

GENERAL ORDINANCE NO. 06-1266**AN ORDINANCE AUTHORIZING THE ESTABLISHMENT OF PROVISIONS FOR GOVERNING THE DEVELOPMENT AND USE OF SYSTEM DEVELOPMENT CHARGES FOR WATER, WASTEWATER DRAINAGE, STREETS, FLOOD CONTROL, AND PARKS, REPEALING GENERAL ORDINANCE NO. 91-1130**

THE PEOPLE OF THE CITY OF THE DALLES DO ORDAIN AS FOLLOWS:

Section 1. Purpose. The purpose of the system development charge is to impose an equitable portion of the cost of capital improvements for water, wastewater drainage, streets, flood control, and parks upon those developments that create the need for, or increase the demand on capital improvements, and to create a source of funds to assist in paying for such capital improvements.

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. A systems development charge is to be considered in the nature of a charge for service rendered, a service hookup charge, or a charge for services to be rendered.

Section 3. Definitions. For purposes of this ordinance, the following mean:

- A. Capital improvements. Facilities or assets used for:
- (1) Water supply, transmission, treatment, or distribution, or any combination;
 - (2) Wastewater collection, transmission, treatment or disposal or any combination;
 - (3) Drainage or flood control;
 - (4) Transportation; or
 - (5) Parks and recreation.

- B. Development. As used in this ordinance, “development” means constructing or enlarging a building or adding facilities, or making a physical change in the use of a structure or land, including redevelopment and demolishing a building for the conversion of such property to a different use, which increases the usage of any capital improvements or which will contribute to the need for additional or enlarged capital improvements.
- 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 or owners of record title or the purchaser or purchasers under a recorded land sales agreement, and other persons having an interest of record in the described real property.
- F. Parcel of land. A lot, block or other tract of land that is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.
- G. Qualified public improvements. A capital improvement that is:
- (1) Required as a condition of development approval;
 - (2) Identified in the plan adopted pursuant to Section 8 of this ordinance; and either
 - (A) Not located on or contiguous to a parcel of land that is the subject of the 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.

- (3) For purposes of this definition, contiguous means in a public way which abuts the parcel.
- H. Reimbursement fee. A fee for costs associated with capital improvements already constructed or under construction on the date the fee is adopted pursuant to Section 4 of this ordinance, and for which the City Council determines capacity to exist..
- I. System development charge. A reimbursement fee, an improvement fee, or a combination thereof assessed or collected at the time of increased usage of the capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. A "system development charge" is a separate charge which does not include reimbursement to the City for its cost of inspecting and installing connections with water and sewer facilities, which cost is recovered through other fees. A "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 land use decision.
- J. Finance Director. The duly appointed Director of the Finance Department, or his/her designee.
- K. Public Works Director. The duly appointed Director of the Public Works Department, or his/her designee.
- L. Nonprofit Corporation. A mutual benefit corporation, a public benefit corporation, or a religious corporation.

Section 4. System Development Charge Established.

- A. System development charges shall be established and may be revised by resolution of the council. The resolution shall set the amount of the charge, the type of permit to which the charge applies, and, if the charge applies to a geographic area smaller than the entire City, the geographic area subject to the charge.

- B. 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 sewer system within the City, and upon all development outside the boundary of the City that connects to or otherwise uses the sewer facilities, storm sewers, or water facilities of the City.

Section 5. Methodology.

- A. The methodology used to establish the reimbursement fee shall, where applicable, be based on the cost of the existing facility or then-existing facilities, including without limitation design, financing and construction costs, prior contributions by then-existing users, gifts or grants from federal or state government or private persons, the value of unused capacity available to future system users or the cost of existing facilities, rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.
- B. The methodology used to establish or modify the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the system, the need for increased capacity required to serve future users, and be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future system users.
- C. The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be adopted by the council by resolution.

Section 6. 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 associated with the system for which the fee is assessed, including expenditures relating to repayment of future debt for the 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 capital improvements funded by improvement fees must be related to demands created by current or projected development. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the City pursuant to Section 8 of this ordinance.

- C. 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 expenditures.

Section 7. Expenditure Restrictions. 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. System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

Section 8. Improvement Plan.

