

ORDINANCE NO. 5157

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE TITLE 15 TO COMPLY WITH REVISIONS TO OREGON STATE STATUTES AND TO ADD NEW LANGUAGE FOR THE IMPLEMENTATION OF A 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 .

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.

WHEREAS, the said hearing on the 12th day of October 1993 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:

15.16.010 Findings.

(1) The systems development charge established herein is intended to be a charge upon the act of development by whomever seeks the development. It is a fee for service because it is the development which requires essential municipal services based upon the nature of the development. The timing and the extent of the development is within the control and discretion of the developer.

(2) The systems development charge imposed by this chapter is not intended to be a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Sec 11b, Art. XI of the Oregon Constitution or the legislation implementing that section.

(3) Even if the systems development charge herein imposed is viewed under Sec. 11b, Art. XI of the Oregon Constitution as a tax against property or against a property owner as a direct consequence of ownership of that property, it is an incurred charge within the meaning of that section and the statutes implementing it because:

(a) It allows the owner to control the quantity of the service by determining the extent of development to occur upon the property.

(b) It allows the owner to determine when the service is to be initiated or increased by controlling when the development occurs.

(c) State law and the ordinances of this City require the owner to provide certain basic utility services to the property when it is developed for human occupancy. The provision of these basic utility services are a routine obligation of the owner of the affected property and essential to the health and safety of the community.

(4) Among the basic utility services required of every property with a structure designed for human occupancy, except ancillary buildings, are water, ~~and~~ sanitary sewer, ~~and~~ transportation services.

(5) The systems development charge imposed by this chapter is based upon the actual costs of providing existing or planned-for capital improvements and does not impose charges on persons not receiving a service and imposing a burden upon the City's existing capital improvements.

15.16.020 Definitions.

As used in this chapter, except where the context otherwise requires the words and phrases have the following meaning:

(1) Capital Improvement(s). Facilities or assets used for any of the following:

(a) Water supply, storage, treatment and distribution; or

(b) Sanitary sewers, including collection, transmission, treatment and disposal; or

(c) Transportation, including streets, sidewalks, bikeways, traffic signals and signage, and street drainage collection systems.

(2) **Development.** The act of making a manmade change to improved or unimproved real estate (e.g. constructing a building or conducting a mining operation), or making a physical change in the use or appearance of a structure or land, which increases the usage of any capital improvements or which creates the need for additional capital improvements.

(3) **Improvement Fee.** A fee for costs associated with capital improvements to be constructed after the date the ordinance codified in this chapter becomes effective.

(4) **Qualified Public Improvements.** A capital improvement that is:

(a) Required as a condition of residential development approval;

(b) Identified in the plan adopted pursuant to Section 15.16.060(2); and either:

(e a) Not located on or contiguous to a parcel of land property that is the subject of the development approval. (as used in this definition "contiguous" means in a public way which abuts); or

(b) 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 for the particular development project to which the improvement fee is related.

(5) **Reimbursement Fee.** A fee for costs associated with capital improvements constructed or under construction on the effective date of this chapter.

(6) **Systems Development Charge.** A reimbursement fee, an improvement fee, or a combination thereof, assessed or collected at any of the times specified in Section 15.16.070 hereof. It shall also include that portion of a water or sanitary sewer connection charge that is greater than the amount necessary to reimburse the City for its average cost of inspecting and installing connections with the water system or the sanitary sewer system. "Systems development charge" does not include:

(a) Any fees assessed or collected as part of a local improvement district;

(b) A charge in lieu of a local improvement district assessment; or

(c) The cost of complying with requirements or conditions imposed upon a land use decision.

15.16.030 Purpose.

The purpose of the systems development charge is to impose a portion of the public cost of capital improvements upon those developments that create the need for, or increase, the demands on capital improvements.

15.16.040 Scope.

The systems development charge imposed by this chapter is separate from and in addition to any applicable tax, assessment, charge, fee, in lieu of assessment, or fee otherwise provided by law or imposed as a condition of development. A systems development charge is to be considered in the nature of a charge for service to be rendered or a service hookup charge.

15.16.050 Systems development charge established.

(1) Unless otherwise exempted by the provisions of this chapter or other local or state law, ~~effective July 1, 1991~~ 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) ~~Effective July 1, 1991 a~~ 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 because of new development or intensification of the existing development.

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

(54) The systems development charge may be adjusted annually in accordance with the Engineering News Record Construction Cost Index.

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 ~~newly-created~~ 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), ~~and~~ the Wastewater Facility Plan prepared by CH2M Hill (1986), ~~and~~ the North Albany Transportation Corridor Plan prepared by Benton County (1983).

15.16.070 Collection of charge.

(1) The water system development charge is payable upon issuance of a permit to connect to the water system. The sewer system development charge is payable upon issuance of a permit to connect to the sanitary sewer system. **The transportation system development charge is payable upon issuance of a building permit for any new construction.**

(2) If development is commenced or connection is made to the water system, ~~and/or~~ sanitary sewer system, **or transportation system** without an appropriate permit, the systems development charge is immediately payable upon the earliest date that a permit was required.

(3) The Building Official or the official's designee shall collect the systems development charge from the person responsible for or receiving the benefit of the development. The Building Official or the official's designee shall not issue any permit or allow connection described in Section 15.16.070 (1) until the charge has been paid in full or until provision for installment payments has been made within the limits prescribed in Section 15.16.070 (5).

(4) A systems development charge paid hereunder shall apply to the particular lot or tract for which it is issued. Any changes of use which require additional connections or intensification of use to the water, ~~and/or~~ sanitary sewer, **or transportation** system shall cause an additional systems development charge to be paid. The owner of the property shall be given credit only for those systems development charges theretofore paid involving the same parcel of property. Where a structure which is serviced by capital improvements is destroyed by fire, flood, wind, or act of God, no systems development charge shall be imposed for a replacement of the structure, provided the use thereof is not intensified.

(5) The obligation to pay the unpaid systems development charge and interest thereon shall be secured. Acceptable security to insure payment includes: property, bond, deposits, letter of credit, or the obligor may request a lien be placed against the property to be developed.

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 which would intensify the use of the transportation network received prior to November 1, 1994, are exempt from the systems development charge imposed in Section 15.16.050.**

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 a residential development. ~~If a qualified public improvement is located partially on and partially off the parcel of land that is the subject of the 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 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.~~

(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.

(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.

(23) Parties aggrieved by the imposition of a systems development charge which has been calculated by the Building Official or the 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 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 (5) of this section.

(34) 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.

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

(56) 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.

(67) Unless the appellant and the City agree to a longer period, an appeal shall be heard within 30 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.

(78) 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.

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

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

15.16.200 Prohibited connection.

No connections or intensification of use may be made to the sanitary sewer, ~~or~~ water, or transportation system of the City unless the appropriate systems development charge has been paid or the installment payment method has been applied for and approved.

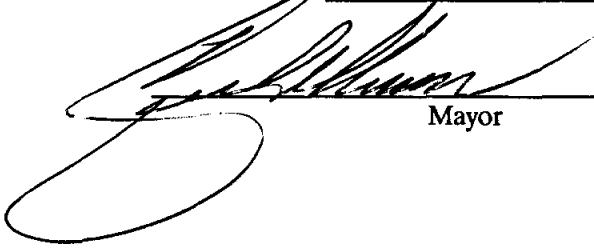
Emergency Clause

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 Mayor.

Passed by the Council: October 26, 1994

Approved by the Mayor: October 26, 1994

Effective Date: October 26, 1994



Mayor

ATTEST:



Deputy City Recorder