

**BEFORE THE CITY COUNCIL
FOR THE CITY OF HOOD RIVER, OREGON**

Ordinance No. 2005

An ordinance repealing in its entirety Title 13 (Streets, Sidewalks and Public Places) Chapter 13.56 (Transportation Systems Development Charges) of the Hood River Municipal Code and amending Title 12 (Public Utilities) Chapter 12.07 (System Development Charges) of the Hood River Municipal Code to implement the authority of ORS chapter 223 to impose system development charges on new development to finance capacity increasing system improvements for the City's Transportation, Sewer, Water, Parks and Stormwater systems.

The Hood River City Council finds as follows:

WHEREAS, ORS Chapter 223 authorizes cities to assess System Development Charges (SDCs) to finance capacity increasing system improvements needed to serve new development; and

WHEREAS, the City of Hood River has adopted two Chapters of the Hood River Municipal Code addressing System Development Charges: Chapter 12.07 addressing System Development Charges generally and Chapter 13.56 addressing only the Transportation System; and

WHEREAS, the City of Hood River desires to revise its SDC regulations to address current issues in the financing of capacity increasing capital improvements and consolidate all of its SDC regulations into a single chapter of the Hood River Municipal Code; and

WHEREAS, the City issued a 90-day Notice of System Development Charge modification as required by ORS 223.304, and on August 20, 2012, the City sent mailed notice of the proposed revision to 47 parties who specifically requested such notice; and

WHEREAS, a 90-day Notice of System Development Charge modification was published in the Legal Notices section of the Hood River News on August 29, 2012; and

WHEREAS, the City Council held public hearings at its January 14, January 28, February 11, and February 25, 2013 regular meetings, at which time it accepted a staff report and public testimony on a proposed revision and consolidation of the City's SDC regulations in a revised Chapter 12.07 of the Hood River Municipal Code; and

WHEREAS, after due consideration and public deliberation, the City Council voted to tentatively approve amendments to Chapter 12.07 to read shown in Exhibit A.

NOW, THEREFORE, based on the foregoing Findings, the Hood River City Council ordains as follows:

Section 1: Title 13 (Streets, Sidewalks and Public Places), Chapter 13.56 (Transportation Systems Development Charges) of the Hood River Municipal Code is repealed in its entirety.

Section 2: Title 12 (Public Utilities) Chapter 12.07 (System Development Charges) of the Hood River Municipal Code is amended to read shown in Exhibit A, attached hereto and by this reference incorporated herein.

Read for the First Time this 25th day of February, 2013.

Read for the Second Time and approved this 11 day of March 2013.
This Ordinance shall take effect on the 31st day following the second reading.

AYES: 10
NAYS: 0
ABSTAIN: 0
ABSENT: 1

Arthur Babitz
Arthur Babitz, Mayor

ATTEST:

Jennifer Gray
Jennifer Gray, City Recorder

Approved as to form:

Daniel Kearns
Daniel Kearns, City Attorney

Chapter 12.07

System Development Charge Program

Section

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ORDINANCE NO. 2005

Exhibit A

12.07.010 Purpose and Policy.

- A. New development within the City of Hood River contributes to the need for capacity increases for roads and other transportation improvements, sewer, water, parks and storm water systems to serve the demand that new development places on the City's systems and facilities. Therefore, new development should contribute to the funding for such capacity increasing improvements. The system development charges (SDC) provided for in this Chapter will fund a portion of the system capacity upgrades to the City's transportation, water, sewer, and stormwater systems needed due to new development.
- B. ORS 223.297 through 223.314 authorizes the City to impose SDC for a variety of capital improvement systems to equitably spread the costs of essential capacity increasing capital improvements to new development.
- C. SDCs for these City systems are incurred upon application to develop property for a specific use or at a specific density. The decision regarding uses, densities, and/or intensities causes direct and proportional changes in the amount of the incurred charge. SDC are separate from other fees provided by law or imposed as a condition of development. An SDC is a fee for service because it contemplates a development's receipt of municipal system services based upon the nature of that development.
- D. The SDCs imposed by this Chapter are not taxes on property or on a property owner as a direct consequence of ownership of property within the meaning of Section 11b, Article XI of the Oregon Constitution or legislation implementing that section. This

Chapter does not shift, transfer or convert a government product or service, wholly or partially paid for by ad valorem property taxes, to be paid for by a fee, assessment or other charge, within the meaning of Section 11g, Article XI of the Oregon Constitution.

