

ORDINANCE NO. 2018-05

AN ORDINANCE OF THE OTTER ROCK WATER DISTRICT, ADDING A SYSTEM DEVELOPMENT CHARGE BASED ON THE ADOPTED MASTER PLAN AND CAPITAL IMPROVEMENT PLAN.



**WHEREAS**, the Otter Rock Water District (hereinafter "District") is a properly formed Domestic Water Supply District created under ORS Chapter 264; and

**WHEREAS**, the District is expressly authorized by Oregon Revised Statutes Chapter 264 to adopt regulations, rates, fees and charges concerning the provision of water service; and

**WHEREAS**, the District fully complied with ORS 198.540 and ORS 198.550 procedures for Ordinance adoption; and

**WHEREAS**, the District fully complied with SDC Ordinance adoption procedures in ORS 223.304, including notice of availability of SDC methodology 60 days prior to the public hearing; and

**WHEREAS**, the District conducted a public hearing on July 24, 2018 at the Otter Rock Community Center and all interested parties were provided an opportunity to be heard concerning the SDC methodology and revised capital improvement plan; and

**WHEREAS**, the District Board deliberated on the draft Ordinance, and continued deliberations for several meetings, including discussion at a public workshop on December 6, 2018; and

**THE OTTER ROCK WATER DISTRICT ORDAINS AS FOLLOWS:**

**SECTION 1. Purpose.** The purpose of the system development charge (SDC) is to impose an equitable share of the public costs of capital improvements for water upon those developments and redevelopments that create the need for or increase the demands on the District's water supply and infrastructure.

**SECTION. Scope.** The SDCs as imposed by this Section are separate from and in addition to any applicable tax, assessment, special assessment, charge, fee in lieu of assessment, exaction, dedication, or fee otherwise provided by law or imposed as a condition of development approval application.

**SECTION 3. Definitions.** For purposes of this ordinance, the following mean:

A. "Capital Improvement" means public facilities or assets used for the following:

1) Water supply, treatment, and distribution;

B. "Capital Improvement" does not include costs of the operation or routine maintenance of capital improvements.

C. "Development" means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage, or activities, any building permit resulting in increased usage of capital improvements, and any new connection or increased size connection for a capital improvement. Development includes the redevelopment of property. Development also includes improved open areas such as plazas and walkways but does not include natural geologic forms or unimproved lands.

D. "Improvement fee" means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 4 of this ordinance.

E. "Reimbursement fee" means a fee for costs associated with capital improvements already constructed, or under construction when the fee is established, for which the Water District determines that capacity exists.

F. "System development charge" means:

1) A reimbursement fee, an improvement fee, or a combination thereof, assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit, building permit, or connection to the capital improvement.

2) The portion of a water system connection charge that is greater than the amount necessary to reimburse the District for its average cost of inspecting and installing connections with water facilities.

G. "System development charge" does not include any 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 upon a land use decision, expedited land use division, or limited land use decision.

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#### **SECTION 4. System Development Charge Established.**

- A. System development charges shall be established and may be revised by resolution of the District Board. The resolution shall set the amount of the charge through a methodology developed pursuant to Section 5 herein, the type of permit to which the charge applies, and, if the charge applies to a geographic area smaller than the entire District, the geographic area subject to the charge. Changes in the system development charges shall also be adopted by resolution, excepting those changes resulting solely from inflationary cost impacts. Inflationary cost impacts shall be measured and calculated each new fiscal year by the District Treasurer and charged accordingly. Such inflationary adjustment in the amount of a system development charge shall not be considered a modification, if the adjustment is based on the periodic application of a specific cost index that is incorporated in the methodology adopted in accord with Section 5.
- B. Unless otherwise exempted by the provisions of this ordinance, or by other local or state law, a system development charge is hereby imposed upon all development within the District, upon issuance of permit as stated in Section 9 herein or upon the act of making a connection of a residential or commercial building to the District water system within the District, whichever occurs first, and upon all development outside the boundary of the District that connects to or otherwise uses the water facilities of the District.

#### **SECTION 5. Methodology.**

A. The methodology used to establish or modify a reimbursement fee shall promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities and be available for public inspection. The methodology used to establish or modify a reimbursement fee shall, where applicable, be based on:

- 1) Ratemaking principles employed to finance publicly owned capital improvements;
- 2) Prior contributions by existing users;
- 3) Gifts or grants from federal or state government or private persons;
- 4) The value of unused capacity available to future system users or the cost of the existing facilities; and
- 5) Other relevant factors identified by the District Board.

