



ORDINANCE 2007-011

AN ORDINANCE APPROVING SYSTEM DEVELOPMENT CHARGES AND REPEALING ORDINANCE NO. 91-927, RESOLUTION NO. 92-518, RESOLUTION NO. 93-561, RESOLUTION NO. 2001-979, WITH A REFERENCE TO RESOLUTION NO. 2001-963 AND RESOLUTION NO. 95-604

WHEREAS, ORS 223.297 to 223.314 was enacted in 1989 and authorized the City of Sherwood to adopt and impose System Development Charges; and

WHEREAS, The City of Sherwood adopted Ordinance No. 91-927 to implement System Development Charges; and

WHEREAS, ORS 223.297 to 223.314 has been amended several times since Ordinance No. 91-927 was adopted; and

WHEREAS, Changes to the Ordinance are necessary to conform to the current version of ORS 223.297 to 223.314; and

WHEREAS, The City adopted Resolution 2006-062 Methodology for Transportation System Development Charge; and

WHEREAS, Changes to the existing System Development Charges Ordinance are desirable in order for the language of the Ordinance to be consistent with the adopted Transportation System Development Charge Methodology Report and Study; and

WHEREAS, after due consideration at multiple Council Work Sessions, staff recommends acceptance of the Ordinance approving System Development Charges.

NOW, THEREFORE, THE CITY ORDAINS AS FOLLOWS:

Section 1. Title

This ordinance shall be known and may be pleaded as the City of Sherwood System Development Charge (SDC) Ordinance.

Section 2. Purpose

The purpose of the System Development Charge is to impose an equitable share of the cost of capital improvements for water, sanitary sewer, streets, storm drainage, and parks and open space upon those new or expanded developments that create the need for or increase the demand on capital improvements.

Section 3. Scope

The System Development Charge imposed under the authority of 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. A System Development Charge is a charge imposed when a property owner or developer chooses to intensify the use of specific parcel or parcels of land and is for excess-capacity provided to accommodate the demand created by new or expanded development.

Section 4. Definitions

For purposes of this Ordinance and any resolutions authorized thereunder:

"Applicant" means the person seeking to obtain a building permit.

"Arterial" means that term as defined in the City Comprehensive Plan.

"Building permit" means that permit issued by the City building official pursuant to the Uniform Building Code and other applicable codes. In addition, building permit shall mean the manufactured home placement permit issued on a form approved by the Oregon Department of Commerce and relating to the placement of manufactured homes in the City.

"Capital improvements" means facilities or assets used for:

- (1) Water supply, storage, treatment, and distribution;
- (2) Waste water collection, transmission, treatment and disposal;
- (3) Drainage and flood control;
- (4) Construction, reconstruction, and improvement of transportation facilities described in the City Capital Improvement Plan; or
- (5) Parks and recreation.

"City Manager" means a person employed by the City as the City Manager, or a person designated by the City Manager for the purpose of administering this Ordinance.

"Development" means constructing a building or an addition to a structure, 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), or creating or terminating rights of access.

"Improvement charge" means a charge for costs associated with capital improvements to be constructed after the date the charge is adopted pursuant to a relevant System Development Charge resolution authorized by this Ordinance.

"Land area" means the area of a parcel of land as measured by projection of the parcel's 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.

"Occupancy permit" means the occupancy permit provided for in the Uniform Building Code or other City ordinances. If an occupancy permit is not provided for a particular structure or use, the final City inspection and approval for that structure or use shall serve as the occupancy permit.

"Owner" means the record owner or owners of fee title, or the purchaser or purchasers under a recorded sale agreement, as shown in the deed records for the county.

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

"Qualified public improvement" means a capital improvement that is:

- (1) Required as a condition of development approval.
- (2) Identified in the public facility plans adopted pursuant to Section 5 of this Ordinance.
- (3) Except for transportation improvements described in (4), not located on or contiguous to a parcel of land that is the subject of a development approval, except as otherwise specified by this Ordinance.

(4) A transportation improvement located on or contiguous to a parcel of land that is the subject of a development approval, except as otherwise specified in this Ordinance.

"Reimbursement charge" means a charge for costs associated with capital improvements constructed or under construction on the date the charge is adopted pursuant to a relevant System Development Charge resolution authorized by this Ordinance.

