

Council Business Meeting

November 15, 2022

Agenda Item	Second Reading of Ordinance 3214 regarding System Development Charges and amending Ashland Municipal Code section 4.20	
From	Scott Fleury PE	Public Works Director
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SUMMARY

Before the Council is an Ordinance update for the current System Development Charges (SDC) municipal code, section 4.20. The ordinance update stems from recommendations made by the SDC Ad-Hoc Committee appointed by the Mayor and approved by Council.

POLICIES, PLANS & GOALS SUPPORTED

City Council Goals:

Essential Services

- Drinking Water System
- Stormwater

Value Services

- Economic Development
- Housing Needs

Department Goals:

- Maintain existing infrastructure to meet regulatory requirements and minimize life-cycle costs
- Deliver timely life cycle capital improvement projects
- Maintain and improve infrastructure that enhances the economic vitality of the community
- Evaluate all city infrastructure regarding planning management and financial resources

PREVIOUS COUNCIL ACTION

- January 5, 2021, Council Business Meeting award of professional services contract to update SDC Methodology for the Water and Storm Drain enterprises ([Staff Report](#)).
- April 6, 2021, Council Business Meeting, approval of the Ad-Hoc SDC Committee ([Staff Report](#)).
- May 3, 2021, Council Study Session, presentational overview of SDCs ([Staff Report](#)).
- May 2, 2022, Council Study Session presentation of SDC Committees recommendations and outcomes of process ([Staff Report](#)).

BACKGROUND AND ADDITIONAL INFORMATION

The recently adopted Water, Storm Drain and TAP Master Plans include Capital Improvement projects (CIP) that differ from the existing and previously developed CIPs, which were used to establish current SDC rate structures (*water 2016, storm water 2002*).

Updates to SDCs are important as they ensure the appropriate fee capture of new development impacts to the City’s infrastructure systems. SDC fees are only used for project costs associated with infrastructure capacity enhancements. Defined capital improvements in the master plans vary in SDC capacity charge ability from 0% to 100% SDC “eligible”. In order to update the SDCs based on new project lists, the Council authorized a professional services contract with Galardi Rothstein to update the Water and Storm Drain System Development Charges. When evaluating SDC updates a must be established by the Mayor as required of Resolution 2001-17.

Committee Charge: The committee shall review the method of computing the system development charges and recommend such changes as it deems necessary to the City Council.

Mayoral appointments to the SDC Committee:

- Homebuilders: Robert Kendrick and Gil Livni
- Public at large: George Kramer and Steve Russo
- Chamber of Commerce: Gary Blake
- Planning Commission or Budget Committee: David Runkel

SDC Committee Ex-Officio Members

- City Council representative: Shaun Moran
- City Staff Community Development Director or designee
- Public Works Director or designee

After approval of the SDC Committee members, Galardi Rothstein and City staff met with the Committee four times to discuss and develop updated SDC methodologies for the water and storm drain enterprise funds. A primary focus of the SDC Committee was to incentivize multifamily development and moderate SDC charge increases.

SDC Update Process:

The Water and Storm Drain SDC Update is broken into these major tasks:

1. Cost & Capacity Basis
2. Development of Unit Costs and SDC Schedules
 - a. Nonresidential and Residential SDC Structures
3. Methodology Report
4. SDC Code Review

Code Review

It is common practice to structure SDCs in such a way that furthers a local jurisdiction’s broader objectives related to housing affordability, economic development, and other policies. The Committee spent a significant amount of time discussing the current Ashland Municipal Code (AMC) section relating to SDCs.

The primary discussion revolved around the collection of charge section of the code. The Committee discussed improvements to the timing of when the SDCs would be collected and associated installment payment options.

The current code allows for deferrals for the development of qualified affordable housing under the City’s affordable housing laws and remains in place until the transfer of ownership to an ineligible buyer occurs. This is essentially a SDC fee waiver for affordable housing for the life of the project as long as it meets the eligibility requirements.

The Committee supports the affordable housing deferral process and was focused on recommending improvements that support multifamily housing, not just developments that meet the affordable housing requirements. The Committee discussed options for code updates that change the collection of charge timing

components and installment payment requirements. The SDCs for large multifamily developments can represent a significant upfront cost and the current code requires the SDCs to be paid upon:

1. A building permit;
2. A development permit;
3. A permit for a development not requiring the issuance of a building permit;
4. A permit or other authorization to connect to the water, sanitary sewer or storm drainage systems;
5. A right-of-way access permit; or
6. A planning action or change in occupancy (as defined in the Uniform Building Code) that will increase the demands on any public facility for which systems development charges are charged.

D. An owner of property obligated to pay a systems development charge may apply to pay the charge in semi-annual installments over a period not exceeding ten years as provided in this section.

1. The minimum charge subject to payment by installments shall be \$2,000.00 and the **maximum charge that may be subject to payment by installments shall not exceed \$200,000.00**. The minimum semi-annual installment shall be \$1,000.00. Installments shall include interest on the unpaid balance at an annual rate of six percent (6%) for a five-year installment loan or seven percent (7%) for a ten-year installment loan. A one-year installment loan shall not be subject to an annual interest rate, provided all charges are paid prior to the City's issuance of the certificate of occupancy, time of sale, or within one year of when the charge was imposed, whichever comes first.

