

ORDINANCE NO. 867

AN ORDINANCE ESTABLISHING SYSTEM DEVELOPMENT CHARGES FOR CAPITAL IMPROVEMENTS FOR WASTEWATER, TRANSPORTATION, DRAINAGE, FLOOD CONTROL AND PARKS; SETTING FORTH STANDARDS AND CRITERIA; PROVIDING EXEMPTIONS AND CREDITS; ESTABLISHING AN APPEAL PROCEDURE; AND DECLARING AN EMERGENCY

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. Purpose. The purpose of the system development charge is to impose all, or a portion of the cost of capital improvements for wastewater treatment or disposal, transportation, drainage, flood control and parks upon those developments that create the need for or increase the demands on capital improvements.

Section 2. Scope. The system development charge imposed by this ordinance is separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development.

Section 3. Definitions. For purposes of this ordinance, the following mean:

"Bedroom". A private habitable room in a residential dwelling unit available for use for sleeping purposes, but not including a kitchen, bathroom, or utility room, first living room, and dining room connected directly with a kitchen, toilet compartment and shower room. This definition is intended to include, as bedrooms, spaces even though labeled on plans by some other names.

"Capital Improvements". Facilities, land acquisitions or assets used for:

1. Wastewater collection, transmission, treatment and disposal;
2. Drainage and flood control;
3. Transportation; or
4. Parks and recreation,

exclusive of normal costs of operation or routine maintenance.

"Development". Conducting a building or 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.

"Dwelling Unit". One or more rooms designed for occupancy by one family and not having more than one cooking facility.

"Improvement Fee". 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.

"Land Area". 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.

"Owner". The owner or owners of record title or the purchaser or purchasers under a recorded sales agreement, and other persons having an interest of record in the described real property.

"Parcel of Land". 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.

"Parkland". Public or private land set aside to provide space and facilities for people to engage in both active and passive recreation.

"Qualified Public Improvements". A capital improvement that is:

1. Required as a condition of residential development approval;
2. Identified in the plan adopted pursuant to Section 9 of this ordinance; and
3. Not located on or contiguous to a parcel of land that is the subject of the residential development approval.

"Reimbursement Fee". A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 4 of this ordinance.

"System Development Charge". A reimbursement fee, an improvement fee, a dedication or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit at the time of a plat sign-off, or at the time of connection to the capital improvement. "System development charge" includes that portion of a sewer system connection charge that is greater than the amount necessary to reimburse the City for its average cost of inspecting and installing connection with sewer facilities. "System development charge" does not include fees assessed or collected as a part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with other requirements or conditions imposed by a land use decision, except parkland.

Section 4. System Development Charge Established.

A. System development charges shall be established and may be revised by resolution of the Council.

B. Unless otherwise exempted by the provisions of this ordinance or other local or state law, a system development charge is hereby imposed upon all parcels of land within the City, and upon all lands outside the boundary of the City that connect to or otherwise use the sewer facilities or storm sewer facilities of the City.

Section 5. Methodology.

A. The methodology used to establish the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by the then-existing users, the value of unused capacity, rate-making principals employed to finance publicly owned capital improvements, and other relevant factors identified by the 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.

B. The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related.

C. The methodology used to establish system development charges, improvement fee, or reimbursement fee shall be established and may be revised by resolution of the Council.

D. The park and recreational space development charge as established by resolution of the Council, shall be updated at least every five (5) years. It has been determined that the Construction Cost Index (CCI) is the accepted index used in adjusting historical costs for parkland improvements to establish the current cost for remaining Canby Master Park Plan Capital Improvements. A final determination of the current cost for Canby Master Park Plan Capital Improvements shall be made by the City Council based upon the current CCI and information submitted by the City staff.

Section 6. Authorized Expenditures.

A. Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

B. (1) Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the capital improvements funded by improvement fees must be related to demands created by development.

(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 9 of this ordinance.

C. Notwithstanding subsections (1) and (2) of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.

Section 7. Parkland Development Charges.

A. Fees or land dedication required. An applicant for a residential building permit, a residential subdivision, a residential planned unit development (PUD), a residential mobile or manufactured home park, a residential partition or the addition of more bedrooms to an existing dwelling, shall be required to contribute cash for the development and acquisition of parks, or dedicate lands for park development, or a combination of both at the option of the City. All land considered or required for parkland dedication shall be based on the Canby Master Park Plan Map, referencing areas planned for park development and upon the standards and criteria in Subsection "B" below. The exact amount of the cash contribution shall be fixed and due at the time of the issuance of the building permit by the Building Official. The cash contribution will be assessed in accordance with the most current rate setting resolution.

