

**A BILL FOR AN ORDINANCE AUTHORIZING )  
THE IMPOSITION OF SYSTEM DEVELOPMENT )  
CHARGES AND REPEALING MUNICIPAL )  
CODE CHAPTER 13.12 )**

**ORDINANCE BILL NO. 9  
for 2005**  
**ORDINANCE NO. 2378**

WHEREAS, having considered various proposals and plans for equitable financing of all or part of future or existing capital improvements within the City of Lebanon and recognizing that the continuing increase in the intensity of the use of land and demand for capital improvements within the City will require substantial changes for the safety of the public and in order to protect the values and usefulness of properties within the City, the City Council has determined that system development charges for existing and future capital improvements should be imposed and collected in accordance with ORS 223.297-.314.

NOW, THEREFORE, the people of the City of Lebanon do hereby ordain as follows:

**Section 1. PURPOSE:** This ordinance is intended to provide authorization for system development charges for capital improvements pursuant to ORS 223.297 - 223.314 for the purpose of creating a source of funds to pay for the installation, construction, and extension of capital improvements. These charges shall be collected at the time of the development of properties which increase the use of capital improvements and generate a need for those facilities.

**Section 2. SCOPE:** The system development charges imposed by this Ordinance are 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:**

- A. Capital Improvements. Facilities or assets used for:
1. Water supply, treatment and distribution;
  2. Wastewater collection, transmission, treatment and disposal;
  3. Drainage and flood control;
  4. Transportation; or
  5. Parks and recreation.
  6. "Capital improvement" does not include costs of the operation or routine maintenance of capital improvements.
- B. Development. Conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, or creating or terminating a right of access.
- C. 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.

- D. 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.
- E. Owner. The owner(s) of record title or the purchaser(s) under a recorded sales agreement, and other persons having an interest of record in the described real property.
- F. 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 includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.
- G. Permittee. The person to whom a Building Permit, Development Permit, Permit to Connect to the sewer or water system or Right-of-Way Access Permit is issued.
- H. Qualified public improvement. A capital improvement that is:
  - 1. Required as a condition of development approval;
  - 2. Identified in the plan and list adopted pursuant to section 9 of this ordinance; and either
  - 3. Not located on or contiguous to property that is the subject of development approval; or
  - 4. 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.
- I. Reimbursement fee. A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to section 5 of this ordinance.
- J. System development charge. A reimbursement fee, an improvement fee 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, or at the time of connection to the capital improvement. "System development charge" includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the city for its average cost of inspecting and installing connections with water and sewer facilities. "System 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.

**Section 4. SYSTEM DEVELOPMENT CHARGE IMPOSED: METHOD FOR ESTABLISHMENT CREATED:**

- A. Unless otherwise exempted by the provisions of this ordinance or other local or state law, a system development charge is hereby imposed upon all development within the city, upon the act of making a connection to the city water or wastewater system within the city, and upon all development outside the boundary of the city that connects to or otherwise uses the wastewater or

water facilities of the city.

- B. System development charges shall be established and may be revised by Resolution of the City 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.

**Section 5. METHODOLOGY:**

- A. A system development charge methodology may be a combination of a reimbursement fee and an improvement fee, if the methodology demonstrates that the charge is not based on providing the same system capacity.
- B. The methodology used to establish the reimbursement fee shall consider:
  - 1. the cost of the then-existing facilities,
  - 2. prior contributions by then-existing system users,
  - 3. the value of unused capacity,
  - 4. rate-making principles employed to finance publicly owned capital improvements,
  - 5. gifts or grants from federal or state governments or private persons and
  - 6. other relevant factors identified by the Council.
  - 7. The methodology for establishing or modifying a reimbursement fee shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities. The methodology must be available for public inspection.
- C. The methodology used to establish the improvement fee must be available for public inspection and shall consider:
  - 1. the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related,
  - 2. the need for increased capacity in the system to which the fee is related that will be required to serve the demands placed on the system by future users,
  - 3. the requirement of obtaining the cost of capital improvements for the projected need for available system capacity for future users and
  - 4. other relevant factors identified by the Council.

**Section 6. CERTAIN SYSTEM DEVELOPMENT CHARGES AND METHODOLOGIES PROHIBITED:**

As used in this section, "employer" means any person who contracts to pay remuneration for, and secures the right to direct and control the services of, any person.

