

CITY OF BAY CITY
ORDINANCE NO. 577

AN ORDINANCE ESTABLISHING A SYSTEMS DEVELOPMENT CHARGE,
ESTABLISHING METHODOLOGY FOR CHARGE, ESTABLISHING APPEALS
PROVISIONS AND DECLARING AN EMERGENCY

THE CITY COUNCIL OF THE CITY OF BAY CITY ORDAINS AS FOLLOWS:

Section 1.0 Purpose. The purpose of the system development charge is to impose a portion of the cost of capital improvements for water, wastewater drainage, streets, flood control, and parks upon those developments that create the need for, or increase the demands on, capital improvements.

Section 2.0 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 3.0 Definitions. For purposes of this ordinance, the following mean:

3.1 **Capital improvements.** Facilities or assets used for:

3.1.1 Water supply, treatment and distribution;

3.1.2 Waste water collection, transmission, treatment and disposal;

3.1.3 Drainage and flood control;

3.1.4 Parks and recreation.

3.1.5 Transportation.

3.2 **Development.** Taking any action relating to land which requires a building permit, a land use approval, or an application to connect to City water or sewer.

3.3 **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.

3.4 **Land area.** The area of a parcel of land less any portion located within a recorded right of way, public way or access easement.

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

3.6 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.

3.7 Permittee. The person to whom a building permit, a permit or plan approval to connect to the sewer or water system, or a land use approval is issued.

3.8 Qualified public improvements. A capital improvement that is:

3.8.1 Required as a condition of residential development approval;

3.8.2 Identified in the plan adopted pursuant to Section 8 of this ordinance; and either

3.8.2.1 Not located on, or contiguous to, a parcel of land that is the subject of the development approval; or

3.8.2.2 Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

3.8.5 For purposes of this definition, contiguous means in a public way which abuts the parcel.

3.9 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.

3.10 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 or water system connection charge that is greater than the amount necessary to reimburse the City for its average cost of inspecting and installing connections with water and sewer facilities. "System development charge" does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a

local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision.

Section 4.0 System Development Charge Established.

4.1 System development charges shall be established and may be revised by resolution of the City Council. The resolution shall set the amount of the charge, the type of permit to which the charge applies, and, if the charge applies to a geographic area smaller than the entire city, the geographic area subject to the charge.

4.2 Unless otherwise exempted by the provisions of this ordinance or by other local or state law, a system development charge is hereby imposed upon all development within the City, and upon all development outside the boundary of the City that connects to or otherwise uses the facilities or assets of the City as set forth in Section 3.1 herein.

Section 5.0 Methodology.

5.1 The methodology used to establish the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, rate-making principals employed to finance publicly owned capital improvements, and other relevant factors identified by the City Council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.

5.2 The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related.

5.3 The methodology used to established the improvement fee or the reimbursement fee, or both, shall be contained in an ordinance adopted by the City Council.

Section 6.0 Authorized Expenditures.

6.1 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.

6.2. 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 current or projected development.

6.3. 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 City pursuant to Section 8 of this ordinance.

6.4 Notwithstanding subsections 6.1 and 6.2 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 7.0 Expenditure Restrictions.

7.1 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.

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

Section 8.0 Improvement Plan. The Council shall adopt a plan that:

8.1 Lists the capital improvements that may be funded with improvement fee revenues;

8.2 Lists the estimated cost and time of construction of each improvement; and

8.3 Describes the process for modifying the plan.

In adopting this plan, the Council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section.

Section 9.0 Collection of Charge.

9.1 The system development charge is payable prior to issuance of:

9.1.1 A building permit;

9.1.2 A permit or approval to connect to the water system;

9.1.3 A permit or approval to connect to the sewer system; or

9.2 If no building or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.

9.3 If development is commenced or connection is made to the water or sewer systems without an appropriate permit, then the penalties of Section 17 herein apply.

9.4 The City Recorder shall collect the applicable system development charge from the permittee when a permit that allows building or development of a parcel is issued or when a connection to the water or sewer system of the City is made.

9.5 The City Recorder shall not issue such permit or allow such connection until the charge has been paid in full, or until provision for installment payments has been made pursuant to Section 11 of this ordinance, or unless an exemption is granted pursuant to Section 12 of this ordinance.

Section 10.0 Installment Payment.

10.1 When a system development charge of \$300.00 or more is due and collectible, the owner of the parcel of land subject to the development charge may apply for payment in 20 semi-annual installments, to include interest on the unpaid balance at the rate of 12% per annum or such other rate established by Council resolution, which shall include the recording fee, and to include an administrative fee to be set by Council resolution. At the owner's express request, payments may be made for less than 10 years in accordance with ORS 223.215(2).

10.2 The City Recorder shall provide application forms for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors. The applicant shall sign and complete all forms necessary to assent to the City's lien being placed on the property or to otherwise effectuate an installment request.

