

ORDINANCE NO. 574 -O

ORDINANCE OF THE CITY OF TROUTDALE REGARDING SYSTEM DEVELOPMENT CHARGES; REPEALING ORDINANCE NO.'s 566-0 and 530-0 SECTIONS 1 THROUGH 12; REPEALING TROUTDALE MUNICIPAL CODE TITLE 13, CHAPTER 10 SECTIONS 010, 020, 030, 040, 050, 060, 070, 080, 090, 100, 110, 120 IN ITS ENTIRETY.

WHEREAS the 1989 Session of the Oregon Legislature has enacted new state law relating to system development charges (ORS 223.297 through 223.314); and

WHEREAS the City's system development charges used after July 1, 1991 must meet certain requirements incorporated in the state law; and

WHEREAS the City of Troutdale has undertaken a complete review of its system development charges in order to insure its compliance with state law; and

WHEREAS it is important to the City that costs of growth are equitably and rationally shared by new growth and development activities.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE THAT:

**ARTICLE I
DEFINITIONS**

Section 1. The following words and phrases, as used within this ordinance have the following definitions and meanings:

- A. Capital Improvement(s). Public facilities or assets used for any of the following:
1. Water supply, treatment and distribution;
 2. Sanitary sewers, including collection, transmission and treatment;
 3. Storm sewers, including drainage and flood control;
 4. Transportation, including but not limited to streets, sidewalks, bike lanes and paths, street lights, traffic signs and signals, street trees, public transportation, vehicle parking, and bridges; or

5. Parks and recreation, including but not limited to mini-neighborhood parks, neighborhood parks, community parks, public open space and trail systems, building, courts, fields and other like facilities.

- B. Change in Use. The conversion, re-construction or rehabilitation or modification of a use or structure to accommodate a different use from that previously established. [For purposes of this Ordinance, SDC's will only be imposed upon changes of use which increase demand upon system capacity.]

- C. City Administrator. The City Administrator of the City of Troutdale or his/her duly appointed deputy, agent or representative.

- D. Community Development Director. The Director of the Department of Community Development as appointed by the City Administrator or the Director's duly appointed deputy, agent or representative.

- E. Connection. The establishment of service to a public system, where an impact to the system is generated and a service available.

- F. Development. Any man-made change to improved or unimproved real estate, including but not limited to construction, installation or change of a building or other structure, land division, storage on the land, tree cutting, drilling and site alteration such as that due to land surface mining, dredging, grading, paving excavation or clearing.

- G. ERU. Equivalent Residential Unit shall mean a unit to measure the use of a public facility or system equal to that use by a single family detached residential unit.
 1. Parks & Recreation ERU. A unit of measure of the city's Parks and Recreation system equal to that of a single family detached residential dwelling unit.

 2. Sewer ERU. The unit of wastewater which incurs the same cost for operation and maintenance as the average liquid volume and biological solids and chemical concentration as that of domestic waste discharged from a single family residence in the wastewater treatment service area.

 3. Street ERU. The average weekday vehicle trip-ends for single-family detached housing as determined and set forth by the Institute of Transportation Engineers, Trip Generation Report, 1991, or most recent edition. A copy of the "Trip Generation Standards" is kept on file and available for review at the City Recorder's office.

4. Storm Water ERU. The unit of storm water which incurs the same cost for operation and maintenance as the average liquid volume and biological, solids and chemical concentration as that of storm water discharged from a single family residential lot in the designated storm water collection area.
 5. Water ERU. A unit of water which incurs the same cost for production, storage, and maintenance as the average volume of water used in a single family residence in the water service area.
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- H. Non-conforming Use. Any use of land or structure which legally existed on the effective date of this ordinance without being in complete compliance with ordinances of the City of Troutdale, Multnomah County or the State of Oregon.
 - I. Operation & Maintenance. Those functions that result in expenditures during the useful life of the system for materials, labor, utilities and other such items which are necessary for the management and upkeep for which such facilities were designed and constructed.
 - J. Owner. The owner of record of real property as shown on the tax rolls of Multnomah County, or a person purchasing a piece of property under contract. For the purposes of this title, in terms of violations and binding agreements between the City and the owner, "owner" also means a leaseholder, tenant or other person in possession or control of the premises or property at the time of agreement, violation of agreement, or the provisions of this title.
 - K. Parks and Recreation System. Any land, structure, easement or accessway open to the public for the purpose of active and/or passive recreational use. This system shall include, but not necessarily be limited to, all parks, greenways, open spaces, preserves, reservations, pathways, bikeways, etc.
 - L. Permit. An official document or certificate issued by the Director of Community Development authorizing performance of a specific activity.
 - M. Pre-existing Use. Any use of land or structure which legally exists upon the date of adoption of this ordinance.
 - N. Public Improvement Charge. A fee for costs associated with capital improvements to be constructed after the effective date of this ordinance. This term shall have the same meaning as the term "improvement fee" as used in ORS 223.297 through 223.314.
 - O. Public Works Director. The Director of the Department of Public Works as appointed by the City Administrator or the Director's duly appointed deputy, agent or representative.

