

**ORDINANCE NO. 98-150**

**AN ORDINANCE ESTABLISHING A SANITARY SEWER SYSTEM DEVELOPMENT CHARGE**

THE ARCH CAPE SANITARY DISTRICT ORDAINS AS FOLLOWS:

**Section 1 - Title**

This Ordinance shall be known as “Sanitary Sewer System Development Charge Ordinance.”

**Section 2 - Scope and Purpose**

- A. Future growth within the District should contribute its fair share to the cost of improvements and additions to District facilities required to accommodate such growth.
- B. The imposition of System Development Charges will provide a source of revenue to fund the construction or improvement of the District’s sanitary sewer facilities necessitated by growth.
- C. ORS 223.297 - 223.314 authorize local governments to impose System Development Charges for waster water collection, transmission, treatment and disposal (“Sanitary Sewer Facilities”).
- D. This Ordinance is intended to be a financing mechanism for District facilities necessitated by new development and for reimbursement for existing facilities.

**Section 3 - Definitions**

- A. “Applicant shall mean the owner or other person who applies for a building or development permit from Clatsop County for development within the boundaries of the District.
- B. “Building” shall mean any structure, either temporary or permanent, built for the support, shelter or enclosure of persons or property of any kind. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a building permit.
- C. “Building Permit” shall mean an official permit or certificate issued by Clatsop County authorizing construction or siting of any building.
- D. “Capital Improvements” shall mean public facilities or assets used for District facilities.
- E. “Citizen or Other Interested Person” shall mean any person whose legal residence is within the boundaries of the District, as evidenced by registration as a voter within the District or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within District boundaries or is otherwise subject to the imposition of System Development Charges, as outlined in Section 4 of this ordinance.

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- F. "Executive Director" shall mean the Board President of the Arch Cape Domestic Water Supply District.
- G. "Development" shall mean a building or other construction, or making a physical change in the use of a structure or land, in a manner which increases the usage of any Capital Improvements or which may contribute to the need for additional or enlarged Capital Improvements, as determined by the Executive Director.
- H. "Development Permit" shall mean an official permit or certificate issued by Clatsop County, other than a building permit, authorizing development.
- I. "Dwelling Unit" shall mean a building or a portion of a building designed for residential occupancy, consisting of one or more rooms which are arranged, designed or used as living quarters for one family only.
- J. "Encumbered" shall mean monies committed by contract or purchase order in a manner that obligates the District to expend the encumbered amount upon delivery of goods, the rendering of services, or the conveyance of a real property provided by a vendor, supplier, contractor or owner.
- K. "Executive Director" shall mean the Executive Director of the Arch Cape Sanitary Sewer District.
- L. "Improvement Fee" shall mean a fee for costs associated with Capital Improvements to be constructed after the effective date of this ordinance.
- M. "Methodology" shall mean the System Development Charge methodology required by ORS 223.304(1) and (2).
- N. "Owner" shall mean the person holding legal title to the real property upon which development is to occur, or a contract purchaser of such property.
- O. "Person" shall mean an individual, corporation, partnership, incorporated association, or any other similar entity.
- P. "Qualified Public Improvement" shall be defined as provided in ORS 223.304(3).
- Q. "System Development Charge(s)" shall mean a reimbursement fee and/or an improvement fee assessed or collected at the time of increased usage of a Capital Improvement or issuance of a development or building permit. System Development Charges are separate from and in addition to any applicable tax, assessment, fee in lieu of assessment, or other fee or charge provided by law or imposed as a condition of development.

#### **Section 4 - Assessment of Charge**

- A. A Sanitary Sewer System Development Charge is hereby imposed upon all new development within the District for which a building permit or development permit is required. This shall include all new construction and alteration, expansion or replacement of a building or dwelling unit if such alteration, expansion or replacement results in an increase in the number of residential dwelling units compared to the present

number of dwelling units in the development or increased usage of a Capital Improvement. For alterations, expansions and replacements, the amount of the System Development Charge to be paid shall be the difference between the rate for the proposed development and the rate that would be imposed for the development prior to the alteration, expansion or replacement.

