

BEFORE THE COMMON COUNCIL OF THE CITY OF CANNON BEACH

FOR THE PURPOSE OF AMENDING THE MUNICIPAL ) ORDINANCE 22-03  
CODE CHAPTER 3.16 SYSTEM DEVELOPMENT )  
CHARGES )

WHEREAS, ORS Chapter 223 authorizes cities to assess System Development Charges (SDC) to fund capital improvement facilities or assets used for water, wastewater, stormwater, transportation and parks; and

WHEREAS, the City of Cannon Beach's SDCs are established in Cannon Beach Municipal Code Chapter 3:16; and

WHEREAS, it is important to the City that costs of growth are equitably and rationally shared by new growth and development activities; and

WHEREAS, City staff utilized a consultant to review the SDC methodologies for water, sewer and storm, and implement an SDC methodology for parks, that are consistent with common industry practice and treats all customers (residential, commercial, duplexes, multi-unit residential and mixed-use) consistently; and

WHEREAS, the consultant also recommended the City update Chapter 3.16 to include future transportation SDC, but is not recommending the City adopt a methodology to implement transportation SDCs at the current time; and

WHEREAS, it is advisable to update the City Code to reflect the updated and new SDC methodologies; and

WHEREAS, City staff and the consultant presented the updated and new SDC methodologies in meetings on October 12, 2021, December 7, 2021, December 14, 2021, January 11, 2022, and February 8, 2022;

NOW THEREFORE, THE CITY OF CANNON BEACH COUNCIL ORDAINS AS FOLLOWS:

1. The Cannon Beach City Council amends Chapter 3.16 of the Cannon Beach Municipal Code as described in Exhibit A to this ordinance, which is attached and incorporated by reference.
2. This Ordinance shall take effect on August 1, 2022.

ADOPTED by the Common Council of the City of Cannon Beach this 1st day of March 2022, by the following roll call vote:

YEAS:

NAYS:

EXCUSED:

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Sam Steidel, Mayor

Attest:

Approved as to form:

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Bruce St. Denis, City Manager

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Ashley Driscoll, City Attorney

## Chapter 3.16 SYSTEM DEVELOPMENT CHARGES

### 3.16.010 Definitions.

The following words and phrases, as used in this chapter, shall have the following definitions and meanings:

“Capital improvement(s)” mean(s) public facilities or assets used for any of the following:

- A. Water supply, treatment or distribution or any combination;
- B. Wastewater collection, transmission, treatment or disposal or any combination;
- C. Drainage or flood control;
- D. Transportation; or
- E. Parks and recreation.

“Development” means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas devoted to exterior display, storage or activities. Development includes redevelopment of property. Development includes improved open areas such as plaza and walkways which increase the usage of any capital improvements or which create the need for additional capital improvements, but does not include natural geologic forms or unimproved lands.

“Improvement fee” means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 3.16.040 of this chapter.

“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 for a public scenic or preservation purpose.

“Owner” means the owner or owners of record title or the purchaser or purchasers under a recorded land sales agreement, an other persons having an interest of record in the described real property.

“Parcel of land” means a lot, parcel, block or other tract of land that in accordance with city regulations 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.

“Permittee” means the person to whom a building permit, development permit, a permit or plan approval to connect to the sewer or water system, or right-of-way access permit is issued.

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

- A. Required as a condition of development approval;
- B. Identified in the plan adopted pursuant to Section 3.16.080; and either:
  - 1. Not located on or contiguous to a parcel of land that is the subject of the development approval; or
  - 2. Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.
- 3. For purposes of this definition, contiguous means in a public way which abuts the parcel.

“Reimbursement fee” means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 3.16.040 of this chapter.

“System development charge” means a reimbursement fee, a improvement fee or a combination thereof assessed or collected at any of the following times: upon issuance of a building permit, a development permit for development not requiring the issuance of a building permit, or a permit to connect to the water, wastewater system, or storm drainage systems.

- A. A system development charge includes that portion of a sewer or wastewater system connection charge that is greater than the amount necessary to reimburse the city for its cost of inspecting and installing connections with water

and sewer facilities. Such fees are designed by the city only to reimburse the city for actual or average costs for such connections.

B. A system development charge does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision. (Ord. 03-1, § 1)

### **3.16.020 Purpose.**

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The purpose of the system development charge is to impose a portion of the cost of capital improvements for water, wastewater, drainage, transportation, and parks upon those developments and redevelopments that create the need for or increase the demands on the water, wastewater, drainage transportation, and parks systems. (Ord. 03-1, § 2)

### **3.16.030 Scope.**

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The system development charge imposed by this ordinance is separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment, or fee otherwise provided by law or imposed as a condition of development. A system development charge is to be considered in the nature of a charge for service rendered or facilities made available, or a charge for future services to be rendered on facilities to be made available in the future. (Ord. 03-1, § 3)

### **3.16.040 System development charge established.**

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A. Unless otherwise exempted by the provisions of this chapter or other local or state law, a system development charge is hereby imposed upon all development within the city and upon all development outside the boundary of the city that connects to or otherwise uses the sanitary sewer system, storm drainage system or water system of the city.