- E. SDCs are in addition to hook-up and similar charges required to be paid by new development to connect to public systems and facilities and are 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 approval.
- F. The funding provided by this Chapter constitutes a mandatory collection method based upon the guidelines set forth in ORS 223.297 through 223.314 to assure the construction of capacity increasing improvements to critical municipal systems and facilities that serve new development, including streets and other transportation system improvements, and similar system components of the City's sewer, water, stormwater and parks systems.

12.07.020 Definitions. For purposes of this chapter, the following definitions apply:

- A. "Alternative System Development Charge" means any SDC established pursuant to Section 12.07.110 of this chapter.
- B. "Applicant" means the applicant for a Permit.
- C. "Capital improvements" means facilities or assets used for:
 - 1. Water supply, treatment and distribution;
 - 2. Sanitary sewer collection, transmission, treatment and disposal;
 - 3. Stormwater drainage and flood control
 - 4. Transportation, including but not limited to streets, sidewalks, bike paths, street lights, street trees, mass public transportation, vehicle parking and bridges; or
 - 5. Parks and recreation, including but not limited to mini-neighborhood parks, neighborhood parks, community parks and other recreational facilities.
- D. "Change of use" means any use that substantially differs from the previous use of a building, structure, land or part thereof. Factors to consider when identifying a change of use include the qualitative nature of the use, any relevant quantitative measure of its intensity, and its off-site effects or impacts, e.g., parking, traffic circulation, drainage, lighting, noise, landscaping, building arrangements, etc.
- E. "City Manager" means the duly appointed City Manager of the City of Hood River or that person's designee.
- F. "Condition of Development Approval" means a city requirement imposed on an Applicant by a city land use or limited land use decision, site plan approval or building permit either by operation of law, including but not limited to the Hood

River Municipal Code, rule or regulation adopted thereunder, or a condition of approval

- G. “Credit” means the amount by which an Applicant may be able to reduce the SDC fee as provided in Section 12.07.100 of this Chapter.
- H. “Development” means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities that have the effect of generating additional person-trips, stormwater runoff or using sanitary sewer or water. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved land.
- I. “Improvement Fee” means a fee for costs associated with Capital Improvements to be constructed after the date the fee is adopted pursuant to Section 12.07.040 of this Chapter.
- J. “New Development” means any Development on a site that generates person-trips to or from the site, uses water, sewer or contributes stormwater runoff from the site. New development for purposes of this Chapter includes new construction as well as interior remodeling and any change in use.
- K. “Over Capacity” means that portion of an improvement that is built larger or with greater capacity (over capacity) than is necessary to serve the Applicant’s New Development or mitigate for Capital Improvement system impacts attributable to the Applicant’s New Development. There is a presumption that improvements built to the City’s minimum standards are required to serve the Applicant’s New Development and to mitigate for Capital Improvement system impacts attributable to the Applicant’s New Development and have no increment of Over Capacity.
- L. “Parcel” means a lot, parcel, block or other tract of land that is or could be occupied by one or more structure or use, including common areas, yards and other open spaces that may be required under the zoning, subdivision or other development regulations.
- M. “Permit” means a building permit, trade or structural specialty permit issued by the City Building Official pursuant to the State of Oregon Structural Specialty Code, as amended, and the State of Oregon Residential Specialty Code, as amended. In addition, Permit shall mean a Manufactured Home Installation Permit issued by the City Building Official relating to the placement of a manufactured home in the City. In addition, Permit shall mean a grading permit or other authorization from the City to grade, pave, create or increase an impervious surface.

