Council Business Meeting

March 19, 2019

Agenda Item	Second Reading of an Ordinance Amending Ashland Municipal Code 4.20, Systems Development Charges	
From	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 approved first reading of this ordinance on March 5, 2019 requesting a clarification to Section 4.20.**105** ~~**085**~~ Deferrals for Affordable Housing (see page 8 of the attached ordinance – copied below with the section highlighted in yellow).

> 4.20.**105** ~~**085**~~ Deferrals for Affordable Housing
>
> A. The systems development charge for the development of qualified affordable housing under the City's affordable housing laws shall be deferred until the transfer of ownership to an ineligible buyer occurs. Deferred systems development charges shall be secured by a second mortgage acceptable to the City, bearing interest at not less than five percent per annum. Accrued interest and principal shall be due on sale to an ineligible buyer.
>
> B. The systems development charge and second mortgage for the development of qualified affordable housing shall terminate **30** ~~**20**~~ years after the issuance of a certificate of occupancy if the housing unit(s) have continued to meet the affordable housing requirements during the **30** ~~**20**~~ -year period. (Ord. 2791 § 8, amended, 1997; Ord. 2670, amended, 1992)

The background on section 4.20.105 regarding the 5% SDC repayment is longstanding and goes back to a period (pre 2005) when the City would grant newly created affordable housing units a full SDC waiver for 20 years, but they would have the option to simply pay-off the SDCs (with 5% interest) and leave the program.

In 2006, the City passed Resolution 2006-13 which required affordable units be fully deed restricted with a Resale Restriction Covenants and Promissory note that obligates affordable units using the SDC deferral (waiver) to remain affordable for 30 years, with no buy-out option. As such the City can ensure each transfer of an affordable housing unit is only to another affordable housing program qualified eligible buyer. Going forward this resolution largely resolved the issue of transfers to ineligible buyers which that section in 4.20.105 addresses.

CITY OF ASHLAND

However, there could be a case where an old (pre 2005) affordable unit was still within their 20 year term of affordability were to wish to payback the SDCs and leave the program under the requirements that were in place when they purchased the unit (per Resolution 1993-39), or alternatively a bank owned (foreclosed) property wishing to remove the lien could seek a judgement to allow payoff of the debt to remove affordability requirements. In such cases, the City would still want to collect the annual 5% interest accrual for the SDC payback as was part of the original code.

Going forward this provision will not be used for affordable housing units transferred to affordable households, as they will not be obligated to pay back any of the deferred SDCs: the housing units will be affordable for the full 30 years and the SDCs will be forgiven.

Council had previously amended the Systems Development Charges ordinance; 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 associated staff time to update the AMC.

STAFF RECOMMENDATION

Staff recommends Council approve second reading of the Ordinance.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

- I move to approve the second 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.

ATTACHMENTS

Attachment 1: An Ordinance Amending Section 4.20 of the Ashland Municipal Code: Systems Development Charges
Attachment 2: Resolution 2006-13, A Resolution Amending Resolution 2005-46
Attachment 3: Resolution 1993-39, A Resolution Establishing Affordable Housing Income Levels…

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

2. is identified in the plan adopted pursuant to section ~~**4.20.060.B. However, it does not include improvements sized or established to meet only the demands created by a development.**~~ **4.20.080 and is either:**

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

b. Located 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 to which the improvement fee is related.

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

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 Section ~~**4.20.070**~~ **4.20.070**. It shall not include connection or hook-up fees for sanitary sewers, storm drains or water lines, since such fees are designed by the City only to reimburse the City for the costs for such connections. Nor shall the 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 (Ord. 2791 § 1, amended, 1997), **or the cost of complying with requirements or conditions imposed by a land use decision**.

4.20.020 Purpose

The purpose of the systems development charge (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.

4.20.030 Scope

The systems development charge imposed by Chapter 4.20 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.

