ORDINANCE NO. 6066

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE SECTION 10.01.080 SEWER SYSTEM DEVELOPMENT CHARGE, CHAPTER 15.16 SYSTEM DEVELOPMENT CHARGE, AND CHAPTER 15.20 PARKS SYSTEM DEVELOPMENT CHARGE.

WHEREAS, the City of Albany seeks to implement its Housing Implementation Plan to support needed housing; and

WHEREAS, deferring the collection of System Development Charges (SDCs) was designated as a high priority recommendation in the Housing Implementation Plan and re-affirmed in June 2023 with City Council's adoption of the plan; and

WHEREAS, it is necessary to establish a mechanism to defer SDCs while ensuring collection and administrative cost recovery.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section1: Section 10.01.080, Chapter 15.16, and Chapter 15.20 of the Albany Municipal Code are hereby by amended as shown in Exhibit A.

Passed by the Council: 8-13-2025

Approved by the Mayor: 8-14-2025

Effective Date: 09-13-2025

Signed Above
Mayor

ATTEST:

City Recorder

10.01.080 Sewer system development charges.

To establish appropriate provisions for the construction and expansion of the sewerage system of the City and the treatment plant, to provide for the necessary oversizing of the sanitary sewer system, and to be assured that the cost of such construction and expansion is borne by those who receive the benefits thereof, there is hereby established connection permits for all connections made to the sewer system of the City in accordance with this section.

(1) Refund Not Permitted. If properties change from one use to a lower use requiring a lower system development charge, no refund for system development charges shall be made.

(2) Payment of Fees. The sewer system development charge shall be imposed upon all connections or intensification of use made to the sewer system of the City in accordance with Chapter 15.16,Before a building permit may be issued, the applicant shall pay to the City the necessary system development charges and any other fees as may be provided by ordinances or resolutions now in effect or hereinafter adopted.

(3) Sewer System Development Charge to Run with Land. A system development charge paid hereunder shall apply to the particular lot or tract for which it is issued. Any change of use which increases the strength or quantity of wastewater to be discharged or which requires additional connections to the wastewater treatment system shall cause an additional fee to be paid. The owner of the property shall be given credit only for those connections theretofore paid involving the same parcel of property. Where a structure which is served by City sewer is destroyed by fire, flood, wind or act of God, no system development charge shall be charged for a replacement of the structure; provided, the use thereof is not intensified.

(4) Base Rates. Sewer system development charges shall be established by Council resolution. (Ord. 5636, 2006; Ord. 5016, 1992).

Chapter 15.16
SYSTEMS DEVELOPMENT CHARGE

Sections:

15.16.010 Findings.

(1) The systems development charge established herein is intended to be a charge upon the act of development by whomever seeks the development. It is a fee for service because it is the development which requires essential municipal services based upon the nature of the development. The timing and the extent of the development is within the control and discretion of the developer.

(2) The systems development charge imposed by this chapter is not intended to be a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Sec. 11b, Art. XI of the Oregon Constitution or the legislation implementing that section.

(3) Even if the systems development charge herein imposed is viewed under Sec. 11b, Art. XI of the Oregon Constitution as a tax against property or against a property owner as a direct consequence of ownership of that property, it is an incurred charge within the meaning of that section and the statutes implementing it because:

(a) It allows the owner to control the quantity of the service by determining the extent of development to occur upon the property.

(b) It allows the owner to determine when the service is to be initiated or increased by controlling when the development occurs.

(c) State law and the ordinances of this City require the owner to provide certain basic utility services to the property when it is developed for human occupancy. The provision of these basic utility services are a routine obligation of the owner of the affected property and essential to the health and safety of the community.

(4) Among the basic utility services required of every property with a structure designed for human occupancy, except ancillary buildings, are water, sanitary sewer, and transportation services.

(5) The systems development charge imposed by this chapter is based upon the actual costs of providing existing or planned-for capital improvements and does not

impose charges on persons not receiving a service and imposing a burden upon the City's existing capital improvements. (Ord. 5157, 1994; Ord. 4966 § 1, 1991).