- P. Qualified public improvements. A capital improvement that is:
1. Required as a condition of development approval;
 2. Identified in an adopted capital improvement plan, pursuant to subsection; and
 3. Not located on or contiguous to a parcel of land that is the subject of the development approval.
- Q. Reimbursement fee. A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted, pursuant to Article IV.
- R. Renewal & Replacement. Expenditures required to maintain the current system capacities, integrity, safety and service level standards for which said systems were designed and constructed.
- S. Reserves. The right of an individual to connect to a public system for a specified charge under conditions established by previously imposed ordinances of the City of Troutdale.
- T. Sanitary Sewer System. Any device and system for the collection, storage, treatment, recycling, reclamation, treatment and discharge of all wastes in compliance with local, state, and federal requirements and includes sewerlines, manholes, treatment, sludge disposal and pumping facilities, etc.
- U. Storm Water System. Any device and system for the collection, detention, retention, treatment, recycling, reclamation, pumping and discharge of all storm water collected in compliance with local, state and federal requirements, and includes storm sewer lines, ditch systems, culverts, detention/retention basins, catch basins, manholes, treatment, grit disposal, pump facilities, etc.
- V. Street System. Any legally established right-of-way together with associated pavement, sidewalks, crosswalks, handicap ramps, curbs, gutters, ditches, et cetera, designed primarily for vehicular traffic but also to accommodate bicycle and pedestrian circulation features as well.
- W. Substantial Change. Any change in use or occupancy type and/or any increase in measured use equal to or greater than 10% over the last established value(s). If no previous use and value had been established, "Substantial Change" shall mean any impact on the public facilities addressed in this ordinance.

- X. Systems development charge. A reimbursement fee, a public improvement charge or a combination thereof assessed or collected at any of the times specified in Article VII. It shall not include connection or hook-up fees for water lines. Such fees are designed by the City only to reimburse the City for actual or average costs for such connections. Nor shall the Systems Development Charge (SDC) 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.
- Y. Trip ends. The total of all trips entering plus all trips leaving a designated land-use or building type over a given period of time.
- Z. Useful Life. The estimated period for which the system(s) was designed and/or expected to be operated.
- AA. Water System. All facilities and appurtenances necessary to provide potable and fire flow water requirements including wells, pumps, reservoirs, transmission and distribution lines, valves, pressure regulating and reducing facilities, fire hydrants, etc.

ARTICLE II PURPOSE

Section 1. The purpose of the SDC 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 capital improvements.

ARTICLE III SCOPE

Section 1. The system development charge as 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 systems development charge is to be considered in the nature of a charge for service rendered or facilities made available, or a charge for future services to be rendered on facilities to be made available in the future.

**ARTICLE IV
SYSTEMS DEVELOPMENT CHARGE ESTABLISHED**

Section 1. Unless otherwise exempted by the provisions of this chapter or other local or state law, a systems development charge is hereby imposed upon all new development within the City, and all new 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 park and recreation system of the City. The City Administrator is authorized to make interpretations of this Section subject to appeal to the City Council.

Section 2. Systems development charges for each type of capital improvement may be created through application of the methodologies described in Article V of this ordinance. The amounts of each system development charge shall be adopted initially by Council resolution. Changes in the amounts shall also be adopted by resolution, excepting those changes resulting solely from inflationary cost impacts. Inflationary cost impacts shall be measured and calculated each March 1st. by the City Administrator 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. All calculations shall be carried out to the hundredths place. A final product ending in .49 or less shall be rounded down to the nearest dollar, .50 or more up to the next dollar.

**ARTICLE V
METHODOLOGY**

Section 1. The methodology used to establish a reimbursement fee shall consider the cost of then-existing facilities, prior contributions 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.

Section 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 and shall provide for a credit against the public improvement charge for the construction of any qualified public improvement.

Section 3. The methodology may also provide for a credit as authorized in Article IX.

Section 4. Except when authorized in the methodology adopted under Article V, Section 1, the fees required by this Ordinance 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 systems development charge and shall not be used as a credit against such charge.

