

GENERAL ORDINANCE NO. 07-1287**AN ORDINANCE IMPOSING STORM WATER SYSTEM
DEVELOPMENT CHARGES ON NEW DEVELOPMENT APPLICABLE AT
THE TIME OF APPLICATION FOR A BUILDING PERMIT**

THE CITY COUNCIL OF THE CITY OF THE DALLES ORDAINS AS FOLLOWS:

Section 1. Scope and Purpose.

- A. New Development within the City contributes to the need for capacity increases and upgrades to capital improvements for storm water facilities; and, therefore, New Development should contribute to the funding for such capital improvements. This SDC will fund a portion of the needed capacity increases for storm water facilities as identified in the City's Master Plan.
- B. The funding provided by this Ordinance constitutes a mandatory collection method based upon ORS 223.297 through 223.314 to assure the construction of capacity-increasing improvements to facilities as contemplated in the City's Master Plan.
- C. This Ordinance is intended to be a mechanism for financing only that portion of the needed capacity-increasing facilities associated with New Development and does not represent a means to fund maintenance of existing facilities or the elimination of existing deficiencies.
- D. The City hereby adopts the report entitled "City of The Dalles Storm Drainage - System Development Charge Methodology Report, dated October 19, 2007, prepared by Shaun Piggot Associates in conjunction with Kennedy/Jenks Consultants, and incorporates herein by this reference the assumptions, conclusions and findings in the report, which refer to the determination of anticipated costs of capital improvements required to accommodate growth and the rates for the City's SDCs for these capital improvements. This report is hereinafter referred to as "SDC Methodology Report." The City may from time to time amend or adopt a new SDC Methodology Report by resolution.

Section 2. Definitions.

- A. “Administrator” means that person, or persons, appointed within the City to manage and implement this storm water SDC program.
- B. “Applicant” means the person who applies for a building permit.
- C. “Building Official” means that person, or designee, providing services through a contract between the City and Mid-Columbia Community and Economic Development Agency, and designated as such to administer the State Building Codes for the City of The Dalles.
- D. “Building Permit” means that permit issued by a Building Official pursuant to the State of Oregon Structural Specialty Code Section 301 or as amended, and the State of Oregon One and Two Family Dwelling Code Section R-109 or as amended. In addition, “Building Permit” means a Manufactured Home Installation Permit issued by the Building Official, relating to the placement of manufactured homes in the City.
- E. “City” means The Dalles, Oregon.
- F. “Commercial or industrial unit” means any building or facility used other than as a single family dwelling unit or as a duplex.
- G. “Condition of Development Approval” is any requirement imposed on an Applicant by a City land use or limited land use decision, or site plan approval.
- H. “Construction Cost Index” means the Engineering News Record (Seattle) Construction Cost Index.
- I. “County” means Wasco County, Oregon.
- J. “Credit” means the amount by which an Applicant may be able to reduce the SDC fee as provided in this Ordinance.
- K. “Development” means a building or other land construction, or making a physical change in the use of a structure or land, in a manner that increases the usage of storm water capital improvements or which may contribute to the need for additional or enlarged storm water capital facilities.
- L. “Duplex” shall mean two dwelling units located on a single lot or development site placed so that some structural parts are in common.

- M. “Equivalent residential unit” or “ERU” shall mean an area which is estimated to place approximately equal demand on the City’s storm drainage system as a single family unit. One ERU shall be equal to three thousand (3000) square feet of impervious surface.
- N. “Impervious surface” means any surface which either prevents or retards saturation of water into the land surface, or a surface which causes water to run off the land surface in greater quantities or at an increased rate of flow from that present under natural conditions pre-existent to development. Common impervious surfaces include, but are not limited to, rooftops, concrete or asphalt sidewalks, walkways, patio areas, driveways, parking lots or storage areas, graveled, oiled or macadam surfaces or other surfaces which similarly impede the natural saturation or runoff patterns which existed prior to development.
- O. “Improved premises” means any area which the Administrator determines has been altered such that the runoff from the site is greater than that which could have historically been expected. “Improved premises” does not include any public ways under the jurisdiction of the City, county, state, or federal government.
- P. “Master Plan” shall mean the “City of The Dalles Storm Drainage Master Plan” prepared by Kennedy Jenks Consultant, adopted by the City Council on May 14, 2007, including such amendments to such plan.
- Q. “Multiple family unit” or “MFU” means a building or facility under unified ownership and control and consisting of more than two dwelling units with each such unit consisting of one or more rooms with bathroom and kitchen facilities designed for occupancy by one family and having a common water meter.
- R. “New Development” means development for which a Building Permit is required.
- S. “Over-capacity” means that portion of an improvement that is built larger or with greater capacity than is necessary to serve the Applicant’s New Development or mitigate for storm water system impacts attributable to the Applicant’s New Development.
- T. “Permit” means a Building Permit.

