

# Council Business Meeting

March 5, 2019

<b>Agenda Item</b>	First Reading of an Ordinance Amending Ashland Municipal Code 4.20, Systems Development Charges	
<b>From</b>	Paula Brown, PE	Public Works Director
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## **SUMMARY**

Before the Council is an update to the Ashland Municipal Code (AMC) section 4.20 that establishes Systems Development Charges. As a part of the contract to review and revise the Wastewater and Transportation Systems Development Charges (SDCs), staff requested that the ordinance language be reviewed for consistency.

## **POLICIES, PLANS & GOALS SUPPORTED**

### **Promote effective citizen communication and engagement**

- 2.1 Engage community in conversation about core services, desired service levels and funding mechanisms.
- 2.2 Engage boards and commissions in supporting the strategic plan.

## **PREVIOUS COUNCIL ACTION**

Council has amended the Systems Development Charges ordinance twice; once in 1992 and again in 1997.

## **BACKGROUND AND ADDITIONAL INFORMATION**

Planning and public works staff requested that the Systems Development Charges ordinance be reviewed during the most recent revisions to the wastewater and transportation SDCs. Language was included in the request for proposals released in December 2017, and in the resulting contract with Galardi Consulting, LLC, who was hired on January 17, 2018.

The resulting ordinance recommendations are shown on attachment 1. Mostly the changes are to provide consistency with evolving clarifications to state law, update the language to for methodology determinations to include the specific reimbursement and improvement fees, provide specifics with regard to the development of a capital improvement plan (based on master plans or comparable planning effort), clarify notification requirements and clarify fund accounting practices. In addition, and at the request of the planning department, the section regarding collection of charge (new section 4.20.090) was updated to include an option to pay the SDC obligation over 10 years in semi-annual payments if the SDC obligation is over \$2,000.

## **FISCAL IMPACTS**

The only fiscal impacts are soft costs associated with staff time to update the AMC.

## **STAFF RECOMMENDATION**

Staff recommends Council approve first reading of the Ordinance and schedule a second reading.

## **ACTIONS, OPTIONS & POTENTIAL MOTIONS**

- I move to approve the first reading of an ordinance titled: An Ordinance Amending Section 4.20 of the Ashland Municipal Code: Systems Development Charges and move to second reading.
- Refer changes back to staff for clarification.
- Take no action.

## **REFERENCES & ATTACHMENTS**

Attachment 1: An Ordinance Amending Section 4.20 of the Ashland Municipal Code: Systems Development Charges

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**ORDINANCE NO. 3174**

**AN ORDINANCE AMENDING SECTION 4.20 OF THE ASHLAND  
MUNICIPAL CODE: SYSTEMS DEVELOPMENT CHARGES**

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **bold lined through** and additions are **bold underlined**.

**WHEREAS**, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

**WHEREAS**, the City desires to amend the systems development charges ordinance

**THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

**SECTION 1.** Chapter 4.20 is hereby amended to read as follows:

4.20.010 Definitions

The following words and phrases, as used in Chapter 4.20 of the Ashland Municipal Code, 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, buildings, courts, fields and other like facilities.

B. Development. As used in Sections 4.20.020 through 4.20.~~090~~180 means constructing or enlarging a building or adding facilities, or making a physical change in the use 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 Fee.** 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 223.297 through 223.314.~~

D. Qualified Public Improvements. A capital improvement that is:

1. required as a condition of development approval; and

1 2. is identified in the plan adopted pursuant to section ~~4.20.060.B. However, it does not include~~  
2 ~~improvements sized or established to meet only the demands created by a development.~~

3 4.20.080 and is either:

4 a. Not located on or contiguous to property this is the subject of development approval, or

5 b. Located on or contiguous to the property that is the subject of development approval  
6 and is required to be built larger or with greater capacity than is necessary for the  
7 particular development project to which the improvement fee is related.

8 E. Reimbursement Fee. A fee for costs associated with capital improvements constructed or  
9 under construction on the date the fee is adopted pursuant to Section 4.20.040.

