing;
  10. acquisition of capital equipment;
  11. repayment of monies transferred or borrowed from any budgetary fund of the District which were used to fund any of the capital improvements as herein provided;
  12. payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the District to fund capital improvements;
  13. direct costs of complying with the provisions of ORS 223.297 to 223.314, including the consulting, legal, and administrative costs required for developing and updating the system development charges methodology report, resolution/ordinance, and capital improvements plan; and the costs of collecting and accounting for system development charges expenditures.
- C. Funds on deposit in system development charge trust accounts must not be used for:
1. any expenditures that would be classified as an operation, maintenance or repair expense; or
  2. costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- D. Any funds on deposit in system development charges trust accounts which are not immediately necessary for expenditure shall be invested by the District. All income derived from such investments shall be deposited in the system development charges trust accounts and used as provided herein.
- E. An applicant or owner shall be eligible to apply for a refund of the SDC Charge paid if the building permit has expired and work on the development authorized by such permit has not been commenced.
1. The application for refund shall be filed with the District and contain the following:

- a. The name and address of the applicant;
  - b. The location of the property which was the subject of the system development charges;
  - c. A notarized sworn statement that the petitioner is the then current owner of the property on behalf of which the system development charges were paid, including proof of ownership, such as a certified copy of the latest recorded deed;
  - d. The date the system development charges were paid;
  - e. A copy of the receipt of payment for the system development charges; and, if appropriate,
  - f. The date the building permit was issued and the date of expiration.
- 2. The application shall be filed within ninety (90) days of the expiration of the building permit. Failure to timely apply for a refund of the system development charges shall waive any right to a refund.
  - 3. Within thirty (30) days from the date of receipt of a petition for refund, the District will advise the petitioner of the status of the request for refund, and if such request is valid, the system development charges shall be returned to the petitioner.
  - 4. A building permit which is subsequently issued for a development on the same property which was the subject of a refund shall pay the systems development charges as required by Section 5.
- F. The District shall prepare an annual report, to be completed by January 1 of each year, showing the total amount of system development charges revenue collected in the trust accounts, and the capital improvement projects that were funded during the previous fiscal year, the amount spent on each project and the amount spent on the costs of complying with ORS 223.297 to 223.314.
- G. Any citizen or other interested person (as defined in Section 3F) may challenge an expenditure of system development charges revenues.
- a. Such challenge shall be submitted, in writing, to the District for review within two years following the subject expenditure, and shall include the following information:
    - i. The name and address of the citizen or other interested person challenging the expenditure;
    - ii. The amount of the expenditure, the project, payee or purpose, and the approximate date on which it was made; and

- iii. The reason why the expenditure is being challenged.
- b. If the District 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 District shall make written notification of the results of the expenditure review to the citizen or other interested person who requested the review within ten (10) days of completion of the review.

*[Adopted by Ord. 94-1152 (10/6/94); amended by Ord.02-2004 (03/25/04); amended by Ord. 06-2014 (10/30/14)]*

#### Section 11- Severability

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

*[Adopted by Ord. 94-1152 (10/6/94); amended by Ord.02-2004 (03/25/04)]*

#### Section 12- Implementing Regulations: Amendments

The District Director may adopt regulations to implement the provisions of this ordinance.

*[Adopted by Ord. 94-1152 (10/6/94); amended by Ord.02-2004 (03/25/04)]*

#### Section 13 -Effective Date

The charge authorized by This Ordinance shall take effect as of February 1, 2008; provided, however, that an application presented before that date, for which all necessary prior approvals have not been granted or other required predicates no met shall not be considered submitted for purposes of this section.

*[Adopted by Ord. 94-1152 (10/6/94); amended by Ord. 04-2004, 3/24/04; amended by Ord. 09-2007 (10/25/07)]*