

**CHAPTER 41
DEVELOPMENT FEE**

- 41.095. Title and Purpose
- 41.097. Scope
- 41.100. Definitions
- 41.110. Development Charge Imposed
- 41.120. Expenditure of Funds From System Development Charge
- 41.130. Use of Charge; Special Fund
- 41.140. Time of Payment; Refunds
- 41.150. Exemptions and Modifications
- 41.160. System Development Charge Credit
- 41.170. Methodology
- 41.180. Appeals
- 41.190. Reimbursement in Excess of Credits for Allowable Costs
- 41.200. Notice
- 41.210. Improvement Plan
- 41.220. Implementing Regulations; Amendments
- 41.310. Reimbursements

41.095. Title and Purpose. This chapter shall be known and may be cited as the "Systems Development Charge Ordinance of the City of Salem." The purpose of this charge or fee is to create a source of funds to assist in paying for capital improvement. (Ord No. 76-89; Ord No. 35-91)

41.097. Scope. The systems development charge imposed by this chapter 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 systems development charge is to be considered in the nature of a charge for service rendered, a service hookup charge, or a charge for services to be rendered. (Ord No. 35-91)

41.100. Definitions. As used in this Chapter, the following words and phrases shall mean:

- (a) Capital improvement. Facilities or assets used for the following:
 - (1) Water supply, treatment and distribution; or
 - (2) Waste water collection, transmission, treatment and disposal; or
 - (3) Parks or recreation; or
 - (4) Transportation; or
 - (5) Drainage or flood control.Capital improvement does not include costs of the operation or routine maintenance of capital improvements.
- (b) Credits. A waiver, reimbursement, or payment of an SDC improvement fee (SDCi) given for the construction of a qualified public improvement. Credits may either be "True Credits," "Pass-Thru Credits," or a combination thereof.
- (c) Development.
 - (1) The first establishment of a use involving the construction or the placing of an improvement upon a parcel of land that was prior to that event not occupied by any improvement; or
 - (2) Any construction, alteration or change to an improvement, or any new use or occupancy, which increases the usage of any capital improvement or which creates additional demand upon existing capital improvements.

- (d) Improvement. Any building, structure, impervious area, including parking areas, plazas and walkways, and landscaping requiring new or increased usage of a capital improvement.
- (e) Improvement fee (SDCi). A fee for costs associated with capital improvements to be constructed after the date of the adoption of the methodology used to establish the fee.
- (f) Multi-Family. Means any building or portion thereof with three or more dwelling units served by a single water meter.
- (g) Pass-Thru Credits. A payment of SDC improvement fees (SDCi) collected from payors within a development to the developer who constructed a qualified public improvement serving the development.
- (h) Qualified public improvement. A capital improvement that is required as a condition of development approval, identified in the plan and list adopted pursuant to ORS 223.309, and either:
 - (1) Not located on or contiguous to property that is subject to development approval; or
 - (2) Located in whole or in part on, or contiguous to, property that is subject to 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 (SDCr). A fee for costs associated with capital improvements already constructed or under construction on the date of the adoption of the methodology used to establish the fee.
- (j) System Development Charge (SDC). A reimbursement fee (SDCr), improvement fee (SDCi), or combination thereof, assessed or collected at any of the times specified in SRC 41.110 and SRC 41.140. System Development Charge includes that portion of a sewer, stormwater or water system connection charge that is greater than the amount necessary to reimburse the City for its cost of inspecting and installing connections with water, stormwater and sewer facilities. System Development Charge does not include any 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 upon a land use decision, limited land use decision, expedited land use decision or building permit pursuant to SRC 77.140.
- (k) True Credits. A waiver or reimbursement of an SDC improvement fee (SDCi) which would otherwise be charged for the type of improvement being constructed. (Ord No. 76-89; Ord No. 63-90; Ord No. 35-91; Ord No. 9-92; Ord No. 53-92; Ord No. 97-95; Ord No. 97-98; Ord No. 91-99; Ord No. 57-2000; Ord No. 48-2002; Ord No. 45-09)

