

ORDINANCE NO. 91-O-477

AN ORDINANCE PROVIDING FOR SYSTEMS DEVELOPMENT CHARGES IN THE CITY OF BROOKINGS, AND REPEALING ORDINANCE NO. 87-O-418. [Effective September 24, 1991]

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The City of Brookings ordains as follows:

Section 1.        Purpose. The purpose of this Ordinance is to adopt systems development charges which impose a portion of the cost of capital improvements for water, wastewater drainage and treatment, streets, flood control and parks upon those developments that create a need for or increase the demands on capital improvements.

Section 2. Scope. The systems development charge imposed by this Ordinance is separate from and in addition to any applicable tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development.

Section 3. Definition. For purpose of this Ordinance, the following mean:

- (a) Capital Improvements. Facilities or assets used for:
  - (1) Water supply, treatment and distribution;
  - (2) Waste water collection, transmission, treatment and disposal;
  - (3) Drainage and flood control;
  - (4) Transportation, including, but not limited to, streets, sidewalks, bike lanes and paths, street lights, traffic signs and signals, street trees, public transportation, vehicle parking and bridges; or
  - (5) Parks and recreation, including but not limited to, neighborhood parks, community parks, public open space and trail systems, buildings, courts, fields and other like facilities.
- (b) Development. Conducting a building or mining operation or making a physical change in the use of a structure or land which increases the usage or demand for usage of any capital improvement or which contributes to the need for additional or enlarged capital improvement(s).
- (c) Improvement Fee. A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 4 of this Ordinance.

- (d) Land Area. The area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a 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. The owner or owners of record title or the purchaser or purchasers under a recorded sales agreement, and other persons having an interest of record in the described real property.
- (f) Parcel of Land. 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.
- (g) Qualified Public Improvements. A capital improvement that is:
  - (1) Required as a condition of residential development approval;
  - (2) Identified in the plan adopted pursuant to Section 8 of this Ordinance; and
  - (3) Not located on or contiguous to a parcel of land that is the subject of the residential development approval.
- (h) Reimbursement Fee. A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 4 of this Ordinance.

- (i) Systems Development Charge. 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 for a development as defined by this Ordinance, or a building permit, or at the time of connection to the 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.

Section 4. Systems Development Charge Established.

- (a) Systems development charges shall be established and may be revised by resolution of the Council.
- (b) Unless otherwise exempted by the provisions of this Ordinance or other local or state law, a systems development charge is hereby 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.

Section 5. Methodology.

- (a) The methodology used to establish the reimbursement fee shall consider the cost of then-existing facilities, prior contribution by then-existing users, the value of unused capacity, rate-making principals employed to finance publicly owned capital improvements, and other relevant factors identified by the Council. The methodology shall promote the objective that future system 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.

Section 6. Authorized Expenditures.

- (a) Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.
- (b)
  - (1) Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to demands created by development.
  - (2) A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the City pursuant to Section 8 of this Ordinance.
- (c) Notwithstanding subsections (a) and (b) of this section, systems development charge revenues may be expended on the direct costs of complying with the provisions of this Ordinance, including the costs of systems development charge methodologies and providing an annual accounting of systems development charge expenditures.

Section 7. Expenditure Restrictions.

- (a) Systems development charge revenues 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) Systems development charge revenues shall not be expended for costs of the operation or routine maintenance of capital improvements.

Section 8. Improvement Plan. The Council shall adopt a plan that:

- (a) Lists the capital improvements that may be funded with improvement fee revenues;
- (b) Lists the estimated cost and time of construction of each improvement; and
- (c) Describes the process for modifying the plan.

Section 9. Collection Charge.

- (a) The systems development charge is payable upon issuance of:
  - (1) A building permit;
  - (2) A development permit for development not requiring issuance of a building permit;
  - (3) A permit to connect to the water system; or
  - (4) A permit to connect to the sewer system.
- (b) If development is commenced or connection is made to the water or sewer system without an appropriate permit, the systems development charge is immediately payable upon the earliest date that a permit was required.
- (c) The City Recorder or the designee shall collect the applicable systems development charge from the owner of the parcel when a permit that allows building or development of a parcel is issued or when a connection to the water or sewer system to the City is made.

- (d) The Community Development Director or the designee shall not issue a permit or allow such connection until the charge has been paid in full, until provision for installment payments have been made pursuant to Section 11 of this Ordinance, or unless an exemption is granted pursuant to Section 12 of this Ordinance.

Section 10. Delinquent Charges; Hearing.

- (a) When, for any reason, the systems development charge has not been paid, the City Recorder shall report to the City Council the amount of the uncollected charge, the description of the real property to which the charge is attributable, the date upon which the charge was due and unpaid, and the name of the owner.
- (b) A public hearing shall be scheduled on the matter with notice of the hearing given to each owner together with a copy of the City Recorder's report concerning the unpaid charge. Notice of the hearing shall be given either personally or by certified mail, return receipt requested, or by both mail and personal service, with date of mailing or personal service at least ten days before the date of the scheduled hearing, and by posting notice on the parcel at least ten days before the date of the scheduled hearing.
- (c) At the hearing, the City Council may accept, reject or modify the determination set forth in the report. If the City finds that a systems development charge is unpaid and uncollected, it shall, by motion, direct the City Recorder to docket the unpaid and uncollected systems development charge in the lien docket. Upon completion of the docketing the City shall have a lien against the described land for the full amount of the unpaid charge, together with interest at the legal rate of 10% per annum and for the City's actual cost of serving notice of the hearing on the owners. The lien shall be enforceable in the manner provided in ORS Chapter 223.

Section 11.      Installment Payment.

