

Chapter 13.05 GENERAL PROVISIONS

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Article I. System Development Charges

13.05.010 Purpose.

The purpose of the system development charge is to impose a portion of the cost of capital improvements for water, wastewater drainage, streets, and flood control upon those developments that create the need for or increase the demands on capital improvements. [Ord. [2823](#) § 1, 3-19-18; Ord. [2306](#), 6-18-91. Code 2001 § 50.01.]

13.05.020 Scope.

The system development charge imposed by this article 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. [Ord. [2306](#), 6-18-91. Code 2001 § 50.02.]

Cross-reference: See Chapter 223 of Title [21](#) ORS for local system development charges.

13.05.030 Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“**Capital improvements**” means facilities or assets used for:

1. Water supply, treatment, and distribution;
2. Wastewater collection, transmission, treatment, and disposal;
3. Drainage and flood control; or
4. Transportation.

“**Developer**” means the person, builder, applicant, permittee, or firm developing land, making the improvement, or building or modifying a structure.

“**Development**” means constructing a building or making a physical change in the use or appearance of a structure or land.

“**Improvement fee**” means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to NMC [13.05.040](#).

“**Land area**” means 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 purpose, or preservation purpose.

“**Parcel of land**” means 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.

“**Qualified public improvement**” means a capital improvement that is:

1. Required as a condition of development approval;
2. Identified in the plan adopted pursuant to NMC [13.05.080](#); and either:
 - a. Not located on or contiguous to a parcel of land that is the subject of a development approval; 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.
3. For purposes of this definition, “**contiguous**” means in a public way which abuts the parcel.

“**Reimbursement fee**” means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to NMC [13.05.040](#) and for which the city council determines capacity exists.

“**System development charge**” means a reimbursement fee, an improvement fee, or a combination of a reimbursement fee and an improvement fee 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 local government 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. [Ord. [2823](#) § 1, 3-19-18; Ord. [2306](#), 6-18-91. Code 2001 § 50.03.]

13.05.040 System development charge established.

- A. System development charges shall be established and may be revised by resolution of the city council.
- B. Unless otherwise exempted by the provisions of this article or other local or state law, a system development charge is imposed upon all development within the city, and upon all development outside the boundary of the city that connect to or otherwise use the wastewater facilities, stormwater facilities, or water facilities of the city.
- C. For residential developments where dwelling units, as defined by the Oregon Residential Specialty Code, are one thousand square feet or less, except for multifamily housing as defined in ORS 456.515(8), the city will, at the election of the developer, modify the system development charge owed by applying a factor of twenty percent to the system development charge computed for the development. For multi-parcel developments, a factor of twenty percent may be applied only to those parcels whose only above grade improvements are single-family houses with dwelling units that are 1000 square feet or less. Developers that claim this system development charge modifier cannot claim any other waiver or discount for system development charges.

Cross-reference: See ORS [223.299](#) and [223.297](#) – [223.314](#) for system development charges.

13.05.050 Methodology.

- A. The methodology used to establish or modify the reimbursement fee shall, where applicable, be based on 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 city 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 or modify the improvement fee shall, where applicable, demonstrate consideration of 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 a resolution adopted by the city council. [Ord. [2823](#) § 1, 3-19-18; Ord. [2306](#), 6-18-91. Code 2001 § 50.05.]

13.05.060 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. Improvement Fees.

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 NMC [13.05.080](#).

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 article, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures. [Ord. [2306](#), 6-18-91. Code 2001 § 50.06.]

13.05.070 Expenditure 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 or routine maintenance of capital improvements. [Ord. [2306](#), 6-18-91. Code 2001 § 50.07.]

13.05.075 Notice.

A. The city shall maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for any system development charge. Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a system development charge. The methodology supporting the system development charge shall be available at least 60 days prior

to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the city.

B. 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. [Ord. [2823](#) § 1, 3-19-18.]

13.05.080 Improvement plan.

A. The city council shall adopt a plan that:

1. Lists the capital improvements that the city council intends to fund in whole or in part with improvement fee revenues;
2. Lists the estimated cost and time of construction of each improvement and the percentage of that cost eligible to be funded with improvement fee revenues; and
3. Describes the process for modifying the plan.

