

ORDINANCE NO. 379

**AN ORDINANCE OF THE CITY OF NORTH PLAINS, OREGON, ADOPTING
MUNICIPAL CODE CHAPTER 2.15 SYSTEM DEVELOPMENT CHARGES,
REGARDING REFUNDS AND CREDITS, AND REPEALING ORDINANCE NO. 228**

WHEREAS, the City Council finds that Municipal Code Chapter 2.15 System Development Charges, should be amended to clarify requirements regarding refunds and credits of system development charges; and

WHEREAS, the City has integrated the proposed changes Section 2.15.130 and renumbered subsequent sections;

**NOW THEREFORE, THE CITY OF NORTH PLAINS ORDAINS AS
FOLLOWS:**

Section 1. The City Council adopts "Exhibit A" as it is attached hereto, amending Municipal Code Chapter 2.15 System Development Charges.

Section 2. Severability. If any provision of this Ordinance or its application to any person or circumstances is held to be unconstitutional or invalid for any reason, the remainder of this Ordinance or the application of the provisions to other persons or circumstances shall not be affected.

Section 3. Repeal. Ordinance No. 228, adopted March 7, 1994, is hereby repealed.

Section 4. Effective Date. This Ordinance shall become effective on the thirtieth day following adoption.

INTRODUCED on the 17th day of November, 2008, **AND ADOPTED** this 1st day of December, 2008.

CITY OF NORTH PLAINS, OREGON

BY: Cheri Olson
Cheri Olson, Mayor

ATTEST:

BY: Lisa J. Gibson
Lisa J. Gibson, City Recorder

Chapter 2.15
SYSTEM DEVELOPMENT CHARGES

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2.15.010 Purpose.
This Chapter is intended to provide authorization for system development charges for capital improvements pursuant to ORS 223.297 - 223.314 for the purpose of creating a source of funds to pay for the installation, construction, and extension of capital improvements. These charges shall be collected at the time of the development of properties which increase the use of capital improvements and generate a need for those facilities.

2.15.020 Scope.
The system development charges imposed by this Chapter are separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development.

2.15.030 Definitions.
A. “Capital Improvements” means facilities or assets used for:

1. Water supply, treatment and distribution;

2. Sewage and wastewater collection, transmission, treatment and disposal;
 3. Drainage and flood control;
 4. Transportation; or
 5. Parks and recreation.
- B. “Development” means conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, or creating or terminating a right of access.
- C. “Improvement fee” means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 2.15.040 of this Chapter.
- D. “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 or preservation purpose.
- E. “Owner” means the owner(s) of record title or the purchaser(s) under a recorded sales agreement, and other persons having an interest of record in the described real property.
- F. “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 includes the yards and other open spaces required under the zoning, subdivision, or other development Chapters.
- G. “Permittee” means the person to whom a Building Permit, Development Permit, Permit to Connect to the sewer or water system or Right-of-Way Access Permit is issued.
- H. “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 Section 2.15.080 of this Chapter; and either,
 3. Not located on or contiguous to a parcel of land that is the subject of

the development approval; or,

4. 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.

I. "Reimbursement fee" means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 2.15.040 of this Chapter.

J. "System development charge" means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement.

"System development charge" includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the City for its average cost of inspecting and installing connections with water and sewer facilities.

"System development charge" does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision.

2.15.040 System Development Charge Imposed: Method For Establishment Created.

A. Unless otherwise exempted by the provisions of this Chapter or other local or state law, a systems development charge is hereby imposed upon all development within the City, upon the act of making a connection to the City water or sewer system within the City, and upon all development outside the boundary of the City that connects to or otherwise uses the sewer or water facilities of the City.

B. Systems development charges shall be established and may be revised by Resolution of the City Council. The Resolution shall set the amount of the charge, the type of permit to which the charge applies, the methodology used to set the amount of the charge and, if the charge applies to a geographic area smaller than the entire City, the geographic area subject to the charge.

2.15.050 Methodology.

A. The methodology used to establish the reimbursement fee shall consider the

cost of the then-existing facilities, prior contributions by then-existing system users, the value of unused capacity, rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the Council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.

- 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 and other relevant factors identified by the Council.
- C. The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be adopted by Resolution.

2.15.060 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.
 - 1. Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such 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 improvements funded by improvement fees must be related to demands created by current or projected development.
 - 2. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the Systems Development Charge Funding Project Plan adopted by the City pursuant to Section 2.15.080 of this Chapter.
- C. Notwithstanding Subsections (1) and (2) of this Section, system development charge revenues may be expended on the direct costs of complying with the provisions of this Chapter, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge funds.

2.15.070 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.

2.15.080

Project Plan.

The Council shall adopt by Resolution the Systems Development Charge Funds Project Plan. This Plan:

- A. Lists the capital improvements that may be funded with improvement fee revenues; and
- B. Lists the estimated cost and time of construction of each improvement.

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. The City may modify this project plan at any time through the adoption of an appropriate Resolution. There may be a separate plan for each system, or the plan may include improvements from more than one system.

2.15.090

Collection of Charge.

- A. The systems development charge is payable upon issuance of:
 - 1. A building permit;
 - 2. A development permit for development not requiring the issuance of a building permit;
 - 3. A permit to connect to the water system;
 - 4. A permit to connect to the sewer system; or
 - 5. A right-of-way access permit.