"System development charge" means a reimbursement fee, an improvement fee, or a combination thereof, assessed or collected at the time of issuance of a building permit, or at the time of connection to a capital improvement. "System development charge" includes that portion of a sanitary sewer, storm water, 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 to water, storm water, and sanitary sewer facilities. "System development charge" does not include charges 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 5. System Development Charge Established

(1) Authority to establish System Development Charges by resolution of the City Council is hereby created.

- A. Each resolution shall be limited to the System Development Charges for one (1) of the five (5) categories of capital improvements described in Section 4 of this Ordinance. The resolution shall include a statement of purpose, and the identification of a designated master plan, public facility plan, capital improvement plan, or comparable plan used to identify authorized expenditures of each System Development Charge's revenues. Each such plan shall be identified in or appended to the authorizing resolution as Appendix "A."
- B. Each resolution shall describe the methodology used in establishing the System Development Charge. The methodology shall comply with the requirements of state law and shall be described in or appended to the authorizing resolution as Appendix "B".
- C. Each resolution shall contain a schedule of charges, identified as improvement and/or reimbursement charges.
- D. Each resolution shall identify, to the extent applicable, those portions of capital improvements that are eligible for credit under Section 10 of this Ordinance. The resolution may vary the general terms and conditions for credits established under Section 10 of this Ordinance, to the extent the terms and conditions are made less restrictive and the variation is expressly allowed by a subsection of Section 10 of this Ordinance.
- E. Each resolution shall establish appeal fees as per Section 12 of this Ordinance.

(2) Unless otherwise exempted by subsection (3) of this section, or other local or State Law, System Development Charges created under the authority of this Ordinance are imposed upon all parcels of land within the City, and upon all lands outside the boundary of the City that choose to connect to or use the City's capital improvements.

(3) Except as provided in subsection (4) of this section, System Development Charges do not apply to the following types of development unless the new structure or use replaces a previously existing structure or use that was not assessed System Development Charges or the system to which the System Development Charge applies was installed to the previously existing structure or use and needs to be replaced or modified to provide extra-capacity, in which case current System Development Charges shall apply to the extra-capacity generating portion of the new structure or use:

- A. Remodeling or replacement of an existing single or two-family structure (including manufactured homes on individual lots and those in manufactured home parks);
- B. Remodeling or replacement of an existing multi-family structures, except to the extent of dwelling units that are added, in which case current System Development Charges shall apply to the additional units;
- C. Remodeling or replacement of an existing office, business and commercial, industrial, or institutional structure or use, except to the extent additional vehicle trips are generated, or increased usage of water, storm water, or sanitary sewer services result, in which case current System Development Charges shall apply to the additional trips or usage.

(4) System Development Charges for transportation-related capital improvements do not apply to the uses and development described in subsection (3) of this section except to the extent the remodeling or replacement creates an additional impact on a transportation facility.

(5) Additional exemptions specific to a particular type of System Development Charge may be established by the authorizing resolution described in subsection (1) of this section.

(6) The City may collect System Development Charges established by other governmental jurisdictions. The System Development Charges shall be assessed and collected under the terms of the applicable ordinances and resolutions established by those jurisdictions, and shall be adopted by the City Council by the appropriate resolution or intergovernmental agreement.

Section 6. Authorized Expenditures

The revenues received from System Development Charges shall be budgeted and expended for capital improvements as provided by state law. The accounting of revenues and expenditures shall be included in the City's Comprehensive Annual Financial Report as required under ORS Chapter 294.

Section 7. Expenditure Restrictions

(1) System Development Charges may not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

(2) System Development Charges may not be expended for costs of the operation or routine maintenance of capital improvements.

Section 8. Collection of Charges

(1) Unless otherwise provided by this Ordinance or state law, System Development Charges are immediately due and payable and shall be collected prior to issuance of any building permits, or in case of a deferral authorized in Section 9 of this Ordinance, prior to issuance of an occupancy permit. Resolutions authorizing specific System Development Charges may identify additional conditions or circumstances triggering collection of each specific charge in those circumstances that otherwise meet the terms of this Ordinance but where no building permit is required.

(2) A building or occupancy permit may not be issued by the City, nor shall connection to any City service be allowed, until System Development Charges have been paid in full or until provisions for deferred payment have been made as described in Section 9 of this Ordinance.

(3) The obligation to pay deferred System Development Charges, and the interest thereon, shall be secured by property, bond, deposits, letter of credit, or other security acceptable to the City Manager.