- U. “Qualified Public Improvement” means any storm water system capital facility or conveyance of an interest in real property that increases the capacity of the City’s storm water system, and is:
- (1) Required as a condition of development approval;
 - (2) Identified in the City’s SDC Capital Improvement Projects List; and
 - (3)
 - (i) Not located on or contiguous to property that is the subject of development approval, or
 - (ii) Located in whole or in part on or contiguous to property that is the subject of development approval and, in the opinion of the Administrator, is required to be built larger or with greater capacity (over-capacity) than is necessary for the Applicant’s New Development or to mitigate for storm water system impacts attributable to the Applicant’s New Development.
- V. “Remodel” or “remodeling” means to alter, expand or replace an existing structure.
- W. “SDC Capital Improvement Projects List” means the City program set forth in the SDC Methodology Report that identifies facility improvements projected to be funded with storm water SDC revenues, and includes the estimated cost, timing, and percentage of costs eligible for funding from SDC revenues for each project.
- X. “SDC Methodology Report” means the City report entitled “Storm Drainage - System Development Charge Methodology”, dated October 19, 2007.
- Y. “Single family unit” or “SFU” means part of a building or structure which contains one or more rooms with a bathroom and kitchen facilities designed for occupancy by one family and where the units are sold and deeded as individual units and have individual water meters. The term “SFU” shall be inclusive of those units identified as detached single family residences, unit ownerships, and condominiums, etc.
- Z. “Storm water” means water from precipitation, surface or subterranean water from any source, drainage and nonseptic waste water.

Section 3. Rules of Construction. For the purposes of administration and enforcement of this Ordinance, unless otherwise stated in this Ordinance, the following rules of construction apply:

- A. In case of any difference of meaning or implication between the text of this Ordinance and any caption, illustration, summary table, or illustrative table, the text shall control.
- B. The word “shall” is always mandatory and not discretionary; the word “may” is permissive.
- C. Words used in the present tense shall include the future; words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- D. The phrase “used for” includes ‘arranged for’, “designed for”, “intended for”, “maintained for”, or “occupied for”.
- E. Where a regulation involves two or more connected items, conditions, provisions, or events:
 - (1) “And” indicates that all the connected terms, conditions, provisions or events shall apply;
 - (2) “Or” indicates that the connected items, conditions, or provisions or events may apply singly or in any combination.
- F. The word “includes” shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.
- G. The word “structure” includes the word “building”.
- H. The words “land”, “property”, “site”, “lot” and “premises” are used interchangeably unless the context clearly indicates to the contrary.
- I. The words “proposal”, “application”, and “request” are used interchangeably unless the context clearly indicates to the contrary.

Section 4. Application. This Ordinance applies to all New Development within the city limits of The Dalles, and to developers of land within the Urban Growth Boundary pursuant to the provisions of an intergovernmental agreement with Wasco County. The amount of the SDC shall be calculated according to this Section, with rates as adopted by separate resolution.

- A. The resolution establishing the storm water SDC shall establish an amount for the SDC rate. The amount for a single family dwelling shall be determined by multiplying one ERU times the SDC rate. For other residentially used property, the amount shall be determined by multiplying the number of dwelling units (one dwelling unit is equivalent to one ERU) times the SDC rate. Storm water system SDC's for a mobile home park shall be calculated at the rate of one single family unit per space. The maximum charge for a multiple family building or facility shall be limited to the number of multiple family units on the property multiplied by the charge for a single family unit.
- B. For all other property which is not residentially used, the storm water SDC shall be based upon the amount of the property's impervious surface. The total square feet of impervious surface area for the property shall be divided by 3000 square feet to yield the number of ERU's. The number of ERU's shall then be multiplied by the amount of the SDC rate to calculate the total SDC amount that is due.
- C. Notwithstanding any other provision, the City Council may annually consider adjusting the dollar amounts of the adopted SDC rates prior to January 1st of each year to account for changes in the costs of constructing facilities. The adjustment factor shall be based on the change in construction costs according to the Engineering News Record (ENR) Northwest (Seattle, Washington) Construction Cost Index (CCI). The adjustment factor may be used to adjust the System Development Charges, unless they are otherwise adjusted by the City based on a change in the CIP to reflect changes in the costs of materials, labor, or real property; or the adoption of an updated methodology.