15.16.020 Definitions.

As used in this chapter, except where the context otherwise requires, the words and phrases have the following meanings:

(1) "Capital improvement(s)" means facilities or assets used for any of the following:

(a) Water supply, storage, treatment and distribution; or

(b) Sanitary sewers, including collection, transmission, treatment and disposal; ~~or~~

(c) Transportation, including streets, sidewalks, bikeways, traffic signals and signage, and street drainage collection systems; or

(d) Storm drainage, including collection, transmission, treatment, and disposal of runoff within the area regulated by Albany's Municipal Separate Storm Sewer (MS4) discharge permit. ~~.~~

(2) "Development" means the act of making a manmade change to improved or unimproved real estate/real property (e.g., constructing a building or conducting a mining operation) or making a physical change in the use or appearance of a structure or land which increases the usage of any capital improvements or which creates the need for additional capital improvements.

(3) "Improvement fee" means a fee for costs associated with capital improvements to be constructed after the date the ordinance codified in this chapter becomes effective.

(4) "Qualified public improvements" means a capital improvement that is required as a condition of development approval, identified in the plan adopted pursuant to AMC 15.16.060(2) and either:

(a) Not located on or contiguous to property that is the subject of development approval (as used in this definition, "contiguous" means in a public way which abuts); or

(b) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

(5) "Reimbursement fee" means a fee for costs associated with capital improvements constructed or under construction on the effective date of this chapter.

(6) "Systems development charge" means a reimbursement fee, an improvement fee, or a combination thereof, assessed or collected at any of the times specified in AMC 15.16.070. It shall also include that portion of a water, sanitary sewer, or storm drainage connection charge that is greater than the amount necessary to reimburse the City for its average cost of inspecting and installing connections with the water system, the sanitary sewer system, or storm drainage system. "Systems development charge" does not include:

(a) Any fees assessed or collected as part of a local improvement district;

(b) A charge in lieu of a local improvement district assessment; or

(c) The cost of complying with requirements or conditions imposed upon a land use decision. (Ord. 6025, 2023; Ord. 5157, 1994; Ord. 4966 § 2, 1991).

15.16.030 Purpose.

The purpose of the systems development charge is to impose a portion of the public cost of capital improvements upon those developments that create the need for, or increase, the demands on capital improvements. (Ord. 5157, 1994; Ord. 4966 § 3, 1991).

15.16.040 Scope.

The systems development charge imposed by this chapter is separate from and in addition to any applicable tax, assessment, charge, fee, in-lieu-of assessment, or fee otherwise provided by law or imposed as a condition of development. A systems development charge is to be considered in the nature of a charge for service to be rendered or a service hookup charge. (Ord. 5157, 1994; Ord. 4966 § 4, 1991).

15.16.050 Systems development charge established.

(1) Unless otherwise exempted by the provisions of this chapter or other local or state law, a systems development charge is hereby imposed upon all new development within the City, and all new development outside the boundary of the City that connects to or otherwise uses the water system, ~~and~~ the ~~or~~ sanitary sewer system, or the storm drainage system ~~or the storm system~~ of the City.

(2) A systems development charge is also imposed upon all new development within the City, and all new development outside the boundary of the City that expands its usage of the water~~, storm, or~~ sanitary sewer, or storm drainage systems because of intensification of the existing development.

(3) Unless otherwise exempted by the provisions of this chapter or other local or state law, a systems development charge is also imposed upon all new development within the City that expands its usage of the transportation system or generates additional traffic because of new development or intensification of the existing development.

(4) When the Council determines to establish a systems development charge for any capital improvement it shall do so by Council resolution.

(5) Because the systems development charge and supporting calculations, including the credits established herein, are closely related to the cost of construction of the capital improvements for each of the systems, the systems development charge and calculations for each system shall be automatically adjusted on the first day of July of each calendar year. The City Engineer shall make the adjustment based upon the Seattle Construction Cost Index published by Engineering News Record (ENR) by calculating the percentage increase/decrease in the index for the period since the last adjustment and then applying that percentage to the figures used to calculate the systems development charge and any credits. (Ord. 5306, 1997; Ord. 5157, 1994; Ord. 4966 § 5, 1991).