- A. Notwithstanding agreement for deferral of payment, the liability for System Development Charges shall survive if unpaid when the building permit has expired and shall be a personal obligation of the permittee.
- B. Failure to pay the System Development Charges within sixty (60) days of the due date shall result in a penalty equal to ten percent (10%) of the charge. Interest shall accrue from the sixty (60) day point at the rate permitted by ORS 82.010.
- C. In addition to an action at law and any statutory rights, the City may, when payment of System Development Charges are delinquent:
 - 1. Refuse to issue any development permits to the delinquent party;
 - 2. Refuse to honor any System Development Charge credits held by the delinquent party for any development;
 - 3. Condition any development approval requested by the delinquent party on payment in full of the System Development Charges, including penalties and interest.
 - 4. Revoke any previous System Development Charges due, including penalties and interest, from any offset account held by the City for the delinquent party, in which case the System Development Charges shall immediately be due, and refuse to issue any new deferrals.
 - 5. Withdraw the amount of System Development Charges due, including penalties and interest, from any offset account held by the City for the delinquent party.

(4) For purposes of this section, the term "delinquent party" includes a person controlling a delinquent corporate permittee and any corporation controlled by a delinquent individual permittee.

Section 9. Deferred Payment

Where the total of all City System Development Charges due and payable from a single family or manufactured home building permit exceed \$5,000.00, or exceed \$10,000.00 for any other type of building permit, an administrative deferral may be granted by the City Manager until an occupancy permit is ready to be issued. No occupancy permit shall be issued until all System Development Charges are paid.

Where the total of any category of System Development Charge as defined in Section 4 due and payable from a single family dwelling or manufactured home building permit exceed \$20,000.00, or exceed \$100,000.00 for any other type of building permit, an administrative deferral may be granted by the City Manager for a period not to exceed five years for the System Development Charge. An occupancy permit may not be issued until the person responsible for payment of the System Development Charge executes a deferred payment agreement.

Section 10. Credits

(1) Credit may be applied to the System Development Charge to the extent that prior structures or uses existed, City services were established to those structures or uses, and said structures or uses had previously paid the applicable System Development Charge in effect at the time the structure or use was established. Except as provided in subsection (6) of this section, credits may not exceed the calculated System Development Charge. Refunds may not be made on account of such excess credit.

(2) Credit shall be given for the cost of a qualified public improvement, as defined by Section 4 of this Ordinance. Except for transportation improvements, if a qualified public improvement is located partially on and partially off the parcel or parcels that are the subject of the 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. For transportation improvements, credit may also be given for the cost of the portion of the improvement located on or contiguous to the property. The terms of this subsection may be modified by the authorizing resolution described in Section 5 of this Ordinance to the extent that credit provisions are made less restrictive.

(3) The credit provided for by this section shall be only for the improvement charges for the type of improvement being constructed and, except as provided in subsection (2) of this section, shall not exceed the improvement charge even if the cost of the capital improvement exceeds the applicable improvement charge. Credits shall not be provided for reimbursement charges.

(4) The qualified public improvement must be designed and constructed to provide additional capacity to meet projected future capacity needs created by the development. Improvements that address capacity deficiencies existing at the time of development are not eligible for credit. In the case of improvements addressing both future and existing capacity needs, only that portion providing future capacity is eligible for credit. The terms of this subsection may be modified by the authorizing resolution described in Section 5 of this Ordinance to the extent that credit provisions may be made less restrictive.

(5) The City Manager must determine that the timing, location, design, and scope of the proposed improvement is consistent with and furthers the objectives of the capital improvement programs of the City. The City Manager may use priorities established by the City Council in the City's Capital Improvement Plan, the information contained in the City's Comprehensive Plan and various public facility master plans, the advice of the City's engineering, public works, and planning staff, and other relevant information and data in making this determination. The City Manager must also determine that the improvement is required to fulfill a condition of development approval issued by the City and is included in the City's adopted public facility plans.

(6) Except as provided in this subsection, excess credit may not be transferred from one development to another.

- A. In the case of a multi-phased development, excess credit generated in one phase may be used to offset applicable System Development Charges in subsequent phases.
- B. Upon written application to the City Manager, excess credits may be reapportioned from one lot or parcel to another lot or parcel within the confines of the property originally eligible for the credit. The reapportionment shall be noted on the original credit form retained by the City.
- C. Upon written application to the City Manager, excess credits may be transferred to another lot or parcel that is adjacent to and served by the transportation facility that generated the credits.

(7) Credit may not be transferred from one of the types of capital improvements defined by Section 4 of this Ordinance and authorized by a resolution, to another type of capital improvement authorized by a different resolution.