10 F. Systems Development Charge. A reimbursement fee, a public improvement charge or a  
11 combination thereof assessed or collected at any of the times specified in Section ~~4.20.070~~  
12 4.20.070. It shall not include connection or hook-up fees for sanitary sewers, storm drains or  
13 water lines, since such fees are designed by the City only to reimburse the City for the costs for  
14 such connections. Nor shall the SDC include costs for capital improvements which by City  
15 policy and State statute are paid for by assessments or fees in lieu of assessments for projects of  
16 special benefit to a property (Ord. 2791 § 1, amended, 1997), or the cost of complying with  
17 requirements or conditions imposed by a land use decision.

18 4.20.020 Purpose

19 The purpose of the systems development charge (SDC) is to impose an equitable share of the  
20 public costs of capital improvements upon those developments that create the need for or  
21 increase the demands on capital improvements.

22 4.20.030 Scope

23 The systems development charge imposed by Chapter 4.20 is separate from and in addition to  
24 any applicable tax, assessment, charge, fee in lieu of assessment, or fee otherwise provided by  
25 law or imposed as a condition of development. A systems development charge is to be  
26 considered in the nature of a charge for service rendered or facilities made available, or a charge  
27 for future services to be rendered on facilities to be made available in the future.

28 4.20.040 Systems Development Charge Established

29 A. Unless otherwise exempted by the provisions of this Chapter or other local or state law, a  
30 systems development charge is hereby imposed upon all development within the City; and all  
development outside the boundary of the City that connects to or otherwise uses the sanitary  
sewer system, storm drainage system or water system of the City. The City Administrator is  
authorized to make interpretations of this Section, subject to appeal to the City Council.

B. Systems development charges for each type of capital improvement may be created through  
application of the methodologies described in Section 4.20.050 of this code. The amounts of  
each system development charge shall be adopted initially by Council resolution following a  
public hearing. Changes in the amounts shall also be adopted by resolution following a public  
hearing, except changes resulting solely from inflationary cost impacts. Inflationary cost impacts  
shall be measured and calculated annually by the City Administrator and charged accordingly.  
Such calculations will be based upon changes in the Engineering News Record Construction  
Index (ENR Index) for Seattle, Washington. (Ord. 2791 § 2, amended, 1997)

1 4.20.050 Methodology

2 A. The methodology used to establish a reimbursement fee shall consider the cost of then-  
3 existing facilities, prior contributions by then-existing users, gifts or grants from federal or  
4 state government or private persons, the value of unused capacity, rate-making principles  
5 employed to finance publicly owned capital improvements, and other relevant factors identified  
6 by the City Council. The methodology shall promote the objective that future systems users  
7 shall contribute an equitable share of the cost of then-existing facilities.

8 B. The methodology used to establish the ~~public improvement charge~~ improvement fee shall  
9 consider the cost of projected capital improvements identified in an improvement plan (see  
10 Subsection 4.20.080) that are needed to increase the capacity of the systems to which the fee is  
11 related, ~~and shall provide for a credit against the public improvement charge for the~~  
12 ~~construction of any qualified public improvement.~~

13 ~~C. The methodology shall also provide for a credit as authorized in Subsection 4.20.090.~~

14 ~~D. Except when authorized in the methodology adopted under Subsection 4.20.050.A, the~~  
15 ~~fees required by this Code which are assessed or collected as part of a local improvement~~  
16 ~~district or a charge in lieu of a local improvement district assessment, or the cost of~~  
17 ~~complying with requirements or conditions imposed by a land use decision are separate~~  
18 ~~from and in addition to the systems development charge and shall not be used as a credit~~  
19 ~~against such charge.~~

20 ~~CE. The methodologies used to establish the systems development charge shall be adopted by~~  
21 ~~resolution of the Council following a public hearing. The specific systems development charge~~  
22 ~~may be adopted and amended concurrent with the establishment or revision of the systems~~  
23 ~~development charge methodology. The City Administrator shall review the methodologies~~  
24 ~~established under this section every three (3) years, and shall recommend amendments, if~~  
25 ~~and as needed, to the Council for its action.~~

26 1. The City shall provide written notice to persons who have requested notice of any  
27 adoption or modification of SDC methodology at least 90 days before the hearing. If no one  
28 has requested notice, the City shall publish notice in a newspaper of general circulation in  
29 the City at least 90 days before the hearing.