41.110. Development Charge Imposed.

- (a) Systems development charges are hereby imposed upon all development within the City of Salem and on development outside the city where there is a connection to or use of a city capital improvement for which a methodology has been or is hereinafter adopted, except where development is exempt under the provisions of SRC 41.150. The person engaging in the activity for which an SDC is imposed shall pay to the City each applicable systems development charge at the time established under SRC 41.140.
- (b) Additional system development charges shall be payable if development occurs, as defined in SRC 41.100(c)(2), and at the time specified in SRC 41.140. The SDC collected shall include a credit for preexisting uses on the property. In such case, each SDC collected shall be the difference between the current SDC rate set by Council resolution for the new demand and the current SDC rate for the previous demand.
- (c) Systems development charges, and modifications thereof, shall be established by resolution of the council. (Ord No. 76-89; Ord No. 63-90; Ord No. 35-91; Ord No. 9-92; Ord No. 97-95; Ord No. 57-2000; Ord No. 48-2002)

41.120. Expenditure of Funds from System Development Charge. The revenues received from the systems development charges shall be budgeted and expended as provided by state law.

(a) Reimbursement fees shall be spent only for 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 provides new facilities. The portion of the capital improvements funded by improvement fees must be related to the need for increased capacity to provide service for future users.

(c) Any capital improvement being funded wholly or in part with System Development Charge revenues must be included in the plan and list adopted by City Council pursuant to ORS 223.309.

(d) 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.

(e) The systems development charges collected for extraterritorial service shall be expended according to the terms and conditions of intergovernmental agreements establishing such service. (Ord No. 76-89; Ord No. 63-90; Ord No. 35-91; Ord No. 9-92; Ord No. 97-98; Ord No. 48-2002; Ord No. 45-09)

41.130. Creation of Special Fund. All moneys collected under this chapter shall be placed in the "Extra Capacity Facilities Fund" which is hereby established and shall be used for the purposes and in the manner set forth in SRC 41.120. The director of finance shall establish and keep such accounts as may be necessary showing the total SDC revenues collected for water, sewer, transportation, parks and recreation, drainage and flood control and the projects that are funded by SDC revenues, and shall provide an annual accounting, to be completed by January 1 of each year, showing amounts collected, projects funded by, and the extent to which each project was funded with SDC revenues during the previous fiscal year. (Ord No. 76-89; Ord No. 9-92; Ord No. 97-95; Ord No. 97-98; Ord No. 48-2002)

41.140. Time of Payment; Refunds.

(a) Except as may be provided by intergovernmental agreement, the SDC imposed under this Chapter shall be due and payable to the Finance Director or his or her designee upon the earliest occurrence of the issuance of:

- (1) A building permit;
- (2) A development permit for development not requiring the issuance of a building permit;
- (3) A permit or approval to connect to the water system;
- (4) A permit or approval to connect to the stormwater or sewer system; or
- (5) A right-of-way access permit.
- (6) If no building permit, development permit, connection permit or approval, or right-of-way access permit is required, the SDC 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.
- (7) If development is commenced or connection is made to the water, sewer or stormwater systems without a required permit or approval, the SDC is immediately payable and deemed due upon the earliest date the permit or approval was required.

(b) No permit shall be issued or any connection to a capital improvement allowed until the SDC has been paid in full, or until provision for installment payments has been made pursuant to subsection (d) of this section, or unless the improvement is exempt from payment of SDCs under SRC 41.150.

(c) An SDC shall be refunded if the permit expires or is revoked before the improvement, or portion thereof, is constructed.

(d) In lieu of payment being made as required under subsection (a) of this section, the owner of the land on which the improvement will be located may enter into an installment agreement to pay the SDC in semiannual installments, as authorized by ORS 223.208. The obligation to pay the SDC pursuant to an installment agreement shall be secured by a lien against the property upon which the improvement will be located. The lien shall be entered into the City's lien docket as provided in SRC 21.190, and may be collected in the same manner as allowed by law for collection of assessment liens.

(e) Transportation System Development Charge payments made by Salem-Keizer School District 24J for siting of a prefabricated structure defined in OAR 918-674-005 shall be refunded, without interest, upon completion of the requirements of a demolition or removal permit for such structure. (Ord No. 76-89; Ord No. 35-91; Ord No. 97-98; Ord No. 58-99; Ord No. 48-2002; Ord No. 40-09)

41.150. Exemptions.

(a) The charge imposed under this chapter shall not apply to the following:

(1) Development for which applications for building permits, or mobile home park use permits have been filed prior to the effective date of the resolution initially establishing the methodology for the SDC, providing the information accompanying the application was sufficiently complete to meet the requirements for issuance of a permit for the entire structure.