(8) All credit requests must be in writing and filed with the City Manager no more than ninety (90) days after acceptance by the City of the qualified public improvement. Improvement acceptance shall be in accordance with the practices, procedures and standards of the City.

(9) The amount of any credit shall be determined by the City Manager and based upon the subject improvement's construction contract documents, or other appropriate information provided by the

applicant, and verified and accepted by the City. Notwithstanding the contract amount, the credit may not exceed prevailing market rates for similar projects, as determined by the City.

(10) In the case of rights-of-way, easements, or other land associated with the improvement, value shall be established by sales documents, formal appraisal provided at the developers cost, by County Assessors records, or some other method deemed acceptable to the City. Notwithstanding actual sales price, the credit may not exceed prevailing market rates for similar projects, as determined by the City.

(11) Credit shall be provided to the applicant on a form provided by the City. The original of the credit form shall be retained by the City. The credit shall state a dollar amount that may be applied against any applicable System Development Charge imposed against the subject property. Excess credit may not be redeemed for cash or a cash-equivalent.

(12) All requests for redemption of credits must be submitted not later than the issuance of a building permit or, if deferral was permitted pursuant to Section 9 of this Ordinance, issuance of an occupancy permit. The permittee is solely responsible for presentation to the City of any credit redemption request and no credit redemption request shall be accepted after issuance of a building permit or, if deferral was granted, issuance of an occupancy permit. In no event is a subject property entitled to redeem credits in excess of the System Development Charges imposed.

(13) Credits shall not be allowed more than seven years after the acceptance of the applicable improvement by the City. Extensions of this deadline may not be granted.

(14) Upon annexation of affected parcels of land, credits previously issued by Washington County will be honored by the City.

Section 11. Segregation and Use of Revenue

(1) All funds derived from each separately authorized System Development Charge are to be segregated by accounting practices from all other funds of the City. That portion of the System Development Charge calculated and collected on account of a specific facility system shall not be used for a purpose other than the purpose set forth in this Ordinance and the specific authorizing resolution.

(2) The City Manager shall provide the City Council with an annual accounting, based on the City's fiscal year, for System Development Charges that shows the total amount of System Development Charge revenues collected for each type of facility and the projects funded from each account.

Section 12. Appeal Procedure

(1) A person challenging the propriety of an expenditure of System Development Charge revenues may appeal the expenditure to the City Council by filing a written appeal with the City Recorder. The appeal shall identify with reasonable certainty the particulars of the expenditure, and the relevant facts and specific provisions alleged to have been violated. An appeal of an expenditure must be filed within two

(2) years of the date of the alleged improper expenditure.

A. Within thirty (30) days of receipt of the appeal, the City Manager shall file a written report with the City Council recommending appropriate action. Within fifteen (15) days of receiving the report, the City Council shall conduct a hearing to determine whether the expenditure was proper. Notice of the hearing, including a copy of the City Manager's report, shall be mailed to the appellant least ten (10) days prior to the hearing. The appellant shall have a reasonable opportunity to present evidence and argument at the hearing.

B. The City Council may by resolution adopt rules of procedure governing appeal hearings, including stipulations that the hearing may be continued if necessary to further address

issues raised by the appellant. The City Council may by resolution establish an appeal fee.

- C. The appellant shall have the burden of proof in any appeal hearing. Evidence and argument shall be limited to grounds specified in the written appeal. The City Council shall issue a written decision stating the basis for its decision and directing any appropriate action to be taken.
- D. If the City Council determines that there has been an improper expenditure of System Development Charge revenues, the City Council shall direct that a sum equal to the misspent amount shall be deposited within one (1) year to the credit of the account or fund from which it was spent.
- E. Review of the City Council decision shall be as provided in ORS 34.010 to 34.100.