In order to be more commensurate with revenues generated from multifamily developments, the Committee wanted to defer the collection of SDCs until an actual certificate of occupancy was issued by the Building Division on "for sale properties" and for two years from the certificate of occupancy for rental properties. The Committee recommended to update the installment payment section to increase the payback period from 10 to 30 years, tie the interest rate to an established rate, and also eliminate the maximum amount of \$200,000 defined in the code. In research performed by Galardi and staff, no other jurisdictions support a 30-year payback, but there are many that support a 20-year payback with no maximum cap.

Motion by Kramer: Multifamily SDCs should be deferred until time of occupancy, and furthermore recommended to Council that they adopt a policy to defer SDC payments for multifamily rentals subject to the above parameters and start two years past date of occupancy, 2nd by Kendrick.

The motion was amended to include removal of the current maximum collection of charge cap of \$200,000.

Motion approved unanimously.

The recommendations are encompassed in the attached ordinance update under Council review as part of this first reading.

FISCAL IMPACTS

The ordinance change will impact the timing associated with collection of SDCs in association with multifamily housing. There will also be staff impacts with respect to processing the SDC deferrals and installment payment agreements that could be utilized by developers.

STAFF RECOMMENDATION

Staff recommends approval of the ordinance modifications as developed with the SDC Ad-Hoc Committee

ACTIONS, OPTIONS & POTENTIAL MOTIONS

I Move to approve second reading of Ordinance Number 3214 and advance it to enactment.

REFERENCES & ATTACHMENTS

Attachment #1: Ordinance #3214

Attachment #2: Memo to City Manager Addressing Rogue Advocates Concerns

Attachment #3: Rogue Advocates Letter – November 1, 2022

1 5. Parks and recreation, including but not limited to mini-neighborhood parks, neighborhood
2 parks, community parks, public open space and trail systems, buildings, courts, fields and other
3 like facilities.

4 B. Development. As used in Sections 4.20.020 through 4.20.180 means constructing or
5 enlarging a building or adding facilities, or making a physical change in the use of a structure or
6 land, which increases the usage of any capital improvements or which will contribute to the need
7 for additional or enlarged capital improvements.

8 C. Improvement Fee. A fee for costs associated with capital improvements to be constructed
9 after the effective date of this ordinance.

10 D. Qualified Public Improvements. A capital improvement that is:

11 1. required as a condition of development approval; and

12 2. is identified in the plan adopted pursuant to section

13 4.20.080 and is either:

14 a. Not located on or contiguous to property that is the subject of development approval, or

15 b. Located on or contiguous to the property that is the subject of development approval and is

16 required to be built larger or with greater capacity than is necessary for the particular

17 development project to which the improvement fee is related.

18 E. Reimbursement Fee. A fee for costs associated with capital improvements constructed or
19 under construction on the date the fee is adopted pursuant to Section 4.20.040.

20 F. Systems Development Charge. A reimbursement fee, a public improvement charge or a
21 combination thereof assessed or collected at any of the times specified in Section 4.20.070. It
22 shall not include connection or hook-up fees for sanitary sewers, storm drains or water lines,
23 since such fees are designed by the City only to reimburse the City for the costs for such
24 connections. Nor shall the SDC include costs for capital improvements which by City policy and
25 State statute are paid for by assessments or fees in lieu of assessments for projects of special
26 benefit to a property (Ord. 2791 § 1, amended, 1997), or the cost of complying with requirements
27 or conditions imposed by a land use decision.

28 4.20.020 Purpose

29 The purpose of the systems development charge (SDC) is to impose an equitable share of the
30 public costs of capital improvements upon those developments that create the need for or
increase the demands on capital improvements.

1
2 4.20.030 Scope

3 The systems development charge imposed by Chapter 4.20 is separate from and in addition to
4 any applicable tax, assessment, charge, fee in lieu of assessment, or fee otherwise provided by
5 law or imposed as a condition of development. A systems development charge is to be
6 considered in the nature of a charge for service rendered or facilities made available, or a charge
7 for future services to be rendered on facilities to be made available in the future.

8
9 4.20.040 Systems Development Charge Established

10 A. Unless otherwise exempted by the provisions of this Chapter or other local or state law, a
11 systems development charge is hereby imposed upon all development within the City; and all
12 development outside the boundary of the City that connects to or otherwise uses the sanitary
13 sewer system, storm drainage system or water system of the City. The City Manager is
14 authorized to make interpretations of this Section, subject to appeal to the City Council.

