

WILSONVILLE CODE

CHAPTER 11 – FEES

SYSTEM DEVELOPMENT CHARGES

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SYSTEM DEVELOPMENT CHARGES

11.000 Purpose. The purpose of the System Development Charge (SDC) is to impose an equitable share of the public costs of Capital Improvements for water, sewers and wastewater drainage, streets, flood control, and parks upon those parties undertaking Developments and redevelopments that add to the need for or increase the demands on all or any of the foregoing.

11.010 Scope. The System Development Charges imposed by this Chapter 11 are separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment, exaction, dedication, or fee otherwise provided by law or imposed as a condition of Development approval application.

11.020 Definitions. For purposes of this Chapter 11, the following terms are defined as follows:

(1) “Applicant” means the party who applies for a permit listed in WC 11.080 below who is subject to SDCs because the Applicant’s Development creates the need for or increases the demands on the City’s sewer, water, stormwater drainage, parks, and/or transportation systems.

(2) “Business Days” means days of the week excluding Saturdays, Sundays, and legal holidays observed by the City.

(3) “Capital Improvement” means public facilities or assets used for the following:

(a) Water supply, treatment, and distribution;

(b) Wastewater collection, transmission, treatment, and disposal;

(c) Stormwater system for collection, treatment, drainage, transmission, and flood control;

(d) Transportation, including, but not limited to, streets, sidewalks, bicycle lanes, multi-use paths, street lights, traffic signs and signals, pavement markings, street trees, swales, public transportation, vehicle parking, and bridges; or

(e) Parks and recreation, including, but not limited to, community parks, public open space and trail systems, recreational buildings, courts, fields, and other like facilities.

(4) “Capital Improvement” does not include costs of the operation or routine maintenance of Capital Improvements.

(5) “City Manager” means the City Manager for the City of Wilsonville or the City Manager’s duly authorized representative.

(6) “Community Development Director” means the Community Development Director for the City of Wilsonville or the Community Development Director’s duly authorized representative.

(7) “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, any building permit resulting in increased usage of Capital Improvements, and any new connection or increased size connection for a Capital Improvement. Development includes the redevelopment of property. Development also includes improved open areas such as plazas and walkways but does not include natural geologic forms or unimproved lands.

(8) “Qualified Public Improvement” means a Capital Improvement that is required as a condition of Development approval, identified in a plan and list adopted pursuant to WC 11.070 and either:

- (a) Not located on or continuous to property that is the subject of Development approval; or
- (b) 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.

(9) “System Development Charge” (“SDC”) means:

(a) A Reimbursement Fee (defined in (ii) below), an Improvement Fee (defined in (i) below), or a combination thereof, assessed or collected at the time of increased usage of a Capital Improvement or the issuance of a Development permit, building permit, or connection to the Capital Improvement.

- i. “Improvement Fee” means a SDC for costs associated with Capital Improvements to be constructed after the date the fee is adopted pursuant to Section 11.030 of this Chapter 11.
- ii. “Reimbursement Fee” means a SDC for costs associated with Capital Improvements already constructed, or under construction when the fee is established, which the City Council determines can be equally imposed.

(b) The 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.

(10) “System Development Charge” does not include any 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 upon a land use decision, expedited land use decision, or limited land use decision.

11.030 System Development Charge Established.

(1) SDCs will be established and may be revised by resolution of the City Council. The resolution will set the amount of the SDC through a methodology developed pursuant to Section 11.040, the type of permit to which the charge applies, and, if the charge applies to a

geographic area smaller than the entire city, the geographic area subject to the charge. Changes in the SDCs shall also be adopted by resolution, except those changes resulting solely from inflationary cost impacts. Inflationary cost impacts shall be based on the yearly changes to the applicable index established each March 1; any changes measured and calculated by the Community Development Director will be implemented each July 1 and charged accordingly. Such calculations will be based upon Pacific Northwest Construction cost changes in the Engineering News Record Construction Cost Index (ENR Index) as represented by the City of Seattle, Washington, or other index that replaces the ENR Index. Notwithstanding the foregoing, the inflationary amount of each SDC may also be calculated as stated in the SDC methodology approved by City Council pursuant to WC 11.040.

