

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE TITLE 15 TO ADD NEW LANGUAGE FOR THE IMPLEMENTATION OF A CITYWIDE TRANSPORTATION SYSTEMS DEVELOPMENT CHARGE AND DECLARING AN EMERGENCY.

WHEREAS, the City of Albany is complying with the provisions of ORS 223.207 through 223.208 and 223.297 through 223.314; and

WHEREAS, the Council of the City of Albany has duly advertised and caused notices to be given as required by law and has had a public hearing concerning the establishment of System Development Charges; and

WHEREAS, the said hearing on the 9th day of July 1997 has been duly held and parties were given an opportunity to be heard and the Council being fully informed.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Title 15 of the Albany Municipal Code is hereby amended to incorporate the changes noted herein:

15.16.050 Systems development charge established.

(1) Unless otherwise exempted by the provisions of this chapter or other local or state law, a systems development charge is hereby imposed upon all new development within the City, and all new development outside the boundary of the City that connects to or otherwise uses the water system or sanitary sewer system of the City.

(2) A systems development charge is also imposed upon all new development within the City, and all new development outside the boundary of the City that expands its usage of the water or sanitary sewer systems because of intensification of the existing development.

(3) Unless otherwise exempted by the provisions of this chapter or other local or state law, a systems development charge is also imposed upon all new development within the City that expands its usage of the transportation system or generates additional traffic because of new development or intensification of the existing development.

(4) When the Council determines to establish a systems development charge for any capital improvement it shall do so by Council resolution.

(5) ~~The systems development charge may be adjusted annually in accordance with the Engineering News Record Construction Cost Index.~~ Because the systems development charge and supporting calculations, including the credits established herein, are closely related to the cost of construction of the capital improvements for each of the systems, the systems development charge and calculations for each system shall be automatically adjusted on the first day of July of each calendar year. The City Engineer shall make the adjustment based upon the Seattle Construction Cost Index published by Engineering News Record (ENR) by calculating the percentage increase/decrease in the index for the period since the last adjustment and then applying that percentage to the figures used to calculate the systems development charge and any credits.

15.16.060 Compliance with state law.

(1) The revenues received from the water system development charge shall be deposited to the newly-created water improvement fee and/or water reimbursement fee funds. The revenues from the sewer system development charge shall be deposited to the sewer improvement fee and/or reimbursement fee funds. The revenues from the transportation system development charge shall be deposited to the transportation improvement fee and/or reimbursement fee funds. These funds shall be budgeted and expended as provided by state law. The accounting of such revenues and expenditures required by state law shall be included in the City's annual financial audit required by ORS Chapter 294.

(2) The capital improvement plan(s) required by state law as the basis for expending revenues from the improvement fees portion of the systems development charge shall be the Albany/Millersburg Water System Plan by Brown and Caldwell, Consulting Engineers (1988); the North Albany Health Hazard Area Sewer Facility Plan, Brown and Caldwell, Consulting Engineers (1990); the Wastewater Facility Plan prepared by CH2M Hill (1986); ~~and the North Albany Transportation Corridor Plan prepared by Benton County (1983);~~ and the Albany Transportation System Plan

and the 20-Year Transportation Plan SDC-Funded Capacity Improvement List prepared by Kimley-Horn and Associates (1997).

15.16.080 Exemptions.

All applications to connect to the water or sanitary sewer system received prior to July 1, 1991 are exempt from the systems development charge imposed in Section 15.16.050. All applications for a building permit that would intensify the use of the transportation network received prior to ~~November 1, 1994~~ October 1, 1997, are exempt from the citywide transportation systems development charge imposed in Section 15.16.050 provided a building permit is issued and all fees and other City systems development charges and in-lieu-of fees (if applicable) have been paid, or the installment payment method has been applied for and approved prior to January 1, 1997.

15.16.090 Credits.

(1) When development occurs that must pay a systems development charge under Section 15.16.050 hereof, the systems development charge for the existing use shall be calculated and if it is less than the systems development charge for the proposed use, the difference between the systems development charge for the existing use and the systems development charge for the proposed use shall be the systems development charge required under Section 15.16.050. If the change in use results in the systems development charge for the proposed use being less than the systems development charge for the existing use, no systems development charge shall be required; however, no refund or credit shall be given.