30 2. The revised methodology shall be available to the public at least 60 days before the first  
public hearing of the adoption or amendment of the methodology.

D. A change in the amount of a reimbursement fee or an improvement fee is not a  
modification of the SDC methodology if the change is based on a change in project costs,  
including cost of materials, labor and real property, or on a provision for a periodic  
adjustment included in the methodology or adopted by separate ordinance or resolution,  
consistent with State law.

E. A change in the amount of an improvement fee is not a modification of the SDC  
methodology if the change is the result of a change in the Improvement Plan adopted in  
accord with Subsection 4.20.080.

F. The formulas and calculations used to compute specific systems development charges 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

1 actual impact of the development, alternative fee calculations may be approved or required by  
2 the City Administrator under administrative procedures prescribed by the City Council. All data  
3 submitted to support alternate calculations under this provision shall be site specific. Major or  
4 unique developments may require special analyses to determine alternatives to the standard  
methodology.

5 G. When an appeal is filed challenging the methodology adopted by the City Council, the City  
6 Administrator shall prepare a written report and recommendation within twenty (20) working  
7 days of receipt for presentation to the Council at its next regular meeting. The council shall by  
8 resolution, approve, modify or reject the report and recommendation of the City Administrator,  
9 or may adopt a revised methodology by resolution, if required. Any legal action contesting the  
City Council's decision in the appeal shall be filed within sixty (60) days of the Council's  
decision.

#### 10 4.20.060 Authorized Expenditures Compliance with State Law

11 A. ~~The revenues received from the systems development charges shall be budgeted and~~  
12 ~~expended as provided by state law. Such revenues and expenditures shall be accounted for~~  
13 ~~as required by state law. Their reporting shall be included in the City's Comprehensive~~  
14 ~~Annual Financial Report required by ORS Chapter 294.~~ Reimbursement Fees shall be spent  
on capital improvements associated with the systems for which the fees are assessed, including  
expenditures relating to repayment of indebtedness.

15 B. Improvement fees shall be spent only on capacity increasing improvements for which the  
16 fees are assessed, including repayment of indebtedness. An increase in system capacity  
17 occurs if a capital improvement increases the level of performance or service provided by  
18 existing facilities or provides new facilities. The portion of such improvements funded by  
improvement SDCs must be related to the need for increased capacity to provide service for  
future users. current or projected development.

19 C. Notwithstanding subsections (A) and (B) of this section, SDC revenues may be  
20 expended on the direct costs of complying with the provisions of this chapter, including the  
21 costs of developing SDC methodologies, system planning, providing an annual accounting  
22 of SDC expenditures and other costs directly related to or required for the administration  
and operation of this SDC program.

23 B. ~~The capital improvement plan required by state law as the basis for expending the~~  
24 ~~public improvement charge component of systems development charge revenues shall be~~  
25 ~~the Ashland Capital Improvements Plan (CIP) or public facility plan and the CIP of any~~  
26 ~~other governmental entity with which the City has a cooperative agreement for the~~  
27 ~~financing of commonly used public improvements by the collection of systems development~~  
28 ~~charges, provided the plan is based on methodologies conforming with State Law and is~~  
consistent with the City's CIP and the City's Comprehensive Plan. (Ord. 2791 § 3,  
amended, 1997)

#### 29 4.20.070 Expenditure Restrictions

30 A. SDCs 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, or for  
costs of the operation or routine maintenance of capital improvements.