(2) Unless otherwise exempted by the provisions of this Chapter, or by other local or state law, an SDC is hereby imposed upon all Development within the City, upon issuance of the type of permit described in Section 11.080, or upon the act of making a connection to the city water or sewer system within the City, as described in Section 11.080, and upon all Development outside the boundary of the City that connects to or otherwise uses the sewer facilities, storm sewers, or water facilities of the City. In lieu of payment being made as required under Section 11.080, the owner of the land on which the improvement will be located may enter into an agreement to pay the SDC in semiannual installments, as authorized by ORS 223.208. The obligation to pay the SDC pursuant to ORS 223.208 shall be secured by a lien against the property upon which the improvement will be located. The lien shall be entered into the City's lien docket and may be collected in the same manner as allowed by law for collection of assessment liens.

(3) When imposing a SDC for Development that requires a building permit, the date of a complete building permit application, as identified on the building permit application, is the effective date of the SDC that will be calculated, consistent with Section (1) above. For clarity, the adopted SDC methodologies that exist at the time the building permit application is deemed complete by the City will be the methodologies used to calculate SDCs. All other SDCs owed to the City will be calculated using the methodology(ies) in effect at the time the SDCs are due and payable to the City under Section 11.080.

11.040 Methodology.

(1) The methodology used to establish or modify a Reimbursement Fee shall promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities and be available for public inspection. The methodology used to establish or modify a Reimbursement Fee shall, where applicable, be based on:

- (a) Ratemaking principles employed to finance publicly owned Capital Improvements;
- (b) Prior contributions by existing users;
- (c) Gifts or grants from federal or state government or private persons;
- (d) The value of unused capacity available to future system users or the cost of the existing facilities; and

(e) Other relevant factors identified by the City Council.

(2) The methodology used to establish or modify an Improvement Fee shall, where applicable, demonstrate consideration of the estimated cost of projected Capital Improvements identified in an improvement plan (*see* Section 11.070) that are needed to increase the capacity of the systems to which the fee is related. The methodology shall be calculated to obtain the cost of Capital Improvements for the projected need for available system capacity for future system users.

(3) The methodology used to establish or modify a Reimbursement Fee or Improvement Fee shall be contained in a resolution adopted by the City Council.

11.050 Authorized Expenditures.

(1) Reimbursement Fees shall be spent on Capital Improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

(2) Improvement Fees shall be spent on capacity increasing Capital Improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity may be established if a Capital Improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by Improvement Fees must be related to the need for increased capacity to provide service for future users.

11.060 Expenditure Restrictions.

(1) SDCs may not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other Capital Improvements or for the expenses of the operation or maintenance of the facilities constructed with SDC revenues.

(2) Any Capital Improvement being funded wholly or in part with SDC revenues must be included in the plan and list adopted by the City Council pursuant to ORS 223.309 and Section 11.070 of this Chapter.

(3) SDC proceeds may only be expended on Capital Improvements included on a list of Capital Improvements that the City intends to fund, in whole or in part, with SDC revenues, including the cost of compliance with this Chapter; development of the Improvement Plans or master plans; development of methodologies; annual accounting of SDC expenditures; debt repayment; engineering, design, and construction; other administrative costs; and related expenses.

11.070 Improvement Plan.

(1) Prior to the establishment of a SDC, the City Council shall prepare a Capital Improvement plan, public facilities plan, master plan, or other comparable plan that includes:

(a) A list of the Capital Improvements that the City Council intends to fund, in whole or in part, with revenues from SDCs; and

(b) The estimated cost and time of construction of each improvement and the percentage of that cost eligible to be funded with SDCs.