- A. Prior to the establishment of a system development charge, the City Council shall adopt a plan that includes a list of:
- (1) The capital improvements that the City Council intends to fund in whole or in part with improvement fee revenues;
 - (2) The estimated cost and time of construction of each improvement and the percentage of that cost eligible to be funded with improvement fee revenues; and
 - (3) A description of the process for modifying the plan.
- B. 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.
- C. The City Council may modify such plan and list at any time. If a system development charge will be increased by a proposed modification to the list to include a capacity increasing public improvement, the Council will:

- (1) at least 30 days prior to the adoption of the proposed modification, provide written notice to persons who have requested notice pursuant to Section 13 of this ordinance; and
 - (2) hold a public hearing if a written request for a hearing is received within seven days of the date of the proposed modification.
- D. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge if the change in amount is based on a change in the cost of materials, labor or real property applied to the projects or project capacity, as set forth in the plan adopted pursuant to Section 8 of this ordinance; or 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:
- (1) 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;
 - (2) 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
 - (3) Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order.
- E. For system development charges for water and wastewater utility facilities, the City Council hereby adopts and approves the Utilities System Master Plan dated February 1991. The Council may adopt improvement plans for other system development charges by resolution.

Section 9. Collection of Charge.

- A. The system development charge is payable upon issuance of:
- (1) A building permit;
 - (2) A development permit;
 - (3) A development permit for development not requiring the issuance of a building permit;
 - (4) A permit to connect to the water system;
 - (5) A permit to connect to the sewer system; or

- (6) A right-of-way access permit.

The City Council may, by adoption of a resolution, establish a program for deferral of water and sanitary sewer system development charges in connection with the construction of a new single family or duplex residential dwelling unit. Such a program may be authorized on a periodic basis. The terms of the deferral program, which include defining the due date of the deferred payment and the length of time which the deferred payment program shall be in effect, shall be set forth in a Council resolution. [Added by General Ordinance No. 09-1300, adopted by City Council June 8, 2009.]

- B. If no building, development, or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.
- C. If development is commenced or connection is made to the water or sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.
- D. Collection of the applicable system development charge by the Finance Director shall be initiated by one of the following events:
- (1) Upon issuance of a permit which allows expansion of an existing building or development of an existing parcel.
 - (2) When a request is made for water or sewer service, or when a connection to the water or sewer system of the City is made, whichever event occurs first.
 - (3) Payment of the water and sanitary sewer system development charge in accordance with a deferred payment program authorized by adoption of a Council resolution, in connection with development or redevelopment of a new single family or duplex residential unit, shall be made in accordance with the terms and conditions set forth in the resolution establishing such a deferred payment program. [Subsection added by General Ordinance No. 09-1300 adopted by City Council June 8, 2009.]

- E. The applicable system development charge shall either be paid in full at the time of occurrence of one of the events outlined in subsection (D), or pursuant to a monthly installment plan approved by the Finance Director. Persons who desire to pay on an installment basis shall submit an application on a form provided by the Finance Director. The maximum period for any installment payment plan shall not exceed twelve (12) months. The installment agreements shall provide that no interest charge will be imposed as long as no default in payment occurs, and that a late charge at the rate of ten percent (10%) per annum will be imposed upon any past due installment.
- F. No permit shall be issued for water or sewer service, nor shall any water or sewer connection be allowed, until the applicable system development charge has been paid in full, or the Public Works Director has received a copy of an installment payment agreement signed by the applicant and the Finance Director, or unless an exemption has been granted pursuant to Section 11 of this ordinance.
- G. The Community Development Director is authorized to prepare and receive requests for and consent to assessment of the amount of systems development charges deferred in accordance with the terms and provisions set forth in the resolution authorizing the deferred payment program. The City Clerk shall enter the assessment in the docket of City liens, and the City Attorney's Office shall record the assessment in the Wasco County Deed Records. Upon the entry and recordation being made, the assessments shall constitute a lien upon the property which received the deferred charge. [Section G added by General Ordinance No. 09-1300, adopted by City Council June 8, 2009.]

Section 10. Delinquent Charges.

- A. When, for any reason, a system development charge has not been paid, the City Manager shall report to the Council the amount of the uncollected charge, the description of the real property to which the charge is attributable, the date upon which the charge was due, and the name of the owner.
- B. The Council shall schedule a public hearing on the matter and direct that notice of the hearing be given to each owner with a copy of the City Manager's report concerning the unpaid charge. Notice of the hearing shall be given either personally or by certified mail, return receipt requested, or by both personal and mailed notice, and by posting notice on the parcel at least ten (10) days before the date set for the hearing.

- C. At the hearing, the City Council may accept, reject, or modify the determination of the City Manager as set forth in the report. If the Council finds that a systems development charge is unpaid and uncollected, the City Clerk shall docket the unpaid and uncollected system development charge in the City lien docket. Upon completion of the docketing, the City shall have a lien against the described land for the full amount of the unpaid charge, together with interest at the legal rate of ten (10) percent. The lien shall be enforceable in the manner provided in ORS Chapter 223.
- D. Upon written request of the City Manager, the City Clerk is authorized to cancel assessments of system development charges, without further City Council action, where the new development approved by the building permit is not constructed and the building permit is cancelled.

