

BEND PARK & RECREATION DISTRICT ORDINANCE NO. 13

AN ORDINANCE ESTABLISHING SYSTEM DEVELOPMENT CHARGES APPLICABLE TO CERTAIN TYPES OF DEVELOPMENT WITHIN BEND PARK & RECREATION DISTRICT BOUNDARIES; AND REPEALING ORDINANCE NO. 12

WHEREAS, ORS 223.297 - 223.316 authorize local governments, including special districts, to impose System Development Charges for parks and recreation; and

WHEREAS, on June 4, 2019, the Board of Directors (the “**Board**”) for Bend Park & Recreation District (the “**District**”) adopted Ordinance No. 12 – System Development Charges (“**Ordinance No. 12**”), which authorizes District to assess and collect System Development Charges (“**SDCs**”), and Resolution No. 421 – *Methodology Report: Parks System Development Charges*; and

WHEREAS, District finds it necessary and appropriate to modify Ordinance No. 12 to update definitions, align Ordinance No. 12 with City of Bend procedures for imposing, collecting and issuing SDC deferrals, and make certain other modifications to Ordinance No. 12, subject to and in accordance with this Ordinance No. 13 (this “**Ordinance**”).

NOW, THEREFORE, Bend Park & Recreation District ordains as follows:

1. PURPOSE AND SCOPE

- A. Future growth within the District should contribute an equitable share of the cost of capacity-increasing acquisitions and improvements to parks, trails, and recreation facilities needed to accommodate such growth.
- B. System Development Charges will provide a source of revenue to finance the acquisition, construction, improvement, or expansion of District parks, trails, and recreation facilities to accommodate growth.
- C. ORS 223.297 – 223.316 authorize local governments, including special districts, to impose System Development Charges for parks and recreation.

2. DEFINITIONS

- A. “**Accessory Dwelling Unit**” or “**ADU**” means a small Dwelling Unit on a Lot of Record with a Single-Unit Dwelling (including a townhome) as the primary use. An ADU may be created at the same time as, or subsequent to, construction of the Single-Unit Dwelling. An Accessory Dwelling Unit may be attached to or detached from the Single-Unit Dwelling as long as the ADU meets the applicable City or County standards for ADUs at the time the ADU was created.
- B. “**Affordable Housing**” means Deed Restricted Residential Development that is:

1. Rental housing affordable to households with income at or below 60% of the area median income ("AMI");
 2. Owner-occupied or lease-to-own housing affordable to households with income at or below 80% of the AMI; or
 3. Homeless Shelter developments.
- C. **"Applicant"** means the Owner or other Person who applies for a Building Permit from the City or County for Residential Development or Overnight Accommodations within the boundaries of the District.
- D. **"Board"** means the District's duly elected Board of Directors.
- E. **"Building Permit"** means permission or authorization from the City or County to perform work on a property; which may be a permit for construction, electrical, mechanical, plumbing, grading or other work, or a permit authorizing the siting of a Manufactured Dwelling.
- F. **"Capital Improvements"** means public parks, trails, recreation facilities or other amenities used for parks and recreation purposes.
- G. **"Capital Projects List"** means the list of the Capital Improvements, based on the comprehensive plan or capital improvements plan adopted by the Board, that the District intends to fund, in whole or in part, with revenues from an Improvement Fee and the estimated cost, timing and percentage of costs for each Capital Improvement eligible to be funded with Improvement Fee revenues.
- H. **"Citizen or Other Interested Person"** means any person whose legal residence is within the boundaries of the District, as evidenced by registration as a voter within the District or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within District boundaries or is otherwise subject to the imposition of SDCs, as provided in Section 3 of this Ordinance.
- I. **"City"** means the City of Bend, Oregon.
- J. **"County"** means Deschutes County, Oregon.
- K. **"Deed Restricted"** means a Site subject to a covenant, contained in a deed or other instrument recorded in the Deschutes County Official Records, that the Site will be maintained or operated as Affordable Housing for a period of not less than 30 years.
- L. **"District"** means the Bend Park & Recreation District, an Oregon special district.
- M. **"Dormitory"** means a college or university residential housing facility intended or used for occupancy of higher education students.