4.20.040 Systems Development Charge Established

A. Unless otherwise exempted by the provisions of this Chapter or other local or state law, a 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)

4.20.050 Methodology

A. The methodology used to establish a reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, **gifts or grants from federal or state government or private persons,** the value of unused capacity, rate-making principles 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 an equitable share of the cost of then-existing facilities.

B. The methodology used to establish the ~~**public improvement charge**~~ **improvement fee** shall consider the cost of projected capital improvements **identified in an improvement plan (see Subsection 4.20.080) that are** 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.**~~

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

~~**D. Except when authorized in the methodology adopted under Subsection 4.20.050.A, the fees required by this Code 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.**~~

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

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

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

G. When an appeal is filed challenging the methodology adopted by the City Council, the City Administrator shall prepare a written report and recommendation within twenty (20) working days of receipt for presentation to the Council at its next regular meeting. The council shall by resolution, approve, modify or reject the report and recommendation of the City Administrator, 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.

4.20.060 **Authorized Expenditures** ~~**Compliance with State Law**~~

A. ~~**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.**~~ 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**.

B. Improvement fees shall be spent only on capacity increasing improvements **for which the fees are assessed, including repayment of indebtedness. 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 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.**~~

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

~~**B. The capital improvement plan required by state law as the basis for expending the public improvement charge component of systems development charge revenues shall be the Ashland Capital Improvements Plan (CIP) or public facility plan and the CIP of any other governmental entity with which the City has a cooperative agreement for the financing of commonly used public improvements by the collection of systems development 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)**~~

4.20.070 Expenditure Restrictions

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.

B. 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 4.20.080 of this ordinance.

4.20.080 Improvement Plan

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

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

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

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

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

C. The city council may modify such plan and list, as described in Section 4.20.080(A) of this ordinance, at any time. If a system development charge will be increased by a

proposed modification to the list to include a capacity increasing public improvement, the city council will:

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

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

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

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

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.

4.20. **090~~070~~** Collection of Charge

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

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

2. **A development permit;**

3.~~2.~~ A permit for a development not requiring the issuance of a building permit; or

4.~~3.~~ A permit or other authorization to connect to the water, sanitary sewer or storm drainage systems.

5. A right-of-way access permit

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

B. 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 Administrator.

C. Any and all persons causing a 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 Administrator may collect the said charge from any of them. The City Administrator or his/her designee shall not issue any permit or allow connections described in Subsection 4.20.**090.A** ~~**070.A**~~ 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.

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

1 The minimum charge subject to payment by installments shall be $~~1,200~~ **$2,000** and the **maximum charge that may be subject to payment by installments shall not exceed $200,000. The** minimum semi-annual installment shall be ~~$600~~ $**1000**. Installments shall 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.

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

4.20.**100** ~~**080**~~ Exemptions
The conditions under which all or part of the systems development charges imposed in Section 4.20.040 may be waived are as follows:

A. ~~If the development occurred prior to July 1, 1991 the transportation, parks, and storm drainage portions shall be assessed in full, and a credit shall be given for the amount of water and wastewater charges previously paid, which shall be applied to the system development charges owed hereunder. After July 1, 2001 this credit will expire in accordance with state law.~~ **Structures and uses established and legally existing on or 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.**

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

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

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

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

4.20.**110** ~~090~~ Credits

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

B. The limitations on the use of credits contained in this Subsection shall not apply when credits are otherwise given under Section 4.20.**110** ~~090~~. A credit shall be given for the cost of a 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 credit shall be given only for the cost of the portion of the improvement not attributable wholly to the development. The credit provided for by this Subsection shall be only for the ~~public~~ improvement **fee** ~~charge~~ charged for the type of improvement being constructed and shall not exceed the ~~public~~ improvement **fee** ~~charge~~ even if the cost of the capital improvement exceeds

the applicable ~~**public**~~ improvement **fee** ~~**charge**~~. Credits paid as a permit for development will expire five years after paid. The credit shall be apportioned equally among all single-family residential lots (where such credit was granted for subdivisions). Credits for other types of developments shall be allocated to building permits on a first-come, first served basis until the credit is depleted.