(2) In adopting a plan under Section 11.070(1), the City Council may incorporate by reference all or a portion of any Capital Improvement plan, public facilities plan, master plan, or other comparable plan that contains the information required by this Section.

(3) The City Council may modify such plan and list, as described in Section 11.070(1), at any time. If a SDC will be increased by a proposed modification to the list to include a capacity increasing public improvement, the City Council will:

(a) At least thirty (30) calendar days prior to the adoption of the proposed modification, provide written notice to persons who have requested notice pursuant to Section 11.110;

(b) Hold a public hearing if a written request for a hearing is received within seven (7) Business Days of the date of the proposed modification.

(4) A change in the amount of a Reimbursement Fee or an Improvement Fee is not a modification of the SDC if the change in amount is based on:

(a) 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 Section 11.070(1);

(b) 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 SDC methodology; and
- 3) Incorporated as part of the established methodology or identified and adopted by the City Council in a separate resolution, or if no other index is identified in the established methodology, then the index stated in Section 11.030(1).

11.080 Collection of Charge.

(1) The SDC is due and payable upon the issuance of the following:

(a) A building permit;

(b) Any other Development or connection permit not requiring the issuance of a building permit, including, but not limited to a permit or approval to connect to or upsize connection(s) related to City infrastructure; or

(c) A right-of-way access permit.

(2) If no building, Development, or connection permit is required but there is an increased impact of one or more Capital Improvement due to a new or changed use, the SDC is payable at the time the usage of the Capital Improvement is increased based on changes in the use of that property, unrelated to seasonal or ordinary fluctuations in usage.

(3) If Development is commenced or connection is made to any City systems without an appropriate permit, the SDC is immediately due and payable at the rate currently assessed by the City, and it will be unlawful for anyone to continue with the construction or associated use until the SDC has been paid.

(4) The City shall collect the applicable SDC from the permittee when a permit that allows building or Development of a parcel is issued or when a connection to any City infrastructure is made.

(5) The City shall not issue such permit or allow such connection until the charge has been paid in full or unless an exemption is granted pursuant to Section 11.090.

(6) Deferral and/or City Financing of System Development Charges. The Council, by resolution, may establish a program for the deferral and/or financing of system development charges by the City consistent with good business practices, Oregon law, and the goal of promoting economic development.

11.090 Exemptions.

(1) Additions to single-family dwellings, including Accessory Dwelling Units, as defined in Wilsonville Code Chapter 4, are exempt from all portions of the SDC.

(2) An alteration, addition, replacement, or change in use that does not increase the use of the public improvement facility are exempt from all portions of the SDC.

11.100 Credits.

(1) The City will grant to an Applicant a credit against any Improvement Fee assessed when the Applicant constructs or dedicates a Qualified Public Improvement as part of the Development. The Applicant bears the burden of evidence and persuasion in establishing entitlement to a SDC credit and the amount of SDC credit in accordance with the requirements of this Section. The initial determination on all credit requests shall be made by the City Manager or Community Development Director.

(2) SDC Credit Application. To obtain a SDC credit, the Applicant must make the request, in writing, to the Community Development Director prior to constructing or dedicating a Qualified Public Improvement. In the request, the Applicant must state the following:

- (a) Identify the improvement for which the credit will be sought;
- (b) Explain how the improvement will be a Qualified Public Improvement; and
- (c) Document, with credible evidence, the estimated value of the improvement for which credit will be sought. Applicable soft costs for engineering design, project management, permitting, and testing may be allowed as approved by

the Community Development Director.

(3) The City will evaluate a request for credit and will either approve, modify, or reject the proposed Qualified Public Improvement project as part of the Applicant's Development review approval conducted by the City pursuant to Wilsonville Code Chapter 4. The City will specify in the conditions of approval, for the Applicant's Development, any Qualified Public Improvements and will further state that the Applicant is required to submit the information stated in subsection (4) below to obtain SDC credits.