(2) A credit against the improvement fee portion of the systems development charge shall be given for the cost of a qualified public improvement associated with development.

(a) The credit provided for in this section shall be only for the improvement fee charged for the type of improvement being constructed, and credit for qualified public improvements under subsection 15.16.020(4b) of this section may be granted only for the cost of that portion of such improvement that exceeds the government units 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 subsection 15.16.020(4b) of this section.

(b) When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project.

(c) Credits shall be used not later than 10 years from the date the credit is given.

(d) Credits shall be established using the method outlined in the transportation system development charge fee resolution or, in the case of water and sewer system development charges, by Council policy, and shall be included in an agreement signed by the applicant and the City Engineer that states the amount of the credit and the effective date of the agreement.

(3) The Finance Director shall be responsible for all recording and accounting associated with the distribution of credits.

15.16.100 Appeal procedures.

(1) The Finance Director will 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. The Finance Director will mail written notice to persons on the list at least 45 days prior to the first hearing to adopt or amend a system development charge, and the methodology supporting the adoption or amendment will be available 30 days prior to the first hearing to adopt or amend. The failure of a person on the list to receive a notice that was mailed will not invalidate the action of the City. The City may periodically delete names from the list, but, at least 30 days prior to removing a name from the list, will 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.

(2) Parties challenging the methodology for establishing the systems development charge may appeal the methodology by filing a written appeal with the Finance Director within 60 days of passage of the ordinance codified in this chapter. Such appeals shall describe with particularity the portion of the methodology, calculations, or assumptions which are being asked for reconsideration. All appeal requests shall comply with subsection (5) of this section. A person shall contest the methodology used for calculating a system development charge only as provided in ORS 34.010 to 34.100, and not otherwise.

(3) Parties aggrieved by the imposition of a systems development charge which has been calculated by the City Engineer ~~Building Official~~ or the City Engineer's ~~Building Official's~~ designee under Sections 15.16.050 through 15.16.090 or a party challenging the propriety of an expenditure of systems development charge revenues may appeal the decision or the expenditure by filing a written request with the City Public Works Director ~~Finance Director~~ for consideration. Such appeal shall describe with particularity the decision or the expenditure from which the person appeals and shall comply with subsection (6)(5) of this section.

(4) An appeal of an expenditure must be filed within two years of the date of alleged improper expenditure. Appeals of any other decision must be filed within 15 days of the date of the decision.

(5) An appeal fee, established by Council resolution, shall accompany all systems development charge appeal requests.

(6) The appeal shall state:

- (a) The name and address of the appellant;
- (b) If applicable, the address or tax lot of the property to which the charge is being applied;
- (c) The nature of the determination being appealed;
- (d) The reason the determination is incorrect; and
- (e) What the correct determination of the appeal should be.

An appellant who fails to file such a statement within the time permitted waives his/her objections, and his/her appeal shall be dismissed.

(7) Unless the appellant and the City agree to a longer period, an appeal shall be heard within ~~30~~ 60 days of the receipt of the notice of intent to appeal. At least seven days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

(8) The City Council shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the City Council deems appropriate. At the hearing the appellant may present testimony and oral argument personally or by counsel. The rules of evidence as used by courts of law do not apply.

(9) The appellant shall carry the burden of proving that the determination being appealed is incorrect and what the correct determination should be.

(10) The City Council shall issue a written decision within ~~20~~ 30 days after the hearing date and that decision shall be final.

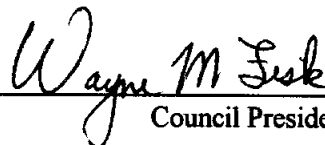
Emergency Clause

Inasmuch as this ordinance is necessary for the immediate preservation of the peace, safety, and health of the citizens of the City of Albany, Oregon, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect immediately upon its passage by the Council and approval by the Council President.

Passed by the Council: August 13, 1997

Approved by the Council President: August 13, 1997

Effective Date: August 13, 1997



Council President

ATTEST:



City Recorder