- N. **“DPD”** means the District’s Director of Planning & Development.
- O. **“Dwelling Unit”** means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
- P. **“Executive Director”** means the District’s executive director or the executive director’s designee, unless expressly provided otherwise.
- Q. **“Final Occupancy”** means when the City or County, as applicable, has issued a certificate of occupancy, or for projects in which no certificate of occupancy will be issued, final inspection has been conducted and approved.
- R. **“Homeless Shelter”** means a location for overnight accommodation of people who lack housing. A shelter may be either a group shelter, outdoor shelter, or multi-room shelter, as defined by the City.
- S. **“Improvement”** means any manmade change to improved or unimproved real estate, including buildings, placement or replacement of manufactured or other structures, parking and loading areas, landscaping, paved or graveled areas, grading, and areas devoted to exterior display, storage, or activities. Improvements include improved open areas such as plazas and walkways, but do not include natural geologic forms or landscapes.
- T. **“Improvement Fee”** means a fee for costs associated with capacity-increasing Capital Improvements to be constructed after the effective date of this Ordinance.
- U. **“Living Space”** means those portions of a Dwelling Unit which permanently provide for living, sleeping, eating, cooking, and sanitation. Living Space does not include spaces such as garages, decks, patios, or detached storage sheds.
- V. **“Lot”** means a unit of land that is created by a subdivision of land.
- W. **“Lot of Record”** means a unit of land held in separate ownership as shown on the records of the Deschutes County Clerk, and which conforms to all applicable zoning and subdivision or partition requirements in effect on the date the unit of land was created.
- X. **“Manufactured Dwelling”** means a Dwelling Unit that is constructed primarily at one location and is then transported to another location for either permanent or temporary siting, including residential trailers, mobile homes, manufactured homes or prefabricated structures. A Manufactured Dwelling shall be assessed the Single-Unit Dwelling SDC rate if sited on its own Lot of Record. If placed in a Manufactured Dwelling Park, a Manufactured Dwelling shall be assessed the Manufactured Dwelling SDC rate.

- Y. **“Manufactured Dwelling Park”** means a place where four or more manufactured dwellings are located, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee.
- Z. **“Methodology”** means the District’s System Development Charge methodology required by ORS 223.304(1) and (2).
- AA. **“Multi-Unit Dwelling”** means a Dwelling Unit located on a single Lot of Record with at least one other Dwelling Unit (that is not an Accessory Dwelling Unit). The Dwelling Units may be attached or detached and include duplexes, triplexes, apartments, condominiums, senior independent living, and assisted living residences. Townhomes and rowhouses which share a wall, but are located on separate Lots of Record, are not considered Multi-Unit Dwellings.
- BB. **“Overnight Accommodations”** means all or any portion of the Improvements on a Site which are designed or used for occupancy of transient individuals. Overnight Accommodations includes hotels, motels, hostels, inns, bed and breakfasts, guest lodges or ranches, RV parks, cabins, campgrounds or camping spaces, and such other Improvements as may be designated as Overnight Accommodations by separate resolution of the Board.
- CC. **“Overnight Accommodations Unit”** means those individually occupiable units within an Overnight Accommodations development, and include hotel rooms, motel rooms, camping sites, RV pads or spaces, yurts, cabins, bed and breakfast rooms and hostel sleeping quarters.
- DD. **“Owner”** means the owner or owners of record of real property, as shown in the official records of the County, or a person purchasing a piece of property under a contract of sale. For the purposes of violations of this Ordinance and binding agreements between the District and the Owner, “Owner” shall also mean the leaseholder, tenant or other person in possession or control of all or any portion of the property at the time of such violation.
- EE. **“Parcel”** means a unit of land that is created by a partition of land.
- FF. **“Person”** means an individual, corporation, partnership, limited liability company, trustee, or any other legal entity of any type.
- GG. **“Qualified Public Improvement”** means a Capital Improvement that is:
1. Required as a condition of development approval; and
 2. Identified in the Capital Projects List adopted pursuant to Section 5 of this Ordinance; and either is:
 - a. Not located on or contiguous to a Site that is the subject of the development approval; or

- b. Located in whole or in part on or contiguous to a Site that is the subject of development approval and required to be built larger or with greater capacity (over-capacity) than is necessary for the particular development project to which the Improvement Fee is related; and

3. Approved/accepted by the District.

For purposes of this definition, contiguous means property within a public way that abuts the Site.

HH. **“Redevelopment”** means alteration, addition, replacement, or change in use of a Site that has an existing or previously existing use, including conversions of existing Improvements, into new or expanded Residential Development or Overnight Accommodations, or conversions of a portion of existing improvements into additional Living Space.