(2) Review of decisions of the City Manager, under this Ordinance, other than decisions relating to the expenditure of funds as per subsection (1) of this section, shall be conducted in the following manner:

- A. Discretionary decisions of the City Manager shall be in writing and mailed by regular mail to the last known address of the appellant.
- B. Discretionary decisions by City Manager's designee may be written or oral. Any person aggrieved by the decision of the City Manager's designee may request in writing that the City Manager review such a decision. The City Manager's response shall be in writing and shall state the reason for his and her decision. The purpose of appeal, the written response shall be provided to the appellant as described in paragraph A of subsection (2) of this section.
- C. Any person aggrieved by discretionary decision of the City Manager may appeal the decision to the City Council. The appeal shall be in writing and must be filed with the City Recorder within fourteen (14) days of the date the City Manager's decision was mailed.
- D. The appeal shall state the relevant facts, applicable ordinance provisions, and the relief sought. The appeal shall be heard by the City Council in the same manner as provided in subsection (1) of this section.
- E. After providing notice to the appellant, the City Council shall determine whether the City Manager's decision or action is in accordance with this Ordinance and associated resolutions, and the provisions of ORS 223.297 to 223.314, and may affirm, modify, or overrule the City Manager's decision or action. The City Council shall issue a written decision stating the Council shall issue a written decision stating the basis for its conclusion and directing appropriate action be taken. The City Council's decision shall be final and is subject to review as provided in ORS 34.010 to 34.100.

Section 13. Annual Fee Review

(1) The City Council shall review System Development Charges at least annually, prior to adoption of a new fiscal year's budget, to determine whether additional revenues should be generated to provide extra-capacity improvements needed to address new development or to ensure that revenues do not exceed identified demands. In so doing, the City Council shall consider

- A. Construction of capital improvements by federal, state, county, special districts, or other revenue sources;

- B. Receipt of unanticipated funds from other sources for construction of capital improvements;
- C. New information adjusting the unit costs or trip rates for capital improvements;
- D. The impact of credits and offsets on capacity increasing improvements.

(2) Upon completing the review, the City Council shall consider such amendments, including adjustment to specific System Development Charges, as are necessary to address changing conditions.

Section 14. Prohibited Connection

A person may not connect to the City's capital improvements or access a City street or right-of-way unless the appropriate System Development Charges have been paid.

Section 15. Transition

(1) Except as otherwise specifically allowed by the authorizing resolution described in Section 5 of this Ordinance, this Ordinance shall apply to issuance of building permits for all development for which a building permit application is received by the City on or after the effective date of this Ordinance. This does not include re-submittal of building permit applications previously deemed incomplete if the requested information is submitted within one hundred eighty (180) days of the date the application was first submitted.

(2) Notwithstanding repeal or amendment of any other City ordinances by this Ordinance, said prior ordinances shall continue to be fully applicable and shall govern all building permit applications received by the City prior to the effective date of this Ordinance. This includes building permit applications previously deemed incomplete if the requested information submitted within one hundred eighty (180) days of the date the application was first submitted.

(3) All System Development Charge deferrals, credits, or similar grants shall continue and be administered under the terms and conditions of the ordinances and resolutions in existence when said deferrals, credits, or similar grants were originally issued. Repeal and enactment of such ordinances and resolutions shall in no way impact any budget or appropriations, contracts, permits, condemnation proceedings, or any other formal City actions.

Section 16. Penalty

Violations of this Ordinance are subject to civil penalties of no more than five-hundred dollars (\$500) for each offense. Each day that a violation is permitted to exist constitutes a separate offense.

Section 17. Construction

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

Section 18. Severability

The invalidity of a section or subsection of this Ordinance shall not affect the validity of the remaining sections or subsections.

Section 19. Repeal


Prior City System Development Charges and related ordinances are hereby repealed as follows:

- A. Ordinance No. 91-927, System Development Charges;
- B. Resolution No. 92-518, Minor Collector Street System Development Charge;
- C. Resolution No. 93-561, Minor Collector Street System Development Charge;
- D. Resolution No. 2001-979, Approving An Increase In Fees – SDCs For Minor Collector Streets, With A Reference To Resolution No. 2001-963; and
- E. Resolution No. 95-604, A Resolution Readopting A City Capital Improvement Plan

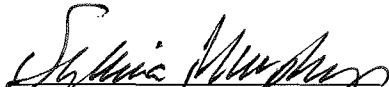
Section 20. Effective date

Because State Law regarding System Development Charges has been amended such that the City's existing System Development Charge Ordinance may be inconsistent with the State Law, an emergency is hereby declared to exist and this Ordinance shall become effective September 18, 2007, following passage by the City Council and approval by the Mayor.

Duly passed by the City Council on 18th day of September 2007.


 Keith S. Mays, Mayor

ATTEST:


 Sylvia Murphy, City Recorder

	<u>AYE</u>	<u>NAY</u>
Weislogel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Luman	<input checked="" type="checkbox"/>	<input type="checkbox"/>
King	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heironimus	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Grant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mays	<input checked="" type="checkbox"/>	<input type="checkbox"/>