15.16.060 Compliance with state law.

(1) The revenues received from the water system development charge shall be deposited to the water improvement fee and/or water reimbursement fee funds. The revenues from the sewer system development charge shall be deposited to the sewer improvement fee and/or reimbursement fee funds. The revenues from the transportation system development charge shall be deposited to the transportation improvement fee

and/or reimbursement fee funds. The revenues from the storm drainage system development charge shall be deposited to the storm drainage improvement fee and/or reimbursement fee funds. These funds shall be budgeted and expended as provided by State law. The accounting of such revenues and expenditures required by State law shall be included in the City's annual financial audit required by ORS Chapter 294.

(2) The capital improvement plan(s) required by state law as the basis for expending revenues from the improvement fees portion of the systems development charge shall be the project lists contained within the most recently adopted water, wastewater, stormwater, and transportation system plans or the project list referenced in the associated methodology.

(3) As provided by State law, the plan or list described in subsection (2) of this section may be modified at any time. If a system development charge will be increased by a proposed modification of the list to include a capacity increasing capital improvement:

(a) The City shall provide, at least 30 days prior to the adoption of the modification, notice of the proposed modification to the persons who have requested written notice described in AMC 15.16.100(1).

(b) The City shall hold a public hearing if the City receives a written request for a hearing on the proposed modification within seven days of the date the proposed modification is scheduled for adoption. (Ord. 6025, 2023; Ord. 5750, 2011; Ord. 5456, 2000; Ord. 5306, 1997; Ord. 5157, 1994; Ord. 4966 § 6, 1991).

15.16.070 Collection of charge.

(1) Unless otherwise granted deferral through the provisions of 15.16.110:

(a)The water system development charge is payable upon issuance of a permit to connect to the water system. The sewer system development charge is payable upon issuance of a permit to connect to the sanitary sewer system. The transportation and storm drainage system development charges are payable upon issuance of a building permit for any new construction, including a building permit for a manufactured home park.

(2) If development is commenced or connection is made to the water system, sanitary sewer system, storm drainage system, or transportation system without an appropriate permit, the systems development charge is immediately ~~payable upon the earliest date that a permit was required~~due.

(3) The building official or the official's designee shall collect the systems development charge(s) from the person responsible for or receiving the benefit of the development.. The building official or the official's designee shall not issue any permit or allow connection described in subsection (1) of this section until the charge(s) has~~ve~~ been paid in full or until provision for installment payments has been made within the limits prescribed in subsection (5) of this section.

(4) A systems development charge paid hereunder shall apply to the particular lot or tract for which it is issued. Any changes of use which require additional connections or intensification of use to the water, sanitary sewer, storm drainage, or transportation system shall cause an additional systems development charge to be paid. The owner of the property shall be given credit only for those systems development charges theretofore paid involving the same parcel of property. Where a structure which is serviced by capital improvements is destroyed by fire, flood, wind, or act of God, no

systems development charge shall be imposed for a replacement of the structure, provided the use thereof is not intensified.

(5) The obligation to pay the unpaid systems development charge and interest thereon shall be secured. Acceptable security to insure payment includes: property, bond, deposits, letter of credit, or the obligor may request a lien be placed against the property to be developed. (Ord. 6025, 2023; Ord. 5334, 1998; Ord. 5157, 1994; Ord. 4966 § 7, 1991).

15.16.080 Exemptions.

Repealed by Ord. 5730. (Ord. 5315, 1997; Ord. 5306, 1997; Ord. 5157, 1994; Ord. 4966 § 8, 1991).

15.16.090 Credits.

(1) When development occurs that must pay a systems development charge under AMC 15.16.050, the systems development charge for the existing use shall be calculated and if it is less than the systems development charge for the proposed use, the difference between the systems development charge for the existing use and the systems development charge for the proposed use shall be the systems development charge required under AMC 15.16.050. If the change in use results in the systems development charge for the proposed use being less than the systems development charge for the existing use, no systems development charge shall be required; however, no refund ~~or credit~~ shall be given. Any unused system development charge created through development shall be credited to the particular lot or tract on which they occurred and tracked for future application should re-development, expansion, or alteration occur. Any existing credit available for a particular lot or tract shall be fully utilized in the case of re-development, expansion, or alteration, prior to assessing additional system development charges.

(2) A credit against the improvement fee portion of the systems development charge shall be given for the cost of a qualified public improvement associated with development.

(a) The credit provided for in this section shall be only for the improvement fee charged for the type of improvement being constructed, and credit for qualified public improvements under AMC 15.16.020(4)(b) may be granted only for the cost of that portion of such improvement that exceeds the government units 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 credit under AMC 15.16.020(4)(b).

