

TITLE THREE PUBLIC IMPROVEMENTS

3.01.00 *Reserved for expansion.*

3.02.00 Local Improvement Districts.

Unless otherwise indicated, Ordinance 98-104 enacts Section 3.02.01 through 3.02.12.

3.02.01 Definitions. For the purpose of this section, the following definitions apply:

Public Capital Improvement means improvements upon the property of the City or within an easement granted to the City which serves to further the operation of the city government and the interests and welfare of the public; for example, a facility or asset used for water supply, treatment, storage and distribution; waste water collection, transmission, treatment and disposal; drainage and flood control; parks and recreation; or transportation.

Local Improvement means a public capital improvement which benefits parcels of land located within a defined area of the City, which area is smaller than the entire area of the City. Local improvement may include construction, demolition or repair of a public capital improvement.

Local Improvement District means the parcels of land benefited by a local improvement and upon which a special assessment is levied to pay for the cost of the local improvement.

Land Area means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with exception of a portion of the parcel within a recorded right-of-way or

easement subject to servitude for a public street or scenic 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.

Sidewalk means that part of a street right-of-way between the curb line or the lateral line of the paved portion of the roadway and the adjacent property line, which is intended for the use of pedestrians.

Single Living Unit means a residential structure or a portion of a residential structure generally intended for one family or fewer individuals (e.g. a single family home, half of a duplex, one apartment within a larger structure.)

Estimated Assessment means, with respect to each property to be assessed in connection with a local improvement, the total assessment that, at the time of giving notice of the proposed assessment and the right to object or remonstrate, the city estimates will be levied against the property following completion of the local improvement.

Final Assessment means, with respect to each property to be assessed in connection with a local improvement, the total assessment levied against the property following completion of the local improvement.

3.02.02 Purpose. The purpose of a local improvement district is to equitably

allocate all or a portion of the cost of public capital improvements for water, wastewater, drainage, streets, sidewalks, street lighting, flood control and other public capital improvements among the owners of parcels of land which are benefited by such public improvements.

3.02.03 Scope. Special assessments levied on local improvement districts under authority of this section of the TRC are separate from and in addition to any systems development charge and any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development.

3.02.04 Establishment of Local Improvement Districts. The City Council may initiate action to establish a local improvement district in accordance with the provisions of this section of the TRC...

3.02.05 Staff Report. The City Council shall initiate the construction, demolition or repair of a public capital improvement which will require the establishment of a local improvement district by directing the City Administrator to prepare a project description which shall include:

- (a) A description of the boundaries of the district to be benefited and assessed for such improvement,
- (b) A description of each parcel of land within the district,
- (c) The names and addresses of recorded owners or contract purchasers of real property within the local improvement district.
- (d) An estimate of all costs attributable to the project including estimated financing costs associated with interim financing of the local improvement but excluding estimated financing costs associated with any bonds issued to accommodate the payment of the assessment in installments.

(e) A recommendation for the fair apportionment of the costs of the project to the properties specially benefited. Apportionment of costs may be based on frontage, square footage, or any other measurement which will result in costs being proportionate to benefits.

3.02.06 Notice of Hearing. If, after reviewing the staff report, the city council finds it is in the best interest of the city to proceed with the project, it shall direct the City Administrator to give notice of a hearing, set for a date at least 20 days following first publication of notice, including the following:

- (a) Statement that staff report of proposed project is available for public inspection at city hall;
- (b) Statement that if prior to scheduled hearing, there are presented to the City Administrator valid, written remonstrance's by owners of two-thirds of the property to be specially affected by such project, the project shall be abandoned for at least six months. The measurement used to apportion assessments shall be the measurement used to determine ownership of two-thirds of the affected properties. For example, if assessments are to be based on frontage, frontage shall be used to determine the ownership of two-thirds of the affected properties. If the required number of remonstrances is presented, the City Council may go ahead with the scheduled public hearing nevertheless, provided a majority of the Council so agrees. (*Amend, Ord. 99-112*)
- (c) A description of the property to be benefited by the project, the estimate of unit cost and the total cost of the project to be paid by special assessments.
- (d) Date, time, and place of the hearing.
- (e) Notice shall be given by the following:

(1) Publication in the Turner Newsletter at least 10 days prior to the hearing.

(2) Written notice sent by mail to each recorded owner of property to be assessed for the project at least 20 days prior to the hearing.