- A. A system development charge shall not be imposed that requires an employer to pay a reimbursement fee or an improvement fee based on:
  - 1. The number of individuals hired by the employer after a specified date; or
  - 2. A methodology that assumes that costs are necessarily incurred for capital improvements when an employer hires an additional employee.
  - 3. A methodology set forth in an ordinance or resolution that establishes an improvement fee or a reimbursement fee shall not include or incorporate any method or system under which the payment of the fee or the amount of the fee is determined by the number of employees of an employer without regard to new construction, new development or new use of an existing structure by the employer.

**Section 7. 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. Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such 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 improvements funded by improvement fees must be related to the need for increased capacity to provide for future users.
- C. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the Systems Development Charge Funding Project Plan adopted by the city pursuant to section 9 of this ordinance.
- D. Notwithstanding subsections A. and B 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 funds.

### **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. PROJECT PLAN:**

- A. The Council shall adopt by resolution the Systems Development Charge Funds Project Plan. This Plan shall:
  - 1. List the capital improvements that may be funded with improvement fee revenues; and
  - 2. List the estimated cost, timing of construction of each improvement and percentage of costs eligible to be funded with revenues from the improvement fee for each improvement.
  - 3. In adopting this plan the City Council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section. The city may modify this project plan at any time through the adoption of an appropriate resolution.

### **Section 10. INSTALLMENT PAYMENT:**

- A. When a system development charge is due and payable, the permittee may apply for payment in twenty (20) semi-annual installments, secured by a lien on the property upon which the development is to occur or to which the utility connection is to be made, to include simple interest on the unpaid balance, if that payment option is required to be made available to the permittee by ORS 223.208.
- B. The City Administrator or designee shall provide application forms for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.
- C. A permittee requesting installment payments shall have the burden of demonstrating the permittee's authority to assent to the imposition of a lien on the property and that the interest of the permittee is adequate to secure payment of the lien.
- D. The City Administrator or designee shall docket the lien in the lien docket. From that time the city shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the council. The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall be superior to all other liens pursuant to ORS 223.230.

**Section 11. EXEMPTIONS:**

- A. Structures and uses established and existing within the City limits on or before January 1, 1977 (except when new structures are created) are exempt from the charge, except water and sewer charges, to the extent of the structure or use existing on that date 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 water or sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the water or sewer system.
- B. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the International Building Code, 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 a capital improvement are exempt from all portions of the system development charge.
- D. Projects financed by city revenue are exempt from all portions of the systems development charge.

**Section 12. CREDITS:**

- A. When development occurs that is subject to a system development charge, the system development charge for the existing use, if applicable, shall be calculated and if it is less than the system development charge for the use that will result from the development, 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. If the change in the 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 unless provided for by another subsection of this section.
- B. A credit shall be given to the permittee for the cost of capital improvements and fee title to land identified in the systems development charge funds project plan which is provided by the permittee upon acceptance by the City of the improvement or land. The City shall review the plans for the capital improvement and verify costs. Land shall be assigned a value equal to the real market value at the time of application for credit as determined by the County Assessor. Credit is not available when less than fee title is transferred. The request for credit shall be filed by the permittee in writing no later than 60 days after acceptance of the improvement or land by the City.
- C. Credits given pursuant to this section are:
  - 1. Valid for a period of ten (10) years from the date of issuance;

2. Transferrable from the permittee to any other person;
  3. Not refundable for cash or any other thing of value; and
- D. The City will make a determination on the request for credit and if approved issue a credit certificate. The certificate shall contain at a minimum the following information:
1. The name of the person to whom the credit is issued;
  2. The systems development charge to which the credit may be applied;
  3. The issue date and the expiration date;
  4. The original signature of the City Manager and the City Finance Director.
- E. The City shall establish a systems development charge credit list. Upon the issuance of a credit certificate, the City shall enter onto the list the information contained in the certificate. No credit certificate shall be valid or may be redeemed unless there is an entry in the systems development charge credit list which corresponds to the information on the systems development charge credit certificate.
- F. When a person wishes to transfer a systems development charge credit certificate, the person shall execute a transfer document indicating the name of the person to whom the certificate is being transferred, the date of the transfer and the signature of the person transferring the document. Only a person eligible to redeem a certificate may transfer the certificate. In order for a transfer to be effective, the transfer document must be endorsed by the City. In order to obtain the City endorsement, the person transferring the document must present the transfer document to the City requesting such endorsement. The City shall provide the endorsement only after making an entry on the systems development charge credit list indicating the name of the person to whom the certificate is being transferred and the date of the transfer. In order for a credit certificate to be valid and redeemable, the person attempting to redeem the credit must be the same person eligible to use the credit as shown on the systems development charge credit list.
- G. Credits shall not be transferable from one type of system development charge to another.

