

ORDINANCE NO. 1707

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE IMPOSITION OF SYSTEM DEVELOPMENT CHARGES, REPEALING CITY CODE SECTIONS 13.16.010 - 13.16.170 and 13.28.010 - 13.28.070, AND DECLARING AN EMERGENCY.

WHEREAS, having considered various proposals and plans for equitable financing of all or part of future or existing capital improvements within the City of Milwaukie and recognizing that the continuing increase in the intensity of the use of land and demand for capital improvements within the City will require substantial changes for the safety of the public and in order to protect the values and usefulness of properties within the City, the City Council has determined that system development charges for existing and future capital improvements should be imposed and collected in accordance with ORS 223.297-.314.

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Purpose. This ordinance is intended to provide authorization for system development charges for capital improvements pursuant to ORS 223.297 - 223.314 for the purpose of creating a source of funds to pay for the installation, construction, and extension of capital improvements. These charges shall be collected at the time of the development of properties which increase the use of capital improvements and generate a need for those facilities.

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.

Section 3. Definitions.

Capital Improvements. Facilities or assets used for:

- (1) Water supply, treatment and distribution;
- (2) Sewage and wastewater collection, transmission, treatment and disposal;
- (3) Drainage and flood control;
- (4) Transportation; or
- (5) Parks and recreation.

Development. Conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, or creating or terminating a right of access.

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.

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(s) of record title or the purchaser(s) under a recorded sales agreement, and other persons having an interest of record in the described real property.

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 includes the yards and other open

spaces required under the zoning, subdivision, or other development ordinances.

Permittee. The person to whom a Building Permit, Development Permit, Permit to Connect to the sewer or water system or Right-of-Way Access Permit is issued.

Qualified public improvement. A capital improvement that is:

- (1) Required as a condition of residential development approval;
- (2) Identified in the plan adopted pursuant to section 8 of this ordinance; and
- (3) Not located on or contiguous to a parcel of land that is the subject of the residential development approval.

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 of this ordinance.

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 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 with water and 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 Imposed; Method For Establishment Created.

(1) Unless otherwise exempted by the provisions of this ordinance or other local or state law, effective July 1, 1991, a systems development charge is hereby imposed upon all development within the city, upon the act of making a connection to the city water or wastewater system within the city, and upon all development outside the boundary of the city that connects to or otherwise uses the wastewater or water facilities of the city.

(2) Systems development charges shall be established and may be revised by resolution of the city council. The resolution shall set the amount of the charge, the type of permit to which the charge applies, the methodology used to set the amount of the charge and, if the charge applies to a geographic area smaller than the entire city, the geographic area subject to the charge.

Section 5. Methodology.

(1) The methodology used to establish the reimbursement fee shall consider the cost of the then-existing facilities, prior contributions by then-existing system users, the value of unused capacity, 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.

(2) The methodology used to establish 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 and other relevant factors identified by the Council.

(3) The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be adopted by Resolution.

Section 6. Authorized Expenditures.

(1) 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.

(2) (a) Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such 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 improvements funded by improvement fees must be related to demands created by current or projected development.

(2) (b) A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the Systems Development Charge Funding Project Plan adopted by the city pursuant to section 8 of this ordinance.

(3) Notwithstanding subsections (1) and (2) 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.

(1) 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.

(2) System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

Section 8. Project Plan. The Council shall adopt by resolution the Systems Development Charge Funds Project Plan. This Plan:

(1) Lists the capital improvements that may be funded with improvement fee revenues; and

(2) Lists the estimated cost and time of construction of each improvement.

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. The city may modify this project plan at any time through the adoption of an appropriate resolution.

Section 9. Collection of Charge.

(1) The systems development charge is payable upon issuance of:

- (a) A building permit;
- (b) A development permit for development not requiring the issuance of a building permit;
- (c) A permit to connect to the water system;
- (d) A permit to connect to the sewer system; or
- (e) A right-of-way access permit.