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

D. Credits for additions to dedicated park land, or development of planned improvements on dedicated park land, shall only be granted by the City Administrator upon recommendation by the Park and Recreation Commission for land or park development projects identified in the Capital Improvement Plan, referred to in Section 4.20.**070**~~**060**~~.B.

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

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

4.20.120 Notification

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

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.

4.20.130 Segregation and Use of Revenue

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

B. The City Administrator shall provide the City Council with an annual accounting, based on the City's fiscal year, for SDCs showing the total amount of SDC revenues collected for each type of facility and the projects funded from each account in the previous fiscal year.

A list of the amounts spent on each project funded in whole or in part with SDC revenues shall be included in the annual accounting.

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

1. Design and construction plan preparation;

2. Permitting and fees;

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

4. Construction of capital improvements;

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

6. Relocating utilities required by the construction of improvements;

7. Landscaping;

8. Construction management and inspection;

9. Surveys, soils, and materials testing;

10. Acquisition of capital equipment;

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

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

4.20.140 Refunds

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

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

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

4.20.**150** ~~**100**~~ Appeal Procedures

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

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

D. The appeal shall state:

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

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

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

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

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

H. 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. (Ord. 2791 § 10, amended, 1997)

4.20.**160** ~~**110**~~ Prohibited Connection
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 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
System development charges as set forth in Chapter 4.20 of the Ashland Municipal Code are 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)

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

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

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the 5th day of March, 2019, and duly PASSED and ADOPTED this ____ day of _____, 2019.

_____
Melissa Huhtala, City Recorder

SIGNED and APPROVED this ___ day of _____, 2019.

_____
John Stromberg, Mayor

Reviewed as to form:

_____
David H. Lohman, City Attorney

RESOLUTION NO. 2006- 13

A RESOLUTION AMENDING AND RESOLUTION 2005-46

RECITALS:

A. WHEREAS, in 1993, the City of Ashland passed Resolution no. 1993-39 which established affordable housing income levels and rental and purchased cost levels.

B. WHEREAS, in 2005, the City of Ashland passed Resolution 2005-46 which required provisions for homeowner and maintenance fees to be included in the affordability calculations for its affordable housing program.

C. WHEREAS, neither resolution contained provisions establishing rent levels or purchase price levels for households earning 60%, 80% 100% or 120% of the area median income (AMI).

D. WHEREAS, neither resolution required Principal, Interest, Taxes and Insurance (PITI) to be included in the maximum housing costs of eligible households in the affordability calculations for the purchasing part of its affordable housing program.

E. WHEREAS both resolutions used "not-to-exceed purchase price" as a qualifying criterion for purchasing housing units, which criterion requires annual revision, and the current resolution seeks to replace the "not-to-exceed purchase price" with a "percent of household income" criterion which does not require annual revision.

F. WHEREAS, the City considers that a range of qualifying incomes maximizes the potential for success of its affordable housing program.

G. WHEREAS, the City desires that PITI be included in the affordability calculations for the various income levels of qualified households and that the "percent of household income" criterion be used in place of the "not-to-exceed purchase price" criterion.

NOW THEREFORE, THE CITY OF ASHLAND RESOLVES AS FOLLOWS:

Resolutions 1993-39 and 2005-46 are hereby amended in their entirety as follows:

SECTION 1. GENERAL ELIGIBILITY – RENTAL AND PURCHASED HOUSING

1.1 All qualifying ownership or rental units required to be affordable through density bonuses, annexation, zone change, condominium conversion, or other land use approval under the Ashland Land Use Ordinance (ALUO) shall not be eligible to receive a waiver of the Community Development and Engineering Services fees associated with the development of said affordable units unless a waiver is approved by the Ashland City Council.