II. **“Reimbursement Fee”** means a fee for costs associated with Capital Improvements already constructed, or under construction when the fee is established, for which the local government determines that capacity exists.

JJ. **“Residential Development”** means all improvements on a Site, including buildings and other structures, which create Dwelling Units or other residential Living Space. Residential Development includes Single-Unit Dwellings, Multi-Unit Dwellings, Dormitories, Manufactured Dwellings, Accessory Dwelling Units, and such other Improvements as may be designated as Residential Development by separate resolution of the Board.

KK. **“Single-Unit Dwelling”** means a single Dwelling Unit located on a single Lot of Record. Single-Unit Dwellings include attached or detached Improvements (e.g., townhomes or rowhouses), regardless of the designation used by the City, County, or Applicant; provided, however, Single-Unit Dwellings do not include accessory dwelling units. The Single-Unit Dwelling rate applies to the primary Dwelling Unit on a Lot of Record, regardless of the presence of one or more ADUs on such Lot of Record.

LL. **“Site”** means a lot, parcel, block or other tract of land that (or group of adjacent lots, parcels, blocks or other tracts of land, whether or not under the same ownership) that is or may be occupied by Residential Development or Overnight Accommodations.

MM. **“System Development Charge”** or **“SDC”** means a Reimbursement Fee or an Improvement Fee assessed or collected at the time of the issuance of a Building Permit, or at such other time as may be designated by resolution of the Board.

3. **SYSTEM DEVELOPMENT CHARGE FRAMEWORK**

A. SDCs are imposed upon all new Residential Development and Overnight Accommodations within District boundaries. SDCs are also imposed on all Redevelopment, if such Redevelopment results in: (i) in the case of Residential Development, an increase in the number (or a change in the type) of Dwelling Units, compared to the Dwelling Units

existing on the Site prior to such Redevelopment, or additions or conversions resulting in additional Living Space in a Dwelling Unit; (ii) in the case of Overnight Accommodations, an increase in the number (or a change in the type) of Overnight Accommodations Units, compared to the Overnight Accommodations Units existing on the Site prior to such Redevelopment; or (iii) any Redevelopment of property which converts the existing use into new Residential Development or Overnight Accommodations.

- B. For an increase in the number of Dwelling Units, or the addition of Living Space within an existing Dwelling Unit, or a change in the type of Dwelling Unit, the amount of SDCs to be paid shall be the difference between the rate that would be imposed for the existing development and the new development. For an increase in the number of Overnight Accommodations Units or Redevelopment of a Site into Overnight Accommodations, the amount of SDCs to be paid shall be the difference between the rate that would be imposed for the existing development and the new development.
- C. System Development Charge amounts, as well as the Capital Projects List, administrative review procedures, and other implementing measures related to this Ordinance shall be established, and may be revised from time to time, by separate resolutions of the Board. A change in implementing measures, administrative fees, qualified projects, and similar changes shall not require amendment of this Ordinance or the Methodology.
- D. A resolution may include definitions of categories for determining the amount of SDCs due for certain types of development. If a particular development or type of use is not clearly Residential Development or Overnight Accommodations, the Executive Director may make a case-by-case determination of appropriate category and the amount of SDCs payable for the development using any methodology reasonably calculated to determine impacts on parks and recreation system resulting from the development or use.
- E. The SDCs imposed by this Ordinance are separate from, and in addition to, any applicable tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development.

4. METHODOLOGY

- A. The Methodology used to establish or modify the Reimbursement Fee shall be based upon, when applicable, the cost of existing facilities (including without limitation design, financing and construction costs), prior contributions by then-existing property Owners, gifts or grants from federal, state, municipal or quasi-municipal government or private persons, the value of unused capacity available to future system users, rate-making principles employed to finance publicly-owned capital improvements, and other relevant factors identified by the District Board. The Methodology shall promote the objective that future Residential Development and Overnight Accommodations developed within the District shall contribute no more than an equitable share of the cost of then-existing facilities.

- B. The Methodology used to establish or modify the Improvement Fee shall consider the projected cost of Capital Improvements identified on the Capital Projects list that are needed to increase the capacity of the systems to which the fee is related, and the need for increased system capacity that will be required to serve the demands placed on the system by future users. 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 the Improvement Fee or the Reimbursement Fee, or both, shall be adopted by separate resolution of the District Board.