(b) 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.

(c) Credits shall be used not later than 10 years from the date the credit is given.

(d) Credits shall be established using the method outlined in the transportation system development charge fee resolution or, in the case of water, sewer, and storm drainage systems development charges, by council policy, and shall be included in an

agreement signed by the applicant and the city engineer that states the amount of the credit and the effective date of the agreement.

(3) The finance director shall be responsible for all recording and accounting associated with the distribution of credits. (Ord. 6025, 2023; Ord. 5306, 1997; Ord. 5157, 1994; Ord. 4966 § 9, 1991).

15.16.100 Appeal procedures.

(1) The Finance Director will maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any systems development charge. The Finance Director will mail written notice to persons on the list at least 45 days prior to the first hearing to adopt or amend a systems development charge, and the methodology supporting the adoption or amendment will be available 30 days prior to the first hearing to adopt or amend. The failure of a person on the list to receive a notice that was mailed will 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, will 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.

(2) Parties challenging the methodology for establishing the systems development charge may appeal the methodology by filing a written appeal with the Finance Director within 60 days of passage of the ordinance codified in this chapter. Such appeals shall describe with particularity the portion of the methodology, calculations, or assumptions which are being asked for reconsideration. All appeal requests shall comply with subsection (6) of this section. A person shall contest the methodology used for calculating a systems development charge only as provided in ORS 34.010 to 34.100, and not otherwise.

(3) Parties aggrieved by the imposition of a systems development charge which has been calculated by the City Engineer or the City Engineer's designee under AMC 15.16.050 through 15.16.090 or a party challenging the propriety of an expenditure of systems development charge revenues may appeal the decision or the expenditure by filing a written request with the City Public Works Director for consideration. Such appeal shall describe with particularity the decision or the expenditure from which the person appeals and shall comply with subsection (6) of this section.

(4) An appeal of an expenditure must be filed within two years of the date of alleged improper expenditure. Appeals of any other decision must be filed within 15 days of the date of the decision.

(5) An appeal fee, established by Council resolution, shall accompany all systems development charge appeal requests.

(6) The appeal shall state:

(a) The name and address of the appellant;

(b) If applicable, the address or tax lot of the property to which the charge is being applied;

(c) The nature of the determination being appealed;

(d) The reason the determination is incorrect; and

(e) What the correct determination of the appeal should be.

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

(7) Unless the appellant and the City agree to a longer period, an appeal shall be heard within 60 days of the receipt of the notice of intent to appeal. At least seven days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

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

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

(10) The City Council shall issue a written decision within 30 days after the hearing date and that decision shall be final. (Ord. 5306, 1997; Ord. 5157, 1994; Ord. 4966 § 10, 1991).

15.16.110 Deferral of charge.

(1) A deferral of system development charges payment may be granted for residential development projects subject to the following conditions:

(a) Deferral is only applicable to residential projects/permits in which a certificate of occupancy is required under the Oregon Building Code and Title 18 of the Albany Municipal Code (AMC). ~~:~~

(b) The project has received all applicable land use approvals and building permits are ready for issuance.

(c) The applicant submits a request for deferral on a form provided by the City including any application fee.

(d) An Application for System Development Charges Deferral & Deferred Payment Agreement is executed with the City prior to permit issuance.

(2) The terms for deferral of SDC's shall be:

(a) Execution of an application for system development charges deferral and Deferred Payment Agreement.

(b) The system development charges established under this title shall be paid prior to any occupancy of a structure or property under permit by the City, and prior to issuance of any certificate of occupancy, where a certificate of occupancy is required under the Oregon Building Code and Title 18.

(c) The City may require adequate security, including but not limited to a lien, bond, or personal guarantee, to ensure payment of deferred system development charges.

(d)A recovery fee at a rate set forth by city council shall ~~Interest may be~~ be charged on deferred system development charges, along with any administrative fees which may be assessed for application, processing, management, and tracking of the deferral.

(e)SDC deferral agreements shall expire if the associated building permit expires.

(3) The building official or the official's designee shall collect the systems development charge(s). The building official or the official's designee shall not issue any certificate of occupancy or issue a permit for work not requiring a certificate of

occupancy as both described in this title until all charge(s) have been paid in full or until provision for installment payments has been made within the limits prescribed in this title.