Section 11. Exemptions. Existing water and sewer connections, to the extent of current service levels as of the effective date of this ordinance, are exempt from a system development charge. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge. An alteration, addition, replacement or change in use that does not increase the use of a public improvement facility is exempt from all portions of the system development charge. Municipal projects are exempt from all system development charges.

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 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. 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 a qualified public improvement upon acceptance by the City of the public improvement. The credit shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee and shall only be for the improvement fee charged for the type of improvement being constructed.

- C. 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. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the City.
- (1) 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 improvement plan pursuant to Section 8 of this ordinance.
- D. When the construction of a qualified public improvement located in whole or in part on or contiguous to the property that is the subject of development approval, gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project.
- E. Notwithstanding subsections (C) and (D), when establishing a methodology for a systems development charge, the City may provide for a credit against the improvement fee, the reimbursement fee, or both, for capital improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the Council finds reasonable.
- F. Any non-residential development which results in the creation of new and permanent full-time equivalent jobs, shall be entitled to receive a credit toward the applicable system development charge, which credit shall be calculated at the rate of one percent (1 %) for each new, permanent full-time equivalent position created by the development. Eligibility for this credit shall be subject to verification by the Finance Director within twelve (12) months of occupancy or start-up of the development. Only non-residential development occurring upon property located within the City limits shall be eligible for this credit.

- G. The City Council shall have the right to grant a credit not to exceed fifty percent (50%) of the applicable system development charge, for any development project submitted by a nonprofit corporation or any agency or subdivision of the federal, state or local government. Only development occurring upon property located within the City limits shall be eligible for this credit.
- H. Credits shall not be transferable from one development to another. Credits shall not be transferable from one type of system development charge to another. Credits shall be used within 10 years from the date the credit is given.

Section 13. Notice.

- A. 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. Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to adopt or amend a system development charge. The methodology supporting the adoption or amendment shall be available at least 60 days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed shall not invalidate the action of the City.
- B. The City may periodically delete the names from the list, but at least 30 days prior to removing a name from the list, the City must 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.

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 of the City. The portion of the system development charge calculated and collected on account of a utility system shall be used for no purpose other than those set forth in Section 6 of this ordinance.
- B. The Finance Director shall provide the City Council with an annual accounting, by January 1st of each year, of system development charges showing the total amount of system development charge revenues collected for each utility and the projects funded from each account in the previous fiscal year. A list of the amount spent on each project funded in whole or in part with system development charge revenues shall be included in the annual accounting.

Section 15. Implementing Regulations; Amendments. The City Council delegates authority to the City Manager to adopt necessary procedures to implement the provisions of this ordinance. All rules pursuant to this delegated authority shall be filed with the office of the City Clerk and be available for public inspection.

Section 16. Appeal Procedure.

- A. A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the City Council by filing a written request with the City Manager, or his designee, describing with particularity the decision of the Finance Director or Public Works Director, and the expenditure from which the person appeals. An appeal of an expenditure must be filed within two (2) years of the date of the alleged improper expenditure.
- B. Appeals of any other decision required or permitted to be made by the Finance Director or Public Works Director under this ordinance must be filed within 30 days of the date of the decision.
- C. After providing notice to the appellant, the Council shall determine whether the Finance Director's or Public Works Director's decision or the expenditure is in accordance with this ordinance and the provisions of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decision. If the Council determines that there has been an improper expenditure of system development charge revenues, the Council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the Council shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.
- D. A legal action challenging the methodology adopted by the Council pursuant to Section 5 shall not be filed later than 60 days after the adoption. The decision of the Council shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.

Section 17. Prohibited Connection. No person may connect to the water or sewer systems of the City unless the appropriate system development charge has been paid.

Section 18. Penalty. Violation of Section 15 of this ordinance is punishable by a fine not to exceed \$500.00.

Section 19. Construction. For 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; and 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”, “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, 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 of like kind or character.

Section 20. 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 City Council’s intent that this ordinance would have been adopted had such unconstitutional provision not been included herein.

Section 21. Classification. The City Council determines that any fee, rates, or charges imposed by this ordinance are not a tax subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

Section 22. Repeal. General Ordinance No. 91-1130, as amended by General Ordinance Nos. 93-1170 and 96-1199 is hereby repealed in its entirety. Any and all resolutions adopted pursuant to General Ordinance No. 91-1130 shall remain in full force and effect pursuant to the authority granted the City in General Ordinance No. 91-1130 and this ordinance, until specifically repealed or amended by resolution.

ADOPTED BY CITY COUNCIL AND APPROVED BY THE MAYOR MAY 22, 2006.