Section 5. Partial and Full Exemptions. The uses listed and described in this Section are exempt, either partially or fully, from payment of the City's SDC. Any Applicant seeking an exemption under this Section shall specifically request that exemption, in writing, no later than the time of application for the Building Permit. Where New Development consists of only part of one or more of the uses described in this Section, only that/those portion(s) of the New Development that qualify under this Section are eligible for an exemption. The balance of the New Development that does not qualify for any exemption under this Section shall be subject to the full SDC. Should the Applicant dispute any decision by the City regarding an exemption request, the Applicant must apply for an alternative exemption calculation under Section 7. The Applicant has the burden of proving entitlement to any exemption so requested.

- A. Temporary uses are fully exempt so long as the New Development use or structure will be used for not more than 180 days in a single calendar year, and only for a single year.
- B. Alteration permits for tenant improvements or remodeling are fully exempt, as long as classifications of category of use are not changed, or increased capacity needs do not occur as a result of the improvements or the remodeling.
- C. New Development that, in the Administrators opinion, will not create demands on the City storm water system greater than those of the present use of the property are fully exempt.
- D. Storm water SDC assessments in excess of a City Council adopted maximum for a single development application.
- E. New Development involving the construction of a storm water facility to be owned, operated or maintained by the City.

Section 6. SDC Credits. The City shall grant a credit against the City's SDC ("SDC Credit"), which is otherwise assessed for a New Development, for any Qualified Public Improvement(s) constructed or dedicated as part of that New Development. The Applicant bears the burden of evidence and persuasion in establishing entitlement to an SDC Credit and to a particular value of SDC Credit.

- A. The criteria for granting a credit for any Qualified Public Improvement constructed or dedicated as part of a New Development is as follows:
 - (1) The improvement shall be constructed to exceed the capacity needs of the New Development; and
 - (2) The improvement shall be designed and constructed to City standards and accepted by the City as a public improvement; and
 - (3) The improvement is identified as a growth-related project in the SDC Capital Improvements Project List; and
 - (4) SDC credits can only be granted for growth-related improvements beyond the improvements that are required for all new developments, and the credit shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee.

- B. If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the City's minimum standard facility size or capacity needed to serve the particular development project or property.
- C. To obtain an SDC credit, the Applicant must specifically request in writing, a credit within sixty (60) days after acceptance of the improvement by the City. In the request, the Applicant must identify the improvement(s) for which credit is sought and explain how the improvement(s) meet(s) the requirements for a Qualified Public Improvement. The Applicant shall also document, with credible evidence, the value of the improvement(s) for which credit is sought. If, in the Administrator's opinion, the improvement(s) is a Qualified Public Improvement, and the Administrator concurs with the proposed value of the improvement(s), an SDC Credit shall be granted. The value of the SDC Credits under this Section shall be determined by the Administrator based on the actual cost of construction as verified by receipts submitted by the Applicant, and shall be applied on a dollar for dollar basis.
- D. The Administrator shall respond to the Applicant's request in writing within 21 days of receipt of a technically complete request. The Administrator shall provide a written explanation of the decision on the SDC Credit request. The City may deny the credit provided for in this section if the City demonstrates that the application does not meet the requirements of this Section or if the improvement for which the credit is sought was not included in the Storm Water SDC Capital Improvements Project List as it currently exists or is hereafter amended.
- E. If the Applicant disputes the Administrator's decision with regard to an SDC Credit request, including the amount of the credit, the Applicant may seek an alternative SDC Credit calculation under Section 7. Any request for an Alternative SDC Credit calculation must be filed with the City Manager in writing within 10 calendar days of the written decision on the initial credit request.
- F. Where the amount of an SDC Credit approved by the Administrator under this Section exceeds the amount of the SDC assessed by the City upon a New Development, the excess credit may be applied against SDCs that accrue in subsequent phases of the original development project. Any excess credit must be used not later than ten years from the date the credit is given.

- G. The City Council shall have the right to grant a credit not to exceed fifty percent (50%) of the applicable storm water system development charge, for any development project submitted by a nonprofit corporation or any agency or subdivision of the federal, state or local government.

Section 7. Alternative Calculation for SDC Credit, or Exemption. An applicant may request an alternative SDC Credit determination, or alternative SDC exemption if: 1) the Applicant believes the City improperly excluded from consideration a Qualified Public Improvement that would qualify for credit under Section 6, or the City accepted for credit a Qualified Public Improvement, but undervalued that improvement and therefore undervalued the credit, or 2) the Applicant believes the City improperly rejected a request for an exemption under Section 5.