- N. "Person-trip" means the number of trips generated by a use (trips to plus trips from) multiplied by the number of people making the trip. Such trips include all modes of transportation, including walking, transit, bicycle and motor vehicle.
- O. "Plan" means the Capital Improvement Plan or Capital Facilities Plan adopted by the city pursuant to Section 12.07.070 of this chapter.
- P. "Previous Use" means the most recent lawful permitted use conducted at a particular parcel, building or part thereof regardless of how long ago the use was conducted. Where the Previous Use of a site or building was composed of a primary or dominant use with other ancillary or secondary uses, the City may regard the primary use to be the sole use of the entire site or building for purposes of this Chapter. In the case of new construction or an existing building that has never been used, it shall be presumed there was no Previous Use. Where the most recent Previous Use failed to obtain necessary land use or building permits, it is not deemed lawful.
- Q. "Proposed Use" means the use proposed by the Applicant for a New Development. Where the Applicant proposes several different uses (mixed use) for the New Development then, for purposes of this Chapter, all of the specific use categories shall be considered. Where the proposed use is composed of a primary use with one or more ancillary uses that support the primary proposed use and are owned and operated in common, that primary use shall be deemed to be the sole proposed use of the property for purposes of this chapter
- R. "Qualified Public Improvement" means a capital improvement that is required as a condition of development approval, identified in the Plan adopted pursuant to Section 12.07.070 of this Chapter, and is either:
1. Not located on or contiguous to the property that is the subject of development approval; or
 2. Located in whole or in part on, or contiguous to, the property that is the subject of development approval and is required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.
- S. "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 12.07.040 .
- T. "Systems Development Charge" or "SDC" means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at any of the times specified in Section 12.07.030 . It shall also include that portion of a water or sanitary sewer system connection charge that is greater than the amount necessary to reimburse the City for its average cost of inspection and installing connections with water and sanitary 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. An SDC imposed under this chapter is in addition to any connection fees that may be charged for a property, structure or tenant to connect to a public service or facility.

12.07.030 System Development Charges Established.

- A. Unless otherwise exempted by the provisions of this Chapter or any other applicable local or state law, a SDC is hereby imposed upon all New Development within the City, and upon all development outside the boundary of the City that connects to, contributes to the need for, or otherwise uses city water, sanitary sewer, stormwater drainage and flood control, transportation or parks and recreation facilities. SDCs shall be due and payable at the point in time at which the development imposes new or increased demand upon these public improvement systems, upon issuance of a Permit, upon the commencement of a change of use that does not require a Permit, whichever occurs first. Depending upon the circumstances, the City Manager may allow deferment of actual payment of an SDC until a later time, but only with appropriate financial guarantees.
- B. SDCs for each type of capital improvement shall be established and may be revised from time to time by resolution of the council. The resolution shall set the amount of the charge, the type of permit to which the charge applies, the methodology used to set the amount of the charge, and if the charge applies to a geographic area smaller than the entire city, the geographic area subject to the charge.
- C. Once paid, an SDC remains with the property that incurred the charge and imposed the demand or impact on the City's capital improvement system(s). SDCs are not personal and shall not be transferred to another or different property.

12.07.040 Methodology.

- A. The methodology used to establish and calculate a reimbursement fee shall be based on ratemaking principles employed to finance publicly owned capital improvements, 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 or the cost of the existing facilities, and other relevant factors identified by the City 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 and shall be available for public inspection.
- B. The methodology used to establish an improvement fee shall demonstrate consideration of the projected cost of capital improvements identified in the Plan and list adopted pursuant to Section 12.07.070 that are needed to increase the capacity of the systems to which the fee is related and for which the need for increased system capacity will be required to serve the demands placed on the system by future users.

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

- C. The methodology shall also provide for SDC credit for Qualified Public Improvements as authorized in Section 12.07.100.
- D. Except when authorized in a methodology adopted pursuant to this section, any fees imposed or required to be paid, assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment shall not be used as a credit against any SDC. The cost of complying with requirements or Conditions of Development Approval imposed by a land use decision shall not be creditable against any SDC unless eligible for SDC credit under Section 12.07.100 of this Chapter.
- E. The methodology used to establish the Improvement Fee or the Reimbursement Fee, or both, shall be adopted by resolution by the Council and may be amended from time to time. All New Development shall be subject to an SDC and any methodology in place at the time the Applicant applies for a Permit. Neither this Chapter nor an SDC methodology shall be considered land use standards or criteria for purposes of ORS 227.178(3).
- F. The City shall maintain a list of people and organizations that have made a written request for notification prior to adoption or amendment of a methodology for any SDC. Written notice shall be mailed to people and organizations on the list at least 90 days prior to the first hearing to establish or modify a SDC, and the methodology supporting the adoption or amendment shall be available at least 60 days prior to the first hearing to adopt or amend. The failure of a person or organization on the list to receive a notice that was mailed shall not invalidate the City's subsequent action. The City may periodically delete names from the list, but at least 30 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. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the SDC methodology if the change in amount is based on a change in cost of materials, labor or real property applied to projects or project capacity as set forth on the list adopted pursuant to Section 12.07.070 or the periodic application of one or more specific cost indices published by a recognized organization or agency and is incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution, or order.