3.02.07 Assessment. If, following a public hearing about the proposed project, the City Council finds that it is in the best interest of the city to proceed, it shall adopt by ordinance a detailed plan for the project, including the staff report, any subsequent amendments to the staff's report, procedures for the equitable apportionment of assessments, the estimated assessment to be levied against each parcel of land within the local improvement district and a time line for the project. The Council shall specify and levy final assessments by ordinance, after the work is completed and total costs have been determined.

3.02.08 Additional Financing. When City Council finds it is in the best interest of the city, it may pay a proportion of the cost of a project from other sources, including the general funds of the city; and the amount to be assessed to the property benefited shall be proportionately reduced.

3.02.09 Installment Payment of Assessments Pursuant to Bancroft Bonding Act.

(a) After the local improvement has been constructed, the City Administrator shall, within ten days following enactment of the ordinance establishing final assessments, publish notice of the final assessment. The notice shall identify the local improvement for which the assessment is to be made, each lot to be assessed and the final assessment for each lot. In addition, the notice shall state that the owner of any

property to be assessed shall have the right to make application to the city for payment of the final assessment in installments. A copy of the notice shall be mailed or personally delivered to the owner of each lot to be assessed.

(b) The owner of any property to be so assessed, at any time within 30 days after notice of final assessment is first published, may file with the City Administrator a written application to pay:

(1) The whole of the final assessment in installments; or

(2) If part of the final assessment has been paid, the unpaid balance of the assessment in installments.

3.02.10 Content of Application.

(a) Repayment over 10 years or longer:

(1) The installment application shall state that the applicant does thereby waive all irregularities or defects, jurisdictional or otherwise, in the proceedings to cause the local improvement for which the final assessment is levied and in the apportionment of the actual cost of the local improvement.

(2) The application shall provide that the applicant agrees to pay the final assessment over a period of not less than 10 years or more than 30 years and according to such terms as the City Council may provide.

(3) The application shall provide that the applicant acknowledges and agrees to pay interest at the rate provided by the City Council on all unpaid assessments, together with an amount, determined by the City Council, sufficient to pay a proportionate part of the cost of administering the bond assessment program and issuing the bonds authorized under ORS 223.235, including but not limited to legal, printing and consultant's fees.

(4) The application shall contain a description of the property of the applicant assessed for the improvement.

(b) Repayment over less than 10 years. The owner of any property to be assessed may irrevocably elect in writing to have the final assessment levied for a number of years less than 10. The written election shall:

(1) Be signed by the owner or a duly authorized representative of the owner;

(2) Contain a description of the assessed property and the local improvement for which the assessment is made; and

(3) Contain a statement by the owner acknowledging that the improvement is a local improvement as described in ORS 223.001(9), that payment of the final assessment against the properties benefited by the local improvement plus interest may be spread over at least 10 years and that, notwithstanding any provision of law, the owner consents to make payments over a period of less than 10 years and to have the assessment levied on the benefited property accordingly.

(c) The election under this subsection shall be recorded in the bond lien docket for the local improvement to which the local improvement relates. From and after the time at which the written election is so recorded, it shall be valid and binding upon all subsequent owners of the property or any part thereof.

3.02.11 Contents of Application. The City Administrator shall be responsible for maintaining records of applications required by ORS 223.225.

3.02.12 Bond Lien Docket. The City Administrator shall be responsible for

establishing and maintaining the bond lien dockets required by ORS 223.230.

3.03.00 *Reserved for expansion.*

3.04.00 System Development Charges. Unless otherwise indicated, Ordinance 98-105 enacts Section 3.04.01 through 3.04.17.

3.04.01 Definitions. For the purpose of this section, the following definitions apply:

Apartment means any residential unit other than a single family living unit for water and sewer SDC's. (*Amend. Ord. 19-109 01/09/2020*)

Developer means any individual or entity constructing, demolishing or repairing a capitol improvement within the City.

Development means conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, dividing land into two or more parcels, creating or terminating a right of access.

Improvement Fee means a fee for costs associated with public capital improvements to be constructed after the date a systems development fee is adopted.

Land Area means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with exception of a portion of the parcel within a recorded right-of-way or easement subject to servitude for a public street or scenic 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.