(2) Reconstruction or repair of a building or structure, or portion thereof, which was damaged or destroyed by earthquake, fire, flood, or other natural causes over which the owner had no control, but only if:

(A) Such reconstruction or repair is done pursuant to a building permit issued within one year after such damage or destruction; and

(B) There is no change in the size of the water meter, development or impervious area.

(3) Replacement structures for any forced acquisition wherein a building or structure is acquired for city purposes through eminent domain provided that:

(A) The owner obtains a building permit for the replacement structure within two years of the acquisition; and

(B) There is no change in the size of the water meter, development, or impervious area.

(4) Any public use or development which is or by agreement will be undertaken by the City of Salem, Oregon; the Housing Authority of the City of Salem, Oregon; or the Urban Renewal Agency of the City of Salem, Oregon.

(5) Any housing unit which is located in a housing project of one or more housing units, if the project receives federal housing funds administered by the city and is affordable to families at or below the city's 80% median income level as defined by the US Dept of Housing and Urban Development.

(6) In the event of a redevelopment, that portion of the development which was pre-existing, as determined from city records or other source acceptable to the public works director.

(7) Development occurring within a development district established pursuant to SRC 200. 200-200.275.

(8) Other development exempted from the charge according to a methodology adopted pursuant to SRC 41.170.

(b) The charge imposed under this Chapter for water supply service connections that provide water supply and fire sprinkler systems through the same meter shall be the charge for the meter size required to provide water supply as if the fire sprinkler system was not included.

(c) Nothing in this Chapter shall be construed as imposing a charge upon any person when imposition of such charge upon that person would be in violation of the Constitution of the United States or the Constitution of the State of Oregon. (Ord No. 97-95; Ord No. 97-98; Ord No. 91-99; Ord No. 48-2002; Ord No. 10-05; Ord No. 102-07; Ord No. 31-13)

41.160. System Development Charge Credit.

(a) A credit against the improvement fee (SDCi) shall be allowed for the construction of a qualified public improvement and may be a 'true credit,' a 'pass-thru,' or a combination of the two. The credit shall be only for the SDCi for the type of improvement being constructed. The credit shall not exceed the developer's allowable costs as determined by the Public Works Director under SRC 41.300 and 41.305. No credit shall be given for the cost of that portion of any water or sewer line, eight inches or less in diameter, or any storm drainage line twelve inches or less in diameter, where lots representing twenty-five percent or more of the front footage take service from such lines; nor shall any credit be given for any facility built larger than the above minimums if such capacity is needed by the development itself.

(b) In addition to the requirements of subsection (a) of this section, a transportation credit shall be given only for the cost of any capital improvement to be partially funded by the Transportation SDC as identified in the adopted Transportation SDC Methodology.

(c) A credit against the Transportation SDC of up to fifteen percent is allowed for an approved transportation demand management plan as defined in the City of Salem Public Works Street Design Standards adopted by the Public Works Director and on file in the Department of Public Works, prepared by the applicant, approved by the Public Works Director and designed to reduce generated trips as set forth in the adopted Transportation SDC Methodology.

(d) When the construction of a qualified public improvement gives rise to a credit amount greater than the SDC 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.

(e) Credits shall be used no later than ten years from the date the credit is given. (Ord No. 76-89; Ord No. 9-92; Ord No. 53-92; Ord No. 97-95; Ord No. 97-98; Ord No. 91-99; Ord No. 57-2000; Ord No. 65-2001; Ord No. 48-2002; Ord No. 45-09; Ord No. 31-13)

41.170. Methodology.

(a) The methodology used to establish or modify a reimbursement fee (SDCr) shall consider the cost of construction for existing facilities, including without limitation design, financing and construction costs, prior contributions by then existing users, gifts or grants from federal or state governments 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 identified factors. The methodology shall promote the objective that future systems users shall contribute an equitable share of the cost of existing facilities.

(b) The methodology used to establish or modify the improvement fee (SDCi) shall consider the estimated cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related, and shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.

(c) The methodology authorized by this section shall be established by resolution; and this methodology may be amended or new methodology adopted when making any revision to the system development charge.