B. Standards and Criteria for Parkland Dedication. Lands shall be selected by the City for reservation as park and recreation areas in accordance with all of the following priorities:

1. City Comprehensive Plan.
2. City Master Park Plan.
3. Conveniently located areas where recreation opportunities can be created to best serve neighborhood needs.
4. Property is adequate as to size, location and topography to satisfy the needs of the City's residents and not unduly impair the builders ability to develop the property.
5. Lands that coordinate well with surrounding jurisdictions' park and open space plans.

6. In no case shall land dedication requirements be in excess of 15% of the gross land area of the development without the agreement of the developer.

The decision of whether land is acceptable for use by the public for park and recreation purposes is to be made by the City Planning Commission based on the findings and planning set forth in the Canby Master Park Plan. Formal acceptance of parks and recreation lands required to be dedicated shall be by the City Council following any land use hearing and recommendation by the City Planning Commission. In all cases, except for PUD's, actual dedication of land shall occur prior to final plat sign-off. Dedication of land in the case of a PUD shall occur, by separate instrument, prior to commencement of construction of the project.

If land proposed for dedication to the public does not meet the criteria set forth in the Canby Master Park Plan, then at the option of the City, a park system development charge shall be required.

Once calculated, the dedication of land shall remain the same, and not change, unless the original plans are altered.

C. Procedures for Land Dedication. Development applications shall include a scaled plan which identifies the sites proposed to be dedicated as park land.

Parkland and recreational sites shall be clearly and accurately depicted on the final plat map and documented in the tax lot files. All phased residential subdivisions and planned unit developments shall show any proposed parkland for dedication on the overall master plan plat for the proposed development in addition to other anticipated public facilities. Such master plan as finally approved and accepted by the Planning Commission is considered binding on all future phases. Any requests by the developer to change parkland dedication for future phases must be brought back to the commission for approval. In the case of phased development where separate plats are recorded, land dedication shall occur prior to final platting of forty percent (40%) of the gross land area.

Tentative approval of parkland boundaries shall be made by the hearing body at the time of the public hearing on the development proposal.

All sites shall be dedicated in a condition ready for full service including electrical, water, sewer and streets as is applicable to the location of the site or as is acceptable to the City. Improvements to any specific site may be delayed until completion of necessary infrastructure and/or improvements to adjacent sites can be made at the discretion of the City. In case of phased development, sites may be improved as each phase is developed rather than at the time of original dedication. An environmental audit sufficient to meet DEQ requirements shall be required on all parkland proposed to be dedicated to the City prior to acceptance. The cost of such an audit shall be split equally between the City and the developer.

All lands dedicated to the City for parkland and recreational space shall be conveyed to the City either by warranty deed or be depicted on the final recorded plat as so dedicated. The conveyer shall be responsible for payment of all title searches, real estate taxes, and recording fees at the time of conveyance.

D. Options for Meeting System Development Charge Requirements. Any land proposed or required for parkland dedication, including improvements thereon, shall be appraised at its fair market value at the time it is dedicated to the City. The cost of the appraisal shall be divided equally between the developer and the City. This value of the property shall be credited toward the system development charge calculated for the development with the difference being the cash owed the System Development Improvement Fund. In no case may the City require more land of the developer than would be required if the entire amount of the system development charge was paid in cash. Similarly, no developer may dedicate parkland above the valuation required by the system development charge so that the City would be required to refund money to the developer unless mutually agreed upon by the City and developer.

If no parkland dedication is required or requested by the City, the full amount of the

park system development charge will be assessed and is due and payable at the time the first building permit(s) is/are issued.

Section 8. Expenditure Restrictions.

A. System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

B. System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

Section 9. Improvement Plan. The Council shall adopt a plan that:

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

B. Lists the estimated cost and time of construction of each improvement.

Section 10. Collection of Charge.

A. The system development charge is payable upon issuance of:
1. A building permit; or
2. A permit to connect to the sewer system.

B. If no building or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.

C. If development is commenced or connection is made to the sewer system without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.

D. The City Treasurer shall collect the applicable system development charge when a permit that allows building or development of a parcel is issued or when a connection to the or sewer system of the City is made.

E. The Building Official 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 12 of this ordinance.

Section 11. Delinquent Charges; Hearing.

A. When, for any reason, the system development charge has not been paid, the City Treasurer shall report to the Council the amount of the uncollected charge, the description of the real property to which the charge is attributable, the date upon which the charge was due, the name of the owner of the subject property, and/or the name of the person responsible for incurring the charge if different from the owner.

B. The City Council shall schedule a public hearing on the matter and direct that notice of the hearing be given to both the owner and the person responsible for incurring the charge if different from the owner with a copy of the City Treasurer's report concerning the unpaid charge. Notice of the hearing shall be given either personally or by certified mail, return receipt requested, or by both personal and mailed notice, and by posting notice on the parcel at least ten (10) days before the date set for the hearing.