Capital Improvement means improvements upon the property of the City or within an easement granted to the City which serves to further the operation of the city government and the interests and welfare of the public; for example, a facility or asset used for water supply, treatment, storage and distribution; waste water collection, transmission, treatment and disposal; drainage and flood control; parks and recreation; or transportation.

Qualified Public Improvement means a capital improvement that is (1) required as a condition of development approval; (2) identified in the City's improvement plan; and (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.

Reimbursement Fee means a fee for costs associated with public capital improvements constructed or under construction on the date the systems development fee is adopted.

Sewer Lateral Connection means the pipe and other equipment by means of which property owner conducts sewage from the premises served to the existing city sewer main within the city right of way.

Sidewalk means that part of a street right-of-way between the curb line or the lateral line of the paved portion of the roadway

and the adjacent property line, which is intended for the use of pedestrians.

Single Family Living Unit means a residential structure serving as a single family home. (*Amend. Ord. 19-109 01/09/2020*)

Systems Development Charge means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a public capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the public capital improvement. "Systems 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. "Systems 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.

Water Service Connection means the pipe, valves and other equipment by means of which the City conducts water from the city water system to and through the meter, but not including piping from the meter to the premises served. Each water meter shall be placed within two feet of the city right of way.

3.04.02 Purpose. The purpose of the systems development charge is to impose a portion of the cost of public capital improvements for water, wastewater, drainage, streets, flood control and parks upon those developments that create the

need for or increase the demands on public improvements.

3.04.03 Scope. The systems development charge imposed by this section of the TRC 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.

3.04.04 Systems Development Charge Established. Unless otherwise exempted by provisions of the TRC or other local or state law, a systems development charge is imposed upon all parcels of land within the city, and upon all lands outside the boundary of the city that connect to or otherwise use the sewer facilities, storm sewers, or water facilities of the city. The amount of the system development charge shall be set by resolution of the City Council.

3.04.05 Calculations.

(a) Reimbursement Fee. The calculations of a reimbursement fee shall consider the cost of the then-existing facilities, prior contributions by the then-existing users, the value of unused capacity, rate-making principals employed to finance publicly owned public capital improvements, and other relevant factors identified by Council to promote the objective that future systems users shall contribute no more than a equitable share of the cost of the then-existing facilities.

(b) Improvement Fee. The calculation of an improvement fee shall consider the cost of projected public capital improvements identified in the plan and list adopted pursuant to TRC 3.04.09 that are needed to increase the capacity of the systems to which the fee is related and the need for increased capacity in the system that will be required to serve the demands placed

on the system by future users. (*Amend. Ord. 07-103 08/26/2007*)

3.04.06 Notification Prior to Adoption or Amendment of Methodology. The City Administrator shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of the methodology for any system development charge. Written notice shall be mailed to persons on the list 90 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 60 days prior to the first hearing to adopt or amend. (*Amend. Ord. 07-103 08/26/2007*)

3.04.07 Authorized Expenditures.

(a) Reimbursement fees shall be applied only to public capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

(b) Improvement fees shall be spent only on capacity increasing public 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 improvements funded by improvement fees must be related to demands created by development. A public capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the City's improvement plan.

(c) Notwithstanding subsections (a) and (b) of this section, systems development charge revenues may be expended on the direct costs of complying with the provisions of this section of Turner's

Revised Code, including the costs of developing systems development charge calculations and providing an annual accounting of systems development charge expenditures.

3.04.08 Expenditure Restrictions. Systems 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 public capital improvements, or for costs of the operation or routine maintenance of public capital improvements.

3.04.09 Improvement Plan.

(a) Capital Improvements Plan. Prior to adoption of a systems development charge, the Council shall prepare a plan that lists the public capital improvements that may be funded, in whole or in part, with improvement fee revenues and lists the estimated costs and timing of construction of each improvement.

(b) Modifications of the Capital Improvements Plan. The City may modify the capital improvements plan at any time. If the City calculates that the SDC will be increased due to the addition of capacity increasing capital improvements the City Council may modify the improvement fee, by resolution, to reflect the increased costs.

(1) The City Administrator shall provide, at least 30 days prior to the adoption of the modification, notice of the proposed modification to the persons who have requested written notice under TRC 3.04.06.

(2) The City Council shall hold a public hearing if the city receives a written request for a hearing on the proposed modifications within seven days of the date the proposed modification is scheduled for adoption.