5. EXPENDITURES

- A. The District shall establish separate accounts for each type of SDC, i.e., Reimbursement Fees and Improvement Fees, which shall be segregated from all other District accounts. All SDC revenues shall be deposited in the appropriate account immediately upon receipt.
- B. Reimbursement Fees shall be spent only on Capital Improvements, including replacements and major repairs, or expenditures relating to repayment of indebtedness.
- C. Improvement Fees shall be spent only on capacity-increasing Capital Improvements, including expenditures relating to repayment of future debt for such improvements. An increase in system capacity occurs if a Capital Improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the Capital Improvements funded by Improvement Fees shall be related to the need for increased capacity to provide service for future users.
- D. Notwithstanding subsections B and C of this section, SDC revenues may also be expended on the direct costs of complying with the provisions of this Ordinance and related state statutes, including, but not limited to, the costs of developing SDC Methodologies and providing an annual accounting system for SDC expenditures.
- E. The monies deposited in the separate SDC accounts shall be used solely for Capital Improvements allowed by ORS Chapter 223 including, but not limited to:
 - 1. design and construction plan preparation;
 - 2. permitting and fees;
 - 3. land and material acquisition costs, including any costs related to costs of condemnation;
 - 4. construction of Capital Improvements;

5. site preparation and grading and the design and construction of new drainage facilities or off-site improvements required as a condition for the construction of Capital Improvements;
 6. relocating utilities required by the construction of Capital Improvements;
 7. landscaping;
 8. construction management and inspection;
 9. surveying, soils and material testing;
 10. acquisition of capital fixtures and equipment;
 11. payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the District to fund adopted Capital Improvements; and
 12. direct costs of complying with the provisions of ORS Chapter 223 including the consulting, legal, and administrative costs required for developing and updating the SDC Methodology report, resolution/ordinance, and Capital Projects List; and the costs of collecting and accounting for SDC expenditures.
- F. Funds on deposit in the separate SDC accounts shall not be used for:
1. any expenditure that would be classified as a maintenance or repair expense; or
 2. costs associated with the construction of administrative office facilities that are more than an incidental part of other Capital Improvements.
- G. Capital Improvements being funded wholly or in part with SDC revenues shall be included in the District's Capital Projects List. The Capital Projects List shall be adopted by resolution of the District Board, and may be modified at any time by separate resolution adopted by the District Board. If the District's SDCs will be increased by a proposed modification of the Capital Projects List, the District shall provide notice, including the proposed adoption date, to persons who have requested notice. If the District receives a written request for a hearing on the proposed modification not less than seven (7) days prior to the proposed adoption date of the modification, the District shall hold a public hearing. If the District does not receive such a request, no hearing is required. The District's decision to increase the SDCs by modification of the Capital Projects List may be judicially reviewed only as provided in ORS 34.010 to 34.100.
- H. Any SDC funds on deposit in the separate SDC accounts that are not immediately necessary for expenditure shall be invested or deposited in an interest-bearing account by the District. All income or interest derived from such investments shall be deposited in the SDC funds accounts and used as provided in this Ordinance.

- I. The District shall prepare an annual accounting report for its SDCs, including the total amount of SDC revenue deposited in the separate SDC accounts, and Capital Improvement projects that were funded with SDC revenues.

