

- (a) Not located on or contiguous to property that is the subject of development approval (as used in this definition, “contiguous” means in a public way which abuts); 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.

- 5. **REIMBURSEMENT FEE:** A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 13.12.220.
- 6. **SYSTEM DEVELOPMENT CHARGE:** A reimbursement fee, a public improvement charge, or a combination thereof, assessed or collected at any of the times specified in Section 13.12.235. It shall not include connection or hook-up fees for sanitary sewers, storm drains, or water lines, since such fees are designed by the City only to reimburse the City for the costs for such connections. Nor shall the system development charge include costs for capital improvements which by City policy and state statute are paid for by assessments or fees in lieu of assessments for projects of special benefit to a property.

13.12.210 **PURPOSE**

The purpose of the system development charge is to impose an equitable share of the public costs of capital improvements upon those developments that create the need for or increase the demands on the facility system(s) to which those capital improvements are made.

13.12.215 **SCOPE**

The system development charge imposed by this Chapter is separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment, or fee otherwise provided by law or imposed as a condition of development. A systems development charge is to be considered in the nature of a charge for services rendered or facilities made available, or a charge for future services to be rendered or facilities to be made available in the future.

13.12.220 **SYSTEM DEVELOPMENT CHARGE ESTABLISHED**

- 1. Unless otherwise exempted by the provisions of this Chapter or other provisions of this Code or by state law, system development charges are hereby imposed upon all development within the City, and all development outside the boundary of the City that connects to or otherwise uses the sanitary sewer system, storm drainage system, water system, street system, or parks system of the City. The City Administrator is authorized to make interpretations of this Section, subject to appeal to the City Council.
- 2. System development charges for each type of capital improvement may be created through application of the methodologies described in Section 13.12.225.

13.12.225 **METHODOLOGY**

- 1. The methodology used to establish a reimbursement fee shall consider the cost of then-existing facilities, prior constructions by then-existing users, the value of unused capacity, rate-making principles employed to finance publicly-owned capital improvements, and other relevant factors. The methodology shall promote the objective that

future systems users shall contribute an equitable share of the cost of then-existing facilities that provide benefit to the future systems users.

2. The methodology used to establish the public improvement charge shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related to accommodate projected future growth and shall provide for a credit against the public improvement charge for the construction of any qualified public improvement, as outlined in Section 13.12.245.
3. [repealed]
4. Except when authorized in the methodology adopted under Section 13.12.225.1, the fees required by this Code which are assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision are separate from and in addition to the system development charge and shall not be used as a credit against such charge.
5. The methodologies used to establish the system development charges shall be adopted by resolution of the City Council. The specific system development charges may be adopted and amended concurrent with the establishment or revision of the system development charge methodology. The City Administrator shall review the methodologies established under this Section every three (3) years and shall recommend amendments, if and as needed, to the City Council for its action.
6. The formulas and calculations used to compute specific system development charges are based upon averages and typical conditions. Whenever the impacts of individual developments present special or unique situations such that the calculated fee is grossly disproportionate to the actual impact of the development, alternative fee calculations may be approved or required by the City Administrator. All data submitted to support alternate calculations under this provision shall be site specific. Major or unique developments may require special analyses to determine alternatives to the standard methodology.
7. Any appeal of the methodology for an alternative fee calculation approved by the City Administrator shall be filed with the City Council. When an appeal is filed challenging an adopted methodology for an alternative fee calculation the City Administrator shall prepare a written report and recommendation within twenty (20) working days of receipt of the appeal for presentation to the City Council at a regular meeting. The City Council shall, by resolution, approve, modify, or reject the report and recommendation of the City Administrator, or it may adopt a revised methodology by resolution, if required. Any legal action contesting the City Council's decision in the appeal shall be filed within sixty (60) days of the Council's decision.

13.12.230

COMPLIANCE WITH STATE LAW

1. The revenues received from the system development charges shall be budgeted and expended as provided by state law. Such revenues and expenditures shall be accounted for as required by state law. Their reporting shall be included in the City's annual financial report required by ORS Chapter 294.

2. The capital improvement plans required by state law as the basis for expending the public improvement charge components of system development charges revenues shall be
 - a. The Transportation System Plan
 - b. The Water Master Plan
 - c. The Wastewater Master Plan
 - d. The Stormwater Master Plan; and
 - e. The Parks and Recreation Master Planand amendments or updates enacted by the City Council.

13.12.235

COLLECTION OF CHARGE

1. System development charges are payable upon, and as a condition of, issuance of:
 - a. A building or plumbing permit for a development;
 - b. A permit for a development not requiring the issuance of a building permit; or
 - c. A permit or other authorization to connect to the water or sanitary sewer systems.

The system development charges shall be based upon the fee schedule in effect at the time the permit is issued.

2. If development is commenced or connection is made to the water system or the sanitary sewer system without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required, and it will be unlawful for anyone to continue with the construction or use constituting a development until the charge has been paid or payment secured to the satisfaction of the City Administrator.
3. Any and all persons causing a development or making application for the needed permit, or otherwise responsible for the development, are jointly and severally obligated to pay the charge, and the City Administrator may collect the charge from any of them. The City Administrator shall not issue any permit or allow connections described in Section 13.12.235.1 until the charge has been paid in full or until an adequately secured arrangement for its payment has been made, within the limits prescribed by a resolution to be adopted by the City Council.
4. A system development charge shall be paid in cash when due, or in lieu thereof the City Administrator may accept the delivery of a written agreement to pay if the written agreement is secured by collateral satisfactory to the City Administrator. The collateral may consist of mortgage or trust deeds of real property, or an agreement secured by surety bond issued by a corporation licensed by a state law to give such undertakings, or by cash deposit, letter of credit, or other like security acceptable to the City Administrator.
5. A person may apply to pay the system development charge in installments.