B. System development charges for each type of capital improvement may be created through application of the methodologies described in Section 3.16.050 of this chapter. The amounts of each system development charge shall be adopted initially by council resolution. Changes in the amounts shall also be adopted by council resolution, except changes resulting solely from inflationary cost impacts. Inflationary cost impacts shall be measured and calculated each January by the city manager and charged accordingly. The city manager shall report to the city council annually with respect to the inflationary calculation. Such calculations will be based upon charges in the Engineering News Records Construction Index (ENR Index).

C. Notwithstanding subsection B of this section, administrative adjustment to charges resulting solely from inflationary cost impacts shall not exceed five percent within any twelve-month period without council approval. (Ord. 03-1, § 4)

### **3.16.050 Methodology.**

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A. The methodology used to establish or modify a reimbursement fee shall consider the cost of then-existing facilities including without limitation design, financing and construction costs, prior contributions by then-existing users, gifts or grants from federal or state government or private persons, the value of unused capacity available to future system users, rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the city manager. The methodology shall promote the objective that future system users shall contribute an equitable share of the cost of then-existing facilities.

B. The methodology used to establish or modify the public improvement fee shall consider the estimated cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related. The

methodology shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future system users.

C. The methodology used to establish or modify the improvement fee or the reimbursement fee, or both, shall be contained in a resolution adopted by the council. (Ord. 03-1, § 5)

### **3.16.060 Authorized expenditures.**

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A. Reimbursement fees shall be applied only to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness.

B. Improvement fees shall be spent only on capacity increasing capital improvements associated with the system for which the fee is assessed, 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 providing new facilities.

1. The portion of the capital improvements funded by improvement fees must be related to demands created by current or projected development. 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 3.16.080 of this chapter.

C. Notwithstanding subsections A and B of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing system development charge methodologies and providing an annual accounting of system development expenditures. (Ord. 03-1, § 6)

### **3.16.070 Expenditure restrictions.**

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A. 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 capital improvements.

B. Systems development charges shall not be expended for costs of the operation or routine maintenance of capital improvements. (Ord. 03-1, § 7)

### **3.16.080 Improvement plan.**

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A. Prior to the establishment of a system development charge, the council shall adopt a plan that includes a list of:

1. The capital improvements that may be funded with improvement fee revenues;
2. The estimated cost and time of construction of each improvement; and
3. A description of the process for modifying the plan.

B. In adopting this plan, the 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 council may modify such plan and list at any time.

C. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge if the change in amount is based on the periodic application of an adopted specific cost index or a modification to any of the factors related to the rate that are incorporated in the established methodology. (Ord. 03-1, § 8)

### **3.16.090 Collection of charge.**

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A. The system development charge is payable upon issuance of:

1. A building permit;

2. A development permit;
  3. A development permit for development not requiring the issuance of a building permit; or
  4. A permit or approval to connect to the water system;    5. A permit or approval to connect to the sewer system; or
  6. A right-of-way access permit.
- B. If no building, development, or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased based on changes in the use of the property unrelated to seasonal or ordinary fluctuations in usage.
- C. If development is commenced or connection is made to the water system, sanitary 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.
- D. The city recorder or the recorder's designee shall collect the applicable system development charges from the permittee when a permit that allows or development of a parcel is issued or when a connection to the water, sewer, or drainage system of the city is made.
- E. The city recorder or designee shall not issue such permit or allow such connections until the charge has been paid in full or until provision for installment payments has been made pursuant to Section 3.16.110 of this chapter, or unless an exemption is granted pursuant to Section 3.16.120 of this chapter. (Ord. 03-1, § 9)

### **3.16.100 Exemptions.**

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The following are exempt from the system development charges:

- A. Housing for low-income or elderly persons which is exempt from real property taxes under state law;
- B. Development which is being financed by city funds;
- C. Structures and uses established and legally existing on or before July 26, 1991, are exempt from a system 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 or sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the water or sewer system.
- D. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge.
- E. An alteration, addition, replacement or change in use that does not increase the parcels or structures use of the public improvement facility are exempt from all portions of the system development charge. (Ord. 03-1, § 10)

### **3.16.110 Credits.**

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- 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 systems 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 use results in the systems development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required. 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 public improvement. The credit shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee and shall be only for the improvement fee charged for the type of improvement being constructed.

