

AFFIDAVIT OF POSTING
ORDINANCE CB-0-156-91

STATE OF OREGON)
COUNTIES OF CLACKAMAS)
AND WASHINGTON)
CITY OF WILSONVILLE)

I, the undersigned, City Recorder of the City of Wilsonville, State of Oregon, being first duly sworn on oath depose and say:

On the 12th day of June, 1991, I caused to be posted copies An Ordinance Regarding System Development Charges; Repealing Ordinance No. 113; Repealing Wilsonville Code, Chapter 11, Section 11.020 and Section 11.050; and Declaring an Emergency, in the following four public and conspicuous places of the City, to wit:

WILSONVILLE CITY HALL

WILSONVILLE POST OFFICE

LOWRIE'S FOOD MARKET

KOPPER KITCHEN

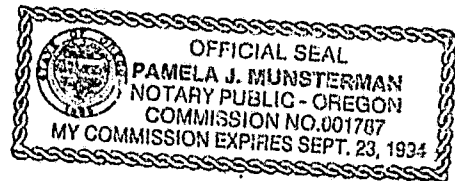
The notice remained posted for more than five (5) consecutive days prior to the time for said public hearing on the 17th day of June, 1991.

Vera A. Rojas
VERA A. ROJAS, CMC, City Recorder

Subscribed and sworn to before me
this 5th day of July, 1991.

Pamela J. Munsterman
NOTARY PUBLIC, STATE OF OREGON

My Commission expires: 9/23/94



ORDINANCE NO. 386

AN ORDINANCE REGARDING SYSTEM DEVELOPMENT CHARGES; REPEALING ORDINANCE NO. 113; REPEALING WILSONVILLE CODE, CHAPTER 11, SECTION 11.020 AND SECTION 11.050; AND DECLARING AN EMERGENCY.

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

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

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

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

NOW THEREFORE THE CITY OF WILSONVILLE DOES HEREBY ORDAIN AS FOLLOWS:

ARTICLE I

DEFINITIONS

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

A. Capital improvement(s). Public facilities or assets used for any of the following:

1. Water supply, treatment and distribution;
2. Sanitary sewers, including collection, transmission and treatment;
3. Storm sewers, including drainage and flood control;
4. Transportation, including but not limited to streets, sidewalks, bike lanes and paths, street lights, traffic signs and signals, street trees, public transportation, vehicle parking, and bridges; or
5. Parks and recreation, including but not limited to mini-neighborhood parks, neighborhood parks, community parks, public open space and trail systems, building, courts, fields and other like facilities.

B. Development. As used in Article IV through Article XI means conducting a building or mining operation, or making a physical change in the use or appearance of a structure or land, which increases the usage of any capital improvements or which will contribute to the need for additional or enlarged capital improvements.

C. Public improvement charge. A fee for costs associated with capital improvements to be constructed after the effective date of this ordinance. This term shall have the same meaning as the term "improvement fee" as used in ORS 223.2907 through 223.314.

D. Qualified public improvements. A capital improvement that is:

1. Required as a condition of development approval;
2. Identified in an adopted capital improvement plan, pursuant to subsection; and
3. Not located on or contiguous to a parcel of land that is the subject of the development approval.

E. Reimbursement fee. A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted, pursuant to Article IV.

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

ARTICLE II

PURPOSE

Section 1. The purpose of the SDC is to impose an equitable share of the public costs of capital improvements upon those developments that create the need for or increase the demands on capital improvements.

ARTICLE III

SCOPE

Section 1. The system development charge as imposed by this Ordinance is separate from and in addition to any applicable tax, assessment, charge, fee in lieu of

assessment, or fee otherwise provided by law or imposed as a condition of development. A systems development charge is to be considered in the nature of a charge for service rendered or facilities made available, or a charge for future services to be rendered on facilities to be made available in the future.

ARTICLE IV

SYSTEMS DEVELOPMENT CHARGE ESTABLISHED

Section 1. Unless otherwise exempted by the provisions of this chapter or other local or state law, a systems development charge is hereby imposed upon all new development within the City, and all new development outside the boundary of the City that connects to or otherwise uses the sanitary sewer system, storm drainage system, water system, transportation system or park and recreation system of the City. The City Manager is authorized to make interpretations of this Section subject to appeal to the City Council.