The resolution which sets the amount of the charge shall designate the permit or permits to which the charge applies.

(2) If development is commenced or connection is made to the water system, wastewater system or storm sewer system without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.

(3) The City Manager or the designee shall collect the applicable system development charge from the permittee.

(4) The City Manager or the designee shall not issue such permit or allow connection until the charge has been paid in full, unless provision for installment payments has been made pursuant to section 10 of this ordinance, or unless an exemption is granted pursuant to section 11 of this ordinance.

Section 10. Installment Payment.

(1) When a system development charge is due and payable, the permittee may apply for payment in twenty (20) semi-annual installments, secured by a lien on the property upon which the development is to occur or to which the utility connection is to be made, to include interest on the unpaid balance, if that payment option is required to be made available to the permittee by ORS 223.207.

(2) The City Manager or designee shall provide application forms for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.

(3) A permittee requesting installment payments shall have the burden of demonstrating the permittee's authority to assent to the imposition of a lien on the property and that the interest of the permittee is adequate to secure payment of the lien.

(5) The City Manager or designee shall docket the lien in the lien docket. From that time the city shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the council. The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall be superior to all other liens pursuant to ORS 223.230.

Section 11. Exemptions.

(1) Structures and uses established and existing on or before the effective date of the resolution which sets the amount of the system development charge are exempt from the charge, except water and sewer charges, to the extent of the structure or use existing on that date 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 water or sewer charges pursuant to the

terms of this ordinance upon the receipt of a permit to connect to the water or sewer system.

(2) Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the Building Code adopted pursuant to §15.04 of this code, are exempt from all portions of the system development charge.

(3) An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of a capital improvement are exempt from all portions of the system development charge.

Section 12. Credits.

(1) 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 charge 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, however, no refund or credit shall be given unless provided for by another subsection of this section.

(2) A credit shall be given to the permittee for the cost of a qualified public improvement associated with a residential development upon acceptance by the City of the improvement. If a qualified public improvement is located partially on and partially off the parcel that is the subject of the residential 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. The City shall review the plans for the qualified public improvements and verify costs. The credit provided for by this subsection shall be only for the improvement fee charged for the type of improvement being constructed and shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the City.

(3) When establishing a methodology for a system development charge, the City may provide for a credit against the improvement fee, the reimbursement fee, or both, for a capital improvement constructed as part of the development that reduces the development's demand upon existing capital improvements or the need for future capital improvements, or a credit based upon any other rationale the Council finds reasonable.

(4) Except to the extent that a qualified public improvement for which a credit is given is part of the phasing of a larger project and that the credit received against the systems development charge is greater than the charge for the phase during which the qualified public improvement is constructed, credit shall not be transferable from one development to another.

(5) Credits shall not be transferable from one type of system development charge to another.

Section 13. Segregation and Use of Revenue.

(1) All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds by the City. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in this Ordinance.

(2) The City Manager shall provide an annual accounting, based on the City's fiscal year, of system development charges showing the total amount of system development charge revenues collected for each type of charge and the projects funded from each account.

Section 14. Appeal Procedure.

(1) A person aggrieved by a decision required or permitted to be made by the City Manager under this ordinance or 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 describing with particularity the decision of the City Manager or the expenditure from which the person appeals.

(2) An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure. Appeals of any other decision must be filed within thirty (30) days of the date of the decision.

(3) The Council shall determine whether the City Manager's decision or the expenditure is in accordance with this ordinance and the provisions of ORS 223.297-.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 a sum equal to the misspent amount shall be deposited within one year of the date of that determination to the credit of the account or fund from which it was spent.

(4) A legal action challenging the methodology adopted by the Council pursuant to sections 4 and 5 shall not be filed later than sixty (60) days after the adoption.

Section 15. Low-income program.

(1) Loan and Deferral Program. Low-income property owners unable to pay system development charges may apply for a program to pay their system development charges in installments. Depending upon eligibility, a property owner may apply for the installment payment program or the low-interest five-year deferral program.