A. Alternative SDC Credit Request:

- (1) If an Applicant has requested an SDC Credit pursuant to Section 6 and that request has been denied by the City, the Applicant must submit a written request to the City Manager for an alternative SDC Credit calculation, under this Section, no later than sixty (60) days after acceptance of the improvement by the City.
- (2) In support of the alternative SDC Credit request, the Applicant must provide complete and detailed documentation, including appraisals, cost analysis or other estimates of value, analyzed and certified to by an appropriate professional, for the improvements for which the Applicant is seeking credit. The Applicant's supporting documentation must rely upon generally accepted sources of information, cost analysis, and techniques of analysis as a means of supporting the proposed alternative SDC Credit.
- (3) The City Manager shall apply the alternative SDC Credit if, in the City Manager's opinion, the following are found:
 - (i) The improvement(s) for which the SDC Credit is sought are Qualified Public Improvement(s), and
 - (ii) The evidence and assumptions underlying the Applicant's alternative SDC Credit request are reasonable, correct, and credible and were gathered and analyzed by an appropriate competent professional in compliance with generally accepted principles and methodologies, and
 - (iii) The proposed alternative SDC Credit is based on realistic, credible valuation or benefit analysis.

- (4) If in the City Manager's opinion, any one or more of the above criteria is not met, the City Manager shall deny the request and provide to the Applicant (by Certified mail, return receipt requested) a written decision explaining the basis for rejecting the proposed alternative SDC Credit proposal.

B. Alternative SDC Exemption Request:

- (1) If an Applicant has requested a full or partial exemption under Section 5 and that request has been denied, the Applicant may submit a request in writing to the City Manager for an alternative SDC exemption under this Section, no later than the time of application for a Building Permit for the New Development.
- (2) In support of the alternative SDC exemption request, the Applicant must provide complete and detailed documentation demonstrating that the Applicant is entitled to one of the exemptions described in Section 5.
- (3) The City Manager shall grant the exemption if, in the City Manager's opinion, the Applicant has demonstrated with credible, relevant evidence that it meets the pertinent criteria in Section 5.
- (4) Within 21 days of receipt of the Applicant's technically complete request, the City Manager shall provide a written decision, by certified mail, return receipt requested explaining the basis for rejecting or accepting the request.

Section 8. Due Date of Payment of SDC Charges. Payment of the storm water system development charge shall be made in accordance with the provisions of Section 9 of General Ordinance No. 06-1266.

Section 9. Refunds. Refunds may be given by the Administrator upon finding that there was a clerical error in the calculation of the SDC. Refunds shall not be allowed for failure to timely claim credit or for failure to timely seek an alternative SDC exempt calculation under Section 7.

Section 10. Dedicated Accounts, Appropriate Use of Accounts, and Accounting. All monies derived from the City Storm Water SDC shall be placed in a City Storm Water SDC account and shall be used solely for the purpose of providing capacity-increasing capital improvements as identified in the Storm Water SDC Capital Improvement Projects List as it currently exists or as hereinafter amended, and eligible administrative costs.

- A. Any capital improvement being funded wholly or in part with revenues from the City's Storm Water SDC shall be included in the City's Storm Water SDC Capital Improvement Projects List and shall include, for each project, the estimated cost, timing and percentage of costs eligible to be funded with revenues from the Storm Water SDC.
- B. The Storm Water SDC Capital Improvement Projects List may be modified at any time, through the procedures established for such modification. If the City's Storm Water SDC will be increased by a proposed modification of the list to include one or more SDC-eligible capacity-increasing capital improvements:
- (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.
 - (2) 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, the City shall hold a public hearing.
 - (3) If the City does not receive a written request for a public hearing, none is required, and the proposed modification and increase in the SDC may be adopted.
 - (4) Any decision of the City to increase the SDC by modifying the list may be judicially reviewed only as provided in ORS 34.010 to 34.100.
- C. SDC revenues may be used for purposes that include, but are not limited to, the following:
- (1) design and construction plan preparation;
 - (2) permitting;
 - (3) land and materials acquisition, including any costs of acquisition or condemnation;
 - (4) construction of storm water capital improvements;
 - (5) design and construction of new streets, sanitary sewers, water distribution facilities, drainage facilities, or other public improvements required by the construction of storm water capital improvements;