Section 2. Systems development charges for each type of capital improvement may be created through application of the methodologies described in Article V of this ordinance. The amounts of each system development charge shall be adopted initially by Council resolution. Changes in the amounts shall also be adopted by resolution, excepting those changes resulting solely from inflationary cost impacts. Inflationary cost impacts shall be measured and calculated each March 1st by the City Manager and charged accordingly. Such calculations will be based upon Pacific Northwest Construction cost changes in the Engineering News Record Construction Cost Index (ENR Index) as represented by the City of Seattle, Washington. All calculations shall be carried out to the hundredths place. A final product ending in .49 or less shall be rounded down to the nearest dollar, .50 or more up to the next dollar.

ARTICLE V

METHODOLOGY

Section 1. The methodology used to establish a reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, rate-making principles employed to finance publicly owned capital improvements, and other relevant factors. The methodology shall promote the objective that future systems users shall contribute an equitable share of the cost of then-existing facilities.

Section 2. The methodology used to establish the public improvement charge shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related and shall provide for a credit against the public

improvement charge for the construction of any qualified public improvement.

Section 3. Except when authorized in the methodology adopted under Article V, Section 1, the fees required by this Ordinance which are assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision are separate from and in addition to the systems development charge and shall not be used as a credit against such charge.

Section 4. The methodologies used to establish the systems development charge shall be adopted by resolution of Council. The specific systems development charge may be adopted and amended concurrent with the establishment or revision of the systems development charge methodology. The City Manager shall review the methodologies established under this section periodically and shall recommend amendments, if and as needed, to the Council for its action.

Section 5. The formulas and calculations used to compute specific SDC's are based upon averages and typical conditions. Whenever the impact of individual developments present special or unique situations such that the calculated fee is grossly disproportionate to the actual impact of the development, alternative fee calculations may be approved or required by the City Manager under prescribed administrative procedures. All data submitted to support alternate calculations under this provision shall be specific to the site and development under consideration. Major or unique developments may require special analyses to determine alternatives to the standard methodology.

ARTICLE VI

COMPLIANCE WITH STATE LAW

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

Section 2. The capital plan for capital improvements required by state law as the basis for expending the public improvement charge component of systems development charge revenues shall be the Wilsonville Capital Improvements Plan (CIP), adopted facilities plans, the capital improvement plan of any other governmental entity with which the City has cooperative agreement for the financing of commonly-used public improvements by the collection of system charges, provided such plans conform with State

Law and are consistent with the City's CIP and the City's Comprehensive Plan.

ARTICLE VII

COLLECTION OF CHARGE

Section 1. The systems development charge is payable upon, and as a condition of, issuance of:

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

Section 2. If development is commenced or connection is made to the water system, sanitary sewer system or storm sewer system without an appropriate permit, the systems development charge is immediately payable upon the earliest date that a permit was required, and it will be unlawful for anyone to continue with the construction or use constituting a development until the charge has been paid or payment secured to the satisfaction of the City Manager.

Section 3. Any and all persons causing, constructing, conducting, occupying or using the development or making application for the needed permit, or otherwise responsible for the development, are jointly and severally obligated to pay the charge, and the City Manager may collect the said charge from any of them. The City Manager or his/her designee shall not issue any permit or allow connections described in Article VII, Section 1, until the charge has been paid in full or until an adequate secured arrangement for its payment has been made, within the limits prescribed by resolution of the City Council.

Section 4. A systems development charge shall be paid in cash when due, or in lieu thereof, the City Manager may accept the delivery of a written agreement to pay if the written agreement is secured by collateral satisfactory to the City Manager or his/her designee. The collateral may consist of mortgage or trust deeds of real property, or an agreement secured by surety bond issued by a corporation licensed by a State law to give such undertakings, or by cash deposit, letter of credit, or other like security acceptable to the City Manager.

Section 5. The person paying the systems development charge in installments may apply for deferral of the payments as provided by resolution of the City Council.

ARTICLE VIII

Section 1. The following are exempt from the systems development charge imposed in Article IV:

- A. Except for the systems development charge attributable to the sanitary sewer system, water system, storm sewer system transportation system, and park and recreation system, development which existed on the effective date of this Ordinance or for which a building permit plan check fee was paid and received by the City or for which a building permit was issued before the date.
- B. An alteration, addition, replacement or change in use that does not increase the use of capital improvements.
- C. Upon good cause shown that a firm financial commitment has been made as a condition prerequisite to development which is to occur within one year from the effective date of this Ordinance, and that the financial commitment was based on the prior level of street and road system development fees imposed under Section 11 of the Wilsonville Code, then that portion of the street and road system development fee greater than prior level of fee imposed shall be exempted.
- D. Any exemption greater than \$15,000 shall be determined by the City Council.

