

## Manzanita Ordinances

### AN ORDINANCE OF THE CITY OF MANZANITA I OREGON, REGARDING SYSTEM DEVELOPMENT CHARGES; AND REPEALING ORDINANCE NO. 90-6.

#### ORDINANCE NO. 91- 4

WHEREAS, the 1989 Session of the Oregon Legislature has enacted new state law relating to system development charges (ORS 223.297 through 223.314}, and

WHEREAS, the City's system development charges used after July 1, 1991, must meet certain requirements incorporated in the state law, and

WHEREAS, the City of Manzanita has undertaken a complete review of its system development charges in order to insure their compliance with state law, and

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

NOW, THEREFORE, the city of Manzanita does hereby ordain as follows:

Section 1. Definitions. The following words and phrases, as used in this ordinance, shall have the following definitions and meanings:

1. Capital Improvement(s). Public facilities or assets used for any of the following:
  - (a) Water supply, treatment and distribution;
  - (b) Storm sewers, including drainage and flood control;
  - (c) Parks and recreation, including, but not limited to, mini-neighborhood parks, neighborhood parks, community parks, public open space and trail systems, buildings, courts, fields and other like facilities.
2. Development. Means conducting a building or mining operation, or making a physical change in the use or appearance of a structure or land, which increases the usage of any capital improvements or which creates the need for additional capital improvements.
3. Public Improvement Charge. A fee for costs associated with capital improvements to be constructed after the effective date of this ordinance. This term shall have the same meaning as the term, "improvement fee," as used in ORS 223.297 through 223.314.
4. Qualified Public Improvements. A capital improvement that is:
  - (a) Required as a condition of development approval;
  - (b) Identified in the plan adopted pursuant to section 6; and
  - (c) Not located on or contiguous to a parcel of land that is the subject of the development approval.
5. 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.

6. System Development Charge. A reimbursement fee, a public improvement charge or a combination thereof assessed or collected at any of the times specified in section 7. It shall not include connection or hook-up fees for sanitary sewers, storm drains or water lines. Such fees are designed by the city only to reimburse the City for actual or average costs for such connections. Nor shall the system development charge include costs for capital improvements which by City policy and State statute are paid for by assessments (or fees in lieu of assessments) for projects of special benefit to a property.

Section 2. Purpose. The purpose of the system development charge is to impose an equitable share of the public costs of capital improvements upon those developments that create the need for or increase the demands on capital improvements.

Section 3. Scope. 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.

Section 4. System Development Charge Established.

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

- (2) System development charges for each type of capital improvement may be created through application of the methodologies described in Section 5 of this ordinance. 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 Council and charged accordingly. Such calculations will be based upon charges in the Engineering News Records Construction Index (ENR Index) for Seattle, Washington.

Section 5. Methodology.

- (1) The methodology used to establish a reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, 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.

- (2) The methodology used to establish the public improvement charge shall consider the cost of projected capital improvements needed to increase the capacity of the systems to

which the fee is related and shall provide for a credit against the public improvement charge for the construction of any qualified public improvement.

(3) The methodology may also provide for a credit as authorized in section 9.

(4) Except when authorized in the methodology adopted under this section, the fees required by this ordinance which are 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 are separate from and in addition to the system development charge and shall not be used as a credit against such charge.

(5) The methodologies used by the City Manager to establish the system development charge shall be adopted by resolution of council. The specific system development charge may be adopted and amended concurrent with the establishment or revision of the system development charge methodology. The City Manager shall review the methodologies established under this section periodically and shall recommend amendments, if and as needed, to the Council for its action.

#### Section 6. Compliance with State Law.

(1) The revenues received from the system development charges shall be budgeted and expended as provided by state law. Such revenues and expenditures shall be accounted for as required by state law. Their reporting shall be included in the city's Comprehensive Annual Financial Report required by ORS Chapter 294.

(2) The capital improvement plan required by law as the basis for expending the public improvement charge component of system development charge revenues shall be the Manzanita Capital Improvements Plan (CIP), or the capital improvement plan adopted by another governmental body which was used by the City Manager in establishing the methodology for the system development charge, provided such other capital improvement plan is consistent with the City's CIP and the city's Comprehensive Plan.