(2) Installment Payment Program. This program is designed for those low-income properties that are unable to make a lump sum payment of the systems development charge at time of permit issuance. Commercial establishments are not eligible for this deferral program. This program will allow applicants to make monthly payments with interest until the amount due is paid, not to exceed ten (10) years. The interest rate shall be the rate of the local government investment pool on the date of approval of the application. Participants must not exceed the low-income level adopted by resolution of the city council. In addition to the application eligibility requirements, the full amount plus interest is due and payable upon the sale or change in use of the property or death of the applicant.

(3) Low-interest Five-year Deferral Program. This deferral program is designed for those participants that meet the low income levels adopted by resolution of the city council for low-interest long-term repayment of systems development charge. Commercial establishments are not eligible for this deferral program. This program allows applicants to defer payment of the systems development charge for five years. At the end of five years the permittee will pay the full amount plus six (6%) percent interest (annually compounded). In addition to the application eligibility requirements, the full amount plus interest is due and payable upon the sale or change in use of the property or the death of the permittee.

(4) Application - Eligibility.

(a) To the extent that the requirements of this chapter are met, a permittee may make application to obtain an installment payment or deferred payment program for systems development charges.

(b) To be eligible for the installment or the deferred payment program:

- (1) The property must meet the requirements of ORS 223 for improvement financing;
- (2) The property involved must be occupied and used by permittee as his or her principal residence;
- (3) No other city assessments or accounts may be in arrears on the property;
- (4) The income of the family, of which the permittee is a member, shall not exceed the income level adopted by resolution of the city council;
- (5) "Family" means one person or two or more persons related by blood, marriage, legal adoption or guardianship; or a group of not more than five persons, all or part of whom are not related by blood, marriage, legal adoption or guardianship, living together as a simple housekeeping and economic unit in the dwelling occupying the property for which the installment or deferred payment program is applied for;
- (6) The permittee shall file an application to obtain the installment or deferred payment with

the city finance director prior to qualifying for the program;

- (7) Proof of total household income must be given to the city finance director prior to qualifying for the program.

Section 16. 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 17. Penalty. Violation of this ordinance is punishable by a fine not to exceed \$500.00.

Section 18. Construction. The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this ordinance.

Section 19. Severability. The invalidity of a section or subsection of this ordinance shall not affect the validity of the remaining sections or subsections.

Section 20. Repealer. Milwaukie City Code Sections 13.16.010 to 13.16.70, and 13.28.010 to 13.28.070 are hereby repealed effective upon the effective date of this ordinance.

Section 21. Saving Clause. Milwaukie City Code Sections 13.16.010 to 13.16.070, and 13.28.010 to 13.28.070, repealed by this ordinance, shall remain in force for the prosecution, conviction, and punishment of persons who violate those code sections before the effective date of this ordinance.

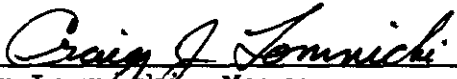
Section 22. Emergency Clause. The City Council finds that in order to impose system development charges, the provisions of this ordinance must be in effect on or before July 1, 1991,

pursuant to the requirements of ORS 223.297 to 223.314. Therefore, an emergency is declared to exist, and this ordinance shall take effect upon its passage.

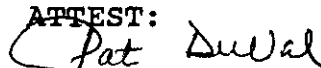
Read the first time on June 18, 1991 and moved to second reading by unanimous vote of the City Council.

Read the second time and adopted by the City Council on June 18, 1991.

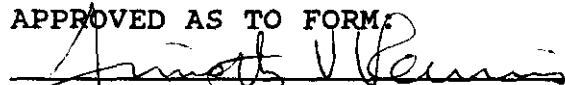
Signed by the Mayor on June 18, 1991.



Craig Lomnicki, Mayor

ATTEST:


City Recorder

APPROVED AS TO FORM:


O'Donnell, Ramis, Crew & Corrigan