

## ORDINANCE NO. 02-238

AN ORDINANCE relating to charges for system development, and stating an effective date.

THE CITY OF LAKESIDE ORDAINS AS FOLLOWS:

### Section 1. Purpose.

The purpose of the system development charge is to impose a portion of the cost of capital improvements for the sewer system on those developments that creates the need for or increase the demands on capital improvements.

### Section 2. Scope.

The system development charge imposed by this ordinance is separate from and in addition to any applicable connection charge, tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development.

### Section 3. Definitions.

For purposes of this ordinance, the following mean:

Capital improvements: Facilities or assets used for:

- (1) Waste sewer collection, transmission, treatment disposal;
- (2) Waste sewer pre-treatment storage.

Permittee. The person to whom a building permit, development permit, a permit or plan approval to connect the sewer or sewer system is issued.

Qualified public improvements. A capital improvement that is:

- (1) Required as a condition of development approval; and either
- (2) Identified in the plan adopted pursuant to section 7 of this ordinance; or
- (3) Adopted into the plan pursuant to section 7 at any time prior to final completion and acceptance thereof; and either
- (4) Not located on or contiguous to a parcel of land that is the subject of the development approval; or
- (5) 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 to the particular development project to which the improvement fee is related.
- (6) For purposes of this definition, contiguous means in a public way which abuts the parcel.

Development. Conducting a building or mining operation, making a physical change in the use or appearance of a structure or land which increases usage of the sewer system.

Improvement Fee. A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 4.4.

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.

Owner. The owner or owners of record title or the purchaser or purchasers under a recorded sales agreement, and other persons having an interest of record in the described real estate.

Parcel of Land. A lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures or other use and that includes the yards and other open spaces required under the zoning, subdivision or other development ordinance.

Reimbursement Fee. A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 4.

System Development Charge. A reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. "System development charge" includes that portion of a sewer system connection charge that is greater than the amount necessary to reimburse the city for its average cost of inspecting and installing connections with sewer facilities. "System development charge" does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment or the cost of complying with requirements or conditions imposed by a land use decision.

Section 4. System Development Charge established.

- A. System development charges shall be established and may be revised by resolution of the council.
- B. Unless otherwise exempted by the provisions of this Ordinance or other local or state law, a system development charge is imposed upon all parcels of land within the city, and upon all lands outside the boundary of the city that connect to or otherwise use the storm sewers, or sewer facilities of the city.

Section 5. Methodology.

- A. The methodology used to establish or modify the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, rate-making principals 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 systems to which the fee is related.

- C. The methodology used to establish or modify the improvement fee or the reimbursement fee, or both, shall be adopted by resolution of the council.

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 the indebtedness.
- B. Improvement fees shall be spent only on capacity increasing capital improvements, 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 development.
- C. 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 7.
- D. Notwithstanding subsections A and B of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.

Section 7. Expenditure Restriction and Collection of Charges.

- (1) The system development charge is payable upon issuance of;
  - (a) A building permit;
  - (b) A development permit;
  - (c) A development permit for development not requiring the issuance of a building permit
  - (d) A plumbing permit;
  - (e) A permit to connect to the sewer system;

An owner of property shall have the option of payment at the time set forth hereinabove or upon the occupancy of the property, or upon the sale of the property, or within one year from the issuance of the date of the building permit, whichever occurs first. In the event that the owner of the property does not pay pursuant to (a) through (f) of this paragraph, the owner shall execute a lien in favor of the City of Lakeside for the amount owing. Said lien shall provide for payment in accordance with this paragraph. The cost of lien preparation and recording shall be paid in advance by the owner.

- A. System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- B. System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

- C. 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.
- D. If development is commenced or connection is made to the sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.
- E. The city administrator or designee shall collect the applicable system development charge when a permit that allows building or development of a parcel is issued or when a connection to the sewer system of the city is made.
- F. The city administrator or designee shall not issue such permit or allow such connection until the charge has been paid in full, or until provision for payment has been made.

Section 8. Delinquent charges-Hearing.

- A. When, for any reason, the system development charge has not been paid, the city administrator 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 city 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 administrator'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 days before the date set for hearing.
- C. At the hearing, the council may accept, reject or modify the determination of the city administrator as set forth in the report. If the council finds that a system development charge is unpaid and uncollected, it shall direct the city administrator to docket the unpaid and uncollected system development charge in the 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 percent and with the city's actual cost of serving notice of the hearing on the owners. The lien shall be enforceable in the manner provided in ORS Chapter 223.

Section 9. Exemptions.

- A. Structures and uses established and legally existing on or before the adoption of the ordinance codified in this Ordinance are exempt from a system development charge, except sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this

- subsection shall pay the sewer charges pursuant to the terms of this Ordinance upon the receipt of a permit to connect to the sewer system.
- B. Additions to single-family dwellings that do not constitute a dwelling as defined by State Uniform Building Codes are exempt from all portions of the system development charge.
  - C. An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge.
  - D. A project financed by city revenues is exempt from all portions of the system development charge.