1 **B. A capital improvement being funded wholly or in part from revenues derived from the**  
2 **improvement fee shall be included in the plan adopted by the city pursuant to section**  
3 **4.20.080 of this ordinance.**

4 **4.20.080 Improvement Plan**

5 **A. Prior to the establishment of a system development charge, the city council shall**  
6 **prepare a capital improvement plan, public facilities plan, master plan, or other**  
7 **comparable plan that includes:**

8 **1. A list of the capital improvements that the city council intends to fund, in whole or in**  
9 **part, with revenues from improvement fees;**

10 **2. The estimated cost and time of construction of each improvement and the percentage of**  
11 **that cost eligible to be funded with improvement fee revenue; and**

12 **3. A description of the process for modifying the plan.**

13 **B. In adopting a plan under Section 4.20.080(A) of this ordinance, the city council may**  
14 **incorporate by reference all or a portion of any capital improvement plan, public facilities**  
15 **plan, master plan, or other comparable plan that contains the information required by this**  
16 **section.**

17 **C. The city council may modify such plan and list, as described in Section 4.20.080(A) of**  
18 **this ordinance, at any time. If a system development charge will be increased by a**  
19 **proposed modification to the list to include a capacity increasing public improvement, the**  
20 **city council will:**

21 **1. At least thirty (30) days prior to the adoption of the proposed modification, provide**  
22 **written notice to persons who have requested notice pursuant to Section 4.20.120 of this**  
23 **ordinance;**

24 **2. Hold a public hearing if a written request for a hearing is received within seven (7) days**  
25 **of the date of the proposed modification.**

26 **D. A change in the amount of a reimbursement fee or an improvement fee is not a**  
27 **modification of the system development charge if the change in amount is based on:**

28 **1. A change in the cost of materials, labor, or real property applied to projects or project**  
29 **capacity as set forth on the list adopted pursuant to Section 4.20.080(A) of this ordinance;**

30 **2. The periodic application of one or more specific cost indexes or other periodic data**  
sources, including the cost index identified in Section 4.20.040 of this ordinance. A specific  
cost index or periodic data source must be:

a. **A relevant measurement of the average change in prices or costs over an**  
identified time period for materials, labor, real property, or a combination of the three;

b. **Published by a recognized organization or agency that produces the index or**  
data source for reasons that are independent of the system development charge  
methodology; and

c. **Incorporated as part of the established methodology or identified and adopted by**  
the city council in a separate resolution, or if no other index is identified in the established  
methodology, then the index stated in Section 4.20.040 of this ordinance.

1 4.20. ~~090070~~ Collection of Charge

2 A. The systems development charge is payable upon, and as a condition of, issuance or approval  
3 of:

4 1. A building ~~or plumbing~~ permit ~~for a development; or;~~

5 2. A development permit;

6 ~~3.2.~~ A permit for a development not requiring the issuance of a building permit; or

7 ~~4.3.~~ A permit or other authorization to connect to the water, sanitary sewer or storm drainage  
8 systems.

9 5. A right-of-way access permit

10 ~~6.4.~~ A planning action or change in occupancy (as defined in the Uniform Building Code) that  
11 will increase the demands on any public facility for which systems development charges are  
12 charged.

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

18 C. Any and all persons causing a development or making application for the needed permit, or  
19 otherwise responsible for the development, are jointly and severally obligated to pay the charge,  
20 and the City Administrator may collect the said charge from any of them. The City Administrator  
21 or his/her designee shall not issue any permit or allow connections described in Subsection  
22 4.20.~~090.A 070.A~~ until the charge has been paid in full or until an adequate secured arrangement  
23 for its payment has been made, within the limits prescribed by resolution of the City Council.

24 D. An owner of property obligated to pay a system development charge may apply to pay the  
25 charge in semi-annual installments over a period not exceeding ~~five-ten~~ years as provided in this  
26 section.

27 1 The minimum charge subject to payment by installments shall be \$1,200 \$2,000 and the  
28 maximum charge that may be subject to payment by installments shall not exceed  
29 \$200,000. The minimum semi-annual installment shall be ~~\$600~~ \$1000. Installments shall  
30 include interest on the unpaid balance at annual rate of 6% for a five-year installment loan or  
7% for a 10-year installment loan. A one-year installment loan shall not be subject to an  
annual interest rate provided all charges are paid prior to the City's issuance of the  
Certificate of Occupancy, time of sale, or within one year of when the charge was imposed,  
whichever comes first. equal to three percent per annum above the prime rate of interest quoted  
by the Wall Street Journal as of January 2 of the year in which the charge is imposed.

