

ORDINANCE NO. 155



AN ORDINANCE ESTABLISHING A SYSTEMS DEVELOPMENT CHARGE RELATING TO CAPITAL IMPROVEMENTS FOR WATER SUPPLY TREATMENT, TRANSMISSION AND DISTRIBUTION; WASTEWATER COLLECTION, TREATMENT AND DISPOSAL; STORM DRAINAGE; STREETS; FLOOD CONTROL AND PARKS, AND REPEALING ALL OTHER ORDINANCES OR PORTIONS THEREOF THAT ARE IN CONFLICT OF THIS ORDINANCE.

THE CITY OF DETROIT ORDAINS AS FOLLOWS:

**Section 1. - Purpose.** The purpose of this system development charge is to impose an equitable share of the costs of capital improvements for water supply treatment, transmission and distribution; wastewater collection, treatment and disposal; storm drainage; streets; flood control and parks upon those developments that create 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 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 means:

A. **Capital Improvements** - Facilities or assets used for:

1. Water supply, treatment and distribution;
2. Wastewater collection, transmission, treatment and disposal;
3. Drainage and flood control;
4. Transportation, including but not limited to streets, sidewalks, bike lanes and paths, street lights, traffic signs and signals, public transportation, vehicle parking and bridges; or
5. Parks and recreation, including but not limited to neighborhood parks, community parks, public open space and trail systems, buildings, courts, fields and other like facilities.

B. **Development** - Conducting a building or mining operation, making a physical change in the use or appearance of a structure of land, dividing land into two or more parcels (including partitions and subdivisions), and creating or terminating a right of access.

C. **Developer** - Any person responsible for a development.

D. 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.

E. 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 right-of-way or easement subject to a servitude for a public street or scenic or preservation purpose.

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

G. 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 ordinances.

H. Qualified Public Improvements - 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.

I. 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.

J. System Development Charge - A reimbursement fee, an improvement fee or a combination thereof assessed or collected at any of the times specified in Section 9. "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 hereby imposed upon all developers of parcels of land within the city and lands outside the boundary of the city that connect to or otherwise use the sewer facilities, storm sewers or water facilities of the city.

#### **Section 5. - Methodology**

A. The methodology used to establish the reimbursement fee shall consider the cost of then existing facilities, prior contributions by then existing 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.

B. 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.

C. The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be contained in an ordinance adopted by 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 indebtedness.

1. 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.

2. 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 and costs of properly administering, collecting and accounting for system development charges.

**Section 7 - Expenditures Restrictions.**

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 of routine maintenance of capital improvements.

**Section 8 - Improvement Plan.** The council shall adopt a plan that:

A. Lists the capital improvements that may be funded with improvement fee revenues;

B. Lists the estimated costs and time of construction of each improvement; and

C. Describes the process for modifying the plan.

**Section 9 - Collection of Charge.**

A. The system development charge is payable upon issuance of:

1. A building permit;

2. A development permit for development not requiring the issuance of a building permit; or

3. A permit to connect to the water, sanitary sewer or storm drainage systems.

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, sewer or storm drainage systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.

D. The city recorder 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 water or sewer system of the city is made.

E. The city recorder shall not issue such permit or allow such connection until the charge has been paid in full, or until provision for installment payments had been made pursuant to Section 11 of this Ordinance, or unless an exemption is granted pursuant to Section 12 of this ordinance.

#### **Section 10 - Delinquent Charges; Hearing.**

A. When, for any reason, the system development charge has not been paid, the city recorder 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 developer.

B. The city council shall schedule a public hearing on the matter and direct that notice of the hearing be given to each developer with a copy of the city recorder'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 10 days before the date set for the hearing.

C. At the hearing, the council may accept, reject or modify the determination of the city recorder as set forth in the report. If the council finds that a system development charge is unpaid and uncollected, it shall direct the city recorder 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 10 percent and with the city's actual cost of serving notice of the hearing on the developer. The lien shall be enforceable in the manner provided in ORS Chapter 223.

#### **Section 11 - Exemptions.**

A. A developer whose structures and uses were established and existing on or before the effective date of this ordinance is exempt from a system development charge, except water and 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. Developers 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.

B. A developer constructing additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code is exempt from all portions of the system development charge.

C. A developer whose development consists of an alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the public improvement facility is exempt from all portions of the system development charge.

D. A developer whose project is financed by city revenues is exempt from all portions of the system development charge.

### **Section 12 - Credits**

A. As used in this section and in the definition of "Qualified Public Improvements" in Section 3 the word "Contiguous" means: in a public way which abuts.

B. When development occurs that must pay a system development charge under Section 4 of this ordinance, the system development charge for the existing use shall be calculated and if it is less than the system development charge for the proposed use, 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 required under Section 4. If the change in use results in the systems development charge for the proposed use being less than the system development charge for the existing use, no system development shall be required; however, no refund or credit shall be given.

C. A credit shall be given for the cost of a qualified public improvement associated with a development. If a qualified public improvement is located partially on and partially off the parcel of land that is the subject of the 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 parcel of land. The credit provided for by this subsection shall be only for the public improvement charge charged for the type of improvement being constructed and shall not exceed the public improvement charge even if the cost of the capital improvement exceeds the applicable public improvement charge.

D. In situations where the amount of credit exceeds the amount of the system development charge, the excess credit is not transferable to another development. It may be transferred to another phase of the original development.

E. Credit shall not be transferable from one type of capital improvement to another.

**Section 13 - 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. 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 Section 6 of this ordinance.

B. The city recorder 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 type of facility and the projects funds from 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 recorder describing with particularity the decision of the city council and the expenditure from which the person appeals. An appeal of an 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 by the city recorder under this ordinance must be filed within 10 days of the date of the decision.

C. After providing notice to the appellant, the council shall determine whether the city recorder'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 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 to the credit of the account or fund from which it was spent.

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.

**Section 15 - 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 16 - Penalty.** Violation of Section 15 of this ordinance is punishable by a fine not to exceed \$1000.00.

**Section 17 - Construction.** The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this ordinance.

**Section 18 - Severability.** If any provision, section, sentence or phrase of this ordinance shall for any reason be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgment or decision shall not affect the validity of the remaining portions of this ordinance.

**Section 19 - Repeal.** All other City of Detroit ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 20 - Emergency.** An emergency is hereby declared to exist and this ordinance shall go into full force and effect immediately upon its passage and approval by the Mayor.

Approved this 9<sup>th</sup> day of December, 1997 by the City Council of the City of Detroit, Marion County, Oregon.

Martha Millican  
Mayor

Adopted on December 9<sup>th</sup>, 1997

ATTEST:

Alberta Phillips  
City Recorder

Aye 5  
Nays 0  
Absent 0