Section 5. The methodologies used to establish the systems development charge shall be adopted by resolution of Council. The specific systems development charge may be adopted and amended concurrent with the establishment or revision of the systems development charge methodology. The City Administrator shall review the methodologies established under this section periodically and shall recommend amendments, if and as needed, to the Council for its action.

Section 6. The formulas and calculations used to compute specific SDC's are based upon averages and typical conditions. Whenever the impact 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 under prescribed administrative procedures. All data submitted to support alternate calculations under this provision shall be specific to the site and development under consideration. Major or unique developments may require special analyses to determine alternatives to the standard methodology.

ARTICLE VI COMPLIANCE WITH STATE LAW

Section 1. The revenues received from the systems 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 Comprehensive Annual Financial Report required by ORS Chapter 294.

Section 2. The capital plan for capital improvements required by state law as the basis for expending the public improvement charge component of systems development charge revenues shall be the Troutdale Capital Improvements Plan (CIP), adopted facilities plans, the capital improvement plan of any other governmental entity with which the City has cooperative agreement for the financing of commonly-used public improvements by the collection of system charges, provided such plans conform with State Law and are consistent with the City's CIP and the City's Comprehensive Plan.

ARTICLE VII COLLECTION OF CHARGE

Section 1. The systems development charge is payable upon, and as a condition of, issuance of:

- A. A permit for new construction;
- B. A permit for the renovation, rehabilitation, alteration or modification of a structure or use; or
- C. A permit allowing connection to the water, sanitary sewer or storm drainage system(s).

Section 2. If development is commenced or connection is made to the water system, sanitary sewer system or storm sewer system without an appropriate permit, the systems 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.

ARTICLE VIII EXEMPTIONS

Section 1. The following, are exempt from the systems development charge imposed in Article IV:

- A. Development which legally existed on the effective date of this ordinance. ERU values will be calculated for pre-existing uses as they were legally established on the effective date of this ordinance.
- B. Any change in use, conversion, reconstruction or rehabilitation, alteration, addition or replacement that does not increase the use of capital improvements.

Section 2. SDC's will be imposed upon any change in use, conversion, reconstruction, rehabilitation, alteration addition or replacement which does increase the use of capital facilities. The SDC will be based only upon the increased impact on the use of public facilities.

ARTICLE IX CREDITS

Section 1. As used in this section and in the definition of "Qualified public improvements" in Article 1, the word "contiguous" means that part of a public way which abuts the development parcel.

Section 2. An applicant for a building permit is eligible for credit against the SDC for constructing a qualified capital improvement. A qualified public improvement means one that meets all of the following criteria:

- A. Required as a condition of development approval by the Planning Commission or City Council; and
- B. Identified in an Adopted Capital Improvement Plan; and
- C. Not located within or contiguous to the property or parcel that is subject to development approval, except to the extent that the capital improvement(s) represent(s) a measurable provision for extra service capacity beyond the actual public facility requirements of the property or parcel approved for development.

Applying the adopted methodology, the City Administrator may grant a credit against the public improvement charge for a capital improvement provided as part of the development that reduces the development's demand upon existing capital improvements or the need for further capital improvements or that would otherwise have to be constructed at City expense under the then-existing Council policies.

Section 3. The credit provided for by this Article shall be only for SDC charged for the type of improvement being constructed and shall not exceed such SDC even if the cost of the capital improvement exceeds the SDC. This section shall not prohibit the City from providing a greater credit or from providing a share of the cost of such improvement by other means, if the City so chooses.

Section 4. All credit requests must be in writing and filed with the City Administrator not less than 90 days after acceptance of the improvement.

Improvement acceptance shall be in accordance with the usual and customary practices, procedures and standards of the City of Troutdale. The amount of any credit shall be determined by the City Administrator and based upon the subject improvement construction contract documents, or other appropriate information, provided by the applicant for the credit. Upon a finding by the City Administrator that the contract amounts exceed prevailing market rate for a similar project, the credit shall be based upon market rates. The City Administrator shall provide the applicant with a credit on a form provided by the City.

The credit shall state the actual dollar amount that may be applied against any SDC imposed against the subject property.

Section 5. Credits shall be apportioned against the property which was subject to the requirement to construct an improvement eligible for credit. Unless otherwise requested, apportionment against lots or parcels constituting the property shall be proportionate to the anticipated public facility service requirements generated by the respective lots or parcels. Upon written application to the City Administrator, however, credits shall be reapportioned from any lot or parcel to any other lot or parcel within the confines of the property originally eligible for the credit. Reapportionment shall be noted on the original credit form retained by the Department of Community Development and a copy shall be forwarded to the Finance Director.

