

# CODE

ORDINANCE NO. 4661

**AN ORDINANCE AMENDING THE MUNICIPAL CODE TITLE 3 TO INCLUDE CHAPTER 3.07 TRANSPORTATION SYSTEM DEVELOPMENT CHARGE PROGRAM**

**WHEREAS**, the City of Beaverton commenced a concept planning process for the area known as the Cooper Mountain area from 2013 to 2015; and

**WHEREAS**, a portion of that area known as South Cooper Mountain was the subject of a more specific comprehensive planning process and the resultant Community Plan was adopted as an amendment to the City's Comprehensive Plan (CPA 2014-0011 and CPA 2014-0012) in February 2015; and

**WHEREAS**, implementation of the South Cooper Mountain Community Plan requires investments in transportation capital improvements as well as related utilities; and

**WHEREAS**, the planning process included a considerable amount of community engagement including a public-private Finance Task Force which developed a reasonable plan for paying for the necessary transportation and other capital improvements; and

**WHEREAS**, the South Cooper Mountain Infrastructure Funding Plan recommends adoption of a Transportation System Development Charge for the South Cooper Mountain area to supplement the Washington County Transportation Development Tax, in addition to other resources; and

**WHEREAS**, this ordinance is applicable to the entire city and may in the future be used to impose a Transportation System Development Charge beyond the South Cooper Mountain area; and

**WHEREAS**, system development charges represent a means by which the burden of financing infrastructure improvements is partially borne by property owners who will most benefit from the improvements made in the Cooper Mountain area; and

**WHEREAS**, this ordinance is intended to comply with the provisions of ORS 223.297-223.314. Any reference to Transportation System Development Charges in this ordinance, its exhibits or appendices, shall be deemed to refer to both the Transportation System Development Charge, and to the equivalent provision under the above-cited statutes, unless the context requires otherwise; and

**WHEREAS**, the rates, applicable area and methodology of the Transportation System Development Charge may be imposed by resolution of the City Council;

**NOW, THEREFORE, THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:**


**Section 1.** The Council adopts the Transportation System Development Charge Ordinance, to be incorporated in Title 3 of the Beaverton City Code in the form of the attached Exhibit A.

First reading this 7th day of July, 2015.


Second reading this 14th day of July, 2015.

Approved by the Mayor this 15th day of July, 2015.

Attest:

  
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City Recorder  
Catherine Jansen

Approved:

  
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Mayor  
Denny Doyle

**EXHIBIT A**  
**TRANSPORTATION SYSTEM DEVELOPMENT CHARGE PROGRAM**

- 3.07.010 Purpose**
- 3.07.020 Definitions**
- 3.07.030 Transportation System Development Charge Established**
- 3.07.040 Methodology**
- 3.07.050 Authorized Expenditures**
- 3.07.060 Expenditure Restrictions**
- 3.07.070 Challenge to TSDC Expenditure.**
- 3.07.080 Improvement Plan**
- 3.07.090 Collection of Charge**
- 3.07.110 Exemptions**
- 3.07.120 Credits**
- 3.07.130 Redeeming Credits**
- 3.07.140 Notice**
- 3.07.150 Segregation and Use of Revenue**
- 3.07.160 Refunds**
- 3.07.170 Appeal Procedure**
- 3.07.180 Severability**
- 3.07.190 Classification**
- 3.07.200 Penalty**

### **3.07 Transportation System Development Charge**

#### **3.07.010 Purpose**

The purpose of the Transportation System Development Charge, or "TSDC," is to ensure that new development contributes to the cost of new transportation infrastructure and any expansion of the existing transportation system required to accommodate additional vehicle, bicycle and pedestrian demand generated by the development.

The TSDC shall provide funds for the capital improvements listed in the methodology report for each area where a TSDC is imposed.

#### **3.07.020 Definitions**

The following definitions apply to Chapter 3.07 of this code:

- A. Actual Cost - Monies expended by the developer for the construction of a qualified public improvement less any credits or reimbursements received from any agency other than the City.
- B. Capital Improvements – Public facilities or assets used for transportation. "Capital improvement" does not include costs of the operation or routine maintenance of capital improvements.
- C. Contiguous - When a property and an improvement or portion thereof share a common boundary line, they are contiguous. Determination of what is contiguous shall include the area of all property subject to the development approval. The boundary lines and area of an improvement shall be determined by the right of way and easement areas for the improvement. In addition, multiple properties under common ownership separated by one or more of the following - common area, non-motorized vehicle or pedestrian way, creek, wetland, park, or similar areas - shall be deemed to include the boundary of such additional area in their boundary line, up to 100 feet between the properties at the boundary with the improvement. Any portion of an improvement that is located beyond the frontage of a property, as determined by the extension of boundary lines perpendicular to the frontage of the property, shall not be contiguous to that property. An intersection improvement shall be deemed contiguous to all property with frontage on the intersection, or that touches the intersection at any point.
- D. City Engineer – The City Engineer of the City of Beaverton or the City Engineer's designee.
- E. Council – The City Council of the City of Beaverton, Oregon.
- F. Credit - The amount by which an applicant may be able to reduce the TSDC as provided in this Ordinance.
- G. Development - Any man-made change to improved or unimproved real estate including a building or other land construction, or making a physical change in the use of a structure or land, in a manner that increases the usage of transportation capital improvements or which may contribute to the need for additional or enlarged transportation capital facilities as determined in this chapter; or:
  - i. The act of bringing about growth; to construct or alter a structure, to make a change in use or appearance of land, to divide land into parcels, or to create or terminate rights of access, or
  - ii. Any plat, partition, subdivision or planned unit development that is created under the City's land division or zoning regulations. "Development" includes "New Development".
- H. Finance Director – The Finance Director of the City of Beaverton or the Finance Director's designee.
- I. Improvement Fee - An SDC for costs associated with capital improvements to be constructed after the effective date of this Ordinance.

- J. Improvement Fee Credit – A credit granted for the construction of a qualified public improvement under the provisions of ORS 223.304(4).
- K. Lot - Any continuous area, tract or parcel of land owned by or under the lawful control and in the lawful possession of one distinct ownership undivided by a dedicated street or alley or another ownership. An abutting "platted lot" or property described by metes and bounds in the same ownership shall be considered a part of such "lot". See also "Parcel".
- L. New Development - Development which occurs on or after the effective date of this Ordinance.
- M. Owner – The owner of record of real property as shown in the records of Washington County Department of Records and Elections, or a person purchasing a piece of property under contract, or a public body or public agency with authority to exercise the power of eminent domain which has formally enacted a resolution of its intent to acquire the property described in the application.
- N. Parcel – See "Lot".
- O. Permittee – The person who is proposing to use or who is using the land pursuant to any permit required herein.
- P. Qualified Public Improvement – A capital improvement that is:
  - i. Required as a condition of development approval; and
  - ii. Identified in the adopted Improvement Plan pursuant to BC 3.07.070; and either:
    - a. Not located on or contiguous to a parcel of land that is the subject of the development approval; or
    - b. Located on or contiguous to property that is the subject of development approval and, in the opinion of the Finance Director, is required to be built larger or with greater capacity (overcapacity) than is necessary for the applicant's new development or to mitigate for transportation system impacts attributable to the applicant's new development.
- Q. Reimbursement Fee – A TSDC for costs associated with transportation capital facilities that have already been constructed or are under construction and which have been determined to have capacity available to serve new development.
- R. Transportation System Development Charge or "TSDC" – A reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of transportation capital facilities or issuance of a development permit or building permit. "TSDC" includes the charge imposed under this chapter. A TSDC does not include fees 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.

**3.07.030 Transportation System Development Charge Established**

TSDCs may be established and revised by resolution of the Council. The resolution shall set the amount of the charge, the type of permit to which the charge applies, and, if the charge applies to a geographic area smaller than the entire city, the geographic area subject to the charge.

**3.07.040 Methodology**

The methodology used to establish or modify the reimbursement fee shall, where applicable, be based on the cost of then-existing facilities including without limitation design, financing and construction costs, prior contributions by then-existing users, gifts or grants from federal or state government or private persons, the cost of the unused capacity of existing facilities, rate-making principals employed to finance publicly owned capital improvements, and other relevant factors identified by the Council.

The methodology shall promote the objective that future system users shall contribute no more than an equitable share of the cost of then-existing facilities.

The methodology used to establish or modify the improvement fee shall demonstrate, where applicable, consideration of the estimated cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related. The methodology shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future system users.

The methodology used to establish or modify the improvement fee or the reimbursement fee, or both, shall be contained in a resolution adopted by the Council.

### **3.07.050 Authorized Expenditures**

Reimbursement fees shall be spent only on capital improvements that are included in the plan adopted by the city pursuant to BC 3.07.070. However, expenditure of reimbursement fees is not limited to the portion of projects that create capacity for future system users.

Improvement fees shall be spent only on capacity increasing capital improvements associated with the system for which the fee is assessed, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or providing new facilities. The portion of the capital improvements funded by improvement fees must be related to demands created by new development. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the city pursuant to BC 3.07.070.