- B. System Development Charge rates shall be established and may be revised from time to time by Resolution of the District.

### **Section 5 - System Development Charge Methodology**

- A. The methodology used to establish the reimbursement fee portion of the System Development Charge shall take into account the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, generally accepted rate-making principles employed to finance publicly owned Capital Improvements, and other relevant factors identified by the District. 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.
- B. The methodology used to establish the improvement fee portion of the System Development Charge shall take into account the cost of projected Capital Improvements needed to increase the capacity of the systems to which the fee is related.
- C. The actual methodology used to establish the improvement fee and the reimbursement fee shall be adopted by Resolution of the District.

### **Section 6 - Collection**

- A. The Sewer Service System Development Charge shall be due and payable at the time of issuance of a building permit or development permit as determined by the Executive Director. Responsibility for collection of charges shall be that of the Manager of the District.
- B. Notwithstanding Section 4A, the following developments shall be exempt from payment of the Sanitary Sewer System Development Charges:
  - 1. Alterations, expansion or replacement of an existing dwelling unit where no additional dwelling unit is created.
  - 2. The construction of accessory buildings or structures which will not create additional dwelling units and which do not create additional demands on the District's capital facilities.
  - 3. Development with vested rights, determined as follows:

- (a) Any owner of land which was the subject of a building permit or development permit issued prior to the effective date of this ordinance may petition the District for a vested rights determination which would exempt the landowner from the provisions of this ordinance. Such petition shall be evaluated by the Executive Director and a decision made based on *all three* of the following criteria being met:
  - (1) The existence of a valid, unexpired building or development permit authorizing the specific development for which a determination is sought, and;
  - (2) Substantial expenditures or obligations made or incurred in reliance upon such permit, and;
  - (3) Other factors that demonstrate it is inequitable to deny the owner the opportunity to complete the previously approved development under the prior conditions of approval by requiring the owner to comply with the requirements of this ordinance. For the purposes of this paragraph, the following factors shall be considered in determining whether it is inequitable to deny the owner the opportunity to complete the previously approved development:
    - (i) Whether the injury suffered by the owner outweighs the public cost of allowing the development to go forward without payment of the System Development Charges required by this ordinance; and
    - (ii) Whether the expenses or obligations for the development were made or incurred prior to the effective date of this ordinance.
- (b) The Executive Director shall make a written determination as to whether the owner has established a vested right in the development and, if so, whether the development would be exempt from the provisions of this ordinance.

### **Section 7 - Credits for Developer Contributions of Qualified Public Improvements**

- A. The District shall grant a credit against the System Development Charges imposed pursuant to Section 4 for the construction of any Qualified Public Improvements.
- B. Prior to issuance of a building permit or development permit, the applicant shall submit to the Executive Director a proposed plan and estimate of cost for contributions for any Qualified Public Improvements. The proposed plan and estimate shall include:
  - 1. a designation of the development for which the proposed plan is being submitted;
  - 2. a list of the contemplated Capital Improvements contained within the plan;

3. an estimate of proposed construction costs certified by a professional architect or engineer; and
  4. a proposed time schedule for completion of the proposed plan.
- C. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit. The amount of credit to be applied shall be determined according to the following standards of valuation;
1. The cost of anticipated construction of qualified public improvements shall be based upon cost estimates certified by a professional architect or engineer.
- D. If a donation or construction of a Qualified Public Improvement gives rise to a credit amount greater than the amount of the System Development Charge that would otherwise be levied against the project receiving development approval, the excess credit may be applied against System Development Charges that accrue in subsequent phases of the original development project. Any excess credit must be used not later than ten years from the date it is given.
- E. The decision of the Executive Director as to whether to accept the proposed plan and estimated cost for contributions and the value of such contribution shall be in writing and issued within fifteen (15) working days of the date all data is received for review. Notification shall be provided to the applicant via regular mail.
- F. Any applicant who submits a proposed plan pursuant to this Section and desires the immediate issuance of a building permit or development permit, shall pay the applicable System Development Charges. Said payment shall not be construed as a waiver of any credit. Any difference between the amount paid and the amount due, as determined by the Executive Director, shall be refunded to the applicant. In no event shall refund by the District under this subsection exceed the amount originally paid by the applicant.