15 B. Systems development charges for each type of capital improvement may be created through
16 application of the methodologies described in Section 4.20.050 of this code. The amounts of
17 each system development charge shall be adopted initially by Council resolution following a
18 public hearing. Changes in the amounts shall also be adopted by resolution following a public
19 hearing, except changes resulting solely from inflationary cost impacts. Inflationary cost impacts
20 shall be measured and calculated annually by the City Manager and charged accordingly. Such
21 calculations will be based upon changes in the Engineering News Record Construction Index
22 (ENR Index) for Seattle, Washington. (Ord. 2791 § 2, amended, 1997)

23
24 4.20.050 Methodology

25 A. The methodology used to establish a reimbursement fee shall consider the cost of then-
26 existing facilities, prior contributions by then-existing users, gifts or grants from federal or state
27 government or private persons, the value of unused capacity, rate-making principles employed to
28 finance publicly owned capital improvements, and other relevant factors identified by the City
29 Council. The methodology shall promote the objective that future systems users shall contribute
30 an equitable share of the cost of then-existing facilities.

1 B. The methodology used to establish the improvement fee shall consider the cost of projected
2 capital improvements identified in an improvement plan (see Subsection 4.20.080) that are
3 needed to increase the capacity of the systems to which the fee is related.

4 C. The methodologies used to establish the systems development charge shall be adopted by
5 resolution of the Council following a public hearing.

6 1. The City shall provide written notice to persons who have requested notice of any adoption or
7 modification of SDC methodology at least 90 days before the hearing. If no one has requested
8 notice, the City shall publish notice in a newspaper of general circulation in the City at least 90
9 days before the hearing.

10 2. The revised methodology shall be available to the public at least 60 days before the first
11 public hearing of the adoption or amendment of the methodology.

12 D. A change in the amount of a reimbursement fee or an improvement fee is not a modification
13 of the SDC methodology if the change is based on a change in project costs, including cost of
14 materials, labor and real property, or on a provision for a periodic adjustment included in the
15 methodology or adopted by separate ordinance or resolution, consistent with State law.

16 E. A change in the amount of an improvement fee is not a modification of the SDC
17 methodology if the change is the result of a change in the Improvement Plan adopted in accord
18 with Subsection 4.20.080.

19 F. The formulas and calculations used to compute specific systems development charges are
20 based upon averages and typical conditions. Whenever the impact of individual developments
21 present special or unique situations such that the calculated fee is grossly disproportionate to the
22 actual impact of the development, alternative fee calculations may be approved or required by
23 the City Manager under administrative procedures prescribed by the City Council. All data
24 submitted to support alternate calculations under this provision shall be site specific. Major or
25 unique developments may require special analyses to determine alternatives to the standard
26 methodology.

27 G. When an appeal is filed challenging the methodology adopted by the City Council, the City
28 Manager shall prepare a written report and recommendation within twenty (20) working days of
29 receipt for presentation to the Council at its next regular meeting. The council shall by
30 resolution, approve, modify or reject the report and recommendation of the City Manager, or

1 may adopt a revised methodology by resolution, if required. Any legal action contesting the City
2 Council's decision in the appeal shall be filed within sixty (60) days of the Council's decision.

3
4 4.20.060 Authorized Expenditures

5 A. Reimbursement Fees shall be spent on capital improvements associated with the systems for
6 which the fees are assessed, including expenditures relating to repayment of indebtedness.

7 B. Improvement fees shall be spent only on capacity increasing improvements for which the fees
8 are assessed, including repayment of indebtedness. An increase in system capacity occurs if a
9 capital improvement increases the level of performance or service provided by existing facilities
10 or provides new facilities. The portion of such improvements funded by improvement SDCs
11 must be related to the need for increased capacity to provide service for future users.

12 C. Notwithstanding subsections (A) and (B) of this section, SDC revenues may be expended on
13 the direct costs of complying with the provisions of this chapter, including the costs of
14 developing SDC methodologies, system planning, providing an annual accounting of SDC
15 expenditures and other costs directly related to or required for the administration and operation
16 of this SDC program.

17
18 4.20.070 Expenditure Restrictions

19 A. SDCs shall not be expended for costs associated with the construction of administrative
20 office facilities that are more than an incidental part of other capital improvements, or for costs
21 of the operation or routine maintenance of capital improvements.

22 B. A capital improvement being funded wholly or in part from revenues derived from the
23 improvement fee shall be included in the plan adopted by the city pursuant to section 4.20.080 of
24 this ordinance.

25
26 4.20.080 Improvement Plan

27 A. Prior to the establishment of a system development charge, the city council shall prepare a
28 capital improvement plan, public facilities plan, master plan, or other comparable plan that
29 includes:

- 1 1. A list of the capital improvements that the city council intends to fund, in whole or in part,
2 with revenues from improvement fees;
 - 3 2. The estimated cost and time of construction of each improvement and the percentage of that
4 cost eligible to be funded with improvement fee revenue; and
 - 5 3. A description of the process for modifying the plan.
- 6 B. In adopting a plan under Section 4.20.080(A) of this ordinance, the city council may
7 incorporate by reference all or a portion of any capital improvement plan, public facilities plan,
8 master plan, or other comparable plan that contains the information required by this section.
- 9 C. The city council may modify such plan and list, as described in Section 4.20.080(A) of this
10 ordinance, at any time. If a system development charge will be increased by a proposed
11 modification to the list to include a capacity increasing public improvement, the city council
12 will:
- 13 1. At least thirty (30) days prior to the adoption of the proposed modification, provide written
14 notice to persons who have requested notice pursuant to Section 4.20.120 of this ordinance;
 - 15 2. Hold a public hearing if a written request for a hearing is received within seven (7) days of
16 the date of the proposed modification.
- 17 D. A change in the amount of a reimbursement fee or an improvement fee is not a modification
18 of the system development charge if the change in amount is based on:
- 19 1. A change in the cost of materials, labor, or real property applied to projects or project
20 capacity as set forth on the list adopted pursuant to Section 4.20.080(A) of this ordinance;
 - 21 2. The periodic application of one or more specific cost indexes or other periodic data sources,
22 including the cost index identified in Section 4.20.040 of this ordinance. A specific cost index or
23 periodic data source must be:
 - 24 a. A relevant measurement of the average change in prices or costs over an identified
25 time period for materials, labor, real property, or a combination of the three;
 - 26 b. Published by a recognized organization or agency that produces the index or data
27 source for reasons that are independent of the system development charge methodology; and
28
 - 29 c. Incorporated as part of the established methodology or identified and adopted by the
30 city council in a separate resolution, or if no other index is identified in the established
methodology, then the index stated in Section 4.20.040 of this ordinance.

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4.20.090 Collection of Charge

A. The systems development charge is payable upon, and as a condition of, issuance or approval of:

- 1. A building permit;
- 2. A development permit;
- 3. A permit for a development not requiring the issuance of a building permit; or
- 4. A permit or other authorization to connect to the water, sanitary sewer or storm drainage systems.
- 5. A right-of-way access permit
- 6. A planning action or change in occupancy (as defined in the Uniform Building Code) that will increase the demands on any public facility for which systems development charges are charged.
- 7. **Certificate of occupancy issued by the Building Division for multifamily development properties.**

B. If development is commenced or connection is made to the water system, sanitary sewer system or storm sewer system without an appropriate permit, the systems development charge is immediately payable upon the earliest date that a permit was required, and it will be unlawful for anyone to continue with the construction or use constituting a development until the charge has been paid or payment secured to the satisfaction of the City Manager.

C. Any and all persons causing a development or making application for the needed permit, or otherwise responsible for the development, are jointly and severally obligated to pay the charge, and the City Manager may collect the said charge from any of them. The City Manager or his/her designee shall not issue any permit or allow connections described in Subsection 4.20.090.A until the charge has been paid in full or until an adequate secured arrangement for its payment has been made, within the limits prescribed by resolution of the City Council.

D. An owner of property obligated to pay a system development charge may apply to pay the charge in semi-annual installments over a period not exceeding ~~ten~~ **twenty** years as provided in this section.

1 The minimum charge subject to payment by installments shall be \$2,000 ~~and the maximum charge that may be subject to payment by installments shall not exceed \$200,000.~~ The

1 minimum semi-annual installment shall be-\$1000. Installments shall include interest on the
2 unpaid balance at annual rate of **3% above the Federal Reserve prime rate. The date of rate**
3 **establishment will coincide with the date a building permit is issued for the development**
4 **utilizing the installment payment program. 6% for a five-year installment loan or 7% for a**
5 **10-year installment loan.** A one-year installment loan shall not be subject to an annual interest
6 rate provided all charges are paid ~~prior~~ to the City's **within one year of** issuance of the
7 Certificate of Occupancy, **or by** time of sale, ~~or within one year of when the charge was~~
8 ~~imposed~~, whichever comes first.

9 **System development charge payments for multiple-family residential rental projects may**
10 **be deferred through an installment loan which shall not be subject to an annual interest**
11 **rate provided all charges are paid prior to two years following the date of issuance of the**
12 **Certificate of Occupancy.**

13 2. The installment application shall state that the applicant waives all irregularities or defects,
14 jurisdictional or otherwise, in the proceedings to cause the system development charge.

15 3. The application shall also contain a statement, by lots or blocks, or other convenient
16 description of the property meeting the requirements of ORS 93.600, subject to the charge.

17 4. A systems development charge subject to installment payments shall be chargeable as a lien
18 upon the property subject to the charge. Pursuant to ORS 93.643(2)(c), the City recorder shall
19 record notice of the installment payment contract with the Jackson County Clerk. The applicant
20 shall pay the recording charges. (Ord. 2791 § 5, amended, 1997; Ord. 2670, amended, 1992)

21
22 4.20.100 Exemptions

23 The conditions under which all or part of the systems development charges imposed in Section
24 4.20.040 may be waived are as follows:

25 A. Structures and uses established and legally existing on or before the effective date of this
26 ordinance are exempt from a system development charge, except water and sewer charges, to the
27 extent of the structure or use then existing and to the extent of the parcel of land as it is
28 constituted on that date. Structures and uses affected by this subsection shall pay the water or
29 sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to
30 the water or sewer system.

