

## Chapter 3.05 System Development Charge Program

### Section

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**3.05.010 Purpose.** This ordinance is intended to implement the authority provided by ORS 223.297 through 223.314 adopt and impose system development charges (SDC) on new development that create or increase the demand for public water, waste water treatment, stormwater, transportation, and parks and recreation services and facilities. The purpose of the SDC is to create a fund to pay for the installation, construction, extension and expansion of capital improvements in these public facilities and systems and to impose an equitable share of the cost of these capital improvements on the developments that create the need for, or increase the demand on them.

**3.05.020 Scope.** The SDC created and imposed by this ordinance 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 SDC is to be considered in the nature of a charge for service rendered, a service hookup charge or a charge for services to be rendered.

**3.05.030 Definitions.** For purposes of this Ordinance, the following definitions apply:

- A. "Capital improvements" means facilities or assets used for:
1. Water supply, treatment and distribution;
  2. Sanitary sewer collection, transmission, treatment and disposal;
  3. Drainage and flood control
  4. Transportation, including but not limited to streets, sidewalks, bike paths, street lights, street trees, mass public transportation, vehicle parking and bridges; or

5. Parks and recreation, including but not limited to mini-neighborhood parks, neighborhood parks, community parks and other recreational facilities.

B. “City Recorder” means the duly appointed City Recorder of the City of Mosier or that person’s designee.

C. “Development” means constructing a building or a structure, conducting a mining operation, making a physical change in the use or appearance of a structure or land, dividing land into two or more parcels (including partitions and subdivisions), and creating or terminating a right of access.

D. “Improvement fee” means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 4 of this ordinance.

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

F. “Parcel of land” means a lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision or other development ordinances.

G. “Qualified public improvement” means a capital improvement that is required as a condition of development approval, identified in the plan adopted pursuant to Section 8 of this ordinance, and is either:

1. Not located on or contiguous to the property that is the subject of development approval; or
2. Located in whole or in part on, or contiguous to, the property that is the subject of development approval and is required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

H. “Reimbursement fee” means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 4.

I. “Systems development charge” or “SDC” means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at any of the times specified in Section 9. It shall also include that portion of a water or sanitary sewer system connection charge that is greater than the amount necessary to reimburse the City for its average cost of inspection and installing connections with water and sanitary sewer facilities. “Systems development charge” does not include fees assessed or collected as

part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision. An SDC imposed under this ordinance is also in addition to any connection fees that may be charged for the connection to a public service or facility.

**3.05.040 Systems Development Charge Established.**

A. SDCs for each type of capital improvement shall be established and may be revised from time to time by resolution of the council. The resolution shall set the amount of the charge, the type of permit to which the charge applies, the methodology used to set the amount of the charge, and if the charge applies to a geographic area smaller than the entire city, the geographic area subject to the charge.

B. Unless otherwise exempted by the provisions of this ordinance or any other applicable local or state law, a SDC is hereby imposed upon all development within the City, and upon all development outside the boundary of the City that connects to, or otherwise uses, the water, sanitary sewer, drainage and flood control, transportation or parks and recreation facilities of the city. SDCs shall be due and payable at the point in time at which the development imposes new or increased demand upon these public improvements or upon issuance of a building permit, whichever occurs first.

**3.05.050 Methodology.**

A. The methodology used to establish the reimbursement fee shall be based on ratemaking principles employed to finance publicly owned capital improvements, prior contributions by then-existing users, gifts or grants from federal or state government or private persons, the value of unused capacity available to future system users or the cost of the existing facilities, and other relevant factors identified by the City Council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities and shall be available for public inspection.

B. The methodology used to establish the improvement fee shall demonstrate consideration of the projected cost of capital improvements identified in the plan and list adopted pursuant to Section 8 that are needed to increase the capacity of the systems to which the fee is related and for which the need for increased system capacity will be required to serve the demands placed on the system by future users. Improvement fees shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.

C. The methodology shall also provide for a credit as authorized in Section 11.

D. Except when authorized in methodology adopted under subsection 5C, any fees imposed or required to be paid, 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 SDC and shall not be used as a credit against an SDC.

E. The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be adopted by resolution by the Council.

F. After the effective date of this ordinance, the City shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any SDC. Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a SDC, and the methodology supporting the adoption or amendment shall be available at least 60 days prior to the first hearing to adopt or amend. The failure of a person on the list to receive a notice that was mailed shall not invalidate the City's subsequent action. The City may periodically delete names from the list, but at least 30 days prior to removing a name from the list the City must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the SDC methodology if the change in amount is based on a change in cost of materials, labor or real property applied to projects or project capacity as set forth on the list adopted pursuant to Section 8 or the periodic application of one or more specific cost indices published by a recognized organization or agency and is incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution, or order.

### **3.05.060 Authorized Expenditures.**

A. Reimbursement fees. Reimbursement fees shall be applied only to capital improvements (and not operating expenses) associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

B. Improvement Fees.

1. Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for the 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.
2. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the city pursuant to Section 8.
3. Notwithstanding subsections 6(B)(1) and (2), SDC revenues may be expended on the costs of complying with the provisions of subsections 6(B)(1), including the costs of developing systems development charge methodologies and providing an annual accounting of systems development charge expenditures.

**3.05.070 Expenditure Restrictions.** SDCs shall not be expended for:

A. Costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements; or

B. Costs of the operation or routine maintenance of capital improvements.

**3.05.080 Capitol Improvement Plan.** The Council shall adopt a capital improvement plan that:

A. Lists the capital improvements that may be funded with improvement fee revenues;

B. Lists the estimated cost, and percentage of costs eligible to be funded with revenues from the improvement fee for each improvement; and

C. Describes the process for modifying the plan. If a SDC will be increased by a proposed modification of the list to include a capacity increasing capital improvement, the City shall provide, at least 30 days prior to the adoption of the modification, notice of the proposed modification to the persons who have requested written notice under Section 5. The City shall hold a public hearing if a written request for a hearing on the proposed modification is received within seven days of the date the proposed modification is scheduled for adoption.