B. The methodology used to establish or modify an improvement fee shall, where applicable, demonstrate consideration of the estimated cost of projected capital improvements identified in an improvement plan (see Section 8) that are 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.

C. The methodology used to establish or modify a reimbursement fee or improvement fee shall be contained in a resolution adopted by the District Board.

#### **SECTION 6. Authorized Expenditures.**

A. Reimbursement fees shall be spent only 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 capital improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity may be established if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to the need for performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to the need for increased capacity to provide service for future users.

#### **SECTION 7. Expenditure Restrictions.**

A. System development charges may 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 the expenses of the operation or maintenance of the facilities constructed with system development charge revenues.

B. Any capital improvement being funded wholly or in part with system development charge revenues must be included in the plan and list adopted by the District Board pursuant to ORS 223.309 and Section 8 of this ordinance. The Plan shall be updated by ordinance or resolution and may be adopted as part of, or be attached to the resolution adopting the methodology and setting the SDC charge.

#### **Section 8. Improvement Plan.**

A. Prior to the establishment of a system development charge, the District Board 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 District Board 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 8(A) of this ordinance, the District Board 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 District Board may modify such plan and list, as described in Section 8(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 District Board 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 13 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 8(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(A) 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 District Board in a separate resolution, or if no

other index is identified in the established methodology, then the index stated in Section 4(A) of this ordinance.

The District Board adopted the 2017 Master Plan in Ordinance 2017-03. In August 2018, the Board adopted an updated Capital Improvement Plan following a public hearing in July 2018. The updated CIP is attached to the SDC Resolution.

#### **SECTION 9. Collection of Charge.**

A. The system development charge is payable upon the issuance of:

- 1) A building permit;
- ~~2) A development permit;~~ *JERAY DAVIS 12-20-18*
- 3) A permit or approval to connect a residential or commercial building to the water system;

B. If development is commenced or connection is made to the water system without an appropriate permit, the system 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 associated use until the system development charge has been paid.

C. The District Treasurer or Lincoln County through appropriate agreement shall collect the applicable system development charge from the permittee when a permit that allows building or development of a parcel is issued or when a connection to the water system of the District is made to serve a residential or commercial building.

D. The District Treasurer or Lincoln County shall not issue such permit or allow such connection until the charge has been paid in full, or until provision for installment payments has been made pursuant to Section 10 of this ordinance, or unless an exemption is granted pursuant to Section 11 of this ordinance.

#### **SECTION 10. Cancellation.**

The District Board is authorized, by motion, to cancel assessments of system development charges, where a new development approved by a building permit is not constructed and the building permit is cancelled. Any system development charges paid to the District pursuant to the cancelled permit shall be refunded upon request of the applicant. Such refund will be in the amount paid at the time of the payment to the District, unadjusted for inflation.

#### **SECTION 11. Exemptions.**

A. Residential or Commercial Buildings established and legally existing on or before the effective date of this ordinance are exempt from a system development charge, to the extent of the residential or commercial building then existing and to the extent of the parcel of land as it is constituted on that date. All new residential or commercial buildings and new uses shall pay the water charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to a residential or commercial building to the water system.

B. Additions to existing single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the Oregon Uniform Building Code, are exempt from all portions of the water system development charge.

C. An alteration, addition, replacement, or change in use that does not increase a parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge. A replacement of a single family use with a duplex triplex or other use shall pay the additional ERU applicable to the replacement.

D. An existing water connection to an existing vacant residential or commercial parcel (without a building approved with a building permit) is not exempt from payment of the applicable system development charges.

#### **SECTION 12. Credits.**

A. The District will grant to an applicant a credit against any improvement fee assessed when the applicant, or the developer from whom the applicant purchased a lot, constructs, or dedicates a qualified public improvement as part of the development. The initial determination on all credit requests shall be a decision by the District Board, and the applicant bears the burden of evidence and persuasion in establishing entitlement to a system development charge credit and the amount of credit in accordance with the requirements of this Section.

B. To obtain a system development charge credit, the applicant must make the request, in writing, prior to the issuance of the first building permit for the development in question. In the request, the applicant must state the following:

- 1) Identify the improvement for which the credit is sought;
- 2) Explain how the improvement is a qualified public improvement; and
- 3) Document, with credible evidence, the value of the improvement for which credit is sought.