1.2 All qualifying ownership or rental units required to be affordable through density bonuses, annexation, zone change, condominium conversion, or other land use approval under the ALUO shall be eligible to receive a deferral of the System Development Charges associated with the development of said affordable units.

1.3 All qualifying ownership or rental units voluntarily provided as affordable to low income households, consistent with section 1.1 and 1.2, above, shall be eligible for a System Development Charge, Engineering Service, and Community Development Fee deferral or waiver without obtaining approval from the Ashland City Council.

1.4 Affordable Housing Units covered under this Resolution can only be sold or rented to occupant households from the same income category as the original purchasers or renters for a period of not less than 30 years, or as required through the condition of approval for a unit required to be affordable through a land use approval.

1.5 System Development Charges, Engineering Services, and Community Development Fees may be deferred or waived when units are sold or rented to low-income persons. For purposes of this subsection, "low-income persons" means:

a. With regard to rental housing, persons with an income at or below 60 percent of the area median income as determined by the State Housing Council based on information from the United States Department of Housing and Urban Development; and

b. With regard to home ownership housing and lease to purchase home ownership housing, persons with an income at or below 80 percent of the area median income as determined by the State Housing Council based on information from the United States Department of Housing and Urban Development.

2. RENTAL HOUSING -. Units designated for affordable rental housing in developments which have qualified for density bonuses, annexation, zone change, condominium conversion , or other land use approval under the ALUO shall be rented to individuals or households whose annual income is consistent with the target income identified in the planning approval. Incomes shall be qualified at the 60% or 80% median income levels for households in the Medford-Ashland Metropolitan Statistical Area (MSA). This figure shall be known as the "qualifying household income" and shall be determined by the City's Department of Community Development in May of each year from the annual family incomes published by the U.S. Department of Housing and Urban Development (HUD) for the Medford-Ashland Metropolitan Service Area (MSA).

2.1 **Area Median Income – 80%.** The rent charged for such affordable rental housing benefiting households earning 80% Area Median Income or greater, including any home-owners association or maintenance fees, shall not exceed 23% of the qualifying monthly income (qualifying family income divided by twelve) as provided in the following formulas:

Studio Apartment	23% of the average of 1 & 2 person qualifying monthly incomes
1 Bedroom	23% of the average of 2 & 3 person qualifying monthly incomes
2 Bedroom	23% of the average of 3, 4, & 5 person qualifying monthly incomes
3 Bedroom	23% of the average of 4, 5, 6, & 7 person qualifying monthly incomes
4 Bedroom	23% of the average of 5, 6, 7, & 8 person qualifying monthly incomes

The City's Department of Community Development shall maintain a table of maximum rent levels permitted under these formulas and shall annually update the table in May of each year.

2.2 **Area Median Income – 60% *or* lower.** The rent charged for such affordable rental housing benefiting households earning 60% Area Median Income or less, including any home-owners association or maintenance fees, shall comply with the maximum rents established by the State of Oregon HOME Program based on the target income qualification as adjusted annually by the Department of Housing and Urban Development for the Medford-Ashland Metropolitan Service Area. The HOME program indexed allowable rents are adjusted annually by the State of Oregon Housing and Community Services Department (OHCS).

2.3. **Owner's Obligation.** The owner of the affordable rental housing shall sign a 30-year agreement, or longer depending on the period of affordability established through the ALUO, with the City of Ashland that guarantees these rent levels will not be exceeded and that the owner will rent only to households meeting the income limits. The agreement shall bind subsequent owners who purchase the rental housing during the established period of affordability. The agreement shall also require the owner to allow the unit to be rented to HUD Section 8 qualified applicants and agree to accept rent vouchers for all of the affordable units when applicable. The City shall file the agreement for recordation in the County Clerk deed records, Jackson County, Oregon.