2. The installment application shall state that the applicant waives all irregularities or defects,  
jurisdictional or otherwise, in the proceedings to cause the system development charge.

3. The application shall also contain a statement, by lots or blocks, or other convenient  
description of the property meeting the requirements of ORS 93.600, subject to the charge.

1 4. A systems development charge subject to installment payments shall be chargeable as a lien  
2 upon the property subject to the charge. Pursuant to ORS 93.643(2)(c), the City recorder shall  
3 record notice of the installment payment contract with the Jackson County Clerk. The applicant  
4 shall pay the recording charges. (Ord. 2791 § 5, amended, 1997; Ord. 2670, amended, 1992)

4 4.20.~~100 080~~ Exemptions

5 The conditions under which all or part of the systems development charges imposed in Section  
6 4.20.040 may be waived are as follows:

7 A. ~~If the development occurred prior to July 1, 1991 the transportation, parks, and storm~~  
8 ~~drainage portions shall be assessed in full, and a credit shall be given for the amount of~~  
9 ~~water and wastewater charges previously paid, which shall be applied to the system~~  
10 ~~development charges owed hereunder. After July 1, 2001 this credit will expire in~~  
11 ~~accordance with state law. Structures and uses established and legally existing on or before~~  
12 ~~the effective date of this ordinance are exempt from a system development charge, except~~  
13 ~~water and sewer charges, to the extent of the structure or use then existing and to the~~  
14 ~~extent of the parcel of land as it is constituted on that date. Structures and uses affected by~~  
15 ~~this subsection shall pay the water or sewer charges pursuant to the terms of this ordinance~~  
16 ~~upon the receipt of a permit to connect to the water or sewer system.~~

17 B. Housing for low income or elderly persons which is exempt from real property taxes under  
18 state law. (Ord. 2791 § 7, amended, 1997)

15 4.20.~~105 085~~ Deferrals for Affordable Housing

16 A. The systems development charge for the development of qualified affordable housing under  
17 the City's affordable housing laws shall be deferred until the transfer of ownership to an  
18 ineligible buyer occurs. Deferred systems development charges shall be secured by a second  
19 mortgage acceptable to the City, bearing interest at not less than five percent per annum.  
20 Accrued interest and principal shall be due on sale to an ineligible buyer.

21 B. The systems development charge and second mortgage for the development of qualified  
22 affordable housing shall terminate ~~30 20~~ years after the issuance of a certificate of occupancy if  
23 the housing unit(s) have continued to meet the affordable housing requirements during the ~~30 20~~  
24 -year period. (Ord. 2791 § 8, amended, 1997; Ord. 2670, amended, 1992)

23 4.20.~~110 090~~ Credits

24 A. When development occurs that gives rise to a system development charge under Section  
25 4.20.040 of this Chapter, the system development charge for the existing use shall be calculated  
26 and if it is less than the system development charge for the proposed use, the difference between  
27 the system development charge for the existing use and the system development charge for the  
28 proposed use shall be the system development charge required under Section 4.20.040. If the  
29 change is use results in the systems development charge for the proposed use being less than the  
30 system development charge for the existing use, no system development charge shall be  
required; however, no refund or credit shall be given.

31 B. The limitations on the use of credits contained in this Subsection shall not apply when credits  
32 are otherwise given under Section 4.20.~~110 090~~. A credit shall be given for the cost of a  
33 qualified public improvement associated with a development. If a qualified public improvement  
is located partially on and partially off the parcel of land that is the subject of the approval, the

1 credit shall be given only for the cost of the portion of the improvement not attributable wholly  
2 to the development. The credit provided for by this Subsection shall be only for the **public**  
3 improvement **fee charge** charged for the type of improvement being constructed and shall not  
4 exceed the **public** improvement **fee charge** even if the cost of the capital improvement exceeds  
5 the applicable **public** improvement **fee charge**. Credits paid as a permit for development will  
6 expire five years after paid. The credit shall be apportioned equally among all single-family  
7 residential lots (where such credit was granted for subdivisions). Credits for other types of  
8 developments shall be allocated to building permits on a first-come, first served basis until the  
9 credit is depleted.