1 B. Housing for low income or elderly persons which is exempt from real property taxes under
2 state law. (Ord. 2791 § 7, amended, 1997)

3
4 4.20.105 Deferrals for Affordable Housing

5 A. The systems development charge for the development of qualified affordable housing under
6 the City's affordable housing laws shall be deferred until the transfer of ownership to an
7 ineligible buyer occurs. Deferred systems development charges shall be secured by a second
8 mortgage acceptable to the City, bearing interest at not less than five percent per annum.
9 Accrued interest and principal shall be due on sale to an ineligible buyer.

10 B. The systems development charge and second mortgage for the development of qualified
11 affordable housing shall terminate 30 years after the issuance of a certificate of occupancy if the
12 housing unit(s) have continued to meet the affordable housing requirements during the 30 year
13 period. (Ord. 2791 § 8, amended, 1997; Ord. 2670, amended, 1992)

14
15 4.20.110 Credits

16 A. When development occurs that gives rise to a system development charge under Section
17 4.20.040 of this Chapter, the system development charge for the existing use shall be calculated
18 and if it is less than the system development charge for the proposed use, the difference between
19 the system development charge for the existing use and the system development charge for the
20 proposed use shall be the system development charge required under Section 4.20.040. If the
21 change is use results in the systems development charge for the proposed use being less than the
22 system development charge for the existing use, no system development charge shall be
23 required; however, no refund or credit shall be given.

24 B. The limitations on the use of credits contained in this Subsection shall not apply when credits
25 are otherwise given under Section 4.20. 110. A credit shall be given for the cost of a qualified
26 public improvement associated with a development. If a qualified public improvement is located
27 partially on and partially off the parcel of land that is the subject of the approval, the credit shall
28 be given only for the cost of the portion of the improvement not attributable wholly to the
29 development. The credit provided for by this Subsection shall be only for the improvement fee
30 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. Credits paid

1 as a permit for development will expire five years after paid. The credit shall be apportioned
2 equally among all single-family residential lots (where such credit was granted for subdivisions).
3 Credits for other types of developments shall be allocated to building permits on a first-come,
4 first served basis until the credit is depleted.

5 C. Applying the methodology adopted by resolution, the City Manager or designee shall grant a
6 credit against the improvement fee, for a capital improvement constructed as part of the
7 development that reduces the development's demand upon existing capital improvements or the
8 need for future capital improvements or that would otherwise have to be provided at City
9 expense under then existing Council policies.

10 D. Credits for additions to dedicated park land, or development of planned improvements on
11 dedicated park land, shall only be granted by the City Manager upon recommendation by the
12 Park and Recreation Commission for land or park development projects identified in the Capital
13 Improvement Plan, referred to in Section 4.20.070.B.

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

17 F. Credit shall not be transferable from one type of capital improvement to another. (Ord. 2791 §
18 9, amended, 1997)

19
20 4.20.120 Notification

21 A. The city shall maintain a list of persons who have made a written request for notification
22 prior to adoption or modification of a methodology for any system development charge. Written
23 notice shall be mailed to persons on the list as provide in sections 4.20.050 and 4.20.080. The
24 failure of a person on the list to receive a notice that was mailed does not invalidate the action of
25 the city.

26 B. The city may periodically delete names from the list, but at least thirty (30) days prior to
27 removing a name from the list, the city must notify the person whose name is to be deleted that a
28 new written request for notification is required if the person wishes to remain on the notification
29 list.

30
4.20.130 Segregation and Use of Revenue

1 A. All SDC proceeds are to be segregated by accounting practices from all other funds of the
2 City. SDC proceeds shall be used only for capital improvement of the type for which they were
3 collected and authorized costs and overhead.

4 B. The City Manager shall provide the City Council with an annual accounting, based on the
5 City's fiscal year, for SDCs showing the total amount of SDC revenues collected for each type of
6 facility and the projects funded from each account in the previous fiscal year. A list of the
7 amounts spent on each project funded in whole or in part with SDC revenues shall be included in
8 the annual accounting.

9 C . The monies deposited into each SDC account shall be used solely as allowed by this chapter
10 and State law, including, but not limited to:

- 11 1. Design and construction plan preparation;
- 12 2. Permitting and fees;
- 13 3. Land, easements, and materials acquisition, including any cost of acquisition or
14 condemnation, including financing, legal and other costs;
- 15 4. Construction of capital improvements;
- 16 5. Design and construction of new utility facilities required by the construction of capital
17 improvements and structures;
- 18 6. Relocating utilities required by the construction of improvements;
- 19 7. Landscaping;
- 20 8. Construction management and inspection;
- 21 9. Surveys, soils, and materials testing;
- 22 10. Acquisition of capital equipment;
- 23 11. Repayment of monies transferred or borrowed from any budgetary fund of the City which
24 were used to fund any of the capital improvements as herein provided; and
- 25 12. Payment of principal and interest, necessary reserves and cost of issuance under bonds or
26 other indebtedness issued by the City to fund capital improvements.

27
28 4.20.140 Refunds

29 A. Refunds shall be given by the City Manager upon finding that there was a clerical error in
30 the calculation of a system development charge.