(d) A change in the amount of an SDC is not a modification if the change is based on the periodic application of a specific cost index or on change to any of the factors related to rate that are incorporated in the adopted methodology.

(e) All SDCs shall be adjusted annually for inflation, using indices adopted by the city council. (Ord No. 76-89; Ord No. 9-92; Ord No. 57-2000; Ord No. 48-2002)

41.180. Appeals.

(a) A person who wishes to challenge the imposition or calculation of an SDC must make a written challenge to the calculation of the SDC and file the challenge with the director of public works within ten days of receiving the calculation. The written challenge must describe with particularity the basis for the appeal.

(1) The written challenge shall state:

(A) The name and address of the challenger;

(B) The nature of the decision being appealed;

(C) The reason the imposition or calculation of the SDC is incorrect; and

(D) What the correct decision should be or how the correct calculation should be derived.

(2) As soon as is practicable, the director of public works shall determine whether the imposition or calculation is in accordance with the resolution and methodology used to establish or modify the SDC, and shall provide written notice of the decision to the challenger at the address set forth in the written challenge, which shall contain an explanation of the process for appealing the decision to the council.

(b) A decision made by the director of public works under this chapter may be appealed to the council by filing a written request with the city recorder within fifteen days of the date of the decision, describing with particularity the decision from which the person appeals and the reason the director's decision is incorrect. The council shall as soon as is practicable hear and consider the appeal. The council may affirm, modify, extend, or reverse the decision in a manner that is consistent with the provisions of this chapter. The council shall provide written notice of its decision, which shall contain a statement the person has a right to seek review as provided in ORS 34.010 to 34.100.

(c) Any citizen or other interested person may challenge an expenditure of system development charge revenues by filing such challenge with the council, in writing, within two years of the expenditure, describing how the charges were improperly spent. 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 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 person who fails to file such a written challenge as provided in subsections (a)-(c) of this section, waives all objections and right to an administrative review of the imposition or calculation of the SDC.

(e) A legal action challenging the methodology adopted by the council pursuant to SRC 41.170 shall not be filed later than 60 days after adoption. A person shall contest the methodology used for calculating a SDC only as provided in ORS 34.010 to ORS 34.100, and not otherwise.

(Ord No. 76-89; Ord No. 97-95; Ord No. 51-96; Ord No. 57-2000; Ord No. 48-2002)

41.190. Reimbursement in Excess of Credits for Allowable Costs. Developers may be eligible for a reimbursement in excess of credits for construction of a qualified public improvement as provided in

SRC 41.310. (Ord No. 97-98; Ord No 57-2000; Ord No. 31-13)

41.200. Notice.

(a) The director of public works shall maintain a list of persons who have made written request for notification prior to adoption or modification of a methodology for any SDC. Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a SDC. The methodology supporting the SDC shall be available at least 60 days prior to the first hearing to adopt or amend an SDC. 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 director of public works may periodically delete names from the list, but at least 30 days prior to removing a name from the list, the director of public works shall notify the person whose name is to be deleted at that person's last known address that a new written request for notification is required if the person wishes to remain on the notification list. (Ord No. 48-2002)

41.210. Improvement Plan.

(a) Prior to the establishment of an SDC, the City Council shall adopt a capital improvement plan, public facilities plan, master plan or comparable plan that includes a list of:

- (1) The capital improvements that City Council intends to fund, in whole or in part, with SDCi fee revenues; and
- (2) The estimated cost and time of construction of each improvement and percentage of costs eligible to be funded with SDCi fee revenues for each improvement; and
- (3) A description of the process for modifying the plan.

(b) 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 Council may modify such plan and list at any time. (Ord No. 48-2002; Ord No. 45-09)

41.220. Implementing Regulations; Amendments. The city council delegates authority to the director of public works to adopt necessary procedures to implement the provisions of this ordinance. All rules made pursuant to this delegated authority shall be filed with the office of director of public works and be available for public inspection. (Ord No. 48-2002)

41.300. Certification of Costs by Developer.

(a) Where a qualified public improvement as defined by SRC 41.100(h) is constructed by a developer as required by SRC Chapter 200, for which reimbursement or SDC credits may be available, the developer shall, within thirty days of City acceptance of the facility, prepare a sworn statement of all allowable costs incurred in the construction, and submit the same, together with proof of payment thereof, to the Public Works Director. The Public Works Director may require the developer to provide additional documentation prior to certification by the City.