(4) SDC Credit Confirmation. Upon completion and inspection by the City accepting the Qualified Public Improvement, the Applicant must submit to the Community Development Director the following information to confirm the completion of the Qualified Public Improvement and the actual cost to the Applicant for constructing the Qualified Public Improvement:

- (a) The name of the Applicant;
- (b) The improvement for which the credit is sought;
- (c) The condition of approval contained within the City's Development approval that includes the improvement;
- (d) The date(s) the City inspected the improvement and approved the construction of the improvement;
- (e) Documentation, with supporting credible evidence, of the actual cost to the Applicant for constructing the Qualified Public Improvement;
- (f) The date of the submission along with the Applicant's signature; and
- (g) A "Certification of Completion and Payment of Subcontractors and Suppliers."

(5) SDC Credit Certificate. The City will verify the amount of credit the Applicant is entitled to receive no later than thirty (30) days after its receipt of the SDC credit confirmation documents required in subsection (4) above. The City may require, in its sole discretion, additional time if the Applicant's confirmation documents are insufficient to verify the amount of the SDC credit. Upon verification, the City will issue a credit certificate to the Applicant in the amount determined by the City.

- (a) The credit certificate shall contain, at a minimum, the following information:
 - 1) The name of the Applicant and the project to which the improvement giving rise to the credit is related;
 - 2) The SDC to which the credit may be applied;
 - 3) The issue date and the expiration date;
 - 4) The amount of the credit given;

- 5) A place for entry of reduced SDC credit amounts as the SDC credits are used by the Applicant; and
 - 6) The original signature of the City Manager, the Finance Director, and the Community Development Director.
- (b) The SDC credit shall be an amount equal to the fair market value of the improvement. Fair market value shall be determined by the City based on credible evidence of the following:
- 1) For real property, value shall be based upon a written appraisal of fair market value by a qualified Member of the Appraisal Institute (MAI) appraiser based upon comparable sales of similar property between unrelated parties in an arms-length transaction;
 - 2) For a Qualified Public Improvement already constructed, value shall be based on the actual cost of construction as verified by contract documents and receipts submitted by the Applicant;
 - 3) For a Qualified Public Improvement located on, or contiguous to, the site of the Development, only the over-capacity portion, as described in the definition of Qualified Public Improvement, is eligible for SDC credit. There is a rebuttable presumption that the over-capacity portion of such a Qualified Public Improvement is limited to the portion constructed larger, or of greater capacity, than the City's minimum standard facility capacity or size needed to serve the particular Development.

(6) Form of Credit and Limitation on Use. When given, SDC credits will be for a particular dollar value as a credit against a SDC assessed on a Development. The party named on the SDC credit certificate issued pursuant to subsection (5) above must provide the SDC credit certificate to the City at the time payment of SDCs is due to use the SDC credits. Credits may only be used to defray or pay the SDC for the particular Capital Improvement system to which the Qualified Public Improvement is related, e.g., credit from a Qualified Public Improvement for sewer may only be used to pay or defray a sewer SDC. When an Applicant utilizes the SDC credits stated in the SDC credit certificate, the City will note on the SDC credit certificate the new balance of the SDC credits and the effective date of the new balance. SDC credit certificates are not refundable for cash or any other thing of value, except as provided in subsection (6)(b) below.

- (a) SDC Credit Transfers. If the Applicant does not utilize the entire balance of the SDC credit, the Applicant may carry-forward the balance to a future project, or may transfer the SDC credit to another developer by submitting a written request with the SDC credit certificate to the City, which request must be signed by the Applicant and the other party seeking to obtain the SDC credits. If SDC credits are transferred to another party, the amount of the remaining SDC credits being transferred will be reduced by twenty-five (25) percent. The City will issue a new SDC credit certificate to the other party.