- (a) When a systems development charge of \$25 or more is due and collectible, to the extent provided for by resolution of the City Council, the owner of the parcel of land subject to the charge may apply for payment in installments, to include interest, in accordance with the provisions of ORS 223.208.
- (b) The City Recorder shall provide application forms for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for correction of computational errors.
- (c) An applicant for installment payments shall have the burden of demonstrating the applicant's authority to grant the imposition of a lien on the parcel and that the interest of the applicant is adequate to secure payment of the lien.
- (d) The Community Development Director shall report to the City Recorder the amount of the systems development charge, the date upon which the payments are due, the name of the owner(s) and a description of the parcel.
- (e) The City Recorder shall docket the lien in the lien docket. From that time, the City shall have a lien on the property described for the amount of the systems development charge, together with interest on the unpaid balance at the rate of 10% per annum. The lien shall be enforceable in the manner provided in ORS Chapter 223.

Section 12.      Exemptions.

- (a) Structures and uses established and existing on or before the effective date of this Ordinance are exempt from a systems development charge imposed by this Ordinance, 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.

- (b) Additions or alterations which do not increase the floor space of a structure, the land area occupied by the structure or do not constitute the imposition of an increased use on the City's water or sewer services are exempt from all portions of the systems development charge.

Section 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 in an amount equal to what would otherwise be the charges for the existing structure and use. 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 associated with a residential development. If a qualified public improvement is located partially on and partially off the parcel that is subject to the residential development approval, the credit shall be given only for the cost of the portion of the improvement not located on or wholly contiguous to the property. The credit provided for by this section shall be only for the improvement fee 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.
- (c) Credits shall not be transferable from one type of capital improvement to another.

Section 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. The portion of the systems development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in Section 6 of this Ordinance.

- (b) The City Recorder 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.

Section 15.        Advisory Board.

- (a) There is hereby established a Systems Development Charge Review Board to be appointed by the Mayor with the approval of the City Council. The Board shall be comprised of five members, one of whom may reside outside of the City but from within its adopted urban growth boundary; the other four members must be electors of the City of Brookings. Terms of office for the board shall be four (4) years. The first five members serving on the board shall choose their term of office by lot, as follows:

- (1) One for one year;
- (2) One for two years;
- (3) One for three years;
- (4) Two for four years;

and they shall immediately thereafter notify the Mayor and City Council in writing of such allotment.

- (b) The board shall review system development charges of the City, including those for water, sewer, storm drainage, transportation and parks systems, and shall review appeals, as provided in Section 16. **[As amended by Ordinance No. 03-O-477.A, effective date July 9, 2003]**

- (c) To keep the City Council informed of the activities of the board, the board shall submit a copy of their Minutes to the City Council after each meeting. The board shall present at least an annual progress report to the City Council at their January meeting each year.
- (d) The board shall organize by electing a chairperson and secretary of the board. Thereafter, the board shall hold regular quarterly meetings on a day and hour to be fixed by the board. Three members of the board shall constitute a quorum. Special meetings may be held upon a call of the chairperson or any three members of the board.
- (e) A member of the board may be removed by the City Council, after hearing, for misconduct or nonperformance of duty. A member who is absent from two consecutive meetings without permission of the commission chairperson is rebuttably presumed to be in nonperformance of duty, and the City Council shall declare the position vacant unless finding otherwise following the hearing. All vacancies on the board shall be filled by appointment by the Mayor, with approval of the City Council, for the unexpired term.

Section 16. Appeal.

- (a) A person aggrieved by a decision required or permitted to be made under the provisions of this Ordinance, who has been denied the privilege of constructing or developing or a person challenging the propriety of an expenditure of systems development charge revenues may appeal the decision to the Systems Development Charge Review Board by filing a written request with the City Recorder within 15 days of the action appealed from describing with particularity the matter which forms the basis for the appeal.
- (b) Notwithstanding the provisions of Section 16(a) above, an appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure.

- (c) After an appeal has been filed, the Systems Development Charge Review Board shall, within 15 days, notify the appellant of the time and place for consideration of the appeal and the appellant shall have the right to be present at the appeal hearing. The board shall schedule the appeal hearing within 35 days of the date of filing the written request for appeal. The board shall give full consideration to the evidence presented relative to the action appealed from and shall render its decision within seven days after the date of the final appeal hearing and shall notify the appellant of its decision, in writing.
- (d) Within ten days following the decision of the board on the appeal, the appellant or City staff may request a final review of the board's decision by the City Council. The City Council shall determine whether the decision is in accordance with the provisions of this Ordinance and the provisions of state law and may modify, affirm or overrule the decision of the board and/or staff. In the event that the final decision determines that there has been an improper expenditure of systems development charge revenues, the City Council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent.
- (e) Any legal action challenging the methodology adopted by the City Council pursuant to Section 5 of this Ordinance shall not be filed later than 60 days after the adoption of the methodology.

Section 17.      Prohibited Connection. No person may connect to the water, sewage or drainage systems of the City unless the appropriate systems development charges have been paid or the lien or installment payment method has been applied for and approved.

Section 18.      Penalty. Violation of Section 17 of this Ordinance is punishable by a fine not to exceed \$1,000. Each separate connection to a City system prohibited under the provisions of Section 17 shall be a separate offense under the provisions of this Ordinance.

Section 19.      Construction. The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this Ordinance.

Section 20.      Severability. The invalidity of a section or subsection of this Ordinance shall not affect the validity of the remaining sections or subsections.

Section 21.      Repeal. Ordinance No. 87-O-418 enacted August 11, 1987, is hereby repealed.

Section 22.      Saving Clause. Ordinance No. 87-O-418, repealed by this Ordinance, shall remain in force for the prosecution, conviction and punishment of persons who violate Ordinance No. 87-O-418 before the effective date of this Ordinance.

[Effective September 24, 1991]