**3.05.090 Collection of Charge.**

A. The SDC is payable upon issuance of:

1. A building or construction permit of any kind, including any permit or permits issued in connection with the set-up or installation of any trailer, mobile or manufactured home;
2. A development permit;
3. A development permit for development not requiring the issuance of a building permit;
4. A permit to connect to the water system;
5. A permit to connect to the sanitary sewer system;
6. A permit to connect to the drainage and flood control system; or
7. A permit to connect to the transportation system.

B. If development is commenced or connection is made to the water, sanitary sewer, drainage and flood control or transportation systems without an appropriate permit, the SDC shall be immediately due and payable upon the earliest date that a permit was required.

C. The City Recorder shall collect the applicable SDC from the person responsible for or receiving the benefit of the development in accordance with subparagraph A above. The City Recorder 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 10, or unless arrangements for payment of the charge, under such terms as the City Recorder deems reasonable, have been made, pursuant to subsection D, which follows.

D. The obligation to pay the unpaid SDC and interest thereon shall be secured by property, bond, deposits, letter of credit or other security acceptable to the City Recorder. The net value of security accepted, excluding liens and encumbrances thereon, must be at least double the amount of the SDC secured thereby.

E. If the SDC is not paid upon issuance of the applicable permit, and the applicant chooses to pay the charge in installments and secure the obligation with security acceptable under subsection D above, then there shall be added to the amount owing the following:

1. Interest on the obligation at the prevailing state statutory rate of interest;
2. All costs associated with processing the particular form of security, such as title insurance, escrow fees, recording costs, collection escrow costs and/or any other expense associated with the City accepting such security;
3. Any and all costs, as determined by the City Recorder, incurred in establishing payment schedules and administering the collections process;
4. When the charge is secured by bond pursuant to ORS 223.205--223.295, any and all costs associated with administering the bond assessment program and issuing the bonds, as determined by the City Recorder;
5. The intent of this subsection E is to recognize that the payment of an SDC by installments increases the administrative expense to the City. It is the intent of this subsection to shift that added expense to the applicant, so that the City will not lose SDC revenue by accepting installment payments on such charges. Subject to the provisions of subsection 9(E), all costs added to the SDC will be determined by the City Recorder.

### **3.05.100 Exemptions.**

A. The following are exempt from SDC:

1. Additions to single-family dwellings that do not constitute the addition of a dwelling unit. Dwelling unit means any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking and sanitation;
2. An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the system to which the systems development charge applies;

B. Any enlargement or change and any new connection or utilization of the system to which a SDC applies shall not be exempt.

### **3.05.110 Credits.**

A. A SDC shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given in an amount equal to the existing SDC as applied to the pre-existing type and level use. The credit so computed shall not exceed the calculated SDC. No refund shall be made on account of such credit.

B. An improvement fee credit shall be given for the cost of a qualified public improvement associated with a development, subject to the following:

1. Such credit shall be only for the improvement fee charged for the type of improvement being constructed, and credit for qualified public improvements under Section 3(G) 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 property or project. The applicant shall have the burden of demonstrating that a particular improvement qualifies as a Section 3(G) qualified public improvement.
2. 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, if any.
3. Credits shall be used within 10 years from the date the credit is given, after which the credit shall expire, and be null and void, without the need for the City to take any further action.
4. Credit shall not be transferable from one development to another nor from one type of capital improvement to another.

### **3.05.120 Segregation and Use of SDC Revenue.**

A. 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 those set forth in Section 6.

B. The City Recorder shall provide the City Council with an annual accounting, based on the City's fiscal year, for SDCs showing the total amount of systems development charge revenues collected for each type of facility and the projects funded from each account.

**3.05.130 Appeals and Procedure.** A person aggrieved by a decision required or allowed to be made by the City Recorder under this ordinance or a person challenging the propriety of an expenditure of SDC revenues may appeal the decision or the expenditure to the City Council by filing a written request with the City Recorder describing with particularity the decision of the City Recorder or the expenditure from which the person appeals.

A. Appeal of an Expenditure: An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure. The Council shall determine whether the City Recorder's decision or the expenditure is in accordance with this ordinance and the provisions of ORS 223.297 to 223.314 and may affirm, modify or overrule the decision. If the Council determines that there has been an improper expenditure of SDC revenues, the Council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent.

B. Appeal of an SDC Methodology: Legal action challenging the methodology adopted by the Council pursuant to Section 5 shall not be filed later than 60 days after the date of adoption, and shall be contested according to the procedure set forth in ORS 34.010 to 34.100, and not otherwise.

C. Appeal of an SDC Calculation or Credit Determination: Legal action challenging an SDC calculation or a SDC credit determination shall be filed with the City Recorder no later than 14 days following the date of the challenged SDC calculation or SDC credit determination. Only the applicant may appeal an SDC calculation or SDC credit determination, and the City Council shall determine whether the Recorder's decision with regard to the SDC calculation or SDC credit determination was consistent with the requirements of this ordinance, the applicable methodology and ORS 223.297 through 223.314. The appellant has the burden of demonstrating with particularity, based on credible professional reports, that the rate established in the applicable SDC methodology does not accurately reflect this particular development's impact on the City's public facility at issue. With regard to a challenge to an SDC credit determination, the appellant has the burden of providing credible cost estimates, certified by an appropriate professional, demonstrating that the qualified public improvement offered for credit is in fact a "qualified public improvement" and has a higher value or larger increment of over-capacity than the City Recorder had determined.