2.3.1. **Certification of qualifying occupants.** The owner of record, or the designated agent of the record, owner, shall annually file with the City of Ashland a signed certificate stating the occupants of the record owner's rental housing units continue to be qualified households, or are a household that qualified at its initial occupancy, within the meaning of this Resolution, and any amendment made to it. The City of Ashland shall provide the record owner or the record owner's agent with access to a form to complete and sign to comply with this provision.

3. PURCHASED HOUSES - QUALIFYING. Units designated for affordable housing available for purchase in developments which have qualified for density

bonuses annexation, zone change, condominium conversion , or other land use approval under the ALUO must satisfy two criteria.

1. They shall only be sold to occupant households whose:

   a. Annual income is consistent with the target income identified in the planning approval for the development. Incomes shall be qualified at the applicable 60%, 80%, 100% or 120% median income levels for households based on number of people per household as adjusted annually by the Department of Housing and Urban Development for the Medford-Ashland Metropolitan Service Area.

      i. The maximum monthly payment for a covered unit shall be established to not exceed the affordability limits, established above, indicated in following table:

      Studio = 1 person household income for the designated income level
      1 Bedroom = 2 person household income for the designated income level
      2 Bedroom = 4 person household income for the designated income level
      3 Bedroom = 6 person household income for the designated income level
      4 Bedroom = 7 person household income for the designated income level
      Households with a greater or lesser number of occupants shall remain eligible for covered units but the sale price shall not be adjusted due to household size above the limits established above.

   b. Net assets, excluding pension plans and IRA's and excluding the down payment and closing costs, do not exceed $20,000 for a household or $130,000 if one household member is 65 years or older.

   c. Mortgage payment does not exceed more than 30% of the monthly income for the target income level indicated in 3.1(a)(i) on total housing costs which includes PITI and any homeowners or regular maintenance fees.

   d. The maximum monthly payment for a covered unit shall be calculated by utilizing the interest rate for the Oregon Bond Loan RateAdvantage as updated by the State of Oregon Housing and Community Services Department.

2. They shall remain affordable as follows:

   a. The purchasers of the affordable housing units shall agree to the City of Ashland Affordable Housing Resale Restriction Agreement establishing a period of affordability of not less than 30 years. In no event will a purchaser be required to sell the unit subject to the aforementioned

Agreement for less than his or her original purchase price, plus any applicable closing costs and realtor fees.

b. For housing financed by Farmer's Home Administration (FmHA), the affordability shall be assured by the FmHA's recapture provisions FmHA which require sellers to repay FmHA for all the subsidies accrued during the period the sellers resided in the housing unit.

SECTION 2. EFFECTIVE DATE. This Resolution takes effect upon signing by the Mayor.

This resolution was read by title only in accordance with Ashland Municipal Code §2.04.090 duly PASSED and ADOPTED this 21 day of June, 2006.

Barbara Christensen, City Recorder

SIGNED and APPROVED this 21 day of June, 2006.

Alex Amarotico, Council Chair

Review as to form:

Michael W. Franell, City Attorney

RESOLUTION NO. 93-39

A RESOLUTION ESTABLISHING AFFORDABLE HOUSING INCOME LEVELS AND RENTAL AND PURCHASED COST LEVELS AND REPEALING RESOLUTION 91-32

RECITALS:

A. The City of Ashland desires to provide affordable housing for its citizens; and

B. The Land Use Ordinance has been amended to provide density bonuses for providing affordable housing; and

C. The Land Use Ordinance requires the City Council to adopt a resolution to establish affordability standards to implement the affordable housing density bonuses.

The Mayor and City Council of the City of Ashland, Oregon resolve as follows:

1. RENTAL HOUSING. Units designated for affordable rental housing in developments which have qualified for density bonuses under the City's Land Use Ordinance (LUO) shall be rented to individuals or families whose annual income does not exceed 80% of the median income for families in the Medford-Ashland Metropolitan Statistical Area (MSA). This figure shall be known as the "qualifying family income" and shall be determined by the City's Department of Community Development in May of each year from the annual family incomes published by the U.S. Department of Housing and Urban Development (HUD).