- (b) SDC Refund Check. If the City Manager requests that a developer complete a Qualified Public Improvement, the City may opt, in its sole discretion, to provide a refund of SDCs collected for the type of Qualified Public Improvement by issuing a check to the developer. Such a refund must be approved by the City Council if the refund exceeds one hundred thousand dollars (\$100,000).
- (c) SDC credit certificates are void and of no value if not redeemed with the City for payment of a SDC of the same type of Capital Improvement system for which the credit was issued within ten (10) years of the original date of issuance. Transfers of SDC credit certificates do not restart the ten (10) year term.

(7) SDC Credit Deadline. The Applicant must submit SDC credit confirmation documents pursuant to WC 11.100(4) to the Community Development Director no later than one hundred eighty (180) calendar days after acceptance of the Qualified Public Improvement by the City.

11.110 Notice

(1) The City will maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for any SDC. Written notice will be mailed to persons on the list at least ninety (90) calendar days prior to the first hearing to establish or modify a SDC. The methodology supporting the SDC shall be available at least sixty (60) calendar days prior to the first hearing to adopt or amend a SDC. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the City.

(2) The City may periodically delete names from the list if the name has been on the list for more than one (1) year, but at least thirty (30) calendar 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.

11.120 Segregation and Use of Revenue

(1) All funds derived from a particular type of SDC are to be segregated by accounting practices from all other funds of the City. That portion of the SDC calculated and collected on account of a specific facility system shall be used for no purpose other than that set forth in Section 11.050.

(2) The Finance Director shall provide the City Council with an annual accounting, by January 1 of each year, for SDCs showing the total amount of SDC revenue collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amount spent on each project funded, in whole or in part, with SDC revenue shall be included in the annual accounting.

11.130 Refunds

(1) Refunds shall be given by the Finance Director upon finding by the Community Development Director that there was a clerical error in the calculation of a SDC or may be given

in accordance with WC 11.100(6)(b).

(2) Refunds shall not be allowed for failure to timely claim a credit under Section 11.100.

11.140 Implementing Regulations; Amendments. The City Council delegates to the City Manager the authority to adopt necessary procedures to implement the provisions of this Chapter 11. All rules developed pursuant to that delegated authority shall be filed with the office of the City Manager and be available for public inspection.

11.150 Appeals; Procedure.

(1) A person challenging the propriety of an expenditure of SDC revenue may appeal the decision or the expenditure to the City Council by filing a written appeal petition with the City Manager, pursuant to Subsection (4) below. An appeal of an expenditure must be filed not later than two (2) years after the expenditure of the SDCs.

(2) A person challenging the propriety of the methodology adopted by the City Council pursuant to Section 11.040 may appeal the decision or the expenditure to the City Council by filing a written appeal petition with the City Manager, pursuant to Subsection (4) below. An appeal petition challenging the adopted methodology shall be filed not later than sixty (60) calendar days from the date of adoption of the methodology.

(3) A person challenging the calculation of a SDC must file a written appeal petition regarding the calculation of the SDC with the City Manager within ten (10) Business Days of assessment of the SDC. The ten (10) Business Day period shall be measured from the date the permit is issued pursuant to WC 11.080.

(4) Any person submitting an appeal petition pursuant to Subsections (1) through (3) above, must describe, with particularity, the basis for the appeal and include:

- (a) The name and address of the appellant;
- (b) The nature of the expenditure, methodology, or calculation being appealed;
- (c) The reason the expenditure, methodology, or calculation is allegedly incorrect; and
- (d) Detailed explanation, with supporting documentation, concerning what the correct determination of the appeal should be or how the correct calculation should be derived.

(5) If the appeal petition is untimely or fails to meet the requirements of Subsection (4) above, the appeal shall be automatically and summarily dismissed by the City Council without a hearing.

(6) If the appeal petition is timely filed and submitted in accordance with Subsection (4) above, the City Council shall order an investigation and direct that within sixty (60) calendar days of receipt of the petition a written report be filed by the Community Development Director recommending appropriate action. Within sixty (60) calendar days of

receipt of said report, the City Council shall conduct a hearing to determine whether the expenditure, methodology, or calculation was proper. The City Council shall provide notice and a copy of the report to the appellant at least fourteen (14) calendar days prior to the hearing. The appellant shall have a reasonable opportunity to present appellant's position at the hearing.