- (6) relocating utilities required by the construction of improvements;
 - (7) landscaping;
 - (8) construction management and inspection;
 - (9) surveying, soils and material testing;
 - (10) acquisition of capital equipment that is an intrinsic part of a facility;
 - (11) demolition that is part of the construction of any of the improvements on this list;
 - (12) payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the City to provide money to construct or acquire storm water facilities;
 - (13) direct costs of complying with the provisions of ORS 223.297 to 223.314, including the consulting, legal, and administrative costs required for developing and updating the system development charges methodologies and capital improvement program; and the costs of collecting and accounting for system development charges expenditures.
- D. Money on deposit in the City's Storm Water SDC account shall not be used for:
- (1) any expenditure that would be classified as a maintenance or repair expense; or
 - (2) costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements; or
 - (3) costs associated with acquisition or maintenance of rolling stock.
- E. Annual Accounting Reports.
- (1) The City shall provide an annual accounting, to be completed by January 1 of each year, for SDCs showing the total amount of Storm Water SDC revenues collected and the projects that were funded in the previous fiscal year.
 - (2) The annual accounting shall include:

- (i) A list of the amount spent on each project funded, in whole or in part, with SDC revenues; and
- (ii) The amount of revenue collected by the City from Storm Water SDCs and attributed to the costs of complying with the provisions of ORS 223.297 to 223.314, as described in ORS 223.307.

Section 11. Challenges and Appeals.

- A. Any citizen or other interested person may challenge the expenditure of SDC revenues by filing a challenge to the expenditure with the Administrator within two years after the date of the disputed SDC revenue expenditure.
- B. Except where a different time for an Administrator's decision is provided in this Ordinance, all Administrator decisions shall be in writing and shall be delivered to the Applicant within 21 days of receipt of a technically complete application or other Applicant request for an Administrator determination. Delivery shall be deemed complete upon the earlier of actual delivery to the Applicant or upon deposit by the Administrator by certified mail, addressed to the address for notice Applicant has designated in the Application.
- C. Any person may appeal to the City Council any decision of the City Manager made pursuant to this Ordinance by filing a written request with the City Clerk within fourteen (14) days after the delivery of the City Manager's written decision to the Applicant.
 - (1) The appeal shall be filed with the City Clerk and should contain the following information:
 - (i) The name and address of the applicant;
 - (ii) The legal description of the property in question (if applicable);
 - (iii) If issued, the date the building permit was issued;
 - (iv) If paid, the date the system development charges were paid; and
 - (v) A statement of the reasons why the applicant is appealing a decision.

- (2) Upon receipt of such request, the City shall schedule a hearing before the City Council at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the applicant written notice of the time and place of the hearing. Such hearing shall be held within twenty-one (21) days of the date the appeal was filed.
- (3) The City Council shall conduct a hearing in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedures and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.
- (4) Any applicant who appeals a decision pursuant to this Section and desires the immediate issuance of a building permit shall pay prior to or at the time the request for hearing is filed the applicable system development charges pursuant to Section 4. Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights.
- (5) An applicant may appeal a decision under this Section without paying the applicable system development charges, but no building permit shall be issued until such system development charges are paid in the amount initially calculated or the amount approved upon completion of the review provided in this Section.
- (6) The City Council shall decide an appeal within sixty (60) days of the date of the appeal to the City Council and that decision may be reviewed under ORS 34.010 to 34.100, and not otherwise.

Section 12. City Review of SDC. No later than every five (5) years as measured from date of adoption of the Ordinance, the City shall undertake a review to determine that sufficient money will be available to help fund the SDC Capital Improvement Projects List; to determine whether the adopted SDC rates keep pace with inflation; and whether the SDC Capital Improvement Projects List should be modified.

- A. In the event that during the review referred to above, it is determined that an adjustment to the SDC is necessary for sufficient funding of the SDC Capital Improvement Projects List or to ensure that such projects are not over-funded by the SDC, the City Council may propose and adopt appropriately adjusted SDCs.

- B. The City may from time to time amend the adopted SDC Methodology Report and rates, amend the SDC Capital Improvement Projects List, and/or adopt a new SDC Methodology Report by resolution.

Section 13. Implementing Regulations; Amendments. The Administrator may adopt regulations to implement the provisions of this Ordinance.

Section 14. Severability. The provisions of this Ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any clause, Section or provision of this Ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this Ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such an unconstitutional provision not been included herein.

Section 15. Effective Date. The provisions of this Ordinance become effective on the 13th day of November, 2007.

ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR
NOVEMBER 13, 2007.