The Resolution which sets the amount of the charge shall designate the permit or permits to which the charge applies.

- B. If development is commenced or connection is made to the water system, sewer system or storm sewer system without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.
- C. The City Council or the designee shall collect the applicable system development charge from the permittee.

- D. The City Council or the designee shall not issue such permit or allow connection until the charge has been paid in full, unless provision for installment payments has been made pursuant to Section 2.15.100 of this Chapter, or unless an exemption is granted pursuant to Section 2.15.110 of this Chapter.

2.15.100 Installment Payment.

- A. When a system development charge is due and payable, the permittee may apply for payment in twenty (20) semiannual installments, secured by a lien on the property upon which the development is to occur or to which the utility connection is to be made, to include interest on the unpaid balance, if that payment option is required to be made available to the permittee by ORS 223.207.
- B. The City Council or designee 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. A permittee requesting installment payments shall have the burden of demonstrating the permittee's authority to assent to the imposition of a lien on the property and that the interest of the permittee is adequate to secure payment of the lien.
- D. The City Council or designee shall docket the lien in the lien docket. From that time, the City shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the Council. The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall be superior to all other liens pursuant to ORS 223.230.

2.15.110 Exemptions.

- A. Structures and uses established and existing on or before the effective date of the Resolution which sets the amount of the system development charge are exempt from the charge, except water and sewer charges, to the extent of the structure or use existing on that date and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this Subsection shall pay the water or sewer charges pursuant to the terms of this Chapter upon the receipt of a permit to connect to the water or sewer system.
- B. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the Building Code adopted pursuant to Ordinance No. 66, 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 a capital improvement are exempt from all portions of the system development charge.

2.15.120

Credits.

- A. When development occurs that is subject to a system development charge, the system development charge for the existing use, if applicable, shall be calculated and if it is less than the system development charge for the use that will result from the development, the difference between the system development charge for the existing use and the system development charge for the proposed use shall be the system development charge. If the change in the use results in the system development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required, however, no refund or credit shall be given unless provided for by another Subsection of this Section.
- B. A credit shall be given to the permittee for the cost of a qualified public improvement upon acceptance by the City of the improvement. The credit provided for in this Subsection shall be only for the improvement fee charged for the type of improvement being constructed, and credit for qualified public improvements may be granted only for the cost of that portion of such improvement that exceeds the City's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this Subsection. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the City.
- C. When establishing a methodology for a system development charge, the City may provide for a credit against the improvement fee, the reimbursement fee, or both, for capital improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the Council finds reasonable.
- D. When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project. Credit shall not be transferable from one development to another.
- E. Credits shall not be transferable from one type of system development charge

to another.

F. Credits shall be used within 10 years from the date the credit is given.

2.15.130 Credits if Use or Building Not Developed.

If an applicant pays system development charges and then does not complete the project, the City will not refund the SDC's. If the applicant requests refund of the SDC's, the city shall not refund the SDC's but will credit the property for the payment of such SDC's. If subsequent development of the property does not occur within two years, the credit shall expire and SDC payments will be required before subsequent development of the property may occur.

2.15.140 Notice.

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 system development charge. Written notice shall be mailed to persons on the list at least 45 days prior to the first hearing to adopt or amend a system development charge, and the methodology supporting the adoption or amendment shall be available at least 30 days prior to the first hearing to adopt or amend. The failure of a person on the list to receive a notice that was mailed shall not invalidate the action of the City. The City may periodically delete names from the list, but at least 30 days prior to removing a name from the list must notify the persons whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

2.15.150 Segregation and Use of Revenue.

A. All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds by 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 this Chapter.

B. The City Council shall provide an annual accounting, based on the City's fiscal year, of system development charges showing the total amount of system development charge revenues collected for each type of charge and the projects funded from each account.

2.15.160 Appeal Procedure.

A. A person aggrieved by a decision required or permitted to be made by the City Council under this Chapter or 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 Council describing with particularity the decision of the City Council or the

expenditure from which the person appeals.

- B. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure. Appeals of any other decision must be filed within thirty (30) days of the date of the decision.
- C. The Council shall determine whether the City Council's decision or the expenditure is in accordance with this Chapter and the provisions of ORS 223.297-.314 and may affirm, modify, or overrule the decisions. If the Council determines that there has been an improper expenditure of system development charge revenues, the Council shall direct that a sum equal to the misspent amount shall be deposited within one year of the date of that determination to the credit of the account or fund from which it was spent. The decision of the Council shall be reviewed only as provided in ORS 34.010 to 34.100 and not otherwise.
- D. A legal action challenging the methodology adopted by the Council pursuant to Sections 2.15.040 and 2.15.050 of this Chapter shall not be filed later than sixty (60) days after the adoption. A person shall contest the methodology used for calculating a system development charge only as provided in ORS 34.010 to 34.100, and not otherwise.

2.15.170 Prohibited Connection.

No person may connect to the water or sewer systems of the City unless the appropriate system development charge has been paid.

2.15.180 Penalty.

Violation of this Chapter is a Class A infraction punishable by a fine not to exceed \$500.

(ORD. 228, March 7, 1994)

(ORD. 379, December 1, 2008)