1 B. Refunds shall not be allowed for failure to timely claim a credit under Section 4.20.110 of
2 this ordinance, or for failure to seek an alternative system development charge rate calculation at
3 the time of submission of an application for a building permit.

4 C. Refunds may be given on application of a permittee if the development did not occur and all
5 permits for the development have been withdrawn.

6
7 4.20.150 Appeal Procedures

8 A. As used in this Section “working day” means a day when the general offices of the City are
9 open to transact business with the public.

10 B. A person aggrieved by a decision required or permitted to be made by the City Manager or
11 designee under Sections 4.20.010 through 4.20.130 or a person challenging the propriety of an
12 expenditure of systems development charge revenues may appeal the decision or expenditure by
13 filing a written request with the City Recorder for consideration by the City Council. Such appeal
14 shall describe with particularity the decision or the expenditure from which the person appeals
15 and shall comply with subsection D of this section.

16 C. An appeal of an expenditure must be filed within two years of the date of alleged improper
17 expenditure. An appeal petition challenging the adopted methodology shall be filed not later than
18 sixty (60) days from the date of the adoption of the methodology. Appeals of any other decision
19 must be filed within 10 working days of the date of the decision.

20 D. The appeal shall state:

- 21 1. The name and address of the appellant;
- 22 2. The nature of the determination being appealed;
- 23 3. The reason the determination is incorrect; and
- 24 4. What the correct determination should be.

25 An appellant who fails to file such a statement within the time permitted waives any objections,
26 and the appeal shall be dismissed.

27 E. Unless the appellant and the City agree to a longer period, an appeal shall be heard within 30
28 days of the receipt of the written appeal. At least 10 working days prior to the hearing, the City
29 shall mail notice of the time and location thereof to the appellant.

30 F. The City Council shall hear and determine the appeal on the basis of the appellant’s written
statement and any additional evidence the appellant deems appropriate. At the hearing, the

1 appellant may present testimony and oral argument personally or by counsel. The City may
2 present written or oral testimony at this same hearing. The rules of evidence as used by courts of
3 law do not apply.

4 G. The appellant shall carry the burden of proving that the determination being appealed is
5 incorrect and what the correct determination should be.

6 H. The City Council shall render its decision within 15 days after the hearing date and the
7 decision of the Council shall be final. The decision shall be in writing but written findings shall
8 not be made or required unless the Council in its discretion, elects to make findings for
9 precedential purposes.

10 Any legal action contesting the Council's decision on the appeal shall be filed within 60 days of
11 the Council's decision. (Ord. 2791 § 10, amended, 1997)

12 13 4.20.160 Prohibited Connection

14 After the effective date of this chapter, no person may connect any premises for service, or cause
15 the same to be connected, to any sanitary sewer, water system, or storm sewer system of the City
16 unless the appropriate systems development charge has been paid or payment has been secured
17 as provided in this chapter.

18 19 4.20.170 Enforcement - Violation

20 Any service connected to the City water, sewer or storm sewer system after the effective date of
21 this chapter for which the fee due hereunder has not been paid as required or an adequate secured
22 arrangement for its payment has been made, is subject to termination of service under the City's
23 utility disconnect policy. In addition to any other remedy or penalty provided herein, any
24 connection to the City water, sewer or storm system made without payment as specified in this
25 Chapter shall be considered a Class I violation. (Ord. 3023, amended, 08/03/2010)

26 27 4.20.180 Classification of the Fee

28 System development charges as set forth in Chapter 4.20 of the Ashland Municipal Code are
29 classified as not subject to the limits of Section 11b of Article XI of the Oregon Constitution
30 (Ballot Measure No. 5) (Ord. 2791 § 11, amended, 1997)

1 **SECTION 2. Severability.** The sections, subsections, paragraphs and clauses of this ordinance
2 are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the
3 validity of the remaining sections, subsections, paragraphs and clauses.

4
5 **SECTION 3. Codification.** Provisions of this Ordinance shall be incorporated in the City Code,
6 and the word “ordinance” may be changed to “code”, “article”, “section”, or another word, and
7 the sections of this Ordinance may be renumbered or re-lettered, provided however, that any
8 Whereas clauses and boilerplate provisions (*i.e.*, Sections [No(s.)] need not be codified, and the
9 City Recorder is authorized to correct any cross-references and any typographical errors.

10
11 The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C)
12 of the City Charter on the ____ day of _____, ~~2019~~ **2022**, and duly PASSED and
13 ADOPTED this ____ day of _____, ~~2019~~ **2022**.

14
15 _____
16 Melissa Huhtala, City Recorder

17
18 SIGNED and APPROVED this ____ day of _____, ~~2019~~ **2022**.