- C. If a qualified public improvement is located in whole or in part on or contiguous to the property is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the 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 sixty days after acceptance of the improvement by the city.
- D. When the construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project.
- E. Notwithstanding subsections A and B, when establishing a methodology for a system development charge, the city manager may provide for a credit against the improvement fee the reimbursement fee, or both, for capital improvements constructed as part of the development that reduces the development 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.
- F. Credit shall not be transferable from one type of development fee to another.
- G. Credits shall not be transferable from type of system development charge to another.
- H. Credits shall be used within ten years from the date the credit is given. (Ord. 03-1, § 11)

### **3.16.120 Notice.**

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- A. The city shall maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for any system development charge. Written notice shall be mailed to persons on the list at least ninety days prior to the first hearing to establish or modify a system development charge. The methodology supporting the system development charge shall be available at least sixty days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the city.
- B. The city may periodically delete names from the list, but at least thirty days prior to removing a name from the list, the city must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list. (Ord. 03-1, § 12)

### **3.16.130 Segregation and use of revenue.**

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- A. All funds derived from a particular type of system development charge are to be segregated by accounting practices from all funds of the city. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than set forth in Section 3.16.060 of this chapter.
- B. The appropriate city official shall provide the city council with an annual accounting, by January 1st of each year for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amount spent on each project funded in whole or in part, with system development charge revenues shall be included in the annual accounting. (Ord. 03-1, § 13)

### **3.16.140 Refunds.**

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- A. Refunds may be given by the city manager upon finding that there was a clerical error in the calculation of the SDC.
- B. Refunds shall not be allowed for failure to timely claim credit or for failure to timely seek an alternative SDC rate calculation.



tion at the time of submission of an application for a building permit. (Ord. 03-1 § 14)

### **3.16.150 Implementing regulations—Amendments.**

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The city council delegates authority to the city manager to adopt necessary procedures to implement provisions of this chapter including the appointment of an SDC program administrator. All rules pursuant to this delegated authority shall be filed with the office of recorder and be available for public inspection. (Ord. 03-1 § 15)

### **3.16.160 Appeal procedures.**

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- A. As used in this section, “working day” means a day when the general offices of the city are open to transact business with the public.
- B. A person disagreeing with a decision on the amount of the system development charged, an expenditure of funds collected under this ordinance, or the methodology used to determine the system development amounts may file an appeal by complying with subsections C and D of this section.
- C. An appeal of an expenditure must be filed within two years of the date of alleged improper expenditure. An appeal contesting the methodology used for calculating a system development charge must be filed within sixty days of the council adoption or modification of the system development ordinance or resolution. Appeals of the calculation of any other decision must be filed within ten working days of the date of the decision.
- D. The appeal shall state:
  - 1. The name and address of the appellant;
  - 2. The nature of the determination being appealed;
  - 3. The reason the appellant believes the determination is incorrect; and
  - 4. What the appellant believes the correct determination should be.

An appellant who fails to file such a statement within the time permitted waives his or her objections and his or her appeal shall be dismissed.

- E. Unless the appellant and the city agree to a longer period, an appeal shall be considered by the city manager, or designee, within ten working days of the receipt of the written appeal. A written response must be given to the appellant within this time period.
- F. The appellant shall have ten days after receipt of the city manager’s decision to appeal this decision to the city council. An appellant who fails to file such a statement with the city manager within ten working days shall waive his or her objections and the city manager’s decision shall be final.
- G. The council shall consider an appeal filed under subsection C within twenty working days. The appellant shall be notified of the council hearing date ten working days prior to the council hearing. By council motion, the report and recommendations of the city manager shall be approved, modified or rejected. Council decision shall be final. Any legal action contesting the council decision shall be filed within sixty days of the council’s decision. (Ord. 03-1 § 16)

### **3.16.170 Prohibited connection.**

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No person may connect to the sanitary sewer/water system or storm sewer system of the city unless the appropriate system development charge has been paid or the lien or the installment payment method has been applied for and approved. (Ord. 03-1 § 17)

### **3.16.180 Penalty.**

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Violation of this chapter is punishable by a fine not to exceed five hundred dollars. (Ord. 03-1 § 18)

### 3.16.190 Construction.

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For the purposes of administration and enforcement of this chapter, unless otherwise stated in this chapter, the following rules of construction shall apply:

- A. In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, summary table, or illustrative table, the text shall control.
- B. The word “shall” is always mandatory and not discretionary; the word “may” is permissive.
- C. Words used in the present tense shall include the future; and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- D. The phrase “used for” includes “arranged for,” “designed for,” “maintained for,” or “occupied for.”
- E. Where a regulation involves two or more connected items, conditions, provisions, or events:
  - 1. “And” indicates that all the connected terms, conditions, provisions or events shall apply;
  - 2. “Or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
- F. The word “includes” shall not limit a term to the specific example, but is intended to extend its meaning to all other instances of like kind or character. (Ord. 03-1 § 19)

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