

ORDINANCE NO. 01-4

AN ORDINANCE AUTHORIZING THE ESTABLISHMENT AND PROVISIONS GOVERNING THE DEVELOPMENT AND USE FOR SYSTEM DEVELOPMENT CHARGES FOR SEWER; AND REPEALING ORDINANCE NO. 88-8 AND ALL AMENDMENTS AND REVISIONS THERETO

The LaPine Special Sewer District does ordain as follows:

Section 1. Purpose. The purpose of the system development charge is to impose a portion of the cost of capital improvements for sewer upon those developments that create the need for or increase the demands on capital improvements.

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

Section 3. Definitions. For purposes of this Ordinance, the following mean:

- (1) Capital Improvements. Facilities or assets used for:
  - a. Water supply, treatment and distribution;
  - b. Waste water collection, transmission, treatment and disposal;
  - c. Drainage and flood control;
  - d. Transportation; or
  - e. Parks and recreation.
  - f. "Capital improvement" does not include costs of the operation or routine maintenance of capital improvement.
- (2) Development. The change in character, occupancy or use of land or buildings; or demolishing of a building for the conversion of such property to a deferring use.
- (3) Improvement Fee. A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 4 of this Ordinance.
- (4) Land Area. The area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane, with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or scenic or preservation purpose.

(5) Owner. The owner or owners of record, title, or the purchaser or purchasers under a recorded sales agreement, and other persons having an interest of record in the described real property.

(6) Parcel of Land. A lot, parcel, block, or other tract of land that is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.

(7) Qualified Public Improvements. A capital improvement that is required as a condition of development approval, identified in the plan adopted pursuant to Section 8 of this Ordinance; and either

a. Not located on or contiguous to property that is the subject of the development approval; or

b. 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.

(8) Reimbursement Fee. A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 4 of this Ordinance.

(9) System Development Charge. A reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. "System development charge" includes that portion of a sewer system connection charge that is greater than the amount necessary to reimburse the District for its average cost of inspecting and installing connections with sewer facilities. "System development charge" does not include fees assessed or collected as part of a local improvement District assessment, or the cost of complying with requirements or conditions imposed by a land use decision.

#### Section 4. System Development Charge Established.

(1) A system development charge shall be established and may be revised by resolution of the Board.

(2) Unless otherwise exempted by the provisions of this Ordinance or other local or state law, a system development charge is hereby imposed upon all parcels of land within the District, and upon all lands outside the boundary of the District that connect to or otherwise use the sewer facilities of the District.

#### Section 5. Methodology.

(1) The methodology used to establish or modify the reimbursement fee shall consider the cost of the then-existing facilities, 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 principals employed to finance publicly owned capital improvements, and other relevant factors identified by the Board. The methodology for establishing or modifying a reimbursement fee shall promote the objective that future system users shall contribute no more than an equitable share of the cost of then-existing facilities.

(2) The methodology used to establish or modify the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the system.

(3) 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 Board.

(4) The methodology used to establish or modify the improvement fee or the reimbursement fee shall not:

- a. Include or incorporate a method or system under which the payment of the fee or the amount of the fee is determined by the number of employees of an employer without regard to new construction, new development or new use of an existing structure by the employer;
- b. Include or incorporate any method or system under which the payment of the fee or the amount of the fee is based on the number of individuals hired by the employer after a specified date; or
- c. Assume that costs are necessarily incurred where capital improvements when an employer hires an additional employee.

(5) All methodology for establishing or modifying reimbursement or improvement fees shall be available for public inspection.

(6) 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 on a modification to any of the factors related to rate that are incorporated in the established methodology.

#### Section 6. Authorized Expenditures.

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

(2) Improvement fees shall be spent only on capacity-increasing capital improvements, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the capital improvements funded by improvement fees must be related to demands created by development.

(3) 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 District pursuant to Section 8 of this Ordinance.

(4) Notwithstanding subsections (1) and (2) 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 charge expenditures.

#### Section 7. Expenditure Restrictions.

(1) System 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.

(2) System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

Section 8. Improvement Plan. Prior to the establishment of a system development charge by ordinance or resolution, the Board shall adopt a plan that:

(1) Lists the capital improvements that may be funded with improvement fee revenues;

(2) Lists the estimated cost and time of construction of each improvement;  
and

(3) Describes the process for modifying the plan.

#### Section 9. Collection of Charge.

(1) The system development charge is payable upon annexation; issuance of a building permit; a development permit; a development permit for development not requiring the issuance of a building permit; or a permit to connect to the sewer system.

(2) 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.

(3) The applicant for a connection permit shall be required to state in writing the intended use of the building in sufficient detail to enable the District to determine the appropriate category of use. If the use of a building changes or if the stated use is incorrect, the occupant shall report the change of use to the District within 30 days and promptly pay any additional system development charge. If the applicant fails to report a correct statement of use or a change of use within 30 days or fails to pay the additional system development charge within 10 days after invoice, the occupant shall pay a penalty of 10% of the balance due plus interest on the unpaid balance at the rate of 1.5% per month.

(4)(a) The District shall not issue such permit or allow such connection until the charge has been paid in full, unless an exemption is granted pursuant to Section 11 of this Ordinance, or unless, in the case of hardship, owner agrees in writing to allow the District to assess the uncollected charge against the real property to which the charge is attributable, pursuant to Section 10(3) of this Ordinance.

(b) A hardship shall be determined in the District Board's sole discretion, upon consideration of:

- (1) The financial resources of the owner, and the burden the charge will impose on the owner, with due regard to the owner's other obligations; and
- (2) The extent to which such burden can be alleviated by waiving immediate payment and assessing the total amount against the benefitted property.