(b) Allowable costs include:

- (1) The actual price paid to an independent contractor or contractors for the construction of the facility or any part thereof.
- (2) The cost of labor and materials plus fifteen percent thereof for the work performed by the developer directly.
- (3) The actual cost charged by an independent engineer or engineers for the design of the facility or any part thereof, or for supervision or inspection of its construction.
- (4) The amount of wages or salary paid plus fifteen percent thereof, based on actual hours worked by engineers and draftsmen and other technicians who are directly employed by the

developer for the design of the facility or any party thereof or for supervision or inspection of its construction.

(5) The actual cost of independent tests performed in aid of design of the facility, or to determine whether the materials and workmanship employed in the construction are within the approved specifications.

(6) The actual price paid to an independent surveyor for establishing lines, locations and grades (construction staking) for construction of the facility or to establish property lines, rights-of-way and easements for acquisition of property interests necessary to the facility.

(7) The amount of wages or salary paid, plus the cost of materials, plus fifteen percent thereof based on the actual hours worked by surveyors and their assistants who are employed by the developer for establishing lines, locations and grades (construction staking) for construction of the facility or to establish property lines, rights-of-way and easements for acquisition of property interests necessary to the facility.

(8) The costs of acquiring real property interests for the facility, escrow fees and fees related to litigation charged by the City Attorney and other involved City departments pursuant to SRC 200.050.

(9) The fair market value of real property within the development that is reserved for dedication to the City for public park use.

(c) "Allowable costs" do not include developer's personal oversight or superintendence of the project unless the developer is also the contractor, or interest or finance charges on money borrowed to finance the project. (Ord No. 31-13)

41.305. Certification of Costs by City. Upon completion and final acceptance of a qualified public improvement as defined by SRC 41.100(h), including right-of-way or easement acquisition costs, where the cost thereof is not to be assessed against benefitted property through the normal assessment procedure, the Public Works Director shall certify the allowable costs thereof to the Finance Director. Allowable costs include all costs which are allowable under SRC 41.300. (Ord No. 31-13)

41.310. Reimbursements.

(a) **SDC Credits.** A developer who constructs a qualified public improvement as defined by SRC 41.100(h) shall be eligible for credits under SRC 41.160, and reimbursements in excess of credits for their allowable costs as provided in this section.

(1) Where the preliminary declaration requires the construction of such facilities and they are specified as eligible facilities in the improvement agreement, the developer shall be eligible for reimbursement from the Extra Capacity Facilities Fund for the allowable cost of such construction, as provided in subparagraph (2) of this section, provided, however, no reimbursement shall be given for the cost of that portion of any water or sewer lines, eight inches or less, or any storm drainage line twelve inches or less, where lots representing twenty-five percent or more of the front footage take service from said lines; nor shall any reimbursement be given for any facility built larger than the above minimums if such capacity is needed by the development itself.

(2) Repayment from SDCs paid within a development, in the form of pass-thru credits as defined in SRC 41.100, is payable to any developer who provides an eligible facility, whether within or without the USA.

(b) **Reimbursement in Excess of Credits.**

(1) Subject to budgetary appropriation, reimbursement in excess of the credits is payable to any developer of an eligible facility that is listed in the CIP or budget as a publicly-funded improvement. Reimbursement for certified allowable costs shall be annually adjusted (indexed) for inflation beginning on the date the eligible facility is accepted by the City based upon the Engineering News Record (ENR) index approved by City Council for

the methodologies for the facilities. Full reimbursement for certified allowable costs under this paragraph shall be made within the time frame specified in the CIP and as funds are budgeted, but in no event later than fifteen years from the time that the facility is accepted by the City.

(2) In no event shall a developer be reimbursed in an amount that exceeds the developer's allowable costs plus return on investment or indexing as specified in subparagraph (1) of this section.

(c) There shall be assessed against the developer an administrative fee for determining certified allowable costs and processing reimbursements in an amount established by resolution of the City Council. (Ord No. 81-83; Ord No. 54-84; Ord No. 111-90; Ord No. 54-92; Ord No. 117-94; Ord No. 96-98; Ord No. 57-2000; Ord No. 65-2001; Ord No. 37-08; Ord No. 45-09; Ord No. 31-13)

(CHAPTER 42 RESERVED FOR EXPANSION)