(4) Failure to pay deferred system development charges shall result in the City withholding occupancy and may result in other remedies including but not limited to: revocation of permits, assessment of penalties as allowed under the Albany Municipal Code, initiation of collection proceedings, and foreclosure of liens.

15.16.200 Prohibited connection.

No connections or intensification of use may be made to the sanitary sewer, water, storm drainage, or transportation system of the City unless the appropriate systems development charge has been paid as detailed under 15.16.070, or a deferral approved under 15.16.110, -or the installment payment method has been applied for and approved. (Ord. 6025, 2023; Ord. 5157, 1994; Ord. 4966 § 11, 1991).

Chapter 15.20
PARKS SYSTEM DEVELOPMENT CHARGE

Sections:

15.20.010 Findings.

(1) The Parks SDC established herein is intended to be a charge upon the act of residential development by whomever seeks the residential development. It is a fee for service because it is the residential development which requires essential municipal services based upon the nature of the residential development. The timing and the extent of the residential development is within the control and discretion of the developer.

(2) The Parks SDC imposed in this chapter is not intended to be a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Sec. IIb, Art. XI of the Oregon Constitution or the legislation implementing that section.

(3) Even if the Parks SDC herein imposed is viewed under Sec. IIb, Art. XI of the Oregon Constitution as a tax against property or against a property owner as a direct consequence of ownership of that property, it is an incurred charge within the meaning of that section and the statutes implementing it because:

(a) It allows the owner to control the quantity of the service by determining the extent of residential development to occur upon the property.

(b) It allows the owner to determine when the service is to be initiated or increased by controlling when the residential development occurs.

(c) State law and the ordinances of the City of Albany require the owner to provide certain basic utility services to the property when it is developed for human occupancy. The provision of these basic services are a routine obligation of the owner of the affected property and essential to the health and safety of the community.

(4) Among the basic services required of every property with a structure designed for human occupancy, except ancillary buildings, are parks, open space, recreation centers and trails.

(5) The Parks SDC imposed in this chapter is based upon the actual costs of providing existing or planned parks capital improvements and does not impose charges on persons not receiving a service and imposing a burden upon the City's existing parks capital improvements. (Ord. 5084 § 1, 1993).

15.20.020 Definitions.

As used in this chapter, except where the context otherwise requires, the words and phrases have the following meaning:

(1) "Parks Capital Improvement(s)" means all existing City parks, trails, open space, and recreation centers which are used or designed for recreational purposes. "Parks Capital Improvements" also includes real property acquired for ownership, access, or use in connection with the residential development, upgrading, or expansion of parks, trails, open space, or recreation centers.

(2) "Residential development" means a development, as that term is defined in Article 22 of the Albany Development Code for residential purposes which is expected to increase the usage of any parks capital improvement or which creates the need for additional parks capital improvements.

(3) "Improvement fee" means a fee for costs associated with parks capital improvements to be acquired or constructed after the date the ordinance adopting this chapter becomes effective.

(4) "Reimbursement fee" means a fee for costs associated with capital improvements constructed or under construction on or before the effective date of this chapter.

(5) "Qualified public improvements" means a capital improvement that is:

(a) Required as a condition of residential development approval;

(b) Identified in the Master Plan adopted pursuant to AMC 15.20.060(2).

(6) "Parks System development charge (Parks SDC)" means a reimbursement fee, an improvement fee, or a combination thereof, assessed or collected at any of the times specified in AMC 15.20.070. "Parks SDC" does not include:

(a) Any fees assessed or collected as part of a local improvement district;

(b) A charge in lieu of a local improvement district assessment; or

(c) The cost of complying with requirements or conditions imposed upon a land use decision or limited land use decision. (Ord. 6021 § 2, 2023; Ord. 5084 § 1, 1993).

15.20.030 Purpose.

The purpose of the Parks SDC is to impose a portion of the public cost of parks capital improvements upon those residential developments that create the need for, or increase the demands on parks capital improvements. (Ord. 5084 § 1, 1993).

15.20.040 Scope.

The Parks SDC imposed by this chapter is separate from and in addition to any applicable tax, assessment, charge, fee, in lieu of assessment, or fee otherwise provided by law or imposed as a condition of residential development. A Parks SDC is to be considered in the nature of a charge for service to be rendered. (Ord. 5084 § 1, 1993).