ARTICLE IX

CREDITS

Section 1. As used in this section and in the definition of "Qualified public improvements" in Article I, the word "contiguous" means that part of a public way which abuts the development parcel.

Section 2. An applicant for a building permit is eligible for credit against the SDC for constructing a qualified capital improvement. A qualified public improvement means one that meets all of the following criteria:

- A. Required as a condition of development approval by the Planning Commission or City Council; and
- B. Identified in an Adopted Capital Improvement Plan; and
- C. Not located within or contiguous to the property or parcel that is subject to development approval, except to the extent that the capital improvement(s) represent(s) a measurable provision for extra service

capacity beyond the actual public facility requirements of the property or parcel approved for development.

Applying the adopted methodology, the City Manager may grant a credit against the public improvement charge for a capital improvement provided as part of the development that reduces the development's demand upon existing capital improvements or the need for further capital improvements or that would otherwise have to be constructed at City expense under the then-existing Council policies.

Section 3. The credit provided for by this Article shall be only for SDC charged for the type of improvement being constructed and shall not exceed such SDC even if the cost of the capital improvement exceeds the SDC. However, this section shall not prohibit the City from providing a greater credit or from providing a share of the cost of such improvement by other means, if the City so chooses.

Section 4. Where it is determined a credit is applicable, the City Council may also provide reimbursement of the credit from the appropriate SDC's collected in accordance with the payback provisions for extension of services under Wilsonville Code 3.116. In connection with transportation SDC credits, the extension of provision of streets and roads and attendant facilities shall be included as being subject to credit reimbursement from transportation system development charges under the reimbursement provisions set forth in Wilsonville Code 3.116.

Section 5. All credit requests must be in writing and filed with the City Manager not less than 90 days after acceptance of the improvement.

Improvement acceptance shall be in accordance with the usual and customary practices, procedures and standards of the City of Wilsonville. The amount of any credit shall be determined by the City Manager and based upon the subject improvement construction contract documents, or other appropriate information, provided by the applicant for the credit. Upon a finding by the City Manager that the contract amounts exceed prevailing market rate for a similar project, the credit shall be based upon market rates. The City Manager shall provide the applicant with a credit on a form provided by the City. The credit shall state the actual dollar amount that may be applied against any SDC imposed against the subject property.

Section 6. Credits shall be apportioned against the property which was subject to the requirement to construct an improvement eligible for credit. Unless otherwise requested, apportionment against lots or parcels constituting the property shall be proportionate to the anticipated public facility service requirements generated by the

respective lots or parcels. Upon written application to the City Manager, however, credits shall be reapportioned from any lot or parcel to any other lot or parcel within the confines of the property originally eligible for the credit. Reapportionment shall be noted on the original credit form retained by the department and a copy shall be forwarded to the Finance Director.

Section 7. Any credits as provided in the Ordinance are assignable; however, they shall apply only to that property subject to the original condition for land use approval upon which the credit is based or any partitioned or subdivided parcel or lots of such property to which the credit has been apportioned. Credits shall only apply against SDCs, are limited to the amount of the fee attributable to the development of the specific lot or parcel for which the credit is sought and shall not be a basis for any refund.

Section 8. Any credit must be submitted before the issuance of a building permit or, if deferral was permitted, issuance of the final occupancy permit. The applicant is responsible for presentation of any credit and no credit shall be considered after issuance of a building permit or, if deferral was granted, issuance of the final occupancy permit.

Section 9. Credits shall not be allowed more than ten years after the acceptance of the applicable improvement by the appropriate jurisdiction. No extension of this deadline shall be granted or authorized.

ARTICLE X

APPEAL PROCEDURES

Section 1. As used in this Article "working day" means a day when the general offices of the City are open to transact business with the public.

Section 2. A person aggrieved by a decision required or permitted to be made by the City Manager or his/her designee under Article I through Article IX or a person challenging the propriety of an expenditure of systems development charge revenues may appeal the decision or the expenditure by filing a written request with the City Recorder for consideration by the City Council. Such appeal shall describe with particularity the decision or the expenditure from which the person appeals and shall comply with Section 4 of this Article.