The rent charged for such affordable rental housing shall not exceed 23% of the qualifying monthly income (qualifying family income divided by twelve) as provided in the following formulas:

Studio Apartment	**23% of the average of 1 & 2 person qualifying monthly incomes**
1 Bedroom	**23% of the average of 2 & 3 person qualifying monthly incomes**
2 Bedroom	**23% of the average of 3,4, & 5 person qualifying monthly incomes**
3 Bedroom	**23% of the average of 4,5,6, & 7 person qualifying monthly incomes**
4 Bedroom	**23% of the average of 5,6,7, & 8 person qualifying monthly incomes**

The City's Department of Community Development shall maintain a table of maximum rent levels permitted under these formulas and shall annually update the table in May of each year.

The owner of the affordable rental housing shall sign a 20-year agreement with the City of Ashland that guarantees these rent levels will not be exceeded and that the owner will rent only to families meeting the income limits. The agreement shall bind subsequent owners who purchase the rental housing during the 20-year period. The

agreement shall also require the owner to rent to HUD Section 8 qualified applicants and agree to accept rent vouchers for all of the affordable units where applicable.

2. PURCHASED HOUSING. Units designated for affordable housing available for purchase in developments which have qualified for density bonuses under LUO, shall

2.1. Only be sold to individuals or families whose:

2.1.1. Annual income does not exceed 130% of the median income for families in the MSA.

2.1.2. Net assets, excluding pension plans and IRA's and excluding the down payment (to a maximum of 20 percent of the purchase price) and closing costs, do not exceed $20,000 for a family or $130,000 if one family member is 65 years or older.

2.2. Have a purchase price not exceeding the following amounts:

Type of Unit	Purchase Price (revised annually)
Studio	**$75,985**
1 Bedroom	**$86,718**
2 Bedroom	**$97,665**
3 Bedroom	**$108,396**
4 Bedroom	**$117,028**

The purchase price shall be annually revised in May of each year by the City's Department of Community Development. The annual revision shall be calculated by multiplying the current purchase price by the annual percentage change in median family income as published by HUD for the MSA.

2.3. Be assured to remain affordable as follows:

2.3.1. *FARMER'S HOME ADMINISTRATION (FmHA)* - For housing financed by the FmHA, affordability will be assured by the recapture provisions required by FmHA which requires sellers' to repay FmHA for all the subsidies accrued during the period that they resided in the housing.

In addition, FmHA financed housing shall be subject to a covenant that for the first five years after the initial purchase, resale can only be to individuals from the same income category as the original purchasers.

2.3.2. *ALL OTHER DEVELOPMENTS* - For all other developments obtaining density bonuses for the provision of affordable housing, affordability will be assured by requiring that the purchasers of the affordable housing units

agree to the **City of Ashland Affordable Housing Resale Restriction Agreement** prior to the issuance of building permits for the units.

3. **REPEAL OF RESOLUTION 91-32.** Resolution 91-32 is repealed.

The foregoing resolution was READ and DULY ADOPTED at the regular meeting of the Ashland City Council on the 19th day of October, 1993.

Russell E. Chadick, Jr.
Acting City Recorder

SIGNED and APPROVED this 20th day of October, 1993.

Catherine M. Golden
Mayor

Approved as to form:

Paul Nolte
City Attorney

City of Ashland
Affordable Housing
Income and Rental Cost Levels
October 19, 1993

Qualifying Incomes for RENTAL HOUSING (as of May 5, 1993)

Family Size	Annual Income Level (80% of median income)
1	$19,700
2	$22,550
3	$25,350
4	$28,150
5	$30,400
6	$32,650
7	$34,900
8	$37,150

RENTS for affordable units shall not exceed the following:

Apartment Type	Maximum Rent Level
Studio	$405/month
1 Bedroom	$459/month
2 Bedroom	$536/month
3 Bedroom	$604/month
4 Bedroom	$647/month