15.20.050 Parks System development charge established.

(1) Unless otherwise exempted by the provisions of this chapter or other local or state law, effective January 1, 1994, a Parks SDC is hereby imposed upon all new residential development; changes of the occupancy of an existing structure to a residential use, and additions to existing residential structures that creates additional living space within the corporate limits of the City of Albany.

(2) Immediately upon execution or modification of an intergovernmental agreement between the City of Albany and Linn County, which provides for the collection and distribution of this Parks SDC, said charge will also be imposed upon all new residential development within the unincorporated urban growth boundary of the City of Albany.

(3) The fee to be imposed by the Parks SDC shall be established and amended from time to time by City Council resolution. (Ord. 5084 § 1, 1993).

15.20.060 Compliance with state law.

(1) The revenues received from the Parks SDC shall be deposited in the Parks Improvement Fee Activity. This activity shall be budgeted and expended as provided by state law. The accounting of such revenues and expenditures required by state law shall be included in the City's annual financial audit required by ORS Chapter 294.

(2) The capital improvement plan required by state law as the basis for expending revenues from the improvement fees portion of the Parks SDC shall be the Albany Parks and Recreation Master Plan (1993). (Ord. 6021 § 2, 2023; Ord. 5084 § 1, 1993).

15.20.070 Collection of charge.

(1) Unless otherwise granted deferral through the provisions of 15.16.110, ~~T~~the Parks SDC is due and payable upon issuance of a building permit for new on-site residential construction, including additions and alterations to existing residential structures.

(2) The Parks SDC is due and payable upon issuance of the first manufactured home placement permit granted upon an individual building lot. A Parks SDC will not be charged on any replacement dwelling unit on the same lot unless called for by other sections of this chapter.

(3) In the case of a manufactured home park, 50 percent of the Parks SDC shall be due and payable for all spaces in the manufactured home park at the time land use approval is granted. In computing the 50 percent Parks SDC paid at the time of land use approval, each space within the manufactured home park shall be conclusively deemed occupied by a 1,500-square-foot home. The remaining balance of the Parks SDC shall be due and payable at the time the first placement permit is granted for each space based upon the actual square footage contained in each manufactured home. When the actual size of the manufactured home is known, at the time of placement, the correct Parks SDC shall be determined and, after applying a proportionate credit for that portion of the charge which was paid at the time of land use approval, the remaining balance shall be due and payable.

(4) The owner(s) of vacant lots or spaces within an existing manufactured home park that has received all necessary land use approvals prior to January 1, 1994, shall pay a Parks SDC which is limited to 50 percent of the applicable Parks SDC for each space at the time the first placement permit is granted for that space.

(5) If a residential development is commenced without an appropriate permit, the Parks SDC is immediately ~~payable upon the earliest date that a permit was required~~due.

(6) The City Building Official or their designee shall collect the Parks SDC from the building/ placement permit applicant, the person required to apply for the building/placement permit, the owner of the real property upon which the residential development occurs or any person receiving benefit from the residential development. The Building Official or their designee and shall not issue any permit or allow construction described in this ~~the above subsections (1) of this section~~ Title until the charge has been paid in full as described in this Title.~~.~~

(7) A Parks SDC paid hereunder shall apply to the particular lot or tract for which it is issued unless exempted under AMC 15.20.080. The owner of the property shall be given credit only for those Parks SDCs therefor paid involving the same parcel of property. Where a structure which is benefitted by parks capital improvements is destroyed by fire, flood, wind, or act of God, no Parks SDC shall be imposed for the replacement of the structure, provided the number of bedrooms is not increased.

(8) The City may collect any delinquent system development charge which becomes due under the terms of this chapter by appropriate civil action commenced against the person(s) responsible for payment of said charge pursuant to subsection (3) of this section. In addition, failure to pay the prescribed charge after written notice to do so constitutes a misdemeanor punishable under the general penalty prescribed at AMC 1.04.010.

(9) The Park SDCs to be paid under the provisions of this chapter may be subject to the payment in installments under the provisions of the Bancroft Bonding Act of the State of Oregon. (Ord. 6021 § 2, 2023; Ord. 5084 § 1, 1993).