19
20 _____
21 ~~John Stromberg~~ **Julie Akins**, Mayor

22
23 Reviewed as to form:

24
25 _____
26 ~~David H. Lohman~~ **Doug McGeary, Interim** City Attorney

Memo

CITY OF
ASHLAND

Date: November 10, 2022
From: Scott Fleury PE, Public Works Director
To: Joseph Lessard, City Manager
RE: System Development Charges Code and Methodology Update

Concerns raised during the Business Meeting of November 1, 2022 regarding an update to Section 4.20 System Development Charges Background:

Concern: Incorrect Public Noticing
Oregon Revised Statute: 223.304 details public noticing requirements for SDC Methodology Changes:

ORS223.304:

Determination of amount of system development charges; methodology; credit allowed against charge; limitation of action contesting methodology for imposing charge; notification request. (1)(a) Reimbursement fees must be established or modified by ordinance or resolution setting forth a methodology that is, when applicable, based on:

(7)(a) Written notice must be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a system development charge, and the methodology supporting the system development charge must be available at least 60 days prior to the first hearing. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the local government. The local government may periodically delete names from the list, but at least 30 days prior to removing a name from the list shall 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.

(b) Legal action intended to contest the methodology used for calculating a system development charge may not be filed after 60 days following adoption or modification of the system development charge ordinance or resolution by the local government. A 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.

Answer:

The action considered by the City Council at the November 1, 2022 Business Meeting was not associated with resolution approval for methodology updates for water and storm drain System Development Charges, it was a standalone policy action meant to consider changes to section 4.20 of the Ashland Municipal Code. This does not require the noticing associated with ORS 223.304. Ordinance changes/updates have a separate noticing requirement that was followed by the Legal Division and the City Recorder.

Concern:

Oregon Revised Statutes 223.208 also authorizes (but does not compel) local governments to provide financing of SDCs under the provisions of the Bancroft Bonding Act. These provisions allow local governments to provide loan-like financing of SDCs. Provider financing programs vary in terms of the type of development eligible, maximum financing term, interest rates charged, and program application fees and other requirements.

ORS 223.208:

System development and connection charges of local government subject to Bancroft Bonding Act. (1) Subject to subsection (2) of this section, the rights and duties accorded local governments and the owners of property for financing and assessments under ORS 223.205 to 223.775 shall apply to the following:

(a) A system development charge designed to finance the purchase or development of a public park or recreational facility or the construction, extension or enlargement of a street, community water supply, storm sewer or sewerage or disposal system as defined in ORS 199.464 imposed by a local government as a condition to issuance of any occupancy permit or imposed by a local government at such other time as, by ordinance, it may determine.

(b) That portion of a connection charge imposed by a local government that is greater than the amount necessary to reimburse the local government for its costs of inspection and installing connections with system mains.

(2) Notwithstanding ORS 223.230, the financing of system development or connection charges under this section may, at the option of the governing body, be a second lien on real property, which lien shall be inferior only to the mortgage or other security interest held by the lender of the owner's purchase money. Bonds issued under this subsection shall be issued separately from bonds otherwise issued under ORS 223.205 to 223.775 and shall comply with all applicable federal regulations. [1977 c.722 §3; 1979 c.837 §1; 1983 c.349 §1; 1991 c.902 §8; 1997 c.249 §62; 2001 c.662 §1; 2003 c.802 §4]

Answer: Updates to section 4.20 of the Ashland Municipal Code do not impair the City's ability under the Bancroft Bonding Action. Section 4.20.090 D.4 provides the ability for the City to place a lien on real property to ensure collection of any SDC charges within a payment plan structure (relevant to ORS 223.208 (2) above).

Concern: Reducing SDC fees

Answer: The update to section 4.20 does not reduce the fees calculated as part of the development requirements, it provides for the option to allow the collection to occur a certificate of occupancy for multifamily development and provides additional options for payment plans of SDCs associated with multifamily development.

Ad-Hoc SDC Committee:

The Ad-Hoc SDC Committee makeup is detailed in City Council approved resolution 2001-17. The number and actual makeup of the Committee as recommended by the Mayor and approved by City Council is detailed below:

SDC Committee Representation Recommended Appointments

- (2) Homebuilders: Robert Kendrick and Gil Livni
- (2) “Public at large”: George Kramer and Steve Russo
- (1) Chamber of Commerce: Gary Blake
- (1) Planning Commission or Budget Committee: David Runkel

SDC Committee Ex-Officio Members

- (1) City Council representative: Shaun Moran
- (2) City Staff Community Development Director or designee
Public Works Director or designee

SDC Methodology and Code Review Contract:

Galardi Rothstein was awarded a contract by the City Council to update the SDC methodology for the water and storm drain enterprise system based on updated master plans. Task 5 of the scope of services outlines work associated with the existing municipal code and coordination with the Ad-Hoc SDC Committee.

Task 5: Code Review

It is common practice to structure SDCs in such a way that furthers a local jurisdiction's broader objectives related to housing affordability, economic development, and other policies. SDC programs may include focused incentives for certain housing types (e.g., affordable housing, and accessory dwelling units) or targeted locations. We will review current SDC policies and administration practices (e.g. inflationary update) reflected in the City's SDC code. **We will recommend any modifications to code language and provisions to reflect the updated policy and technical framework recommended by the SDC Advisory Committee.**



*Advocating for a liveable and sustainable
Rogue Valley through responsible land use.*

November 1, 2022

Dear Members of the City Council,

Rogue Advocates has several comments on an item for tonight's agenda, entitled "First Reading of Ordinance 3214 regarding System Development Charges and amending Ashland Municipal Code section 4.20," as explained below.