### **Section 8 - Appeals and Review Hearings**

- A. An applicant who is required to pay System Development Charges shall have the right to request a hearing to review the denial of any of the following:
1. A petition for vested rights pursuant to Section 6B5.
  2. A proposed credit for contribution of Qualified Public Improvements pursuant to Section 7.
- B. Such hearing shall be requested by the applicant within thirty (30) days of the date of notice of denial. Failure to request a hearing within the time provided shall be deemed a waiver of such right.

- C. The request for hearing shall be filed with the Executive Director and shall contain the following:
1. The name and address of the applicant;
  2. The legal description of the property in question;
  3. If issued, the date the building permit or development permit was issued;
  4. A brief description of the nature of the development being undertaken pursuant to the building or development permit;
  5. If paid, the date the System Development Charges were paid; and
  6. A statement of the reasons why the applicant is requesting review.
- D. Upon receipt of such request, the District shall schedule a hearing before the Board of Directors at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the applicant written notice of the time and place of the hearing. Such hearing shall be held within forty-five (45) days of the date the request for hearing was filed.
- E. Such hearing shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedure and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.
- F. Any applicant who requests a hearing pursuant to this Section and desires the immediate issuance of a building permit or development permit shall pay prior to or at the time the request for hearing is filed the applicable System Development Charges pursuant to Section 4B. Said payment shall not be construed as a waiver of any review rights.
- G. An applicant may request review under this Section without paying the applicable System Development Charges as long as no building permit or development permit has been issued.

### **Section 9 - Review of Methodology and Rates**

- A. This ordinance, the System Development Charge methodology, and the Capital Improvement plan required by ORS 223.309 may be reviewed by the Board of Directors at least every 2 years. The review shall consider new estimates of population and other socioeconomic data, changes in the cost of construction and land acquisition, and adjustments to the assumptions, conclusions or findings set forth in the methodology. The purpose of this review is to evaluate and revise, if necessary, the rates of the System Development Charges to assure that they do not exceed the actual or reasonably anticipated costs of the District's Capital Improvements.

- B. In the event the review of the ordinance or the methodology alters or changes the assumptions, conclusions and findings of the methodology, or alters or changes the amount of System Development Charges, the methodology shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews.

### **Section 10 - Receipt and Expenditure of System Development Charges**

- A. The District shall establish separate accounts for each type of System Development Charge, which shall be maintained apart from all other accounts of the District. All System Development Charge payments shall be deposited in the appropriate account immediately upon receipt.
- B. 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.
- C. Improvement fees shall be applied only to 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 shall be related to demands created by development. 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 ORS 223.309.
- D. Notwithstanding subsections B and C of this section, System Development Charge revenues may also be expended on the direct costs of complying with the provisions of this ordinance, including, but not limited to, the costs of developing System Development Charge methodologies and providing an annual accounting system for development charge expenditures.
- E. The monies deposited in the above accounts shall be used solely as allowed by ORS 223.307, including, but not limited to:
1. design and construction plan preparation;
  2. permitting and fees;
  3. land and materials acquisition, including any costs of acquisition or condemnation;
  4. construction of Capital Improvements;
  5. relocating utilities required by the construction of improvements;
  6. landscaping;

7. construction management and inspection;
  8. surveying, soils and material testing;
  9. acquisition of capital equipment;
  10. repayment of monies transferred or borrowed from any budgetary fund of the District which were used to fund any of the Capital Improvements as herein provided;
  11. payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the District to fund Capital Improvements;
  12. direct costs of complying with the provisions of ORS 223.297 to 223.314, including the consulting, legal, and administrative costs required for developing and updating the System Development Charge methodology report, resolution/ordinance, and Capital Improvements plan; and the costs of collecting and accounting for System Development Charge expenditures.
- F. Funds on deposit in System Development Charge accounts shall not be used for:
1. any expenditure that would be classified as a maintenance or repair expense; or
  2. costs associated with the construction of administrative office facilities that are more than an incidental part of other Capital Improvements.
- G. Any Capital Improvement being funded wholly or in part with System Development Charge revenue shall be included in the District's Capital Improvement plan. The Capital Improvement plan may be modified at any time by the Board of Directors and shall:
1. list the specific Capital Improvement projects that may be funded with System Development Charge revenue;
  2. provide the estimated cost of each Capital Improvement project,
  3. provide the estimated timing of each Capital Improvement project; and
  4. be updated at least once every 2 years.
- H. Any funds on deposit in System Development Charge accounts which are not immediately necessary for expenditure shall be invested by the District. All income derived from such investments shall be deposited in the System Development Charge trust accounts and used as provided herein.