Notwithstanding other provisions of this section, TSDC revenues may be expended on the direct costs of complying with the provisions of this chapter, including the costs of developing system development charge methodologies and providing an annual accounting of system development expenditures.

### **3.07.060 Expenditure Restrictions**

TSDCs 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.

TSDCs shall not be expended for costs of the operation or routine maintenance of capital improvements.

### **3.07.070 Challenge to TSDC Expenditure.**

A challenge to a TSDC expenditure may be made in the same way and shall be subject to the same requirements as those set forth in BC 4.01.100 for a challenge to an SDC expenditure.

### **3.07.080 Improvement Plan**

Prior to the establishment of a TSDC, the Council shall adopt a plan by resolution that includes a list of:

- A. The capital improvements that the Council intends to fund in whole or in part with improvement fee revenues; and
- B. The estimated cost and time of construction of each improvement and the percentage of that cost eligible to be funded with improvement fee revenues; and
- C. A description of the process for modifying the plan.

In adopting this plan, the Council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section.

The Council may modify such plan and list at any time. If a TSDC will be increased by a proposed modification to the list the Council will:

- A. At least 30 days prior to adoption of the proposed modification, provide written notice to persons who have requested notice pursuant to BC 3.07.140; and
- B. Hold a public hearing if a written request for a hearing is received within seven days of the date of the proposed modification.

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 the periodic application of one of the construction cost indices published by the *Engineering News Record*.

### **3.07.090 Collection of Charge**

The TSDC is payable upon the issuance of:

- A. A building permit; or
- B. A development permit for development not requiring the issuance of a building permit.

If no building, development, or access permit is required, the TSDC is payable at the time the usage of the capital improvement is increased based on the changes in the use of the property unrelated to seasonal or ordinary fluctuations in usage.

Notwithstanding issuance of a building or occupancy permit without payment, the TSDC liability shall survive and be a personal obligation of the permittee.

Intentional failure to pay the charge within sixty days of the due date shall result in a penalty equal to fifty percent of the charge. Interest shall accrue from the sixty-day point at the legal rate established by statute.

In addition to an action at law and any statutory rights, the City may:

- A. Refuse to issue any permits of any kind to the delinquent party for any development;
- B. Refuse to honor any credits held by the delinquent party for any development;
- C. Condition any development approval of the delinquent party on payment in full, including penalties and interest;
- D. Revoke any previous deferrals issued to the delinquent party, in which case the amount immediately shall be due, and refuse to issue any new deferrals;
- E. Withdraw the amount due, including penalties and interest, from any offset account held by the jurisdiction for the delinquent party.

For purposes of this section, delinquent party shall include any person controlling a delinquent corporate permittee, including but not limited to any partnership, limited liability company or joint venture and, conversely, any corporation or entity controlled by a delinquent individual permittee.

The Finance Director is authorized to take the following actions with respect to TSDCs, penalties, and interest:

- A. To take any action described in this section to collect and enforce the charge, penalties, and interest.
- B. To initiate legal action or exercise any other statutory right to collect any delinquent charge, penalties and interest under this chapter upon approval of the City Council, as applicable, or in accordance with any general city collection policy.

- C. If the Finance Director and the City Attorney determine that the delinquent charges for any development are for any reason wholly uncollectible, the Finance Director and City Attorney may request, in writing, to the City Council for an order directing that the charges be cancelled. The City Council, when so requested, may in its discretion order and direct the Finance Director to cancel such uncollectible charges.

### **3.07.110 Exemptions**

The uses listed and described in this subsection are exempt, either partially or fully, from payment of the TSDC. Any applicant seeking an exemption under this Section shall request that exemption, in writing, no later than the time of application for the building permit. Where Development consists of only part of one or more of the uses described in this Section, only that/those portion(s) of the Development that qualify under this Section are eligible for an exemption. The balance of the Development that does not qualify for any exemption under this Section shall be subject to the full TSDC.

- A. Remodeling or replacement of existing structures (including mobile homes) except to the extent that the remodeling or replacement creates demands on the transportation system greater than those of the existing use of the property;
- B. Structures and uses established and legally existing on or before the effective date of this chapter are exempt from a system development charge to the extent of the structure or use then existing and to the extent of the parcel of land, as it constituted on that date.
- C. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge.
- D. Temporary uses which do not exceed ninety days in a calendar year;
- E. Temporary construction facilities as determined by the Finance Director;

### **3.07.120 Credits**

The Finance Director may approve administrative rules for the implementation of the credit policies of this ordinance.

