

# Council Business Meeting

November 1, 2022

<b>Agenda Item</b>	First Reading of Ordinance 3214 regarding System Development Charges and amending Ashland Municipal Code section 4.20	
<b>From</b>	Scott Fleury PE	Public Works Director
<b>Contact</b>	<a href="mailto:Scott.fleury@ashland.or.us">Scott.fleury@ashland.or.us</a>	

## **SUMMARY**

Before the Council is an Ordinance update for the current System Development Charges (SDC) municipal code, section 4.20. The ordinance update stems from recommendations made by the SDC Ad-Hoc Committee appointed by the Mayor and approved by Council.

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

City Council Goals:

Essential Services

- Drinking Water System
- Stormwater

Value Services

- Economic Development
- Housing Needs

Department Goals:

- Maintain existing infrastructure to meet regulatory requirements and minimize life-cycle costs
- Deliver timely life cycle capital improvement projects
- Maintain and improve infrastructure that enhances the economic vitality of the community
- Evaluate all city infrastructure regarding planning management and financial resources

## **PREVIOUS COUNCIL ACTION**

- January 5, 2021, Council Business Meeting award of professional services contract to update SDC Methodology for the Water and Storm Drain enterprises ([Staff Report](#)).
- April 6, 2021, Council Business Meeting, approval of the Ad-Hoc SDC Committee ([Staff Report](#)).
- May 3, 2021, Council Study Session, presentational overview of SDCs ([Staff Report](#)).
- May 2, 2022, Council Study Session presentation of SDC Committees recommendations and outcomes of process ([Staff Report](#)).

## **BACKGROUND AND ADDITIONAL INFORMATION**

The recently adopted Water, Storm Drain and TAP Master Plans include Capital Improvement projects (CIP) that differ from the existing and previously developed CIPs, which were used to establish current SDC rate structures (*water 2016, storm water 2002*).

Updates to SDCs are important as they ensure the appropriate fee capture of new development impacts to the City’s infrastructure systems. SDC fees are only used for project costs associated with infrastructure capacity enhancements. Defined capital improvements in the master plans vary in SDC capacity charge ability from 0% to 100% SDC “eligible”. In order to update the SDCs based on new project lists, the Council authorized a professional services contract with Galardi Rothstein to update the Water and Storm Drain System Development Charges. When evaluating SDC updates a must be established by the Mayor as required of Resolution 2001-17.

**Committee Charge:** The committee shall review the method of computing the system development charges and recommend such changes as it deems necessary to the City Council.

**Mayoral appointments to the SDC Committee:**

- Homebuilders: Robert Kendrick and Gil Livni
- Public at large: George Kramer and Steve Russo
- Chamber of Commerce: Gary Blake
- Planning Commission or Budget Committee: David Runkel

**SDC Committee Ex-Officio Members**

- City Council representative: Shaun Moran
- City Staff Community Development Director or designee
- Public Works Director or designee

After approval of the SDC Committee members, Galardi Rothstein and City staff met with the Committee four times to discuss and develop updated SDC methodologies for the water and storm drain enterprise funds. A primary focus of the SDC Committee was to incentivize multifamily development and moderate SDC charge increases.

**SDC Update Process:**

The Water and Storm Drain SDC Update is broken into these major tasks:

1. Cost & Capacity Basis
2. Development of Unit Costs and SDC Schedules
  - a. Nonresidential and Residential SDC Structures
3. Methodology Report
4. SDC Code Review

**Code Review**

It is common practice to structure SDCs in such a way that furthers a local jurisdiction’s broader objectives related to housing affordability, economic development, and other policies. The Committee spent a significant amount of time discussing the current Ashland Municipal Code (AMC) section relating to SDCs.

The primary discussion revolved around the collection of charge section of the code. The Committee discussed improvements to the timing of when the SDCs would be collected and associated installment payment options.

The current code allows for deferrals for the development of qualified affordable housing under the City’s affordable housing laws and remains in place until the transfer of ownership to an ineligible buyer occurs. This is essentially a SDC fee waiver for affordable housing for the life of the project as long as it meets the eligibility requirements.

The Committee supports the affordable housing deferral process and was focused on recommending improvements that support multifamily housing, not just developments that meet the affordable housing requirements. The Committee discussed options for code updates that change the collection of charge timing

components and installment payment requirements. The SDCs for large multifamily developments can represent a significant upfront cost and the current code requires the SDCs to be paid upon:

1. A building permit;
2. A development permit;
3. A permit for a development not requiring the issuance of a building permit;
4. A permit or other authorization to connect to the water, sanitary sewer or storm drainage systems;
5. A right-of-way access permit; or
6. 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.