#### Section 10. Delinquent Charges; Hearing.

(1) When, for any reason, the system development charge has not been paid, the District manager shall report to the Board the amount of the uncollected charge, the description of the real property to which the charge is attributable, the date upon which the charge was due, and the name of the owner.

(2) The Board shall schedule a public hearing on the matter and direct that notice of the hearing be given to each owner with a copy of the District manager's report concerning the unpaid charge. Notice of the hearing shall be given either personally or by certified mail, return receipt requested, or by both personal and mailed notice, and by posting notice on the parcel at least 10 days before the date set for the hearing.

(3) At the hearing, the Board may accept, reject, or modify the determination of the District manager as set forth in the report. If the Board finds that a system development charge is unpaid and uncollected, it shall docket the unpaid and uncollected system development charge in the lien docket. Upon completion of the docketing, the District shall have a lien against the described land for the full amount of the unpaid charge, together with interest at the legal rate of 10 percent and with the District's actual cost of serving notice of the hearing on the owners. The lien shall be enforceable in the manner provided in ORS chapter 223.

## Section 11. Exemptions.

(1) Structures and uses established and existing on or before the effective date of this Ordinance that are connected to the sewer system are exempt from a system development charge 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 sewer charges pursuant to the terms of this Ordinance upon the receipt of a permit to connect to the sewer system.

(2) An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the sewer system as calculated are exempt from all portions of the system development charge.

## Section 12. Credits.

(1) A system development charge shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given for the computed system development charge to the extent that prior structures existed and services were established on or before the effective date of the Ordinance. The credit so computed shall not exceed the calculated system development charge. No refund shall be made on account of such credit.

(2) A credit shall also be given for construction of a qualified public improvement. The credit shall be only for the improvement fee charged for the type of improvement being constructed, and may be granted only for the cost of that portion of such improvement that exceeds the District's minimum standard facility size or capacity needed to serve that particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this section.

(3) When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee 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. However, this subsection shall not prohibit the District from providing a greater credit, or from establishing a system providing for the transferability of credits, or from providing a credit for a capital improvement not identified in the plan adopted pursuant to Section 8, or from providing a share of the cost of such improvement by other means, if the District so chooses.

(4) Credit shall be used within the time specified in the Ordinance, but not later than ten (10) years from the date the credit is given.

Section 13. Segregation and Use of Revenue; and Annual Accounting. All funds derived from the system development charge are to be segregated by accounting practices from all other funds of the District. The system development charge calculated and collected shall be used for no purpose other than those set forth in section 6 of this Ordinance. The District shall provide an annual accounting to be completed by January 1st of each year for system development charges showing the total amount of system development charge revenues collected for each system and the projects that were funded in the previous fiscal year. The District shall

include in the annual accounting, a list of the amounts spent on each project funded, in whole or in part, with system development charge revenues.

Section 14. Review Procedures.

(1) Expenditure Review.

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the person  
two (2) years of

a. Any citizen or other interested person may challenge an expenditure of systems development charge revenues by filing a written complaint with the District describing with decision of the District and the expenditure which challenges. Such challenges must be filed within the expenditure of the systems development charge revenues.

the

Statutes,  
the Board  
expenditure of systems  
Board shall direct that a sum  
deposited within one year to the  
from which it was spent.

b. A hearing shall be held by the Board within sixty (60) days of the filing of the complaint. After providing notice to the challenger, Board shall determine whether the expenditure was in accordance with this Ordinance and the applicable Oregon Revised Statutes, and may affirm, modify or overrule the decision. If the Board determines that there has been an improper expenditure of systems development charge revenues, the Board shall direct that a sum equal to the misspent amount be deposited within one year to the credit of the account or fund from which it was spent.

c. The decision of the Board shall be judicially reviewed only as provided in ORS 34.010 to 34.100.

(2) Methodology Review.

notice  
days prior  
development  
development  
prior to the first  
list to receive a notice  
the action of the District.

a. The District shall maintain a list of persons who have made written requests for notification prior to adoption or amendment of a methodology for any systems development charge. Written notice shall be mailed to persons on the list at least ninety (90) days prior to the first hearing to establish or modify a systems development charge, and the methodology supporting the system development charge shall be available at least sixty (60) days prior to the first hearing to. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the District.

b. The District may periodically delete names from the list, but, at least thirty (30) days prior to removing a name from the list, 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.

c. Legal action intended to contest the methodology used for calculating a systems development charge may not be filed after systems District. methodology used for charge only as provided in ORS sixty (60) days following adoption or modification of the development charge Ordinance or resolution by the District. Persons shall request judicial review of the calculating a systems development charge only as provided in ORS 34.010 to 34.100.

(3) Other Review. Challenges of any other decisions required or permitted to be made by the District under this Ordinance or associated resolutions including, but not limited to, objections to the calculation of a system development charge must be filed in writing with the District office within twenty (20) days of the date of the decision. The complaint must describe with particularity the decision of the District challenged. A hearing shall be held by the Board within sixty (60) days of the filing of the complaint. After providing notice to the complainant, the Board shall determine whether the decision challenged is in accordance with this Ordinance and the applicable Oregon Revised Statutes, and may affirm, modify, or overrule the decision. The Board must advise the complainant of the right to petition for review pursuant to ORS 34.010 to ORS 34.100.

Section 15. Severability. The sections and subsections of this Ordinance are severable. The invalidity of any one section or subsection shall not affect the validity of the remaining sections or subsections.

Section 16. Repeal. Ordinance No. 88-8 and all amendments and revisions thereto are hereby repealed in their entirety.

ADOPTED this 11<sup>th</sup> day of April, 2002 by action of the Board of Directors.

LAPINE SPECIAL SEWER DISTRICT  
DIRECTORS

Chairman

ATTESTED:

Secretary