C. At the hearing, the Council may accept, reject, or modify the determination

of the City Treasurer as set forth in the report. If the council finds that a system development charge is unpaid; or uncollected, it shall direct the City Recorder to docket the unpaid and uncollected system development charge in the lien docket. Upon completion of the docketing, the City shall have a lien against the described land for the full amount of the unpaid charge, together with interest at the then existing legal rate per annum and with the City's actual cost of serving notice of the hearing on the owners. The lien shall be enforceable in the manner provided in ORS Chapter 223.

Section 12. Exemptions.

A. Structures and uses established and existing on or before October 16, 1991, are exempt from a system development charge, except sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the sewer system.

B. Additions to single-family dwellings that do not constitute the addition of another bedroom are exempt from all portions of the system development charge.

C. An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge.

D. A project financed by City revenues is exempt from all portions of the system development charge.

E. With City Council approval, housing specifically limited in occupancy to "Very Low Income" persons or families, as defined by the most recent HUD (Federal Housing and Urban Development Department) criteria.

Section 13. Credits.

A. A system development charge shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given for the computed system development charge to the extent that prior structures existed and services were established on or after October 16, 1991. The credit so computed shall not exceed the calculated system development charge. No refund shall be made on account of such credit.

B. A credit shall be given for the cost of a qualified public improvement associated with a residential development. If a qualified public improvement is located partially on and partially off the parcel that is the subject of the residential development approval, the credit shall be given only for the cost of the portion of the improvement not located on or wholly contiguous to the property. The credit provided for by this subsection shall be only for the improvement fee charged for the type of improvement being constructed and shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee.

C. Credit shall not be transferable from one development to another except in compliance with standards adopted by the City Council.

D. Credit shall not be transferable from one type of capital improvement to another.

E. Where a substantial private park and recreational area is provided in a

proposed residential development and such space is to be privately owned and maintained by the future residents of the development, partial credit, not to exceed fifty percent (50%), may be given against the system development charge if the Planning Commission finds that it is in the public interest to do so and that all the following standards are met:

1. That yards, court areas, and setbacks required to be maintained by the zoning and building ordinances and regulations shall not be included in the computation of such private parkland.
2. That the private ownership and maintenance of the parkland is adequately provided for by recorded written agreement, conveyance or restrictions.
3. That the use of the private parkland is restricted for park and recreational purposes by recorded covenant, which runs with the land in favor of the future owners of property and which cannot be defeated or eliminated without the consent of the City or its successor.
4. That the proposed private parkland is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location.
5. That facilities proposed for the parkland are in substantial accordance with the provisions of the Canby Master Park Plan and,
6. That the parkland for which credit is given is a minimum of two acres and provides a minimum of three (3) of the local park basic elements listed below, or a combination of such and other recreational improvements that will meet the specific recreation park needs of the future residents of the area:

<u>CRITERIA LIST</u>	<u>ACRES</u>
Children's play apparatus area	.50-.75
Landscape park-like and quiet areas	.50-1.00
Family picnic area	.25-.75
Game court area	.25-.50
Turf playfield	1.00-3.00
Recreation center building	.15-.25
Swimming pool (42'x75') with adjacent deck & lawn area	.25-.50
Recreation community gardening	.15-.25

Before credit is given, the Planning Commission shall make written findings that the above standards are met.

Section 14. Segregation and Use of Revenue.

A. All funds derived from a particular type of system development charge are to be segregated by accounting practices from all funds of the City. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in Section 6 of this ordinance.

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

Section 15. Appeal Procedure

A. A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the City Council by filing a written request with the City Administrator describing with particularity the decision of the City Administrator and the expenditure from which the person appeals. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure.

B. After providing notice to the appellant, the Council shall determine whether the City Administrator'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 system development charge 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.

C. A legal action challenging the methodology adopted by the Council pursuant to Section 5 of this ordinance shall not be filed later than sixty (60) days after the adoption.

Section 16. Prohibited Connection. No person may connect to the sewer system of the City unless the appropriate system development charge has been paid or the installment payment method has been applied for and approved.


Section 17. Penalty. Violation of section 16 of this ordinance is punishable by a fine not to exceed \$2,500.00.

Section 18. Construction. The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this ordinance.

Section 19. Severability. The invalidity of a section or subsection of this ordinance shall not affect the validity of the remaining sections or subsection.

Section 20. Emergency Clause. In order to better promote the safety, health, and welfare of the citizens of Canby and to provide immediate uniform regulations for its citizens, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its final reading and passage by the Canby City Council.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, October 2, 1991, and ordered posted as provided by the Canby City Charter and scheduled for second reading and action of the Canby City Council at a regular meeting thereof on Wednesday, October 16, 1991, commencing at the hour of 7:30 p.m., in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.



Marilyn K. Perrett
City Recorder

ENACTED by the Canby City Council at a regular meeting thereof on October 16, 1991, by the following vote:

YEAS 6 NAYS 0


Shawn Carroll, Mayor

ATTEST:


Marilyn K. Perrett, City Recorder