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

1. The minimum charge subject to payment by installments shall be \$2,000.00 and the **maximum charge that may be subject to payment by installments shall not exceed \$200,000.00**. The minimum semi-annual installment shall be \$1,000.00. Installments shall include interest on the unpaid balance at an annual rate of six percent (6%) for a five-year installment loan or seven percent (7%) for a ten-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.

In order to be more commensurate with revenues generated from multifamily developments, the Committee wanted to defer the collection of SDCs until an actual certificate of occupancy was issued by the Building Division on "for sale properties" and for two years from the certificate of occupancy for rental properties. The Committee recommended to update the installment payment section to increase the payback period from 10 to 30 years, tie the interest rate to an established rate, and also eliminate the maximum amount of \$200,000 defined in the code. In research performed by Galardi and staff, no other jurisdictions support a 30-year payback, but there are many that support a 20-year payback with no maximum cap.

**Motion by Kramer: Multifamily SDCs should be deferred until time of occupancy, and furthermore recommended to Council that they adopt a policy to defer SDC payments for multifamily rentals subject to the above parameters and start two years past date of occupancy, 2<sup>nd</sup> by Kendrick.**

**The motion was amended to include removal of the current maximum collection of charge cap of \$200,000.**

**Motion approved unanimously.**

The recommendations are encompassed in the attached ordinance update under Council review as part of this first reading.

### **FISCAL IMPACTS**

The ordinance change will impact the timing associated with collection of SDCs in association with multifamily housing. There will also be staff impacts with respect to processing the SDC deferrals and installment payment agreements that could be utilized by developers.

### **STAFF RECOMMENDATION**

Staff recommends approval of the ordinance modifications as developed with the SDC Ad-Hoc Committee

**ACTIONS, OPTIONS & POTENTIAL MOTIONS**

I Move to approve first reading of Ordinance Number 3214 and advance it to second reading for enactment.

**REFERENCES & ATTACHMENTS**

Attachment #1: Ordinance #3214



1 5. Parks and recreation, including but not limited to mini-neighborhood parks, neighborhood  
2 parks, community parks, public open space and trail systems, buildings, courts, fields and other  
3 like facilities.

4 B. Development. As used in Sections 4.20.020 through 4.20.180 means constructing or  
5 enlarging a building or adding facilities, or making a physical change in the use of a structure or  
6 land, which increases the usage of any capital improvements or which will contribute to the need  
7 for additional or enlarged capital improvements.

8 C. Improvement Fee. A fee for costs associated with capital improvements to be constructed  
9 after the effective date of this ordinance.

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

11 1. required as a condition of development approval; and

12 2. is identified in the plan adopted pursuant to section

13 4.20.080 and is either:

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

15 b. Located on or contiguous to the property that is the subject of development approval and is

16 required to be built larger or with greater capacity than is necessary for the particular

17 development project to which the improvement fee is related.

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

20 F. Systems Development Charge. A reimbursement fee, a public improvement charge or a  
21 combination thereof assessed or collected at any of the times specified in Section 4.20.070. It

22 shall not include connection or hook-up fees for sanitary sewers, storm drains or water lines,

23 since such fees are designed by the City only to reimburse the City for the costs for such

24 connections. Nor shall the SDC include costs for capital improvements which by City policy and

25 State statute are paid for by assessments or fees in lieu of assessments for projects of special

26 benefit to a property (Ord. 2791 § 1, amended, 1997), or the cost of complying with requirements

27 or conditions imposed by a land use decision.

28 4.20.020 Purpose

29 The purpose of the systems development charge (SDC) is to impose an equitable share of the

30 public costs of capital improvements upon those developments that create the need for or

increase the demands on capital improvements.

1  
2 4.20.030 Scope

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

8  
9 4.20.040 Systems Development Charge Established

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

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

23  
24 4.20.050 Methodology

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

1 B. The methodology used to establish the improvement fee shall consider the cost of projected  
2 capital improvements identified in an improvement plan (see Subsection 4.20.080) that are  
3 needed to increase the capacity of the systems to which the fee is related.

4 C. The methodologies used to establish the systems development charge shall be adopted by  
5 resolution of the Council following a public hearing.

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

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

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

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

19 F. The formulas and calculations used to compute specific systems development charges are  
20 based upon averages and typical conditions. Whenever the impact of individual developments  
21 present special or unique situations such that the calculated fee is grossly disproportionate to the  
22 actual impact of the development, alternative fee calculations may be approved or required by  
23 the City Manager under administrative procedures prescribed by the City Council. All data  
24 submitted to support alternate calculations under this provision shall be site specific. Major or  
25 unique developments may require special analyses to determine alternatives to the standard  
26 methodology.

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

1 may adopt a revised methodology by resolution, if required. Any legal action contesting the City  
2 Council's decision in the appeal shall be filed within sixty (60) days of the Council's decision.