10 C. Applying the methodology adopted by resolution, the City Administrator or designee shall  
11 grant a credit against the **public** improvement **fee charge**, for a capital improvement constructed  
12 as part of the development that reduces the development's demand upon existing capital  
13 improvements or the need for future capital improvements or that would otherwise have to be  
14 provided at City expense under then existing Council policies.

15 D. Credits for additions to dedicated park land, or development of planned improvements on  
16 dedicated park land, shall only be granted by the City Administrator upon recommendation by  
17 the Park and Recreation Commission for land or park development projects identified in the  
18 Capital Improvement Plan, referred to in Section 4.20.~~070060~~.B.

19 E. In situations where the amount of credit exceeds the amount of the system development  
20 charge, the excess credit is not transferable to another development. It may be transferred to  
21 another phase of the original development.

22 F. Credit shall not be transferable from one type of capital improvement to another. (Ord. 2791 §  
23 9, amended, 1997)

#### 24 **4.20.120 Notification**

25 **A. The city shall maintain a list of persons who have made a written request for  
26 notification prior to adoption or modification of a methodology for any system  
27 development charge. Written notice shall be mailed to persons on the list as provide in  
28 sections 4.20.050 and 4.20.080. The failure of a person on the list to receive a notice that  
29 was mailed does not invalidate the action of the city.**

30 **B. The city may periodically delete names from the list, but at least thirty (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.**

#### 31 **4.20.130 Segregation and Use of Revenue**

32 **A. All SDC proceeds are to be segregated by accounting practices from all other funds of  
33 the City. SDC proceeds shall be used only for capital improvement of the type for which  
34 they were collected and authorized costs and overhead.**

35 **B. The City Administrator shall provide the City Council with an annual accounting, based  
36 on the City's fiscal year, for SDCs showing the total amount of SDC revenues collected for  
37 each type of facility and the projects funded from each account in the previous fiscal year.  
38 A list of the amounts spent on each project funded in whole or in part with SDC revenues  
39 shall be included in the annual accounting.**

1 **C . The monies deposited into each SDC account shall be used solely as allowed by this**  
2 **chapter and State law, including, but not limited to:**

3 **1. Design and construction plan preparation;**

4 **2. Permitting and fees;**

5 **3. Land, easements, and materials acquisition, including any cost of acquisition or**  
6 **condemnation, including financing, legal and other costs;**

7 **4. Construction of capital improvements;**

8 **5. Design and construction of new utility facilities required by the construction of capital**  
9 **improvements and structures;**

10 **6. Relocating utilities required by the construction of improvements;**

11 **7. Landscaping;**

12 **8. Construction management and inspection;**

13 **9. Surveys, soils, and materials testing;**

14 **10. Acquisition of capital equipment;**

15 **11. Repayment of monies transferred or borrowed from any budgetary fund of the City**  
16 **which were used to fund any of the capital improvements as herein provided; and**

17 **12. Payment of principal and interest, necessary reserves and cost of issuance under**  
18 **bonds or other indebtedness issued by the City to fund capital improvements.**

19 **4.20.140 Refunds**

20 **A. Refunds shall be given by the City Administrator upon finding that there was a clerical**  
21 **error in the calculation of a system development charge.**

22 **B. Refunds shall not be allowed for failure to timely claim a credit under Section 4.20.110**  
23 **of this ordinance, or for failure to seek an alternative system development charge rate**  
24 **calculation at the time of submission of an application for a building permit.**

25 **C. Refunds may be given on application of a permittee if the development did not occur**  
26 **and all permits for the development have been withdrawn.**

27 **4.20.150 ~~100~~ Appeal Procedures**

28 A. As used in this Section “working day” means a day when the general offices of the City are  
29 open to transact business with the public.