B. The system development charge credit shall be an amount equal to the fair market value of the improvement. Fair market value shall be determined by the District Board based on credible evidence of the following:

- 1) For dedicated lands, value shall be based upon a written appraisal of fair market value by a qualified, professional appraiser based upon comparable sales of similar property between unrelated parties in an arms-length transaction;
- 2) For a qualified public improvement yet to be constructed, value shall be based upon the anticipated cost of construction. Any such cost estimates shall be certified by a registered professional architect or engineer or based on a fixed price bid from a contractor ready and able to construct the improvement(s) for which the system development charge credit is sought;
- 3) For a qualified public improvement already constructed, value shall be based on the actual cost of construction as verified by receipts submitted by the applicant; or
- 4) For a qualified public improvement located on, or contiguous to, the site of the development, only the over-capacity portion as described in the definition of qualified public improvement is eligible for a system development charge credit. There is a rebuttable presumption that the over-capacity portion of such a qualified public improvement is limited to the portion constructed larger, or of greater capacity, than the District's minimum standard facility capacity or size needed to serve the particular development.

D. Form of Credit and Limitation on Use. When given, system development charge credits will be for a particular dollar value as a credit against a system development charge assessed on a development. Credits may only be used to defray or pay the system development charge for the particular capital improvement system to which the qualified public improvement related, *e.g.*, credit from a qualified public improvement for water may only be used to pay or defray a water system development charge.

E. System Development Charge Credit Carry-Forward. Where the amount of a system development charge credit approved under this Section exceeds the amount of a system development charge assessed on a development for a particular capital improvement system, the excess credit may be carried forward pursuant to the following rules:

- 1) A system development charge credit carry-forward will be issued by the District for a particular dollar value to the developer who earned the system development charge credit and may be used by the developer to satisfy system development charge requirements for any other development applied for by the developer within the District. System development charge credit carry-forwards are not negotiable or transferable to any party other than the one to whom they are issued.
- 2) The District will accept a system development charge credit carry-forward presented by a developer as full or partial payment for the system development charge due on any of the developer's developments.



3) System development charge credit carry-forwards are void and of no value if not redeemed with the District for payment of a system development charge of the same type of capital improvement system for which the credit was issued within ten (10) years of the date of issuance.

F. System Development Charge Credit Deadline. For all other system development charge credits not carried forward, the applicant must formally request the system development charge credit no later than one hundred eighty (180) days after the later of the following two conditions occurs:

1) Acceptance of the applicable improvement by the District; and

2) The applicant paying sufficient system development charges for the development to cover the approved SDC credit.

**SECTION 13. Notice.**

A. The District 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 at least ninety (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 sixty (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 District.

B. The District may periodically delete names from the list, but at least thirty (30) days prior to removing a name from the list, the District 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.

**SECTION 14. Segregation and Use of Revenue.**

A. All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds of the District. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than that set forth in Section 6 of this ordinance.

B. The District Treasurer shall provide the District Board with an annual accounting, by January 1 of each year, for system development charges showing the total amount of system development charge revenue 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 project funded, in whole or in part, with system development charge revenue shall be included in the annual accounting.

#### **SECTION 15. Refunds.**

- A. Refunds shall be given by the District Board 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 12 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. The District Board shall refund to an applicant any system development charge revenues not expended within ten years of receipt from the applicant. Such refund will be in the amount paid at the time, unadjusted for inflation.

#### **SECTION 16. Implementing Regulations; Amendments.**

The District Board delegates to the Board President the authority to adopt necessary procedures to implement the provisions of this ordinance including the appointment of a System Development Charge Program Administrator. All rules developed pursuant to that delegated authority shall be filed with the District office and be available for public inspection.

#### **SECTION 17. Appeals; Procedure.**

- A. A person challenging the propriety of an expenditure of system development charge revenue may appeal the decision or the expenditure to the Otter Rock Water District Board by filing a written appeal petition with the Board Treasurer pursuant to Subsection (D) below. An appeal of an expenditure must be filed within two years of the date of the subject expenditure.
- B. A person challenging the propriety of the methodology adopted by the District Board pursuant to Section 5 of this ordinance may appeal the decision or the expenditure to the District Board by filing a written appeal petition with the Board Treasurer pursuant to Subsection (D) below. 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.
- C. A person challenging the calculation of a system development charge must file a written appeal petition to the calculation of the system development charge with the Board Treasurer within thirty (30) days of assessment of the system development charge.
- D. Any person submitting an appeal petition pursuant to Subsections (A) through (C) above, must describe, with particularity, the basis for the appeal and include:

- 1) The name and address of the appellant;
- 2) The nature of the expenditure, methodology, or calculation being appealed;
- 3) The reason the expenditure, methodology, or calculation is allegedly incorrect;  
and
- 4) What the correct determination of the appeal should be or how the correct calculation should be derived.

