

ORDINANCE NO. 640 -O

**AN ORDINANCE MODIFYING THE PROCEDURES FOR
SYSTEM DEVELOPMENT CHARGE CREDITS AND
AMENDING CHAPTER 12.02 OF THE TROUTDALE
MUNICIPAL CODE**

WHEREAS, Section 12.02.080 of the Troutdale Municipal Code establishes provisions for system development charge credits; and

WHEREAS, the City desired to have a professional review of the procedures for requesting and granting such system development charge credits; and

WHEREAS, the City contracted with the firm of KCM, Inc. to perform a storm water master plan for the South Troutdale (Sandy River) basin and included in the scope of work a review of system development charge credits; and

WHEREAS, KCM, Inc. subcontracted with Shaun Pigott Associates to perform the review of system development charge credits; and

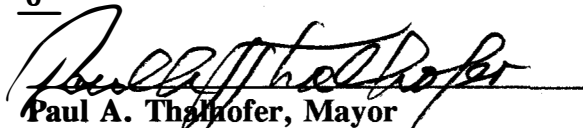
WHEREAS, Mr. Pigott submitted his report to the City and briefed the City Council during a workshop on November 7, 1995; and

WHEREAS, the Council wishes to implement the recommendations made by Mr. Pigott to clarify a number of issues associated with system development charge credits.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE
CITY OF TROUTDALE**

Troutdale Municipal Code Chapter 12.02 is amended to read as shown on Attachment A, which is made a part hereof.

YEAS: 5
NAYS: 0
ABSTAINED: 0


Paul A. Thalhofer, Mayor

Dated: 1-25-96


George Martinez, City Recorder

Adopted: 1-23-96

CHAPTER 12.02

SYSTEM DEVELOPMENT CHARGES

SECTIONS:

- 12.02.010 Title
- 12.02.020 Intent and Scope
- 12.02.030 System Development Charges Established
- 12.02.040 Methodology
- 12.02.050 Compliance with State Law
- 12.02.060 Collection of Charge
- 12.02.070 Exemptions and Pre-existing Conditions
- 12.02.080 Credits
- 12.02.090 Appeal Procedures
- 12.02.100 Prohibited Connections

12.02.010 Title

This chapter of the Troutdale Municipal Code shall be entitled "System Development Charges".

12.02.020 Intent and Scope

- A. Pursuant to the statutes of the State of Oregon and the powers granted in the Charter of the City, the Council finds, declares, and affirms its intent to impose System Development Charges.
- B. 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 capital improvements.
- C. The system development charge as 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 system 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 or facilities to be made available in the future.

12.02.030 System Development Charges Established

- A. Unless otherwise exempted by the provisions of this chapter or other local or state law, a system 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.

- B. System development charges for each type of capital improvement may be created through application of the methodologies described in this chapter and further described in the appropriate implementing resolution. The amount of each system development charge shall be adopted initially by Council resolution. Changes in the amounts shall also be adopted by resolution. Inflationary cost impacts shall be measured and calculated annually by the City Administrator and presented to the Council for consideration. 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 any successor index to this measurement. 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 shall be rounded up to the next dollar.

12.02.040 Methodology

- A. 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.
- B. 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.
- C. The methodology may also provide for a credit as authorized in this chapter.
- D. Except when authorized in the methodology adopted under 12.02.040(A), the fees required by this chapter 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.
- E. The methodologies used to establish the system development charge shall be adopted by resolution of Council. The specific system development charge 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 periodically and shall recommend amendments, if and as needed, to the Council for its action.

- F. 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.
- G. Written notice of the hearing on adoption or amendment of a methodology shall be given to persons requesting notification. The notice shall be mailed at least 45 days prior to the first hearing to adopt or amend a system development charge. The methodology shall be available at least 30 days prior to this hearing. The names of persons requesting notification shall be maintained by the City Recorder on a list.

12.02.050 Compliance with State Law

- A. 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 Comprehensive Annual Financial Report required by ORS Chapter 294.
- B. 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, or 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 of other governmental entities conform with State Law and are consistent with the City's CIP and the City's Comprehensive Plan.