Section 6. Any credits as provided in the Ordinance are assignable; however, they shall apply only to that property subject to the original condition for land use approval upon which the credit is based or any partitioned or subdivided parcel or lots of such property to which the credit has been apportioned. Credits shall only apply against SDC's, are limited to the amount of the fee attributable to the development of the specific lot or parcel for which the credit is sought and shall not be a basis for any refund.

Section 7. Any credit must be submitted before the issuance of a building permit or, if deferral was permitted, issuance of the final occupancy permit. The applicant is responsible for

presentation of any credit and no credit shall be considered after issuance of a building permit or, if deferral was granted, issuance of the final occupancy permit.

Section 8. Credits shall not be allowed more than ten years after the acceptance of the applicable improvement by the appropriate jurisdiction. No extension of this deadline shall be granted or authorized.

Section 9. Sewer reservations purchased under previously imposed ordinances by the City will be recognized. The total sewer SDC imposed for these connections shall be \$1,250.00

Section 10. Connections to the public systems are based upon ERU's. The payment of an SDC purchases a right to system connection, not to a specific flow, trip count or impervious surface area.

ARTICLE X APPEAL PROCEDURES

Section 1. As used in this Article "working day" means a day when the general offices of the City are open to transact business with the public.

Section 2. A person aggrieved by a decision required or permitted to be made by the City Administrator or his/her designee under Article I through Article IX or a person challenging the propriety of an expenditure of systems development charge revenues may appeal the decision or the expenditure by filing a written request with the City Recorder 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 Section 4 of this Article.

Section 3. An appeal of an expenditure must be filed within two 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.

Section 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.

Section 5. The Council shall order an investigation and direct that within 60 days of receipt of the petition that a written report be filed by the director recommending appropriate action. Within 30 days of receipt of said report, the Council shall conduct a hearing to determine whether the expenditure was proper. At least 10 working days advance notice of the hearing, including a copy of the report, shall be mailed to the petitioner. Petitioner shall have a reasonable opportunity to present their position at the hearing.

Section 6. The petitioner shall have the burden of proof. Evidence and argument shall be limited to grounds specified in the petition. The Council shall issue a written decision stating the basis for its conclusion and directing appropriate action be taken.

Section 7. Review of the Council decision shall be provided as in ORS 34.010.

Section 8. The City Council shall render its decision within 15 days after the hearing date and the decision of the Council shall be final. The decision shall be in writing but written findings shall not be made or required unless the Council, in its discretion, elects to make Findings for precedential purposes. Any legal action contesting the Council's decision on the appeal shall be filed within 60 days of the Council's decision.

ARTICLE XI PROHIBITED CONNECTION

Section 1. 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, water system, or storm sewer system of the City unless the appropriate systems development charge has been paid or payment has been secured as provided in this Ordinance.

Section 2. Abatement and Penalty.

- A. A person violating a provision of this code shall be subject to a fine of not less than \$500 nor more than \$1,000. A violation shall be considered a separate violation for each day it continues.
- b. A development in violation of this code or the use of a development in violation of this code shall constitute a nuisance. The City may, as an alternative to other remedies that are legally available for enforcing this code institute injunction, mandamus, abatement or other appropriate proceedings to prevent, enjoin, abate or remove the development or use in violation.

**ARTICLE XII
EFFECTIVE DATE**

Section 1. This Ordinance shall become effective at the time prescribed by charter or as soon thereafter as the resolutions adopting methodologies, plans and other required provisions have been adopted; and upon the effective date of this ordinance, and any funds collected pursuant to the previous systems development charges chapter shall be transferred to general capital improvements in the Capital Improvement Fund.

**ARTICLE XIII
REPEAL**

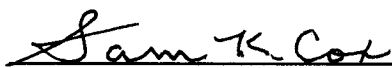
Section 1. By adoption of this Ordinance, Ordinance No. 566, Ordinance No. 530 and Troutdale Municipal Code, Title 13 Chapter 10, Sections 010 through 120 are hereby repealed.

**ARTICLE XIV
SEVERABILITY**

Section 1. The invalidity of any section, subsection, paragraph, sentence, or phrase of this ordinance which is incorporated herein, shall not affect the validity of the remaining portions thereof.

**PASSED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE
THIS 28th DAY OF JANUARY, 1992.**

YEAS: 4
NAYS: 1
ABSTAINED: 0



Sam K. Cox, Mayor

Dated: 1/30/92

ATTEST:



Valerie J. Raglione, CMC
City Recorder

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