3  
4 4.20.060 Authorized Expenditures

5 A. Reimbursement Fees shall be spent on capital improvements associated with the systems for  
6 which the fees are assessed, including expenditures relating to repayment of indebtedness.

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

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

17  
18 4.20.070 Expenditure Restrictions

19 A. SDCs shall not be expended for costs associated with the construction of administrative  
20 office facilities that are more than an incidental part of other capital improvements, or for costs  
21 of the operation or routine maintenance of capital improvements.

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

25  
26 4.20.080 Improvement Plan

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

- 1 1. A list of the capital improvements that the city council intends to fund, in whole or in part,  
2 with revenues from improvement fees;
  - 3 2. The estimated cost and time of construction of each improvement and the percentage of that  
4 cost eligible to be funded with improvement fee revenue; and
  - 5 3. A description of the process for modifying the plan.
- 6 B. In adopting a plan under Section 4.20.080(A) of this ordinance, the city council may  
7 incorporate by reference all or a portion of any capital improvement plan, public facilities plan,  
8 master plan, or other comparable plan that contains the information required by this section.
- 9 C. The city council may modify such plan and list, as described in Section 4.20.080(A) of this  
10 ordinance, at any time. If a system development charge will be increased by a proposed  
11 modification to the list to include a capacity increasing public improvement, the city council  
12 will:
- 13 1. At least thirty (30) days prior to the adoption of the proposed modification, provide written  
14 notice to persons who have requested notice pursuant to Section 4.20.120 of this ordinance;
  - 15 2. Hold a public hearing if a written request for a hearing is received within seven (7) days of  
16 the date of the proposed modification.
- 17 D. A change in the amount of a reimbursement fee or an improvement fee is not a modification  
18 of the system development charge if the change in amount is based on:
- 19 1. A change in the cost of materials, labor, or real property applied to projects or project  
20 capacity as set forth on the list adopted pursuant to Section 4.20.080(A) of this ordinance;
  - 21 2. The periodic application of one or more specific cost indexes or other periodic data sources,  
22 including the cost index identified in Section 4.20.040 of this ordinance. A specific cost index or  
23 periodic data source must be:
    - 24 a. A relevant measurement of the average change in prices or costs over an identified  
25 time period for materials, labor, real property, or a combination of the three;
    - 26 b. Published by a recognized organization or agency that produces the index or data  
27 source for reasons that are independent of the system development charge methodology; and  
28
    - 29 c. Incorporated as part of the established methodology or identified and adopted by the  
30 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  
2 4.20.090 Collection of Charge

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

5 1. A building permit;

6 2. A development permit;

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

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

10 5. A right-of-way access permit

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

13 7. **Certificate of occupancy issued by the Building Division for multifamily development**  
14 **properties.**

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

20 C. Any and all persons causing a development or making application for the needed permit, or  
21 otherwise responsible for the development, are jointly and severally obligated to pay the charge,  
22 and the City Manager may collect the said charge from any of them. The City Manager or his/her  
23 designee shall not issue any permit or allow connections described in Subsection 4.20.090.A  
24 until the charge has been paid in full or until an adequate secured arrangement for its payment  
25 has been made, within the limits prescribed by resolution of the City Council.

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

29  
30 1 The minimum charge subject to payment by installments shall be \$2,000 ~~and the maximum~~  
~~charge that may be subject to payment by installments shall not exceed \$200,000.~~ The

1 minimum semi-annual installment shall be-\$1000. Installments shall include interest on the  
2 unpaid balance at annual rate of **3% above the Federal Reserve prime rate. The date of rate**  
3 **establishment will coincide with the date a building permit is issued for the development**  
4 **utilizing the installment payment program. 6% for a five-year installment loan or 7% for a**  
5 **10-year installment loan.** A one-year installment loan shall not be subject to an annual interest  
6 rate provided all charges are paid prior to the City’s issuance of the Certificate of Occupancy,  
7 time of sale, or within one year of when the charge was imposed, whichever comes first.

8 **System development charge payments for multiple-family residential rental projects may**  
9 **be deferred through an installment loan which shall not be subject to an annual interest**  
10 **rate provided all charges are paid prior to two years following the date of issuance of the**  
11 **Certificate of Occupancy.**

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

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

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

20  
21 4.20.100 Exemptions

22 The conditions under which all or part of the systems development charges imposed in Section  
23 4.20.040 may be waived are as follows:

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

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

1  
2 4.20.105 Deferrals for Affordable Housing

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

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

12  
13 4.20.110 Credits

14 A. When development occurs that gives rise to a system development charge under Section  
15 4.20.040 of this Chapter, the system development charge for the existing use shall be calculated  
16 and if it is less than the system development charge for the proposed use, the difference between  
17 the system development charge for the existing use and the system development charge for the  
18 proposed use shall be the system development charge required under Section 4.20.040. If the  
19 change in use results in the systems development charge for the proposed use being less than the  
20 system development charge for the existing use, no system development charge shall be  
21 required; however, no refund or credit shall be given.

