

ORDINANCE NO. 678

AN ORDINANCE ESTABLISHING A SYSTEMS DEVELOPMENT CHARGE FOR CAPITAL IMPROVEMENTS FOR WATER SUPPLY, TREATMENT, TRANSMISSION, AND DISTRIBUTION; WASTEWATER COLLECTION, TREATMENT, AND DISPOSAL; STORM DRAINAGE, INCLUDING FLOOD CONTROL; STREETS; AND PARKS AND REPEALING ORDINANCE NO. 387.

The city of Aumsville ordains as follows:

Section 1. Purpose. The systems development charge (SDC) imposes an equitable share of capital improvement costs for water, supply, treatment, transmission, and distribution; wastewater collection, treatment, and disposal; storm drainage; streets; flood control; and parks upon developments creating the need for, or increase in, the demand made on the aforementioned capital improvements.

Section 2. Scope. The SDC 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:

- (A) Capital Improvements. Facilities or assets used for:
 - 1. Water, supply, treatment, and distribution;
 - 2. Wastewater collection, transmission, treatment, and disposal; drainage and flood control;
 - 3. Transportation, including but not limited to streets, sidewalks, bike lanes and paths, streetlights, traffic signs and signals, public transportation, vehicle parking and bridges; or
 - 4. 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. Any man-made change to improved or unimproved real estate, including but not limited to construction, installation, or change of a building or other structure; land division; establishment or termination of a right to access; storage on the land; drilling and site alteration, including but not limited to surface mining, dredging, paving, excavation, or clearing Developer. Any person responsible for a development.
- (C) 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.
- (D) 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.
- (E) Owner. The owner(s) of record title or purchaser(s) under a recorded sale agreement and other persons having an interest of record in the described real property.

- (F) Parcel of Land. A tract of land however described 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.
- (G) 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.
- (H) 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.
- (I) Systems Development Charge (SDC). A reimbursement fee, an improvement fee, or a combination thereof assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit, building permit, or connection to the capital improvement as identified in Section 9. SDC does not include connection or hook-up fees for sanitary sewers, storm drains, or water lines; such fees are designed by the City only to reimburse the City for actual or average costs for such connections. An SDC 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. Systems Development Charge Established.

- (A) SDCs shall be established and may be revised by resolution of Council.
- (B) Unless otherwise exempted by the provisions of this ordinance or other local or state law, an SDC 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, park facilities, transportation system, 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 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 established and may be revised by resolution of Council.
 - 1. The City shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any SDC.

2. Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify an SDC, and the methodology supporting the system development charge shall be available at least 60 days prior to the first hearing.
3. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the City. The city administrator may periodically delete names from the list, but at least 30 days prior to removing a name from the list 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.
4. Legal action intended to contest the methodology used for calculating a system development charge may not be filed after 60 days after the effective date of the ordinance or resolution establishing or modifying an SDC. Any person shall request judicial review of the methodology used for calculating a system development charge only as provided in ORS 34.010 to 34.100 (2020).
5. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the SDC if the change in the amount is based on the periodic application of an adopted specific cost index or on a modification to any of the factors related to rate that are incorporated in the established methodology.

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.
- (B)
 1. Improvement fees shall be spent only on costs associated with capacity increasing capital improvements, including expenditures relating to repayment of bonded debt for said 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, SDC revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing SDC methodologies and providing an annual accounting of SDC expenditures and costs of properly administering, collecting, and accounting for SDCs.

Section 7. Expenditures Restrictions.

- (A) SDCs 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) SDCs shall not be expended for costs of the operation or routine maintenance of capital improvements.

Section 8. Improvement Plan. 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 SDC 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 SDC is payable at the time of annexation or when 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 SDC is immediately payable upon the earliest date that a permit was required.
- (D) The city administrator shall collect the applicable SDC 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 administrator 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 12 of this ordinance.

Section 10. Delinquent Charges; Hearing.

- (A) When, for any reason, the SDC has not been paid, the city administrator shall report to 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) 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 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 10 days before the date set for the hearing.
- (C) At the hearing, Council may accept, reject, or modify the determination of the city administrator as set forth in the report. If Council finds that an SDC is unpaid and uncollected, it shall direct the city administrator to docket the unpaid and uncollected SDC 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 service notice of the hearing on the developer. The lien shall be enforceable in the manner provided in ORS Chapter 223.

Section 11. Installment Payment.