In May of 2021, Rogue Advocates successfully appealed the Grand Terrace Annexation to Oregon's Land Use Board of Appeals (LUBA). Rogue Advocates' brief to LUBA identified numerous provisions within AMC 18.5.8 that were violated through the City's approval. As a result of LUBA's reversal, the City was forced to undertake significant code amendments so that, in a second time around, the annexation proposal might be lawfully approved. Such amendments included altering code language that provides for the safety of pedestrians, cyclists and transit riders.

Bob Kendrick, the Applicant for Grand Terrace, proposed an illegal annexation that has required the City to amend its laws - including laws enacted to protect public safety - in order to be approved. However, prior to considering Kendrick's first annexation proposal, and at Mr. Kendrick's request, the City Council also amended its affordable housing requirements, resulting in an approximately 20% reduction in required affordable units for Grand Terrace. During Planning Commission hearings, Mr. Kendrick made it clear that he wanted to minimize the number of required affordable units in order to make his development more profitable. And despite all the rhetoric we've heard about the desire to build more affordable housing in Ashland, the City Council obliged this request as well.

A new Grand Terrace annexation application, addressing the revised code provisions, is currently pending recommendation at the Planning Commission and is scheduled to come to the City Council in the near future.

Tonight we are confronted with yet another example of how the City of Ashland intends to bend over backwards in order to accommodate Mr. Kendrick. In fact, the City went so far as to include Mr. Kendrick on the committee to come up with the recommendations before you tonight - recommendations that will affect the profitability of his development and add costs to City taxpayers. And these recommendations also come from people with direct ties to political candidates aligned with Mr. Kendrick, people who have pledged to deal with "excessive system development charges" without identifying how infrastructure will otherwise be paid for.

Rogue Advocates is highly supportive of the development of affordable housing in Ashland and is generally supportive of the City's efforts to treat such developments differently with respect to SDCs. Yet, there is no evidence that providing favorable SDC terms for market-rate developers, such as those you are considering tonight, will result in any benefits for Ashland residents. In fact, the exact opposite is true.

In a Study Session on May 17, 2021, Beth Goodman of ECONorthwest told the City Council that her investigations have shown that reducing SDCs for market rate development simply improves profits for developers, it does not result in lowered housing prices. If that is the case, why is the Council pursuing this course of action?

On October 18, 2022, the State of Oregon published "Oregon System Development Charges Study - Public Review Draft" as required through House Bill 3040. Among the findings published in that document include:

BOARD & STAFF

Jimmy MacLeod Steve Rouse Maud Powell Pepper Trail Melissa Matthewson Mike Walker

RogueAdvocates.org • 541.846.1083 • P.O. Box 443 Williams, OR 97544



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Rogue Valley through responsible land use.

- *"SDCs are increasing faster than inflation due to lack of alternative funding and increasing infrastructure costs."*
- *"On average, SDCs and water and sewer utility rates have increased faster than construction costs over the past 10-15 years, yet many jurisdictions report falling behind in their ability to pay for infrastructure, especially in the last few years."*
- *"While jurisdictions that have implemented deferrals reported few issues, many others expressed concerns about their ability to collect fees after permits are issued, administrative cost and complexity, and, in some cases, delaying revenue collection."*
- *"Oregon property tax limitations imposed in the 1990s slowed the growth of property tax revenue and sharply reduced localities' abilities to use property taxes to finance infrastructure improvements. At the same time, higher environmental and safety standards have increased the cost of infrastructure investments and maintenance, while construction costs and personnel costs (including pensions) have also risen."*
- *"There are few viable alternatives to SDCs for local investments in capital infrastructure, particularly in fast growing communities. SDCs also provide an important leveraging tool for state and federal infrastructure grants, particularly for parks and transportation."*
- *"Most service providers prefer to collect SDCs at issuance of the building permit as this offers the greatest certainty of payment with the least administrative effort, and many expressed concern about challenges with collecting payment at certificate of occupancy, and even more so at time of sale."*
- *"Oregon Revised Statutes 223.208 also authorizes (but does not compel) local governments to provide financing of SDCs under the provisions of the Bancroft Bonding Act. These provisions allow local governments to provide loan-like financing of SDCs. Provider financing programs vary in terms of the type of development eligible, maximum financing term, interest rates charged, and program application fees and other requirements."*
- *"The SDC methodology must also be made available for review 60 days prior to the first public hearing. ORS 223.304(7)."*

Rogue Advocates is concerned that the City Council is amending their SDC provisions inconsistent with ORS 223.304(7) as we are not aware of the proposed methodology before you being publicly presented 60 days in advance of this hearing. We are also concerned that the terms of ORS 223.208 (Bancroft Bonding) are inconsistent with what the City is proposing in these amendments. We ask that this first reading be postponed until such a time as these two issues can be appropriately addressed.

Sincerely,

Craig Anderson
Member Rogue Advocates

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