- A. A TSDC shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given in an amount equal to the existing TSDC as applied to the preexisting type and level use. The credit so computed shall not exceed the calculated TSDC. No refund or credit shall be made on account of such credit.
- B. An improvement fee credit shall be given for the cost of a bonded or completed qualified public improvement associated with a development upon acceptance by the City of the improvement, subject to the following conditions:
  - 1. Such credit shall be only for the actual, estimated, or agreed-upon cost of that portion of such improvement that the adopted methodology includes in the cost basis of the improvement fee. The applicant shall have the burden of demonstrating that a particular improvement is a qualified public improvement per BC 3.07.080. The request for credit shall be filed in writing no later than sixty (60) days after acceptance of the improvement by the City.
  - 2. When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against

improvement fees that accrue in subsequent phases of the original development project, if any.

3. Credits shall be used within ten (10) years from the date the credit is given, after which the credit shall expire, and be null and void, without the need for the city to take any further action.
  4. Credit shall not be transferable from one type of capital improvement to another.
  5. Credits may be transferable from one development to another within the geographic area subject to the TSDC.
  6. Credits for any TSDC, or for the Washington County Transportation Development Tax, shall only be used for obligations relating to the charge and capital improvement type for which the credit was issued.
- C. Reimbursement in excess of credits shall be granted for that portion of the actual, estimated, or agreed-upon cost of a qualified public improvement that exceeds the improvement fee credit granted under paragraph B of this subsection, subject to the following conditions:
1. In no event shall the sum of improvement fee credits and reimbursement in excess of credits exceed actual costs incurred by the developer.
  2. Reimbursement in excess of credits is subject to budgetary appropriation, but in no event will reimbursement be made later than fifteen years from the time that the qualified public improvement is accepted by the City.

### **3.07.130 Redeeming Credits**

A developer can redeem credits for development within the City subject to the following constraints. Any credit must be redeemed not later than the issuance of the building permit or, if deferral was permitted, issuance of the occupancy permit. The applicant is responsible for presentation of any credit prior to issuance of the building or occupancy permit. Under no circumstances shall any credit redemption be considered after issuance of a building permit or, if deferral was granted, issuance of an occupancy permit.

### **3.07.140 Notice**

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 TSDC. Written notice will be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a system development charge. The methodology supporting the system development charge shall be available at least 60 days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the City.

The City may periodically delete names from the list, but at least 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.

### **3.07.150 Segregation and Use of Revenue**

All funds derived from the TSDC described in this chapter are to be segregated by accounting practices from all funds of the City. Those TSDCs collected under this chapter will be used for no purpose other than set forth in BC 3.07.050.

The Finance Director shall provide the Council with an annual accounting, by January 1 of each year, for TSDCs showing the total amount of revenues collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amount spent on each projected funded in whole or in part with TSDC revenues shall be included in the annual accounting.



### **3.07.160 Refunds**

Refunds may be given by the Finance Director upon finding that there was a clerical error in the calculation of a system development charge.

Refunds are not allowed for failure to timely claim credit or for failure to timely seek an alternative method of system development charge calculation at the time of submission of an application for a building permit.

### **3.07.170 Appeal Procedure**

A person challenging the propriety of an expenditure of TSDC revenues may appeal the decision or the expenditure to the City Council by filing a written request with the Finance Director describing with particularity the decision of the Finance Director and the expenditure from which the person appeals. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure.

After providing notice to the appellant, the Council shall determine whether the Finance Director's decision or the expenditure is in accordance with this chapter and the provisions of ORS 223.297 to 223.214 and may affirm, modify, or overrule the decisions. If the Council determines that there has been an improper expenditure of TSDC revenues, the Council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the Council shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.

A legal action challenging the methodology adopted by the Council under this chapter shall not be filed later than 60 days after adoption. A person shall contest the methodology used for calculating a system development charge only as provided in ORS 34.010 to 34.100 and not otherwise.

### **3.07.180 Severability**

The provisions of this chapter are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any clause, section or provision of this chapter shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this chapter shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. It is hereby declared to be the Council's intent that this chapter would have been adopted had such an unconstitutional provision not been included herein.

### **3.07.190 Classification**

The Council determines that any fee, rates or charges imposed by this chapter are not a tax subject to the property tax limitations of Article XI, section 11(b) of the Oregon C.

### **3.07.200 Penalty**

Violations of this chapter are subject to civil penalties of no more than five hundred dollars (\$500.00) for each offense. Each day that a violation is permitted to exist constitutes a separate offense.