12.07.050 Authorized Expenditures.

- A. Reimbursement fees. Reimbursement Fees shall be applied only to Capital Improvements (and not operating expenses) associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

B. Improvement Fees.

1. Improvement fees shall be spent only on capacity increasing Capital Improvements, including expenditures relating to repayment of debt for the improvements. An increase in system capacity may be established 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 the need for increased capacity to provide service for future users.
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 12.07.070.
3. Notwithstanding subsections 12.07.050(B)(1) and (2), SDC revenues may be expended on the costs of complying with the provisions of subsections 12.07.050(B)(1), including the costs of developing SDC methodologies and providing an annual accounting of SDC expenditures.

12.07.060 Expenditure Restrictions. SDCs shall not be expended for:

- A. Costs associated with the construction of administrative office facilities that are more than an incidental part of other Capital Improvements; or
- B. Costs of the operation or routine maintenance of Capital Improvements.

12.07.070 Capital Improvement Plan. Each SDC collected by the city shall be based upon a Capital Improvement Plan adopted for each Capital Improvement system that:

- A. Lists the capital improvements that may be funded with Improvement Fee revenues;
- B. Lists the estimated cost, and percentage of costs eligible to be funded with revenues from the Improvement Fee for each improvement; and
- C. Describes the process for modifying the Plan. If a SDC will be increased by a proposed modification of the list to include a capacity increasing Capital Improvement, the City shall provide, at least 30 days prior to the adoption of the modification, notice of the proposed modification to the people and organizations that have requested written notice under Section 12.07.040(F). The City shall hold a public hearing if a written request for a hearing on the proposed modification is received within seven days of the date the proposed modification is scheduled for adoption.

12.07.080 Calculation and Collection of SDC.

- A. All Applicants for New Development shall pay all applicable SDCs, and all such SDCs shall be due and payable at the time of issuance of a Permit or whenever there is a change of use of a parcel or building, or part thereof that does not involve issuance of a Permit.

- B. Unless a particular Capital Improvement SDC methodology provides otherwise, the City shall use the following means of measuring the demand or impact that a particular use will have on the City's systems:
1. For transportation system impacts, the City shall rely upon the number of person-trips generated by the proposed new use (and previous use) according to the use categories in the current version of the ITE Trip Generation Manual or other comparable compilation of national average person-trips generated by different use classifications.
 2. For water system impacts, the City shall rely upon the meter size serving the use and/or an average equivalent dwelling unit (EDU) calculation.
 3. For stormwater and drainage system impacts, the City shall rely upon the amount of impervious surface that contributes stormwater run off to the City's stormwater collection and disposal system.
 4. For sanitary sewer system impacts, the City shall rely upon the average equivalent dwelling unit (EDU) calculation.
 5. For park system impacts, the City shall rely upon the number of residents or employees at the site.
- C. When the New Development constitutes a change or an enlargement of a Previous Use of the parcel, including a change in use or tenant within a multi-tenant building, the New Development shall trigger an SDC review and calculation under the current methodologies.
1. If the Proposed Use results in a greater demand or impact on a city Capital Improvement system under the current applicable methodology than for the Previous Use (e.g., the new use generates a larger number of person-trips than did the previous use), the Applicant shall pay the difference between the SDC rate ascribed to the Previous Use and the calculated SDC attributable to the Proposed Use. In the case of new construction or a building where there has been no Previous Use, the New Development shall pay the full amount of all SDCs attributable to the use proposed for the New Development.
 2. If the Proposed Use results in a lower demand or impact on a city Capital Improvement system (e.g., a smaller number of person-trips) under the current applicable methodology than for the Previous Use, no further SDC shall be due, but no refund shall be paid to the applicant.
 3. It shall be the Applicant's burden to prove and document the existence and extent of the Previous Use.
 4. Where the New Development is a change in use or tenant for only part of a multi-tenant building, the SDC can be calculated and paid for only the particular space involved.
- E. If New Development is commenced or connection is made to the water, sanitary sewer, stormwater drainage or transportation systems without first obtaining a Permit, where one is required, all applicable SDCs shall be due and payable immediately upon the earliest date that a Permit was required.