#### Section 7. Collection of Charge.

(1) The system development charge is payable upon issuance of:

- (a) A building permit;
- (b) A development permit for development not requiring the issuance of a building permit; or
- (c) A permit to connect to the water, sanitary sewer or storm drainage systems.

(2) 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.

(3) The City Manager or the Manager's designee shall collect the system development charges from the person responsible for or receiving the benefit of the development. The city Manager or his/her designee shall not issue any permit or allow connections

described in section 7 (1) until the charge has been paid in full or until provision for installment payments has been made within the limits prescribed by resolution of the city council.

(4) The obligation to pay the unpaid system development charge and interest thereon shall be secured by property, bond, deposits, letter of credit or other security acceptable to the city Manager.

(5) The person paying the system development charge in installments may apply for bonding of the payments as provided by resolution of the city Council.

Section 8. Exemptions. The following are exempt from the system development charge imposed in section 4.

(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.

Section 9. Credits.

(1) As used in this section and in the definition of “qualified public improvements” in Section 1, the word, “contiguous” means: in a public way which abuts.

(2) When development occurs that must pay a system development charge under section 4 of this ordinance, the system development charge for the existing use or the use two years prior to issuance of the new permit shall be calculated and if it is less than the systems development charge for the proposed use, 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 required under section 4. 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; however, no refund or credit shall be given.

(3) Credit allowed in this subsection is in addition to any credit allowed under subsection 9 (2). A credit shall be given for the cost of a qualified public improvement associated with a development. If a qualified public improvement is located partially on and partially off the parcel of land that is the subject of the approval, the credit shall be given only for the cost of the portion of the improvement not located on or wholly contiguous to the parcel of land. The credit provided for by this subsection shall be only for the public improvement charged for the type of improvement being constructed and shall not exceed the public improvement charge even if the cost of the capital improvement exceeds the applicable public improvement charge.

(4) When establishing the methodology, the City Manager may provide for a credit against the public improvement charge, the reimbursement fee, or both, for a capital improvement constructed as part of the development that reduces the development demand upon existing capital improvements or the need for future capital improvements or that would otherwise have to be constructed at city expense under then existing council policies.

(5) In situations where the amount of credit exceeds the amount of the system development charge, the excess credit is not transferable to another development. It may be transferred to another phase of the original development, if the future development occurs within 2 years of the original permit.

(6) Credit shall not be transferable from one type of development fee to another.

#### Section 10. Appeal Procedures.

(1) 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.

(2) 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 subsection (3) and (4) of this section.

(3) 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 60 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 10 working days of the date of the decision.

(4) The appeal shall state;

- (a) The name and address of the appellant;
- (b) The nature of the determination being appealed;
- (c) The reason the appellant believes the determination is incorrect; and
- (d) What the appellant believes the correct determination should be.

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

(5) Unless the appellant and the City agree to a longer period, an appeal shall be considered by the City Manager; or his/her designee, within 10 working days of the receipt of the written appeal. A written response must be given to the appellant within this time period.

(6) The appellant shall have 10 days after receipt of the Director of Public Work’s decision to appeal this decision to the City Council. An appellant who fails to file such a statement with the City Manager within 10 working days shall waive his/her objections and the Director of Public Work’s decision shall be final.

(7) The Council shall consider an appeal filed under Section 3 within 20 working days. The appellant shall be notified of the Council hearing date 10 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 60 days of the Council’s decision.

Section 11. Prohibited Connection. 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 installment payment method has been applied for and approved.

Section 12. Penalty. Violation of Section 11 of this ordinance is punishable by a fine not to exceed \$500.00.

Section 1.3. Severability. The invalidity of a section or subsection of this ordinance shall not affect the validity of the remaining sections or subsections.

Section 1.4. Construction. The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this ordinance.

Section 1.5. Emergency. The City Council of Manzanita declares that an emergency exists to protect the health and welfare of the public and, therefore, this ordinance shall become effective on July 1, 1991.

APPROVED: June 20, 1991.