22 B. The limitations on the use of credits contained in this Subsection shall not apply when credits  
23 are otherwise given under Section 4.20. 110. A credit shall be given for the cost of a qualified  
24 public improvement associated with a development. If a qualified public improvement is located  
25 partially on and partially off the parcel of land that is the subject of the approval, the credit shall  
26 be given only for the cost of the portion of the improvement not attributable wholly to the  
27 development. The credit provided for by this Subsection shall be only for the improvement fee  
28 charged for the type of improvement being constructed and shall not exceed the improvement fee  
29 even if the cost of the capital improvement exceeds the applicable improvement fee. Credits paid  
30 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).

1 Credits for other types of developments shall be allocated to building permits on a first-come,  
2 first served basis until the credit is depleted.

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

8 D. Credits for additions to dedicated park land, or development of planned improvements on  
9 dedicated park land, shall only be granted by the City Manager upon recommendation by the  
10 Park and Recreation Commission for land or park development projects identified in the Capital  
11 Improvement Plan, referred to in Section 4.20.070.B.

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

15 F. Credit shall not be transferable from one type of capital improvement to another. (Ord. 2791 §  
16 9, amended, 1997)

17  
18 4.20.120 Notification

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

24 B. The city may periodically delete names from the list, but at least thirty (30) days prior to  
25 removing a name from the list, the city must notify the person whose name is to be deleted that a  
26 new written request for notification is required if the person wishes to remain on the notification  
27 list.

28  
29 4.20.130 Segregation and Use of Revenue  
30

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

4 B. The City Manager shall provide the City Council with an annual accounting, based on the  
5 City's fiscal year, for SDCs showing the total amount of SDC revenues collected for each type of  
6 facility and the projects funded from each account in the previous fiscal year. A list of the  
7 amounts spent on each project funded in whole or in part with SDC revenues shall be included in  
8 the annual accounting.

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

- 11 1. Design and construction plan preparation;
- 12 2. Permitting and fees;
- 13 3. Land, easements, and materials acquisition, including any cost of acquisition or  
14 condemnation, including financing, legal and other costs;
- 15 4. Construction of capital improvements;
- 16 5. Design and construction of new utility facilities required by the construction of capital  
17 improvements and structures;
- 18 6. Relocating utilities required by the construction of improvements;
- 19 7. Landscaping;
- 20 8. Construction management and inspection;
- 21 9. Surveys, soils, and materials testing;
- 22 10. Acquisition of capital equipment;
- 23 11. Repayment of monies transferred or borrowed from any budgetary fund of the City which  
24 were used to fund any of the capital improvements as herein provided; and
- 25 12. Payment of principal and interest, necessary reserves and cost of issuance under bonds or  
26 other indebtedness issued by the City to fund capital improvements.

27  
28 4.20.140 Refunds

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

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

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

6  
7 4.20.150 Appeal Procedures

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

10 B. A person aggrieved by a decision required or permitted to be made by the City Manager or  
11 designee under Sections 4.20.010 through 4.20.130 or a person challenging the propriety of an  
12 expenditure of systems development charge revenues may appeal the decision or expenditure by  
13 filing a written request with the City Recorder for consideration by the City Council. Such appeal  
14 shall describe with particularity the decision or the expenditure from which the person appeals  
15 and shall comply with subsection D of this section.

16 C. An appeal of an expenditure must be filed within two years of the date of alleged improper  
17 expenditure. An appeal petition challenging the adopted methodology shall be filed not later than  
18 sixty (60) days from the date of the adoption of the methodology. Appeals of any other decision  
19 must be filed within 10 working days of the date of the decision.

20 D. The appeal shall state:

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

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

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

30 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

1 appellant may present testimony and oral argument personally or by counsel. The City may  
2 present written or oral testimony at this same hearing. The rules of evidence as used by courts of  
3 law do not apply.

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

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

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

#### 12 13 4.20.160 Prohibited Connection

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

#### 18 19 4.20.170 Enforcement - Violation

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

#### 26 27 4.20.180 Classification of the Fee

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

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

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

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~~ **2022**, and duly PASSED and  
13 ADOPTED this \_\_\_\_ day of \_\_\_\_\_, ~~2019~~ **2022**.  
14

15 \_\_\_\_\_  
16 Melissa Huhtala, City Recorder  
17

18 SIGNED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, ~~2019~~ **2022**.  
19

20 \_\_\_\_\_  
21 ~~John Stromberg~~ **Julie Akins**, Mayor  
22

23 Reviewed as to form:  
24

25 \_\_\_\_\_  
26 ~~David H. Lohman~~ **Doug McGeary, Interim** City Attorney  
27  
28  
29  
30