- F. The City Building Permit Department shall collect the applicable SDC(s) from the Applicant or person responsible for or receiving the benefit of the New Development in accordance with this Section. No Department of the City shall issue any Permit or allow connection to a City Capital Improvement system until all applicable SDCs have been paid in full or, at the City Manager's option, future payment is financially guaranteed under such terms as the City Manager deems reasonable.
- G. The obligation to pay an unpaid SDC and interest thereon shall be secured by property, bond, deposits, letter of credit or other security acceptable to the City Manager.
- H. If an SDC is not paid upon issuance of a Permit or the Applicant is otherwise allowed to defer or pay an SDC in installments, the obligation shall include the following amounts added to the principal amount due:
1. Interest on the obligation at 9% annual simple interest;
 2. All costs associated with processing the particular form of security, such as title insurance, escrow fees, recording costs, collection costs and any other expense incurred by the City in connection with the security;
 3. Any and all costs, as determined by the City Manager, incurred in establishing payment schedules and administering the collections process;
 4. When the charge is secured by bond pursuant to ORS 223.205 to 223.295, all costs associated with administering the bond assessment program and issuing the bonds, as determined by the City Manager;
 5. The intent of this subsection is to recognize that the payment of an SDC by installments increases the administrative expense to the City. It is the intent of this subsection to shift that added expense to the applicant, so that the City will not lose SDC revenue by accepting installment payments on such charges. Subject to the provisions of subsection 12.07.080(F), all costs added to the SDC will be determined by the City Manager.

12.07.090 Partial and Full Exemptions. The uses listed and described in this section shall be exempt, either partially or fully, from payment of one or more SDCs that are otherwise due. Any Applicant seeking an exemption under this Section shall specifically request that exemption within 180 days after issuance of a Permit for the New Development. Where New Development consists of only part of one or more of the uses described in this section, only that/those portion(s) of the development that qualify under this section are eligible for an exemption. The balance of the New Development that does not qualify for any exemption under this section shall be subject to the full SDC. Should the Applicant dispute any decision by the City regarding an exemption request, the Applicant must apply for an Alternative Exemption Determination under Section 12.07.110. The Applicant has the burden of proving entitlement to any exemption so requested.

- A. Any use allowed by the City pursuant to a Transient Use Permit or a Special Event Permit.
- B. Low income housing that receives federal funding, whether directly or through tax credits, and for which a deed restriction is recorded for each housing unit that preserves the unit as affordable housing for no less than 40 years.
- C. Alteration permits for tenant improvements, new construction or remodeling are exempt where
 - 1. no additional dwellings are created. Dwelling means any building or portion thereof that serves or could serve as a separate living facility, with areas for sleeping, eating, cooking and sanitation; or
 - 2. if the New Development is not reasonably expected to result in an increase in person-trips as compared to the trip generation of the previous use, it is exempt from transportation SDC.
- D. The construction of accessory buildings or structures that will not create additional dwelling units or do not create additional demands on the City's Capital Improvement systems.
- E. For New Development that includes a mix of exempt and non-exempt forms of development, the applicable exemption(s) shall apply only to that portion of the New Development to which the exemption applies.

12.07.100 Credits. The City shall grant a credit against an SDC that is otherwise assessed for a New Development, for any Qualified Public Improvement constructed or dedicated as part of that New Development. The Applicant bears the burden of proof and persuasion in establishing entitlement to an SDC Credit and to a particular value of SDC Credit.