30 B. A person aggrieved by a decision required or permitted to be made by the City Administrator  
or designee under Sections 4.20.010 through 4.20.130 ~~090~~ or a person challenging the propriety  
of an expenditure of systems development charge revenues may appeal the decision or  
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 subsection D of this section.

C. An appeal of an expenditure must be filed within two years of the date of alleged improper  
expenditure. **An appeal petition challenging the adopted methodology shall be filed not later**

1 **than sixty (60) days from the date of the adoption of the methodology.** Appeals of any other  
2 decision must be filed within 10 working days of the date of the decision.

3 D. The appeal shall state:

- 4 1. The name and address of the appellant;
- 5 2. The nature of the determination being appealed;
- 6 3. The reason the determination is incorrect; and
- 7 4. What the correct determination should be.

8 An appellant who fails to file such a statement within the time permitted waives any objections,  
9 and the appeal shall be dismissed.

10 E. Unless the appellant and the City agree to a longer period, an appeal shall be heard within 30  
11 days of the receipt of the written appeal. At least 10 working days prior to the hearing, the City  
12 shall mail notice of the time and location thereof to the appellant.

13 F. The City Council shall hear and determine the appeal on the basis of the appellant's written  
14 statement and any additional evidence the appellant deems appropriate. At the hearing, the  
15 appellant may present testimony and oral argument personally or by counsel. The City may  
16 present written or oral testimony at this same hearing. The rules of evidence as used by courts of  
17 law do not apply.

18 G. The appellant shall carry the burden of proving that the determination being appealed is  
19 incorrect and what the correct determination should be.

20 H. The City Council shall render its decision within 15 days after the hearing date and the  
21 decision of the Council shall be final. The decision shall be in writing but written findings shall  
22 not be made or required unless the Council in its discretion, elects to make findings for  
23 precedential purposes.

24 Any legal action contesting the Council's decision on the appeal shall be filed within 60 days of  
25 the Council's decision. (Ord. 2791 § 10, amended, 1997)

#### 26 4.20.~~160~~ ~~110~~ Prohibited Connection

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

#### 4.20.~~170~~ ~~120~~ Enforcement - Violation

Any service connected to the City water, sewer or storm sewer system after the effective date of  
this chapter for which the fee due hereunder has not been paid as required or an adequate secured  
arrangement for its payment has been made, is subject to termination of service under the City's  
utility disconnect policy. In addition to any other remedy or penalty provided herein, any  
connection to the City water, sewer or storm system made without payment as specified in this  
Chapter shall be considered a Class I violation. (Ord. 3023, amended, 08/03/2010)

#### 4.20.~~180~~ ~~121~~ Classification of the Fee

1 System development charges as set forth in Chapter 4.20 of the Ashland Municipal Code are  
2 classified as not subject to the limits of Section 11b of Article XI of the Oregon Constitution  
(Ballot Measure No. 5) (Ord. 2791 § 11, amended, 1997)

3 **SECTION 2. Severability.** The sections, subsections, paragraphs and clauses of this ordinance  
4 are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the  
5 validity of the remaining sections, subsections, paragraphs and clauses.

6 **SECTION 3. Codification.** Provisions of this Ordinance shall be incorporated in the City Code,  
7 and the word “ordinance” may be changed to “code”, “article”, “section”, or another word, and  
8 the sections of this Ordinance may be renumbered or re-lettered, provided however, that any  
9 Whereas clauses and boilerplate provisions (*i.e.*, Sections [No(s.)] need not be codified, and the  
10 City Recorder is authorized to correct any cross-references and any typographical errors.

11 The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C)  
12 of the City Charter on the \_\_\_\_ day of \_\_\_\_\_, 2019, and duly PASSED and ADOPTED  
13 this \_\_\_\_ day of \_\_\_\_\_, 2019.

14 \_\_\_\_\_  
15 Melissa Huhtala, City Recorder

16 SIGNED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2019.

17 \_\_\_\_\_  
18 John Stromberg, Mayor

19 Reviewed as to form:

20 \_\_\_\_\_  
21 David H. Lohman, City Attorney