(3) A public hearing is not required if the local government does not receive a written request for a hearing. *(Amend. Ord. 07-103 08/26/2007)*

3.04.10 Collection of Charge.

(a) The systems development charge is payable upon issuance of a building permit, a permit to connect to the water system or a permit to connect to the sewer system.

(b) If development is commenced or connection is made to the water or sewer systems without an appropriate permit, the systems development charge is immediately payable upon the earliest date that a permit was required.

3.04.11 SDC Payment Waiver.

(a) When a systems development charge on a public facility or affordable housing project that offers rent subsidized by government funds is due and collectable, the owner of the parcel of land subject to the development charge may apply to the City Council to reduce, defer or waive said fees. *(Amend. Ord. 11-101 09/22/2011)*

3.04.12 Exemption.

(a) Structures and uses established and existing on or before the date on which this ordinance becomes effective are exempt from a systems development charge, except water and sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water and sewer charges pursuant to the terms of this section of the TRC 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, are exempt from all portions of the systems development charge.

(c) An alteration, addition, replacement or change in use that does not increase the parcels or structure's use of the public improvement facility, is exempt from the systems development charge.

(d) A project financed by city revenues is exempt from all portions of the systems development charge.

3.04.13 Credits.

(a) A systems development charge shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given for the computed systems development charge to the extent that prior structures existed and services were established on or after the date on which this ordinance becomes effective. The credit so computed shall not exceed the calculated systems development charge. No refund shall be made on account of such credit.

(b) A credit shall be given for the cost of a qualified public improvement that is required as a condition of a development approval and is installed at the sole cost and expense of the developer. The credit for a qualified public improvement that is located in whole, or in part, or contiguous to the property subject to the development approval may be granted only for the cost of that portion of such improvement that exceeds the city's minimum public works standard size or capacity needed to serve the development project or property.

(c) The applicant shall submit a written request to the city and shall have the burden of demonstrating that a particular improvement qualifies for a credit under this section.

(d) The city may deny the credit provided for in this section if it finds:

(1) That the application does not meet the requirements of subsection (b) of this section; or

(2) By reference to the list adopted pursuant to TRC 3.04.09, that the improvement for which the credit is sought is not included in the plan and list adopted pursuant to TRC 3.04.09.

(e) Credits must be used not later than 10 years from the date the credit is given.

(Amend. Ord. 07-103 08/26/2007)

3.04.14 Segregation and Use of Revenue.

(a) All funds derived from a particular type of systems development charge are to be segregated by accounting practices from all other funds of the city. That portion of the systems development charge calculated and collected on account of a specific facility shall be used for no purpose other than those set forth in section 3.04.07 of the TRC.

(b) The City Administrator shall provide the City Council with an annual accounting, based on the city's fiscal year, for systems development charges showing the total amount of systems development charge revenues collected for each type of facility and the projects funded from each account.

3.04.15 Appeal Procedure.

(a) A person aggrieved by a decision required or permitted to be made by the City Administrator under this ordinance or a person challenging the propriety of an expenditure of systems development charge revenues may appeal the decision or the expenditure to the City Council by filing a written request with the City Administrator describing with particularity the decision or the expenditure from which the person appeals.

(b) An appeal of expenditure must be filed within two years of the date of the alleged improper expenditure. Appeals of any

other decision must be filed within 10 business days of the date of the decision.

(c) Upon receipt of an appeal, the City Administrator shall set the date for the Council to consider the appeal. The City Administrator shall notify the appellant in writing of the date the Council will consider the appeal and of the appellant's legal right to petition for review pursuant to ORS 34.010 to ORS 34.100.

(d) The Council shall determine whether the City Administrator's decision or the expenditure is in accordance with section 3.04.07 of the TRC and the provisions of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decisions. If the Council determines that there has been an improper expenditure of systems development charge revenues, the 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.

(e) A legal action challenging the calculation method adopted by the Council pursuant to section 3.04.05 of the TRC shall not be filed later than 60 days after the adoption and may only be challenged as provided for in ORS 34.010 to ORS 34.100. (*Amend. Ord. 07-103 08/26/2007*)

3.04.16 Prohibited Connection. No person may connect to the water or sewer systems of the city unless the appropriate systems development charge has been paid or the lien or installment payments method has been applied for and approved.

3.04.17 Violation. Violation of section 3.04.16 of the TRC is punishable as prescribed in Section 1.45.00.