B. 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.

C. The city council may modify such plan and list at any time. If a system development charge will be increased by a proposed modification to the list to include a capacity-increasing public improvement the city council will:

1. At least 30 days prior to adoption of the proposed modification, provide written notice to persons who have requested notice pursuant to NMC [13.05.075](#).
2. Hold a public hearing if a written request for a hearing is received within seven days of the date of the proposed modification.

D. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge if the change in amount is based on a modification to any of the factors related to the rate therein that are incorporated in the established methodology. [Ord. [2823](#) § 1, 3-19-18; Ord. [2306](#), 6-18-91. Code 2001 § 50.08.]

13.05.090 Collection of charge.

A. The system development charge is due and payable at the earliest of the following:

1. At the time a request for an insulation inspection is made on single-family residences and duplexes. To allow timely processing of payment, payment must be made not less than 48 hours prior to a request for inspection and no insulation inspection shall be scheduled without proof of payment;
2. Issuance of a building permit for all other habitable structures (a development permit);
3. Issuance of a development permit that does not require the issuance of a building permit;
4. Issuance of a permit to connect to the water system; or
5. Issuance of a permit to connect to the wastewater system.

B. If no building or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased based on changes in the use of the property unrelated to seasonal or ordinary fluctuations in usage.

C. If development is commenced or connection is made to the water, stormwater, or wastewater systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.

D. The city manager 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, stormwater, or wastewater system of the city is made. The applicable charge is the charge in place at the time of collection, not the time of permit application.

E. The city manager shall not issue such permit or allow such connection until the charge has been paid in full, except for single-family residences and duplexes per subsection (A)(1) of this section, provision for installment payments has been made pursuant to NMC [13.05.110](#), or unless an exemption is granted pursuant to NMC [13.05.120](#). [Ord. [2869](#) § 1, 11-16-20; Ord. [2823](#) § 1, 3-19-18; Ord. [2306](#), 6-18-91. Code 2001 § 50.09.]

13.05.100 Delinquent charges – Hearing.

A. When, for any reason, the system development charge has not been paid, the city manager shall report to the city council the amount of the uncollected charge, the description of the development 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 manager 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 city council may accept, reject, or modify the determination of the city manager as set forth in the report. If the city council finds that a system development charge is unpaid and uncollected, it shall direct the city manager to enter 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 owners. The lien shall be enforceable in the manner provided in ORS Chapter [223](#). [Ord. [2306](#), 6-18-91. Code 2001 § 50.10.]

13.05.110 Installment payment.

A. An owner of property obligated to pay a system development charge in an amount exceeding \$2,500 may apply to pay the charge in semiannual installments over a period not to exceed 10 years, but will pay minimum semiannual installments of not less than \$1,250. Installments shall include interest on the unpaid balance at the rate equal to three percent per annum above the prime rate of interest quoted by the Wall Street Journal as of January 2nd of the year in which the charge is imposed.

B. The city manager 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.

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 development and that the interest of the applicant is adequate to secure payment of the lien.

D. The city manager 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. The lien shall be enforceable in the manner provided in ORS Chapter [223](#). [Ord. [2823](#) § 1, 3-19-18; Ord. [2306](#), 6-18-91. Code 2001 § 50.11.]

13.05.120 Exemptions.

A. Structures and uses established and existing on or before June 18, 1991, are exempt from a system

development charge, except water and wastewater 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 section shall pay the water or wastewater charges pursuant to the terms of this article upon the receipt of a permit to connect to the water or wastewater system.

B. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the current Oregon Residential Specialty Code, are exempt from all portions of the system development charge.

C. 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.

D. No transportation system development charges shall be charged for applications that only request a change in use for improvements existing at the time of application submission.

E. Development of child care facilities as defined by ORS 329A.250(5) and certified per ORS 329A.300 are exempt from all system development charges established under this Chapter.

13.05.125 Waivers.

A. Up to two low or moderate income single-family residential projects for certified nonprofit entities per calendar year will be granted a waiver for wastewater and water system development charges by the city manager on a first come, first served basis.