Section 3. An appeal of an expenditure must be filed within two years of the date of alleged improper expenditure. Appeals of any other decision must be filed within 10 working days of the date of the decision.

Section 4. The appeal shall state:

- A. The name and address of the appellant;
- B. The nature of the determination being appealed;

C. The reason the determination is incorrect; and

D. What the correct determination should be.

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

Section 5. The Council shall order an investigation and direct that within 60 days of receipt of the petition that a written report be filed by the director recommending appropriate action. Within 30 days of receipt of said report, the Council shall conduct a hearing to determine whether the expenditure was proper. At least 10 working days advance notice of the hearing, including a copy of the report, shall be mailed to the petitioner. Petitioner shall have a reasonable opportunity to present their position at the hearing.

Section 6. The petitioner shall have the burden of proof. Evidence and argument shall be limited to grounds specified in the petition. The Council shall issue a written decision stating the basis for its conclusion and directing appropriate action be taken.

Section 7. Review of the Council decision shall be provided as in ORS 34.010 to 34.100.

Section 8. The City Council shall render its decision within 15 days after the hearing date and the decision of the Council shall be final. The decision shall be in writing but written findings shall not be made or required unless the Council, in its discretion, elects to make findings for precedential purposes. Any legal action contesting the Council's decision on the appeal shall be filed within 60 days of the Council's decision.

ARTICLE XI

PROHIBITED CONNECTION

Section 1. After the effective date of this chapter, no person may connect any premises for service, or cause the same to be connected, to any sanitary sewer, water system, or storm sewer system of the City unless the appropriate systems development charge has been paid or payment has been secured as provided in this Ordinance.

ARTICLE XII

EFFECTIVE DATE

Section 1. This Ordinance shall become effective at the time prescribed by charter or as soon thereafter as the resolutions adopting methodologies, plans and other required provisions have been adopted; and upon the effective date of this ordinance, and

any funds collected pursuant to the previous systems development charges chapter shall be transferred to general capital improvements in the Capital Improvement Fund.

ARTICLE XIII

REPEAL

Section 1. By adoption of this Ordinance, Ordinance No. 113 and Wilsonville Code, Chapter 11, Section 11.020 and Section 11.050 are hereby repealed.

ARTICLE XIV

SEVERABILITY


Section 1. The invalidity of any section, subsection, paragraph, sentence, or phrase of this ordinance which is incorporated herein, shall not affect the validity of the remaining portions thereof.

ARTICLE XV

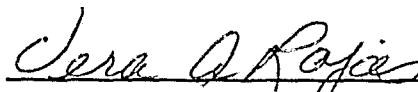
EMERGENCY DECLARED

Section 1. That the matters contained herein concern the public health, welfare and safety, and in order to allow the City Manager to prepare and recommend methodologies upon which to base the systems development charges and collect revenues in an orderly fashion without causing hasty applications for building permits, an emergency is hereby declared to exist, and this Ordinance shall become effective on July 1, 1991 upon its passage by the City Council.

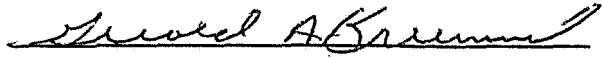
SUBMITTED to the Wilsonville City Council and read the first time at a regular meeting thereof on the 3rd day of June 1991 and scheduled for second reading at a regular meeting of the City Council on the 17th day of June, 1991 commencing at the hour of 7:30 o'clock p.m. at the Wilsonville City Hall Annex, Community Development Conference Room. The ordinance was continued to June 27, 1991 at a special meeting of the City Council commencing at the hour of 7:00 p.m.


VERA A. ROJAS, CMC, City Recorder

ENACTED by the City Council on the 27th day of June, 1991 by the following votes: YEAS: 5 NAYS: 0


VERA A. ROJAS, CMC, City Recorder

DATED and signed by the Mayor this 1st day of July, 1991.



GERALD A. KRUMMEL, Mayor

SUMMARY of Votes:

Mayor Krummel	<u>AYE</u>
Councilor Chandler	<u>AYE</u>
Councilor Carter	<u>AYE</u>
Councilor Lehan	<u>AYE</u>
Councilor Van Eck	<u>AYE</u>