15.20.080 Exemptions.

(1) Exemptions to the Parks SDC are as follows:

(a) All building/placement permit applications for existing lots of record submitted prior to January 1, 1994, are exempt from the Parks SDC.

(b) Existing lots or spaces within an existing manufactured home park upon which the City of Albany has issued a placement permit prior to January 1, 1994, are exempt from the Parks SDC.

(c) All existing structures and uses for which building/placement permits have been issued and which were established and existing prior to January 1, 1994, are exempt from the Parks SDC. Reoccupation after vacancy of any residential apartment unit when original use existed prior to January 1, 1994, shall be exempt from the Parks SDC.

(d) Garages (attached or detached), and other detached nonhabitable accessory buildings are exempt from the Parks Systems development charge.

(e) Housing for low income or elderly persons which is exempt from real property taxes under Oregon State law are exempt from the Parks Systems development charge.

(f) Multiple unit nursing homes, congregate care or assisted care housing facilities containing three or more housing units and designed for the professionally assisted care of elderly or disabled persons are exempt from the Parks Systems development charge.

(2) Any residential development which is exempt from the Parks Systems development charge by reason of its intended use shall lose such exemption immediately upon a change in use to a type of residential development which is not

exempt from the Parks SDC obligation. Upon such loss of exemption, the Parks SDC shall be due and payable upon the entire residential development which was previously exempt. (Ord. 6021 § 2, 2023; Ord. 5084 § 1, 1993).

15.20.090 Credits.

(1) When residential development occurs that must pay a Parks SDC under AMC Section 15.20.050 hereof, the Parks SDC for the existing use shall be calculated and if it is less than the Parks SDC for the proposed use, the difference between the Parks SDC for the existing use and the Parks SDC for the proposed use shall be the Parks SDC required under AMC Section 15.20.050. If the change in use results in the Parks SDC for the proposed use being less than the Parks SDC for the existing use, no Parks SDC shall be required; however, no refund ~~or credit~~ shall be given. Any unused system development charge created through development shall be credited to the particular lot or tract on which they occurred and tracked for future application should re-development, expansion, or alteration occur. Any existing credit available for a particular lot or tract shall be fully utilized in the case of re-development, expansion, or alteration, prior to assessing additional system development charges.

(2) The City of Albany may grant a credit against the Parks SDC imposed pursuant to AMC Section 15.20.050 for the contribution of land for, or the construction of, any qualified public improvements determined by the City to satisfy a specific element of the parks capital improvements required as part of the Albany Parks and Recreation Master Plan and this Parks SDC.

(a) Such land contribution and/or construction shall be subject to the approval of the Albany Parks, Recreation, and Tree Advisory Commission. The amount of credit to be applied to the Parks SDC shall be determined according to the following standards of valuation:

(i) The value of contributed lands shall be based upon a written appraisal of the fair market value conducted at the applicant's expense and mutual consent of the City by an independent and certified appraiser. The appraisal shall be based upon comparable sales of similar property between unrelated parties; and

(ii) The cost of anticipated construction of qualified public improvements shall be based upon cost estimates which are approved by an independent and certified architect or engineer.

(b) Prior to issuance of a building or development permit, the applicant shall submit to the Parks, Recreation, and Tree Advisory Commission, a proposed plan and estimate of cost of contributions of qualified public improvements. The proposed plan and estimate shall include:

(i) A designation of the development for which the proposed plan is being submitted;

(ii) A legal description of any land proposed to be contributed and a written appraisal prepared in conformity with subsection (a)(i) of this section;

(iii) A list of the proposed capital improvements contained within the plan;

(iv) An estimate of proposed construction costs approved by an independent and certified architect or engineer; and

(v) A proposed time schedule for completion of the proposed plan.

(c) The principal factors the Parks, Recreation, and Tree Advisory Commission will use to determine the eligibility of a proposed qualified public improvement as a credit against a Parks SDC shall include the following:

(i) Size, location and cost of maintenance; and

(ii) The extent to which the proposed capital improvement satisfies capital improvement requirements identified in the Parks and Recreation Master Plan pursuant to AMC Section 15.20.060(2); and

(iii) Consideration shall be given only to those capital improvements which are in excess of those required as a condition of land use approval.