I. System Development Charges shall be refunded in accordance with the following requirements:

1. An applicant or owner shall be eligible to apply for a refund if:
  - (a) The building permit or development permit has expired and the development authorized by such permit was not commenced; or
  - (b) The System Development Charge has not been expended or encumbered prior to the end of the fiscal year immediately following the tenth anniversary of the date upon which such charges were paid. For the purposes of this Section, System Development Charges collected shall be deemed to be expended or encumbered on the basis that the first System Development Charge in shall be the first System Development Charge out.
2. The application for refund shall be filed with the District and contain the following:
  - (a) The name and address of the applicant;
  - (b) The location of the property which was the subject of the System Development Charge;
  - (c) A notarized sworn statement that the petitioner is the then current owner of the property on behalf of which the System Development Charge was paid, including proof of ownership, such as a certified copy of the latest recorded deed;
  - (d) The date the System Development Charge was paid;
  - (e) A copy of the receipt of payment for the System Development Charges; and, if appropriate,
  - (f) The date the building permit or development permit was issued and the date of expiration.
3. The application shall be filed within ninety (90) days of the expiration of the building permit, development permit, or connection, or within ninety (90) days of the end of the fiscal year following the tenth anniversary of the date upon which the System Development Charge was paid. Failure to timely apply for a refund of the System Development Charge shall waive any right to a refund.
4. Within thirty (30) days from the date of receipt of a petition for refund, the District will advise the petitioner of the status of the request for refund, and if such request is valid, the System Development Charge shall be returned to the petitioner.

5. A building permit, development permit, or connection which is subsequently issued for a development on the same property which was the subject of a refund shall pay the Systems Development Charge required by Section 4.
- J. The District shall prepare an annual report accounting for System Development Charge, including the total amount of System Development Charge revenue collected in the accounts, and the Capital Improvement projects that were funded
- K. Any citizen or other interested person may challenge an expenditure of System Development Charge revenues.
  1. Such challenge shall be submitted, in writing, to the Executive Director for review within two years following the subject expenditure, and shall include the following information:
    - (a) The name and address of the citizen or other interested person challenging the expenditures;
    - (b) The amount of the expenditure, the project, payee or purpose, and the approximate date on which it was made; and
    - (c) The reason why the expenditure is being challenged.
  2. If the Executive Director determines that the expenditure was not made in accordance with the provisions of this ordinance and other relevant laws, a reimbursement of System Development Charge account revenues from other revenue sources shall be made within one year following the determination that the expenditures were not appropriate.
  3. The Executive Director shall make written notification of the results of the expenditure review to the citizen or other interested person who requested the review within ten (10) days of completion of the review.

### **Section 11 – Severability**

If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

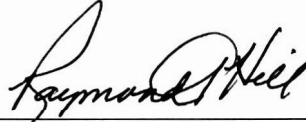
### **Section 12 - Implementing Regulations**

The Board of Directors may adopt regulations to implement the provisions of this ordinance.

**Section 13 - Effective Date; Emergency**

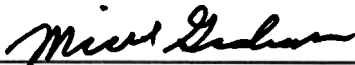
The charge authorized by this ordinance shall be imposed on building or development permit applications submitted on or after NOVEMBER 15, 1998; provided, however, that an application presented before that date, for which all necessary prior approvals have not been granted or other required predicates not met shall not be considered submitted for purposes of this section.

Adopted: NOVEMBER 13, 1998.



CHAIR

Attest:



Clerk