10.3 An applicant for installment payments shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that the interest of the applicant is adequate to secure payment of the lien. Further, the City may require the applicant to furnish a title insurance policy confirming ownership by the applicant, a deed or contract or other evidence of ownership satisfactory to the City. In addition, the City may require production of trust documents, partnership documents or corporate documents, as may be relevant, if the property is owned by an entity other than individual ownership. However, all documents which are not already a matter of public record prior to their submission to the City and which pertain to the financial affairs of the Applicant, including estate planning of the Applicant, shall be deemed to be confidential and shall be considered exempt from public disclosure unless otherwise required by law. The City may further require the applicant to provide additional security if the City has reason to believe that there is not sufficient equity in the property to pay any mortgage and superior lienholders in addition to the City. If the applicant cannot satisfy these requirements, the City may deny the applicant the ability to make installment payments.

10.4 The City Recorder shall report to the City Council, for its approval, the amount of the system development charge, the dates on which the payments are due, the name of the owner, and the description of the parcel.

10.5 After approval of the application for installment payments by the City Council, the City Recorder shall docket the lien in the City's lien docket as well as recording a notice of the lien in the Tillamook County Deed Records. From that time the City shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the City Council. The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall be binding on all successors in interest in the subject property.

Section 11. Exemptions.

11.1 Structures and uses established and existing on before the effective date of this ordinance are exempt from a system development charge, except water and sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the water or sewer system.

11.2 Additions to single family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge.

11.3 An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge.

Section 12.0 Credits.

12.1 When development occurs that is subject to a system development charge, the system development charge for the existing use, if applicable, shall be calculated and if it is less than the system development charge for the use that will result from the development, the difference between the system development charge for the existing use and the system development charge for the proposed use, no system development charge shall be required. No refund or credit shall be given unless provided for by another subsection of this Section.

12.2 A credit shall be given to the permittee for the cost of a qualified public improvement upon acceptance by the City of the public improvement. The credit shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee and shall only be for the improvement fee charged for the type of improvement being constructed.

12.3 If a qualified public improvement is 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, a credit shall be given for the cost of the portion of the improvement that exceeds the City's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the City.

12.4 When the construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fees for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project.

12.5 Notwithstanding subsections 12.4 and 12.5, when establishing a methodology for a system development charge, the City may provide for a credit against the improvement fee, the reimbursement fee, or both, for capital improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the Council finds reasonable.

12.6 Credits shall not be transferable from one development to another.

12.7 Credits shall not be transferable from type of system development charge to another.

12.8 Credits shall be used within 10 years from the date the credit is given or the credit shall expire.

Section 13.0 Notice.

13.1 The City shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any system development charge. Written notice shall be mailed to persons on the list at least 45 days prior to the first hearing to adopt or amend a system development charge. The methodology supporting the adoption or amendment shall be available at least 30 days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed shall not invalidate the action of the City.

13.2 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.

Section 14.0 Segregation and Use of Revenue.

14.1 All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds of the City. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no other purpose other than those set forth in Section 6 of this ordinance.

14.2 The City Recorder shall provide the City Council with an annual accounting, based on the City's fiscal year, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account.

Section 15.0 Appeal Procedure.

15.1 A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the City Council by filing a written request with the City Recorder describing with particularity the expenditure from which the person appeals. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure.

15.2 Appeals of any other decision required or permitted to be made by the City under this ordinance must be filed within 10 days of the date of the decision.

15.3 After providing notice to the appellant, the City Council shall determine whether the decision or the expenditure is in accordance with this ordinance and the provisions of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decisions. If the Council determines that there has been an improper expenditure of any 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 ORS 34.100, and not otherwise

15.4 A legal action challenging the methodology adopted by the Council pursuant to Section 5 shall not be filed later than 60 days after the adoption. A person shall contest the methodology used for calculating a system development charge only as provided in ORS 34.010 to ORS 34.100, and not otherwise.

Section 16.0 Prohibited Connection. No person may connect to the water or sewer systems of the City unless the appropriate system development charge has been paid or the lien or installment payment method has been applied for and approved.

Section 17.0 Penalty. Violation of Section 16 of this ordinance is punishable by a fine not to exceed *twice the applicable SDC charge(s)*.

Section 18.0 Construction. The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this ordinance.

Section 19.0 Severability. The invalidity of a section or subsection of this ordinance shall not affect the validity of the remaining sections or subsections.

Section 20.0 Classification. The City Council determines that any fee, rates or charges imposed by this ordinance are not a tax subject to the property tax limitations of Article XI, Section 11 (b) of the Oregon Constitution.

Section 21.0 Effective Date. This ordinance shall become effective immediately after its passage by the Council and approval by the Mayor. An emergency is declared due to the necessity of continuity of City administration of sewer and water services pursuant to the repeal of certain other fees and charges.

PASSED AND ADOPTED this 14th day of March, 2000 and APPROVED by the Mayor of the City of Bay City this 14th day of March, 2000.

/s/ James A. Cole, Jr., Mayor
James A. Cole, Jr., Mayor

ATTEST:

/s/ Linda Dvorak
Linda Dvorak, City Recorder

First Reading: March 14, 2000
Second Reading: March 14, 2000
Adoption: March 14, 2000

Ayes: 5
Nays: 0
Abstentions: 0