B. Partial waivers of twenty-five percent for each category of system development charge shall be applied to developments starting or expanding enterprises that provide family wage jobs as further described in this subsection. No developer may claim any other waiver, modifier, or discount for system development charges in addition to the partial waiver described in this subsection. No partial waiver shall be applied unless the city council affirmatively finds that:

1. The enterprise will create at least twenty family wage jobs.
2. The developer will also be the employer of each individual receiving a family wage job.
3. The family wage jobs will not pay less than one hundred and fifty percent of the applicable minimum wage rate provided under ORS 653.025(1).
4. The enterprise has been reviewed and endorsed by the Strategic Economic Development Corporation of the Mid-Willamette Valley, Oregon or another outside Oregon economic development agency.

5. The duration of each family wage job is permanent in nature and will likely last three or more years.
6. A staff report by the city's community development department supports the award of a partial waiver.

C. Except as provided in this section, no waiver of system development charges shall be made. [Ord. [2823](#) § 1, 3-19-18; Ord. [2306](#), 6-18-91. Code 2001 § 50.12.]

13.05.130 Credits and deductions.

A. Deductions shall be given for the computed system development charge to the extent that prior structures existed and services were established on or before June 18, 1991. The deduction so computed shall not exceed the calculated system development charge. No refund shall be made on account of such deduction. No deduction will be granted on uses that have not existed for over five years or if said property has been vacant for over five years.

B. A credit shall be given for the cost of a qualified public improvement associated with a development. If a qualified public improvement is the subject of the development approval:

1. The credit shall be given only for the cost of the eligible portion of the improvement.
2. The credit provided for by this subsection shall be only for the improvement fee charged for the type of improvement being constructed.
3. Credits must be for the actual cost of project capacity in excess of that needed to serve the particular development.
4. Credits must be issued only for projects in the plan adopted pursuant to NMC [13.05.080](#).
5. The credit shall be given only after the city approves the cost of the eligible portion of the improvement, including the cost basis of said amount. 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. The city's determination of the cost of a qualified public improvement shall be final, subject to any applicable appeal processes.
6. The city may deny the credit provided for in this section if the city demonstrates that the application does not meet the requirements of this section or if the improvement for which credit is

sought was not included in the improvement plan.

C. Credit shall not be transferable from one development to another except within the same use district or subdistrict that is part of a Council-approved master plan or within a planned unit development authorized by NMC 15.240.

D. Credit shall not be transferable from one category of capital improvement to another.

E. Credits cannot be indexed for inflation.

F. Credits cannot be redeemed for cash.

G. Credits shall be used within ten years from the date the credit is given. [Ord. [2823](#) § 1, 3-19-18; Ord. [2306](#), 6-18-91. Code 2001 § 50.13.]

H. The city may require the developer to identify the credits the developer believes are applicable to the development during the applicable permitting process. The city will not be bound to approve any credits identified under this section. The city will not issue planning approval until potential credits have been approved by the city engineer.

13.05.135 – Repealed

13.05.140 Segregation and use of revenue.

A. All funds derived from a particular 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 NMC [13.05.060](#).

B. The city manager shall provide 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. [Ord. [2823](#) § 1, 3-19-18; Ord. [2306](#), 6-18-91. Code 2001 § 50.14.]

13.05.150 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 manager describing with particularity the expenditure which the person appeals. An appeal of an expenditure must be filed within

two years of the date of the alleged improper expenditure.

B. After providing notice to the appellant, the city council shall determine if the expenditure is in accordance with this article and the provisions of ORS [223.297](#) through [223.314](#) and may affirm, modify, or overrule the decisions. If the city council determines that there has been an improper expenditure of system development charge revenues, the city 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.

C. A legal action challenging the methodology adopted by the city council pursuant to NMC [13.05.050](#) shall not be filed later than 60 days after the adoption and only as provided in ORS [34.010](#) through ORS [34.100](#).

[Ord. [2823](#) § 1, 3-19-18; Ord. [2306](#), 6-18-91. Code 2001 § 50.15.]

13.05.160 Prohibited connection.

No person shall connect to the water or wastewater systems of the city unless the appropriate system development charge has been paid or installment payment method has been applied for and approved. [Ord. [2306](#), 6-18-91. Code 2001 § 50.16.]

Penalty: See NMC [13.05.170](#).

Article II. Penalty

13.05.170 Penalty.

Violation of NMC [13.05.160](#) is punishable by a fine not to exceed \$500.00. [Ord. [2585](#), 7-21-03; Ord. [2306](#), 6-18-91. Code 2001 § 50.99.]