12.02.060 Collection of Charge

- A. When required, the system development charge is payable upon, and as a condition of, issuance of:
 - 1. A permit for new construction;
 - 2. A permit for the renovation, rehabilitation, alteration or modification of a structure or use; or

3. A public works permit allowing connection to the water, sanitary sewer or storm drainage system(s), or
 4. A permit authorizing access to a public street.
- B. If development is commenced or connection is made to the water system, sanitary sewer system, storm sewer system or street system without an appropriate permit, the system development charge is payable within thirty days following a demand for payment by the City, and it will be unlawful for anyone to continue with the construction or use of the development until the charge has been paid or payment secured to the satisfaction of the City Administrator.

12.02.070 Exemptions and Pre-Existing Conditions

- A. The following are exempt from the system development charges imposed in this chapter:
1. Development which legally existed on February 28, 1992. Values will be calculated for pre-existing uses as they were legally established on the effective date of this ordinance, and an allowance will be granted for such pre-existing use in calculating any new or additional system development charge. The calculation for pre-existing use shall establish the number of pre-existing hydraulic equivalents for water SDC's, the number of pre-existing equivalent residential units for sanitary sewer SDC's, the number of pre-existing PM Peak Hour Trip Ends for transportation SDC's, and the amount of pre-existing impervious surface area for storm water SDC's.
 2. Any change in use, conversion, reconstruction or rehabilitation, alteration, addition or replacement that does not increase the use of capital improvements.
 3. Existing facilities as of July 11, 1995 (for transportation SDC's only), but the exemption shall not include additions to or expansion of any existing facility.
 4. The impervious surface of a street, road, highway, runway, or taxiway constructed by a governmental entity or by a private entity when the street, road, highway, runway, or taxiway is to be transferred to a governmental entity immediately upon its completion.
- B. 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 after granting an allowance for pre-existing use.

12.02.080 Credits

- A. As used in this section, the word "contiguous" means that part of a public way which abuts the development parcel.**

- B. An applicant for a building permit is eligible for credit against the SDC for constructing a qualified capital improvement, provided that the qualified capital improvement portion of the facility and its corresponding costs are established by the City at the time of development approval. A qualified capital improvement means one that meets all of the following criteria:**
 - 1. Required as a condition of development approval by the Planning Commission or City Council; and**

 - 2. Identified in an Adopted Capital Improvement Plan; and**

 - 3. (a) Not located within or contiguous to the property or parcel that is subject to 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. For the purposes of this section, greater capacity shall mean increased size or volume but shall not mean an increase in quality; and**

 - 4. Which reduces the development's demand upon the City's water, sanitary sewer, storm sewer, or transportation system or reduces the need for construction of facilities that would otherwise have to be constructed at City expense under the then-existing Council policies.**

- C. This credit shall be only for the improvement fee charged for the type of improvement being constructed. Credit under subsection (3)(b) of this section may be granted only for the cost of that portion of the improvement that exceeds the facility size or capacity needed to serve the development project.**

- D. 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.**

- E. All credit requests must be in writing and filed with the City Administrator at the time of development review and approval. The applicant is responsible for presentation of all required credit justification. 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 rates 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 the improvement portion of the SDC imposed against the subject property. The applicant has the burden of demonstrating qualification for a credit.

- F. Credits shall be apportioned against the property which was subject to the requirement to construct an improvement eligible for credit.
- G. Any credits 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 system development charges, 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. Credits shall be used not later than ten years from the date when the credit was issued by the City.
- H. Sewer reservations purchased under previously imposed ordinances by the City will be recognized under their original terms and conditions. Owners of property who have sewer reservations may transfer them to other properties which they currently own by submitting a written request to the Director, provided that such transfer may not result in the gaining property acquiring more reservations than the property may utilize in accordance with current zoning.

12.02.090 Appeal Procedures

- A. 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.
- B. A person aggrieved by a decision required or permitted to be made by the City Administrator or his/her designee under this chapter or a person challenging the propriety of an expenditure of system 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 paragraph D below.

- C. 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.**
- D. The appeal shall state:**
- 1. The name and address of the appellant;**
 - 2. The nature of the determination being appealed;**
 - 3. The reason the determination is incorrect; and**
 - 4. 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.

- E. 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. Petitioners shall have a reasonable opportunity to present their position at the hearing.**
- F. 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.**
- G. Review of the Council decision shall be provided as in ORS 34.010.**
- H. 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.**

12.02.100 Prohibited Connections

It shall be unlawful for any person to connect any premises for service, or cause the same to be connected, to any sanitary sewer, water system, storm sewer system, or street system of the City unless the appropriate system development charge has been paid or payment has been secured as provided in this Code.