#### Section 10. Credit.

- A. A system development charge shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given for the computed system development charge to the extent that prior structures existed and services were established on or after the effective date of this ordinance. The credit so computed shall not exceed the calculated system development charge. No refund shall be made on account of such credit.
- B. A credit shall be given to the permittee/developer for the cost of a qualified public improvement not located in whole or in part on or contiguous to the property that is subject of development approval, 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 credit shall not to exceed the improvement and receipt of written confirmation thereof from the City Administrator, or designee.
- D. The request for credit for a qualified public improvement shall be filed with the City Administrator, or designee, not later than 60 days after approval of the development by the city. The request shall include:
  - (1) A legal description of all land within the development.
  - (2) A legal description of any land proposed to be donated as part of the qualified public improvement.

- (3) A Written appraisal of the fair market value of donated lands, which are a part of the qualified public improvement. The appraisal shall be prepared by certified professional appraiser and based upon comparable sales of similar property between unrelated parties;
- (4) A detailed written estimate of proposed construction costs for each qualified public improvement, prepared by a professional engineer. The estimate shall include separate costs for that portion of each improvement that exceeds the city's minimum standard facility size or capacity;
- (5) If the qualified public improvement is not currently on the city's capital improvement plan, a statement requesting the addition of the improvement onto the plan shall be made in writing.
- (6) The signatures of all legal owners of the development property together with the designation of whom is to receive any credits and the designated percentage for each, if more than one person or entity is designated.
- (7) When the construction of a qualified public improvement located in whole or in part 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.
- (8) Notwithstanding subsections (2), (3), and (5), when establishing a methodology for a system development charge, the city may provide for a credit against the improvement fee, the reimbursement, 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
- (9) Credits shall not be transferable from one development to another.
- (10) Credits shall be used within 10 years from the date the credit is given.
- (11) Where public improvement qualifies for both credits for system development charges from the city, and reimbursement from such other property owners receiving service from the improvement pursuant to Ordinance 02-238 the developer shall only be entitled to a combined total redeemed credit and reimbursement amount not greater than the total qualified public improvement cost.



- (12) Where a public improvement qualifies for both credits pursuant to this section and reimbursement pursuant to Ordinance 02-238 the city shall assume any right for reimbursement for any credits redeemed by a developer for that portion of the improvement up to and including the city standard for size of capacity.

Section 11. Notice.

- A. The city shall maintain a list of persons who have made 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 a 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 does not invalidate the action of the city.
- B. The city may periodically delete 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 13. Segregation and use of revenue.

- A. All funds derived from a particular type of system development charge is to be segregated by accounting practices from all other funds of the city. That portion of the development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in Section 6 B. The city administrator shall provide the city council with an annual accounting, based on the city's fiscal year, for system development charges showing the total amount of system development charge revenues collected for each account

Section 14. 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 administrator describing with particularity the decision of the city administrator and the expenditure from which the person appeals. An appeal of expenditure must be filed within two years of the date of the alleged improper expenditure.

- B. Appeals of any other decision required or permitted to be made to the City Administrator under this Ordinance must be filed within 10 years of the date of the decision.
- C. After providing notice to the appellant, the council shall determine whether the city administrator's decision or the expenditure is in accordance with this Ordinance and the provisions of ORS 223.237 to 223.314 and may affirm, modify or overrule the decisions. If the council determines that there has been an improper expenditure of system development charge revenues, the council shall direct that 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.
- D. A legal action challenging the methodology adopted by the council shall not be filed later than sixty days after the adoption.

Section 14. Prohibited connection.

No person may connect to the sewer systems of the city unless the appropriate system development charge has been paid or the lien or installment payment method has been applied for and approved.

Section 15. Penalty.

Violation of Ordinance 02-238 is punishable by a fine as adopted by resolution of the city council.

Section 16. Construction.

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

Section 17. Severability.

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

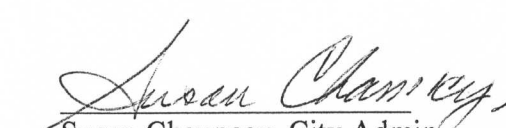
Section 18. Effective date.

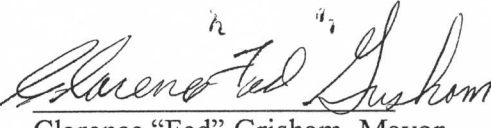
The ordinance shall become effective September 1, 2002.

First Read to the City Council the 8<sup>th</sup> day of Aug, 2002  
 Passed by the Council this 8<sup>th</sup> day of Aug, 2002  
 Signed by the Mayor this 8<sup>th</sup> day of Aug, 2002  
 Effective this 1 day of September 2002.

ATTESTED:

APPROVED:

  
 Susan Chauncey, City Admin.

  
 Clarence "Fed" Grisham, Mayor