6. CALCULATION; COLLECTION

- A. The Methodology establishes the SDC rate applicable to each category of Residential Development and Overnight Accommodations. The SDCs payable for a particular project are calculated by multiplying the applicable rate (as may be adjusted from time to time by Board resolution, as provided in this Ordinance) by the number of Dwelling Units or Overnight Accommodations Units, as applicable, in the Applicant's project.
- B. District SDCs are payable upon the earlier of (1) notification by the City or County that a Building Permit is ready for issuance, or (2) commencement of any development activity for which a Building Permit is required but not obtained. If SDCs are due and payable at the time of issuance of a Building Permit, and if development work commences without an appropriate permit, the SDCs shall be immediately payable, together with interest at an annual rate of 12%, from the earliest date that a Building Permit was required.
- C. Payment of SDCs for Residential Development may be deferred from the time payment is otherwise due until Final Occupancy, subject to the provisions of this section. (Payment of SDCs for Overnight Accommodations may not be deferred.) Deferrals not in compliance with this Ordinance are not permitted.
 1. A deferral application must be submitted by the Applicant, and the deferral approved by the District, before the SDCs become payable under Section 6.B. or before the Building Permit is accepted by the Applicant. A deferral application under this section must be accompanied by the applicable fee amount, if any, established by separate Board resolution to cover all District costs associated with the deferral. District may charge interest on deferred SDCs, to be collected at the time Final Occupancy is certified, at a rate established by separate Board resolution. No additional agreement is necessary to receive a deferral under this section. The District may delegate the approval of deferral applications to the City or County, as applicable, by appropriate intergovernmental agreement.
 2. All deferred SDCs must be paid before the City or County, as applicable, will certify Final Occupancy. Occupancy of the development before payment of the applicable SDCs is prohibited.
 3. Beginning on the effective date of this Ordinance, the amount of SDCs due shall be the total amount calculated by applying the SDC rate in effect on the date the application was submitted to the City or County, as applicable, for the permit or other action for which the SDCs first became payable for the project, regardless of whether the SDC rates have increased by the time payment is due under a deferral under this

Section 6.C. For deferral agreements in place prior to July 1, 2025, the calculation of the amount due shall be as provided in the deferral agreement.

4. The deferral under this Section 6.C. is available for all Residential Development applied for after July 1, 2025.
- D. District may delegate responsibility for calculating and collecting SDCs to the City or County by intergovernmental agreement. In the event of such delegation, the Board shall have the authority to implement, by resolution, an alternative collection time for District SDCs; provided, however, any such alternative time of collection shall be consistent with the time of collection used by the City or County, as applicable.

7. EXEMPTIONS

Notwithstanding Section 3A, the following development is exempt from payment of District SDCs:

- A. Non-residential development, other than Overnight Accommodations.
- B. Through June 30, 2025, alteration, expansion, or replacement of an existing Single-Unit Dwelling where no additional Dwelling Unit is created. Beginning July 1, 2025, alteration, expansion, or replacement of an existing Single-Unit Dwelling that does not increase the square footage of the Dwelling Unit to the next tier of SDCs, as shown in the SDC fee schedule.
- C. The construction of accessory buildings or structures which will not create additional Dwelling Units, and which do not create additional demand on District Capital Improvements.
- D. Hospice care facilities, Alzheimer's care facilities, and end of life residential care facilities, and such other uses as the Executive Director may determine have little or no impact on District Capital Improvements.
- E. Temporary shelters for homeless persons and other uses, such as emergency/rapid response temporary units or camping type shelters (excluding those designated as Overnight Accommodations).

The District may delegate exemption processing to the City or County, as applicable, by appropriate intergovernmental agreement. Exemptions expire upon conversion of the property from the exempted use to another use.

8. CREDITS FOR QUALIFIED PUBLIC IMPROVEMENTS

- A. The District may grant a credit against the Improvement Fee portion of the SDCs imposed pursuant to Section 3 for the contribution of land for, or for the construction of, any Qualified Public Improvements.

- B. Prior to issuance of a Building Permit, the Applicant shall submit to the Executive Director a proposed plan and estimate of the cost for contributions of a Qualified Public Improvement for which a credit may be allowed. The proposed plan and estimate shall include:
1. a designation of the development for which the proposed plan is being submitted;
 2. a legal description of any land proposed to be contributed and a written appraisal prepared in accordance with Section 8.E.1.;
 3. a list of the contemplated Qualified Public Improvements contained within the plan;
 4. an estimate of proposed construction costs certified by a professional architect or engineer; and
 5. a proposed time schedule for completion of the proposed plan.
- C. The Applicant shall have the burden of demonstrating that a particular Qualified Public Improvement qualifies for a credit. The amount of the credit to be applied shall be determined according to the following conditions:
1. When new Residential Development occurs, the SDCs for the existing use, if applicable, shall be calculated and, if less than the SDCs for the proposed use, the difference between the SDCs applicable to the existing use and the SDCs applicable to the proposed use shall be the SDCs payable for the project. If the change in the use results in the SDCs for the proposed use being less than the SDCs for the existing use, then no SDCs shall be charged. No refund or credit shall be given unless provided for elsewhere in this Section 8.
 2. If a Qualified Public Improvement is located in whole or in part on or contiguous to the property that is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit may be given only for the cost of that portion of the improvement that exceeds the District's minimum standard facility size or capacity needed to serve the particular development project or property. The Applicant shall have the burden of demonstrating that a particular improvement qualifies for a credit under this subsection.
- D. If the contribution of land or construction of a Qualified Public Improvement gives rise to a credit amount greater than the amount of the SDCs that would otherwise be levied against the project receiving development approval, the excess credit may be applied against SDCs that accrue in subsequent phases of the original development project. Any excess credit must be used not later than 10 years from the approval date for the credit.
- E. Calculation of credits will be subject to the following standards:

1. The value of contributed lands 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; and
 2. The anticipated construction cost of the Qualified Public Improvements shall be based upon cost estimates certified by a professional architect or engineer.
- F. Upon approval of the District, the decision of the Executive Director, as to whether to accept the proposed contribution plan and the value of such contribution, shall be in writing and issued to the Applicant within 30 days of the date that all data is received for review.
- G. Any Applicant who submits a proposed plan pursuant to this Section 8, and who desires the immediate issuance of a Building Permit, shall pay the applicable SDCs at the time of issuance of such Building Permit. Such payment shall not be construed as a waiver of any credit. Any difference between the amount paid and the amount due, as determined by the Executive Director, shall be refunded to the Applicant. In no event shall refund by the District under this subsection exceed the amount originally paid by the Applicant.
- H. The District may, in its sole discretion, grant a credit for land transferred to the District for park and recreational use, but which does not otherwise meet the requirements of this Section 8.
- I. Credits shall not be transferable from one development to another.
- J. Credits shall be transferable within the same development if all or part of the development is sold, prior to completion of the development, but after completion and dedication of the Qualified Public Improvements.
- K. Credits shall not be transferable from the District's SDCs to any other governmental agency's system development charges.
- L. Credits shall be used within 10 years from the date the credit is given.

9. DEVELOPER REIMBURSEMENT PROCEDURES AND PAYMENTS

- A. Upon approval of the District Board, the District may enter into agreements with developers who propose to expand the park system by dedicating or constructing Capital Improvements. These agreements would allow the District to reimburse the developer for such improvements using a portion of the SDCs collected within a designated recovery area.
- B. The Capital Improvements may serve only the proposed development (a "sole recovery area") or the proposed development and areas beyond it (a "shared recovery area").

C. The District Board shall adopt, by separate resolution, procedures for entering into such agreements. The resolution shall address:

1. Procedures for entering into such agreements.
2. Applicable District, City, and County policies, standards, rules and regulations.
3. Responsibilities for paying the cost of such Capital Improvements.
4. Eligibility for SDC reimbursement payments.
5. Procedures for determining the extent of the area served by proposed Capital Improvements.
6. Procedures for remitting SDC s collected in the sole recovery area or shared recovery area to eligible developers.
7. Payment schedules and conditions for SDC reimbursement payments.
8. Procedures for calculating the amount of the reimbursement payments.
9. Procedures for determining the value of qualified Capital Improvements.

10. REFUNDS AND WAIVERS

A. Refunds.

1. Refunds may be given upon the District's finding that there was a clerical error in the calculation of SDCs.
2. Refunds shall not be allowed for failure to timely claim a credit or for failure to seek an alternative SDC rate calculation in a timely manner, prior to submission of an application for a Building Permit. The District will not issue refunds if the Applicant fails to claim a credit or fails to seek an alternative SDC rate calculation prior to paying an SDC, except for clerical errors, as stated above, or as a result of an objection or review as provided in Section 13.
3. An Applicant or Owner shall be eligible to apply for a refund if:
 - a. The Building Permit has expired, and the development authorized by such permit was not commenced; or
 - b. The District has not expended the SDC revenues prior to the end of the fiscal year immediately following the tenth anniversary of the date upon which such SDCs were paid. For the purposes of this Section 10.A.3., the first funds received shall be deemed to be the first funds expended. If approved, the amount of the refund

shall not exceed the unexpended portion of SDCs collected in connection with the applicable Building Permit.