- A. To obtain an SDC Credit, the Applicant must specifically request a credit within 180 days after Permit issuance for the New Development. In the request, the Applicant must identify the improvement(s) for which credit is sought and explain how the improvement(s) meet the requirements for a Qualified Public Improvement. The Applicant shall also document, with credible evidence, the value of the improvement(s) for which credit is sought. If, in the City Manager's opinion, the improvement(s) are Qualified Public Improvement, and the City Manager concurs with the proposed value of the improvement(s), an SDC Credit shall be granted. The value of SDC Credits under this Section shall be determined by the City Manager based on the cost of the Qualified Public Improvement, or the value of land dedicated, as follows:

1. For dedicated lands, value shall be based upon a written appraisal of fair market value by a qualified, professional appraiser based upon comparable sales of similar property between unrelated parties in an arms-length transaction;
 2. For improvements yet to be constructed, value shall be based upon the anticipated cost of construction. Any such cost estimates shall be certified by a professional architect or engineer or based on a fixed price bid from a contractor ready and able to construct the improvement(s) for which SDC Credit is sought;
 3. For improvements already constructed, value shall be based on the actual cost of construction as verified by receipts submitted by the Applicant;
 4. For all improvements for which credit is sought, only the fraction of Over Capacity in the Qualified Public Improvement is eligible for SDC Credit. There is a presumption that improvements built to the City's minimum standards are required to serve the Applicant's New Development and to mitigate for transportation system impacts attributable to the Applicant's New Development and therefore have no increment of Over Capacity;
- B. The City Manager will respond to the Applicant's written credit request within 21 days of when the request is submitted. The City Manager shall provide a written explanation of the decision on the SDC Credit request.
- C. If an Applicant disputes the City Manager's decision with regard to an SDC Credit request, including the amount of the credit, the Applicant may appeal the City Manager's decision to the City Council pursuant to Section 12.07.130. Any such appeal must be filed with the City Recorder in writing within 14 calendar days of the City Manager's written decision on the credit request.
- D. In no event shall the amount of an SDC Credit approved by the City Manager under this Section exceed the amount of the SDC assessed by the City upon a New Development. In no event shall the City issue or be liable for a refund when the value of a credit-worthy Qualified Public Improvement exceeds any SDC assessed for a New Development.

12.07.110 Alternative SDC Rate Request:

- A. An Applicant may dispute an SDC rate calculation if the Applicant believes that the impact of the New Development is less than the impact assumed by the City based on the City's adopted SDC methodology. An Applicant may dispute an SDC exemption determination if the Applicant believes that the New Development qualifies for exemption under Section 12.07.090. To challenge an SDC rate calculation or exemption determination, the Applicant must submit such a request under this section, within 180 days after issuance of a Permit for the New Development. The City shall not entertain any such a request filed after 180 days after issuance of a Permit for the New Development. Upon the timely request for an alternative SDC

rate calculation or exemption determination, the City Manager shall review the Applicant's calculations and supporting evidence and make a determination within 21 days of submittal as to whether the Applicant's request satisfies the requirements of this Section:

1. Transportation SDC: If the Applicant believes the number of trips generated by the New Development is less than the number of trips estimated by the City's established transportation SDC methodology, including the assumed Person-trip generation, the Applicant must provide complete and detailed documentation, including verifiable trip generation data, analyzed and certified to by a Professional Traffic Engineer. The Applicant's supporting documentation must rely upon generally accepted sampling methods, sources of information, cost analysis, traffic and growth projections and techniques of analysis as a means of supporting the proposed alternative SDC rate. The proposed Alternative SDC Rate calculation shall include an explanation by a registered engineer explaining with particularity why the rate established in the City's transportation SDC methodology does not accurately reflect the New Development's impact on the City's capital improvements and that the Applicant's alternative trip generation profile better or more accurately reflects the New Development's trip generation.
 2. Water and Sewer SDC: If the Applicant believes its New Development will use significantly less water or generate significantly less sanitary sewage than the amounts assumed in the City's adopted water and sanitary sewer SDC methodologies, the Applicant must provide complete and detailed documentation certified to by a Professional Engineer that unusual or innovative fixtures, and water use and water recapture methods will be employed. To document that significantly less water will be used, the Applicant shall document that the New Development will use a water meter at least one size smaller than a comparable conventional New Development would use. To document that significantly less sanitary sewage will be generated, the Applicant shall document that the New Development will generate no more than 50% of the sewage generated by a comparable conventional New Development.
 3. Stormwater Drainage and Flood Control SDC: If the Applicant believes its New Development will generate significantly less stormwater runoff than the volume assumed in the City's adopted stormwater SDC methodology, the Applicant must provide complete and detailed documentation certified to by a Professional Engineer as to the innovative stormwater capture, retention and reuse methods that will be employed to retain on site all stormwater runoff and that none will be released or discharged off-site into the City's stormwater system.
- B. The City Manager shall apply the Alternative SDC Rate if, in the City Manager's opinion, all of the following circumstances are found to exist:
1. The evidence and assumptions underlying the Alternative SDC Rate are reasonable, correct and credible and were gathered and analyzed by a suitable,