**Section 13. NOTIFICATION AND ADMINISTRATIVE REVIEW PROCEDURES:**

- A. Establishment or modification of system development charge. 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 system development charge.
1. Written notice must be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a system development charge.
  2. City Council shall hold a public hearing if the City receives a written request for a hearing on the proposed modification within seven days of the date the proposed modification is scheduled for adoption.

3. The methodology supporting the system development charge must be available at least 60 days prior to the first hearing.
  4. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the City. Names may be periodically deleted from the list, but at least 30 days prior to removing a name from the list shall 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.
  5. Legal action intended to contest the methodology used for calculating a system development charge may not be filed after 60 days following adoption or modification of the system development charge ordinance or resolution.
  6. Notwithstanding other provisions of this section, a public hearing is not required if the City does not receive a written request for a hearing.
  7. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge methodology if the change in amount is based on:
    - a. A change in the cost of materials, labor or real property applied to projects or project capacity as set forth on the list adopted pursuant to ORS 223.309; or
    - b. The periodic application of one or more specific cost indexes or other periodic data sources. A specific cost index or periodic data source must be:
      - i. A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;
      - ii. Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and
      - iii. Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order.
- B. Increase in a system development charge resulting from a proposed modification of the list to include a capacity increasing capital improvement.
1. 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 ORS 223.304 (6).
  2. The City shall hold a public hearing if the City receives a written request for a hearing on the proposed modification within seven days of the date the proposed modification is scheduled for adoption.
  3. Notwithstanding B.(2) of this section, a public hearing is not required if the City does not receive a written request for a hearing.
- C. Expenditures. A citizen or other interest party may challenge the propriety of an expenditure of system development charge revenues by appealing the expenditure to the City Council by filing a written request with the City Administrator describing with particularity expenditure from which the person appeals.



1. Such a challenge must be filed within two years of the expenditure of the system development charge revenues.
  2. The Council shall determine whether the expenditure is in accordance with this ordinance and the provisions of ORS 223.297-.314.
  3. Any expenditure of revenues from system development charges in violation of the limitations described herein or in ORS 223.307 shall be replaced with moneys derived from sources other than system development charges. Replacement moneys must be deposited in a fund designated for the system development charge revenues not later than one year following a determination that the funds were misspent
- D. Decisions made under this section may be judicially reviewed only as provided in ORS 34.010 to 34.100.
- E. The City must advise a person who makes a written objection to the calculation of a system development charge of the right to petition for review pursuant to ORS 34.010 to 34.100.

**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 other funds by 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 this Ordinance.
- B. The City Administrator shall provide an annual accounting, based on the City's fiscal year, of system development charges showing the total amount of system development charge revenues collected for each type of charge and the projects funded from each account. The annual accounting shall include:
1. A list of the amount spent on each project funded, in whole or in part, with system development charge revenues; and
  2. The amount of revenue collected by the local government from system development charges and attributed to the costs of complying with the provisions of ORS 223.297 to 223.314, as described in ORS 223.307.

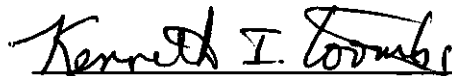
**Section 15. CONSTRUCTION:** The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this ordinance.

**Section 16. SEVERABILITY:** The invalidity of a section or subsection of this ordinance shall not affect the validity of the remaining sections or subsections.

**Section 17. REPEALER:** Lebanon City Code Chapter 13.12 is hereby repealed effective upon the effective date of this ordinance.

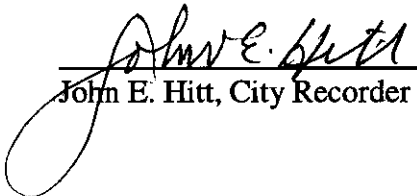
**Section 18. SAVING CLAUSE:** Lebanon City Code Chapter .13.12 shall remain in force for the prosecution, conviction, and punishment of persons who violate those code sections before the effective date of this ordinance.

Passed by the City Council of the City of Lebanon by a vote of 6 for and 0 against this 8 day of June, 2005.



Kenneth I. Toombs, Mayor  
Scott Simpson, Council President

ATTEST:

  
John E. Hitt, City Recorder