4. An application for refund shall be filed with the District and contain the following:
 - a. The name and address of the Applicant;
 - b. The location of the property which was the subject of the SDCs;
 - c. A notarized sworn statement that the petitioner is the then-current Owner of the property on behalf of which the SDCs were paid; including proof of ownership, such as a certified copy of the latest recorded deed;
 - d. The date the SDCs were paid;
 - e. A copy of the receipt of payment for the SDCs; and, if appropriate,
 - f. The date the Building Permit was issued, and its expiration date.
5. The application for a refund shall be filed within 90 days of the expiration of the Building Permit, Placement Permit, or within 90 days of the end of the fiscal year following the tenth anniversary of the date upon which the SDCs were paid. Failure to timely apply for a refund of the SDCs shall waive any right to a refund.
6. Within 30 days from the date of receipt of a petition for refund, the District will advise the petitioner of the status of the request for refund, and if such request is valid, the SDCs (or eligible portion of the SDCs) shall be returned to the petitioner.
7. A subsequent Applicant for a Building Permit on property for which a refund was previously issued, shall pay the SDCs required by Section 3.

B. Waivers

1. The Executive Director may grant a waiver of District SDCs upon finding that the subject development places no demand on the District park and recreation system.
2. The District Board may, by separate resolution, designate other types of Residential Development, including, but not limited to, Affordable Housing, for which SDC waivers may be applied.
3. If the property use under which a waiver was granted is modified or discontinued, the waiver will expire and the District's then-current SDCs will be due and payable by the Owner unless otherwise determined by the Executive Director.

11. ADOPTION OR AMENDMENT OF METHODOLOGY

- A. The District Board shall hold a public hearing prior to adopting or amending the methodology on which any SDCs are based. Notice of the public hearing shall be given as provided in Section 12. If changes in the Methodology are undertaken by the District, the District shall coordinate such changes with the City and County prior to adoption pursuant to any intergovernmental agreements between the District and County or the City, as applicable.
- B. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the SDC methodology if the change is based on: (1) a change in project costs, including cost of materials, labor and real property applied to projects or project capacity as shown on the Capital Projects List; or (2) periodic application of one or more specific cost indexes included in the methodology or adopted by separate ordinance or resolution, as provided in ORS 223.304.

12. 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 SDCs. Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify any SDCs. The Methodology supporting the SDCs shall be available at least 60 days prior to the first hearing to adopt or amend SDCs. The failure of a person on the list to receive a notice that was mailed shall not invalidate the action of the District. Legal action intended to contest the Methodology may not be filed after 60 days following the District's adoption or modification of the SDC ordinance or resolution.
- B. The District may periodically delete names from the list, but at least 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.

13. CHALLENGES, OBJECTIONS, REVIEWS AND APPEALS

- A. Challenge of Expenditures.
 - 1. Any Citizen or Other Interested Person may challenge an expenditure of SDC revenues.
 - a. Such challenge shall be submitted, in writing, to the Executive Director for review within two years following the subject expenditure, and shall include the following information:
 - i. The name and address of the Citizen or Other Interested Person challenging the expenditures;

- ii. The amount of the expenditure; the project, payee, or purpose; and the approximate date on which it was made; and
 - iii. The reason why the expenditure is being challenged.
 - b. If the Executive Director determines that the expenditure was not made in accordance with the provisions of this Ordinance and other applicable laws a reimbursement of SDC revenues shall be made from other revenue sources within one year following the determination that the expenditure was not appropriate.
 - c. The Executive Director shall make written notification of the results of the expenditure review to the person who requested the review within 10 days of completion of the review. The Executive Director's decision may be judicially reviewed only as provided in ORS 34.010 to 34.100.
- B. Review of Methodology.
- 1. Legal action contesting the methodology used for calculating a system development charge must be filed within 60 days following the District's adoption or modification of the SDC ordinance or resolution. A Citizen or Other Interested Person shall request judicial review of the methodology used for calculating a system development charge only as provided in ORS 34.010 to 34.100.
- C. Objection to SDCs Imposed.
- 1. An Applicant who is required to pay SDCs may object to the following:
 - a. The SDC calculation or estimate, or the application of the SDC Methodology to the Applicant's project; provided, however, the SDC Methodology itself may not be reviewed, except as provided in Section 13.B.
 - b. The amount or denial of a proposed credit for contribution of a Qualified Public Improvement pursuant to Section 8.
 - 2. At any time prior to filing a request for formal review of its objection under this Section 13, an Applicant may have informal discussions with District staff designated by the DPD to try to resolve the Applicant's objection. District staff have the authority to work with City or County staff, as applicable, to resolve objections in a manner consistent with this Ordinance.
 - 3. Any Applicant desiring a formal review of its objection shall file a written request with the DPD, accompanied by the applicable objection fee, if any, established by separate Board resolution. The written request shall contain the following information:
 - a. The name and address of the Applicant;