competent professional in compliance with generally accepted engineering principles and methodologies and consistent with this Section, and

2. The calculation of the proposed Alternative SDC rate was by a generally accepted methodology and any innovative designs, systems or techniques are reasonable, proven and likely to function as designed, and
 3. The proposed alternative SDC rate better or more realistically reflects the actual impact of the New Development than the rate derived from use of the City's SDC methodology.
- C. The City Manager shall approve, reject or modify the Applicant's requested SDC calculation or exemption request and provide a written response to the Applicant's request explaining the basis for the decision.

12.07.120 Segregation and Use of SDC Revenue.

- A. All funds derived from a particular type of SDC are to be segregated by accounting practices from all other funds of the City. That portion of the SDC calculated and collected on account of a specific facility system shall be used for no purpose other than those allowed in Sections 12.07.050 and 12.07.060.
- B. The City Finance Director shall provide the City Council with an annual accounting, based on the City's fiscal year, for SDCs showing the total amount of systems development charge revenues collected for each type of facility and the projects funded from each account.

12.07.130 Appeals and Challenges. This section provides the exclusive means for any appeal or legal challenge to the City's adoption or revision of an SDC methodology, expenditure of SDC revenues, or determination of an SDC rate or credit.

- A. Appeal of an SDC Expenditure: An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure. The City Council shall determine whether the challenged expenditure complies with the requirements of this Chapter and ORS 223.297 to 223.314 and may affirm, modify or overrule the decision. If the Council determines that there has been an improper expenditure of SDC 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.
- B. Appeal of an SDC Methodology: Legal action challenging an SDC methodology adopted by the Council pursuant to Section 12.07.040 shall not be filed later than 60 days after the date of adoption, and shall be contested according to the procedure set forth in ORS 34.010 to 34.100, and not otherwise.

C. Appeal of an SDC Calculation or Credit Determination: A mandatory prerequisite to an appeal of an SDC calculation or SDC credit determination is that the Applicant has first sought an alternative SDC rate determination under Section 12.07.110 or applied for SDC Credit under Section 12.07.100.

1. Legal action challenging the City Manager's SDC calculation or a SDC credit determination shall be filed with the City Recorder no later than 14 days following the date of the City Manager's challenged SDC calculation or SDC credit determination. The Applicant shall submit a non-refundable fee of \$250 for any appeal pursuant to this subsection, which must accompany the appeal. No such appeal shall be considered filed or received until such fee is paid in full.
2. Only the Applicant may appeal an SDC calculation or SDC credit determination, and the City Council shall determine whether the City Manager's decision with regard to the SDC calculation or SDC credit determination was consistent with the requirements of this Chapter, the applicable methodology and ORS 223.297 through 223.314. The Applicant has the burden of demonstrating with particularity, based on credible professional reports, that the rate established in the applicable SDC methodology does not accurately reflect the impact of this particular New Development on the City's Capital Improvement system or facilities at issue. With regard to a challenge to an SDC credit determination, the Applicant has the burden of providing credible cost estimates, certified by an appropriate professional, demonstrating that the Qualified Public Improvement offered for credit is in fact a "qualified public improvement" and has a higher value or larger increment of Over Capacity than found by the City Manager.
3. The City shall withhold all permits and other approvals applicable to the Applicant's parcel for the New Development pending resolution of all appeals under this Chapter unless the SDC is paid in full or the Applicant provides a financial guarantee or security for the charge in a form acceptable to the City Attorney for the pendency of the appeal.