E. If the appeal petition is untimely or fails to meet the requirements of Subsection (D) above, the appeal shall be dismissed by the Board without a hearing. Appeal deadlines and requirements are jurisdictional.

F. If the appeal petition is timely filed and submitted in accordance with Subsection (D) above, the Board shall order an investigation and direct that within sixty (60) days of receipt of the appeal petition a written report be filed by staff with the Board recommending appropriate action. Within thirty (30) days of receipt of that report, the District Board shall conduct a hearing to determine whether the expenditure, methodology, or calculation was proper. The District Board shall provide notice and a copy of the report to the appellant at least fourteen (14) days prior to the hearing. The appellant shall have a reasonable opportunity to present appellant's position at the hearing. The District Board may delegate the conduct of the hearing and drafting of a proposed decision, including findings, to a hearings officer.

G. The appellant shall have the burden of proof. Evidence and argument shall be limited to the grounds specified in the petition. The District Board shall issue a written decision stating the basis for its conclusion and directing appropriate action to be taken.

H. The District Board shall render its decision within fifteen (15) days after the hearing date, and the decision of the District Board will be final. The decision will be in writing, but written findings shall not be made or required unless the District Board, in its discretion, elects to make findings for precedential purposes. If the District Board determines that there was an improper expenditure of system development charge funds, the District Board shall direct that a sum equal to the misspent amount be deposited within one (1) year of the date of the decision to the account of the fund from which it was spent.

I. Any legal action contesting the District Board's decision on the appeal must be filed within sixty (60) days of the District Board's decision. Review of the District Board's decision shall be by writ of review pursuant to ORS 34.010 to 34.100.

#### **SECTION 18. Prohibited Connection.**

No person may connect a residential or commercial building to the water systems of the District unless the appropriate system development charge has been paid or the lien or installment payment method has been applied for and approved.

**SECTION 19. Penalty.**

Violation of Section 18 of this ordinance constitutes a violation and is punishable by a fine not to exceed \$1,000 per day.

**SECTION 20. Classification.**

The Otter Rock Water District hereby determines that any fee, rates, or charges imposed by this ordinance are not a tax subject to the property tax limitations of Article XI, section 11(b), of the Oregon Constitution.

**SECTION 21. Findings Adopted.**

The findings contained in the Whereas Clauses of this ordinance together with the competent substantial evidence in the record of this legislative proceeding are incorporated into this section by reference as if fully set forth herein, and are adopted in support of this legislative action.

**SECTION 22. Severability.**

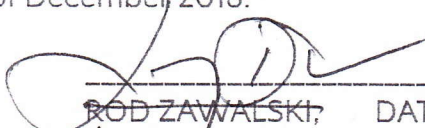
The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 23. Ordinance Effective Date.**

Pursuant to ORS 198.570 the Ordinance shall take effect on the 30<sup>th</sup> day following its adoption.

Following a motion to be read by Title only, the foregoing ordinance was distinctly read by Title only in accordance with Oregon Revised Statutes on the 11<sup>th</sup> day of December, 2018 (First Reading). and after changes were fully read, the Ordinance was distinctly read by Title a second time on the 18<sup>th</sup> day of December 2018(Second Reading).

PASSED AND ADOPTED by the Board of Commissioners of the Otter Rock Water District this 18<sup>th</sup> day of December, 2018.

  
ROD ZAWALSKI, DATE 12-20-18  
JERRY DAVIS  
BOARD VICE PRESIDENT

Ordinance 2018-05

December 18, 2018

BOARD PRESIDENT

ATTEST:

BOARD SECRETARY, DATE

Vote:  
Commissioner 1  
Commissioner 2  
Commissioner 3  
Commissioner 4  
Commissioner 5

~~Yes / No~~  
Arthur Bradley YES  
YES  
ABSENT  
YES  
YES

Rod Zawalski DATE 12-20-18  
BOARD PRESIDENT

VERRY DAVIS  
BOARD VICE PRESIDENT

ATTEST:

Arthur A Bradley

BOARD SECRETARY/TREASURER, DATE 12-20-18

FILED

DEC 20 2018

AT 1:45 P.M.  
DANA W. JENKINS, COUNTY CLERK  
BY [Signature] DEPUTY