(d) If the Parks, Recreation, and Tree Advisory Commission accepts the proposed contribution, credit shall be allowed for the appraised and agreed value of the land or qualified capital improvements. If the proposed contribution is rejected, then the applicant shall be charged the full calculated value of the Parks SDC.

(e) Any applicant who submits a proposed plan pursuant to this section and desires the immediate issuance of a building permit or development permit shall pay the applicable Parks SDC charges. Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due as determined by the City shall be refunded to the applicant.

(f) In the event the amount of the contribution determined to be acceptable by the City, pursuant to an approved plan of contribution, is less than the calculated Parks SDC charge due from the applicant, then the remaining balance shall be paid by the applicant. In the event the accepted contribution exceeds the total amount of the calculated Parks SDC charge due from the applicant, the excess credit may be applied against future Parks SDCs that accrue in subsequent phases of the original development project and/or other development projects. Unused credits may not be credited against other System Development Charges or otherwise applied. Credits shall be used not later than five years from the date the credit is given.

(g) The decision of the Parks, Recreation, and Tree Advisory Commission as to whether to accept the proposed plan of contribution and the value of such contribution shall be in writing and issued to the applicant.

(3) The Finance Director or his/her designee shall be responsible for all recording and accounting associated with the distribution of credits. (Ord. 5084 § 1, 1993).

15.20.100 Appeal procedures.

(1) Parties challenging the methodology for establishing the Parks SDC must appeal the methodology by filing a notice of appeal with the Finance Director within 60 days of passage of the ordinance adopting this chapter. Such appeals shall describe with particularity the portion of the methodology, calculations, or assumptions which are being asked for reconsideration. All appeal requests shall comply with subsection (5) of this section. The filing of such an appeal shall stay the adoption of the methodology until the appeal is determined. Upon determination of the appeal, the methodology shall be deemed adopted subject to legal action pursuant to ORS 223.304(5). Upon final determination of the methodology following appeal and, or judicial review, all Parks SDCs due as result of residential developments occurring subsequent to the effective date of this ordinance, and not otherwise exempt, shall be immediately due and payable.

(2) Parties aggrieved by the imposition of a Parks SDC which has been calculated ~~by the Building Official or the Building Official's designee~~ under AMC Sections 15.20.050 through 15.20.090 or a party challenging the propriety of an expenditure of Parks SDC revenues may appeal the decision or the expenditure by filing a notice of appeal with the City Finance Director. Such appeal shall describe with particularity the decision or the expenditure from which the person appeals and shall comply with subsection (5) of this section.

(3) Decisions of the Parks, Recreation, and Tree Advisory Commission concerning the grant or denial of Parks SDC credits may be appealed to the Albany City Council by filing a notice of appeal with the Finance Director or his/her designee within 10 days of the mailing of the decision by the City as called for in AMC 15.20.090(2)(g).

(4) An appeal of an expenditure must be filed within one year of the date of alleged improper expenditure. Appeals of any other decision must be filed within 14 days of the date of the decision.

(5) An appeal fee, established by Council resolution, shall accompany all Parks SDC appeal requests.

(6) The notice of appeal shall state:

(a) The name and address of the applicant;

(b) The address or tax lot of the subject property;

(c) The nature of the determination being appealed;

(d) If issued, the date the building/placement permit or development permit was issued;

(e) If paid, the date the Parks SDC was paid and the amount of payment;

(f) The reason(s) the determination is incorrect; and

(g) What the correct determination of the appeal should be.

An applicant who fails to file an appeal within the time permitted waives his/her objections, and his/her appeal shall be dismissed.

(7) Unless the appellant and the City agree to a longer period, an appeal shall be heard within 30 days of the receipt of the notice of appeal. At least seven days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

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

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

(10) The City Council shall issue a written decision within 20 days after the hearing date and that decision shall be final. (Ord. 5084 § 1, 1993).

15.20.200 Construction.

The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this chapter. (Ord. 5084 § 1, 1993).

15.20.300 Prohibited construction.

No residential development or intensification of use may be made unless the applicable Parks SDC has been paid as detailed under 15.20.070. (Ord. 5084 § 1, 1993).

15.20.400 Severability.

The invalidity of a section or subsection of this chapter shall not affect the validity of the remaining sections or subsections. (Ord. 5084 § 1, 1993).