(7) The appellant shall have the burden of proof. Evidence and argument shall be limited to grounds specified in the petition. The City Council shall issue a written decision stating the basis for its conclusion and directing appropriate action to be taken.

(8) The City Council shall render its decision within thirty (30) calendar days after the hearing date, and the decision of the City Council will be final. The decision will be in writing, but written findings shall not be made or required unless the City Council, in its discretion, elects to make findings for precedential purposes. If the City Council determines there was an improper expenditure of SDC funds, the City Council shall direct that a sum equal to the misspent amount be deposited within one (1) year of the date of the decision to the account of the fund from which it was spent.

(9) Any legal action contesting the City Council's decision on the appeal must be filed within sixty (60) calendar days of the City Council's decision. Review of the City Council decision shall be by writ of review pursuant to ORS 34.010 to 34.100.

11.160 Prohibited Connection. No person may connect to the water or sewer systems of the City unless the appropriate SDC has been paid.

11.170 Penalty. Violation of Section 11.160 of this Chapter 11 constitutes a violation and is punishable by a fine not to exceed \$1,000 per day.

11.180 Severability. The provisions of this Chapter 11 are severable, and it is the intention of the City Council to confer the whole or any part of the powers herein provided for. If any clause, section, or provision of this Chapter 11 is declared unconstitutional or invalid for any reason, the remaining portion of this Chapter 11 shall remain in full force and effect and be valid as if such invalid portion had not been incorporated. It is hereby declared that the City Council intends that this Chapter 11 would have been adopted had such an unconstitutional provision not been included.

11.190 Classification. The City Council hereby determines that any charges imposed by this Section (WC 11.000 through WC 11.190) of Chapter 11 are not a tax subject to the property tax limitations of Article XI, Section 11(b), of the Oregon Constitution.

CITY LIEN DOCKET SEARCH

11.200 Fee for Search of City's Lien Docket.

(1) For each certificate of lien or non-lien of the City requested by anyone and issued by the City after first searching the City's Lien Docket to determine whether or not a lot, tract or parcel of real property located within the City is subject to any City lien, there shall be paid to the City a cost recovery fee determined by the City Manager. Such fee shall accompany the request to the City for the lien search or, at the discretion of the City, shall be invoiced to the

person, firm or corporation requesting the lien search upon delivery to the requesting party of the lien or non-lien certificate, payable within thirty (30) calendar days of the invoice date.

(2) Monthly utility bills that are shown to be in arrears may be reported on lien searches for subject property.

(3) All fees received by the City under the provisions of subsection (1) above shall be deposited in the General Fund of the City.

LAND USE AND SITE DEVELOPMENT

11.300 Land Use and Site Development Fees.

(1) The purpose of the fees and charges authorized by the provisions of 11.300(1) - 11.300(3) are to defray actual costs. All such fees and charges shall be paid in full at the time of application and shall be non-refundable, except in the case of a withdrawal prior to the publication of public notice. In cases of withdrawal prior to the publication of public notice, the application fee less any actual publication costs incurred and less fifteen percent (15%) of the fee for initial administrative processing shall be refunded.

(2) Staff Consulting - When considerable staff time is required to provide detailed/or special information to professional consultants, staff time and materials will be charged at actual cost. Procedures for these fees shall be established by the Planning Director and City Manager.

(3) The City Council shall adopt by Resolution, from time to time, fees and charges to defray the City's actual costs in reviewing and processing land use and development permit(s). Such fees and charges may also include actual costs incurred by the City in employing specialized consultants, including but not limited to Traffic Engineers and Wetland Biologists.

PARK USE

11.400 Park Use Fees. The City Council shall by Resolution, from time to time, adopt fees and charges for use of the City's parks and park facilities.