- b. The legal description of the property in question;
 - c. If issued, the date the Building Permit was issued;
 - d. A brief description of the development being undertaken pursuant to the Building Permit;
 - e. If paid, the date the SDCs were paid; and
 - f. An explanation of the Applicant's objection, including the amount in dispute, the reasons why the Applicant believes the amount is incorrect, the amount the Applicant believes is appropriate with an explanation of that amount, and a request for a meeting, if desired.
4. The Applicant's request for review must be filed within 30 days of the date of first receipt of the denial, calculation or estimate. Failure to request a formal review of any objection within the time provided shall be deemed a waiver of such right. It is the Applicant's responsibility to understand the development application system used by the City or County, as applicable, including any online portal or other electronic system. If an online portal or other electronic system is used, an Applicant shall be deemed to have received notice, of the SDC amount estimate or calculation, for the purpose of any protest, appeal or other time period specified in this Ordinance as commencing on receipt of such notice, on the date such notice was uploaded to the online portal or other electronic system. It is the Applicant's responsibility to regularly check any online portal or other electronic system used by the City or County, as applicable. Recalculation of SDC amounts following (i) amendment of a development application by the Applicant, or (ii) an increase in the SDC rates applicable to the Applicant's project, shall not give rise to a new opportunity to object to the calculation or estimate; provided, however, that the Applicant may submit an explanation of any errors in the District's arithmetic used for the calculation or estimate.
5. Following payment by the Applicant of any objection fee required by board resolution, the DPD shall respond to the objection in writing within 10 days unless the Applicant requests a meeting. If a meeting is requested, the DPD shall meet with the Applicant within a reasonable period of time. In the event a meeting is held, the DPD will issue, on behalf of the District, a written response to the objection no later than 10 days after the meeting. The District's response may (i) affirm the original amount, (ii) reduce the original amount, or (iii) request additional information. Notwithstanding the foregoing, a request for additional information is not the District's response. If other information is requested and provided pursuant to parameters established by the District, the District shall provide its response to the objection within 15 days of receiving the additional information.
6. The Applicant may appeal the District's response to the objection by submitting a written appeal to the Executive Director, accompanied by the applicable appeal fee,

if any, established by separate Board resolution. The written appeal, and any required appeal fee, must be received by the Executive Director within 10 days of Applicant's receipt of the District's response to the objection. The appeal must include the Applicant's explanation of why the District's response to the objection was incorrect, and may also include evidence and written argument, and a request for a meeting with the Executive Director. The Applicant may submit additional evidence and written argument within 10 days of the day the appeal is submitted to the Executive Director. The appeal will be determined by the Executive Director. The District shall provide a written decision on the appeal within 30 days of filing the appeal, or within 10 days of any meeting, whichever is later. The District's appeal decision shall be subject to review only in accordance with ORS 34.010 to 34.100.

7. Any Applicant who requests a review or appeal pursuant to this Section 13, and who desires the immediate issuance of a Building Permit, shall pay the SDC amount calculated by the District no later than the time the review or appeal request is filed. Such payment shall not be construed as a waiver of the Applicant's review rights.
8. An Applicant may request review or appeal under this Section 13, without paying the applicable SDCs, if no Building Permit has been issued.

14. INTERPRETATION; SEVERABILITY; CORRECTIONS

All pronouns contained in this Ordinance and any variations of such pronouns will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the applicable context may require. The singular includes the plural, and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes" and "including" are not limiting. Any reference to a particular law, statute, rule, regulation, code or resolution includes the law, statute, rule, regulation, code or resolution now in force or as later amended. The provisions of this Ordinance are declared to be severable. If any section, subsection, sentence, clause or portion of this Ordinance is for any reason held invalid, unenforceable or unconstitutional, such invalid, unenforceable or unconstitutional section, subsection, sentence, clause or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected at any time by resolution of the Board to cure editorial or clerical errors, or to comply with applicable law.

15. EFFECTIVE DATE

The SDCs authorized by this Ordinance shall be imposed on development applications submitted on or after July 1, 2025.

16. REPEAL

This Ordinance supersedes, replaces and restates Ordinance No.12, in its entirety, and supersedes all ordinances, resolutions or policies in conflict with this Ordinance. Ordinance No. 12 is repealed.