- (A) The owner of a parcel of land subject to an SDC over \$10,000.00 may apply for payment thereof in installments, to include interest at the rate of 10% on any unpaid balance, consistent with ORS 223.208 (2020). Payment may be over a period of less than 10 years if so elected by the property owner. Otherwise, SDCs are payable over a period of 10 years in 20 semi-annual installments, to include interest on the unpaid balance.
- (B) The city administrator shall provide application forms for payment of the SDC installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.
- (C) 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.
- (D) The city administrator shall report to Council the amount of the SDC, the dates on which the payments are due, the name of the developer, and the description of the parcel.
- (E) The city administrator 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 SDC, together with interest on the unpaid balance at the rate established by Council with the priority of an assessment lien described in ORS 223.230(3) (2020). The lien shall be enforceable in the manner provided in ORS Chapter 223 (2020).

Section 12. Exemptions.

- (A) A developer whose structures and uses were established and existing on or before the effective date of this ordinance is exempt from an SDC, 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 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 those portions of the SDC that are not impacted.

Section 13. Credits.

- (A) As used in this section and in the definition of "qualified public improvement" in Section 3, the word contiguous means: in a public way which abuts.
- (B) When development occurs subject to payment of an SDC under Section 4 of this ordinance, the SDC for the existing use shall be calculated and if less than the SDC for the proposed use, the difference between the charge for the existing use, and the charge for the proposed use shall be the SDC required under Section 4. If the change in use results in the SDC for the proposed use being less than the SDC for the existing use, no SDC shall be imposed but 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 above that required by the development itself, if a qualified public

improvement is located partially on and partially off the parcel of land, 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 subject to development approval. The credit provided for by this subsection shall be only for the public improvement charge charged for the type of improvement being constructed and not exceed the public improvement charge even if the cost of the capital improvement exceeds the applicable public improvement charge. (for example if a development requires an eight inch (8") water line to be installed and the city's master plan shows a 12" water line is desired, and the developer agrees to install; the City would enter into an agreement to offset costs directly attributed to upsizing).

- (D) Where the amount of the credit exceeds the amount of the SDC, the excess credit is not transferable to another development although 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.
- (F) Credits must be used within five (5) years of the date the credit was given.

Section 14. Segregation and Use of Revenue.

- (A) All funds derived from a particular type of SDC are to be segregated by accounting practices from other funds of the City. That portion of the SDC calculated and collected for a specific facility system shall be used for no purpose other than as set forth in Section 6 above.
- (B) The city administrator shall provide Council with an annual accounting, based on the City's fiscal year, for SDCs showing the total amount of SDC revenues collected for each type of facility and the projects funds for each account.

Section 15. Appeal Procedure.

- (A) A person challenging the propriety of an expenditure of SDC revenues may appeal the decision or the expenditure to Council by filing a written request with the city administrator describing with particularity the decision of 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 administrator under this ordinance must be filed within 10 days of the date of the decision.
- (C) After providing notice to the appellant, Council shall determine whether the city administrator's decision or the expenditure is in accordance with this ordinance and the provisions of ORS 223.297 to 223.314 (2020) and may affirm, modify, or overrule the decision. If Council determines that there has been an improper expenditure of SDC revenues, 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 Council pursuant to Section 5 shall not be filed later than 60 days after the adoption.

Section 16. Prohibited Connection. No person may connect to or otherwise use any City public improvement unless the appropriate SDC has been fully paid or a lien or installment payment method has been applied for and approved in writing.

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

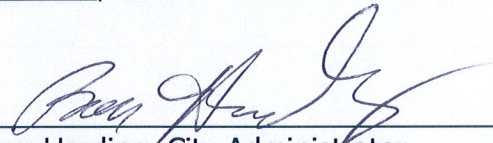
Section 18. Construction. The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference and made a part of this ordinance.

Section 19. Exceptions. Nothing in this ordinance prohibits Council from changing the SDC based on the facts and circumstances of a particular case.

Section 20. 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.

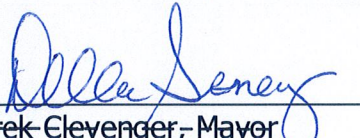
Section 21. Repeal. All city of Aumsville ordinances or parts of ordinance in conflict herewith are hereby repealed.

Read first on the 26th day of October 2020. READ a second time on the 9TH day of November, 2020. ADOPTED AND PASSED by the Aumsville City Council on the 9th day of ~~Novemb~~, 2020.



Ron Harding, City Administrator

SIGNED by the mayor this 12 day of November, 2020



~~Derek Clevenger, Mayor~~
Della Seney, Mayor Pro-tem