13.12.240

EXEMPTION

Any development for which a water or sewer system development charge was paid prior to the date of the adoption of this Chapter is exempt from all of the system development charges imposed in Section 13.12.220.

13.12.245

CREDITS

1. When development occurs that gives rise to a system development charge under Section 13.12.220, the system development charge for the existing use shall be calculated and if it is less than the system development charge for the proposed use, the difference between the system development charge for the existing use and the system development charge for the proposed use shall be the system development charge required under Section 13.12.220. If the change in use results in the system development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required; however, no refund or credit shall be given.
2. Limitations on Credits.
 - a. The limitations on the use of credits contained in this Section shall not apply when credits are otherwise given under Section 13.12.250.
 - b. A credit against the improvement fee portion of the system development charge shall be given for the cost of a qualified public improvement associated with a development.
 - c. The credit provided for in this Section shall be only for the improvement fee charged for the type of improvement being constructed, and credit for qualified public improvements may be granted only for the cost of that portion of such improvement that exceeds the City's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit.
 - d. The request for credit for a qualified public improvement shall be filed with the City Administrator, not later than 60 days after approval of the development by the City. The request shall include:
 1. A legal description of all land within the development;
 2. A legal description of any land proposed to be donated as part of the qualified public improvement;
 3. A written appraisal of the fair market value of donated lands which are a part of the qualified public improvement. The appraisal shall be prepared by a certified professional appraiser and based upon comparable sales of similar property between unrelated parties;
 4. A detailed written estimate of proposed construction costs for each qualified public improvement, prepared by a professional engineer. The estimate shall include separate costs for that portion of each improvement that exceeds the city's minimum standard facility size or capacity;

5. The signatures of all legal owners of the development property together with the designation of who is to receive any credits and the designated percentage for each, if more than one person or entity is designated.
 - e. If a qualified public improvement is located partially on and partially off the parcel of land that is the subject of the approval, the credit shall be given only for the cost of the portion of the improvement not attributable wholly to the development. The credit provided for by this Section shall be only for the public improvement charge charged for the type of improvement being constructed and shall not exceed the public improvement charge even if the cost of the capital improvement exceeds the applicable public improvement charge.
 - f. When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project in accordance with Section 13.12.245.4.
3. Applying the methodology adopted by resolution, the City Administrator shall grant a credit against the public improvement charge, the reimbursement fee, or both, for a capital improvement constructed as part of the development that reduces the development's demand upon existing capital improvements or the need for future capital improvements or that would otherwise have to be provided at City expense under then-existing City Council policies.
 4. In situations where the amount of credit exceeds the amount of the system development charge, the excess credit is not transferable to another development. However, the applicant and the City may enter into a written agreement for the credit to be provided to subsequent phases of the development or for the applicant to be reimbursed for portions of the credit due to the applicant from system development charges paid by other applicants for subsequent phases of the development. The terms of such an agreement shall not provide for future reimbursements more than ten (10) years after the construction of the qualified public improvement.
 5. Credit shall not be transferable from one type of capital improvement to another.

13.12.250

APPEAL PROCEDURES

1. As used in this Section, "working day" means a day when the general offices of the City are open to transact business with the public.
2. A person aggrieved by a decision required or permitted to be made by the City Administrator under Sections 13.12.205 through 13.12.245 or a person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or expenditure by filing a written request with the City Administrator for consideration by the City Council. Such appeal shall describe with particularity the decision or the expenditure from which the person appeals and shall comply with subsection 4 of this Section.
3. An appeal of an expenditure must be filed within two (2) years of the date of alleged improper expenditure. Appeals of any other decision must be filed within ten (10) working days of the date of the decision.

4. The appeal shall state:
 - a. The name and address of the appellant;
 - b. The nature of the determination being appealed;
 - c. The reason the determination is incorrect; and
 - d. What the correct determination should be.

An appellant who fails to file such a statement within the time permitted waives his/her objections and his/her appeal shall be dismissed.

5. Unless the appellant and the City agree to a longer period, an appeal shall be heard within thirty (30) days of the receipt of the written appeal. At least ten (10) working days prior to the hearing, the City Recorder shall mail notice of the time and location thereof to the appellant.
6. The City Council shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the appellant deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The City may present written or oral testimony at this same hearing. The rules of evidence as used by courts of law do not apply.
7. The appellant shall carry the burden of proving that the determination being appealed is incorrect and what the correct determination should be.
8. The City Council shall render its decision within fifteen (15) days after the hearing date and the decision of the City Council shall be final. The decision shall 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. Any legal action contesting the City Council's decision on the appeal shall be filed within sixty (60) days of the City Council's decision.

13.12.255 PROHIBITED CONNECTION

After the effective date of this Chapter, no person may connect any premises for service, or cause the same to be connected, to any sanitary sewer or water system of the City unless the appropriate system development charge has been paid or payment has been secured as provided in this Chapter.

13.12.260 ENFORCEMENT

Any service connected to the City water or sewer system after the effective date of this Chapter for which the fee due hereunder has not been paid as required or an adequate secured arrangement for its payment has been made is subject to termination of service under the City's utility disconnect policy.