

ORDINANCE # 170

REPEALED

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 ORDINANCE NO. 155.

Section 1. Purpose. The purpose of the system development charge is to impose a 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 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 mean:

Capital improvements. Facilities or assets used for:

- (1) Water supply, treatment and distribution;
- (2) Waste water 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, dividing land into two or more parcels (including partitions and subdivisions), and creating or terminating a right of access.

Improvement fee. A fee for costs associated with capital improvements to be constructed after the date the ordinance is adopted pursuant to section 4 of this ordinance.

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.

Permittee means the person to whom a building permit, development permit, a permit or plan approval to connect to the sewer or water system, or right-of-way access permit is issued.

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 either
- (3) Not located on or contiguous to a parcel of land that is the subject of development approval; or
- (4) Located in whole or in part on or contiguous to property that is the subject of developmental 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.
- (5) For purposes of this definition, contiguous means in a public way which abuts the parcel.

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 Established.

- (1) 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 connection even smaller than the minimum size. The

Section 5. Methodology.

- (1) 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 principals employed to finance publicly owned capital improvements, and other 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.
- (3) 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.

- (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 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.
- (b) 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.
- (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 and annual accounting of system development charge expenditures.

Section 8. Improvement Plan.

- (1) Lists the capital improvements that may be funded with improvements fee revenues;
- (2) Lists the estimated cost and time of construction of each improvement; and
- (3) Describes the process for modifying the plan.

In adopting this plan, the 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.

Section 9. Collection of Charge.

- (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 permit or approval to connect to the water system;
 - (e) A permit or approval to connect to the sewer system; or
 - (f) A right-of-way access permit.

(2) If no building, development, or connection permit is required, the system development charge is payable at the time of usage of the capital improvement is increased.

(3) 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.

(4) The City Recorder shall collect the applicable system development charge from the permittee 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.

(5) 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 has been made pursuant to section 11 of this ordinance, or unless an exemption is granted pursuant to section 17 of this

- (2) The City Recorder 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) An applicant for installment payments shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that the interest of the applicant is adequate to secure payment of the lien.
- (4) The City Recorder shall report to the City Council the amount of the system development charge, the dates on which the payments are due, the name of the owner, and the description of the parcel.
- (5) The City Recorder 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.

Section 11. Exemptions.

- (1) Structures and uses established and existing on or before April 13th, 1999 are 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.
Structures and uses affected by this subsection shall pay the water and 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 State Uniform Building 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 the public improvement facility are exempt from all portions of the system development charge.
- (4) A project financed by city revenues is exempt from all portions of the system development charge.

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.

- (2) 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.
- (3) 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.
- (4) 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.
- (5) Notwithstanding subsections (4) and (5), 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 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.
- (6) Credits shall not be transferable from one development to another.
- (7) Credits shall not be transferable from one type of system development charge to another.

(8) Credits shall be used within 10 years from the date the credit is given.

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.

(2) 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 14. 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 of the city. The 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.

(2) The [appropriate city official] 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 funded from each account.

Section 15. Appeal Procedure.

(1) A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or to 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.

(2) Appeals of any other decision required or permitted to be made by the [appropriate city official] under this ordinance must be filed within 10 days of the date of the decision.

(3) After providing notice to the applicant, the council shall determine whether the [appropriate city official'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. The decision of the council shall be reviewed only as provide in ORS 34.010 to 34.100, and not otherwise.

installment payment method has been applied for and approved, with the exception that existing residences (structures) having septic systems at the time this ordinance is adopted shall be exempt.

Section 17. Penalty. Violation of section 16 of this ordinance is punishable by a fine not to exceed \$500.00 (five hundred dollars).

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

Section 21. Effective Date. This ordinance shall become effective 10 (ten) days after its passage by the council and approval by the mayor.

Section 22. Repeal. All other City of Detroit ordinances or parts or ordinances in conflict herewith are hereby repealed.

Approved by the Common Council of the City of Detroit this 13th day of April, 1999.

Signed:


Martha Millican, Mayor

Attest:

