

ORDINANCE NO. NS-

AN ORDINANCE AMENDING BEND MUNICIPAL CODE CHAPTER 12.10, SYSTEM DEVELOPMENT CHARGES

Findings

- A. Oregon Revised Statutes (ORS) 223.297 through 223.316 provide a uniform framework for the imposition of system development charges (SDCs) by local governments, to provide equitable funding for orderly growth and development in Oregon's communities and to establish that the charges may be used only for capital improvements.
- B. Bend Municipal Code (BMC) Chapter 12.10 authorizes and implements SDCs for development within the City of Bend for the City's transportation, sewer, and water systems. The City does not presently charge an SDC for stormwater. The Bend Park and Recreation District charges and manages SDCs for the park system. City code authorizes the City to collect SDCs on behalf of BPRD, through an intergovernmental agreement.
- C. Bend first adopted a code for SDCs in 1991, with an update in 2009. SDC provisions of the code were moved into a new Chapter 12 of the BMC in 2011. The League of Oregon Cities updated a model SDC code for cities in 2019.
- D. In 2023, the City began a project to update the methodologies and associated project lists and fee schedules for the City's SDCs. As part of that process, the City also looked at the model code from the LOC and other cities' codes to update and modernize its code.
- E. The methodology update process included feedback to staff from a group of stakeholders, which met six times from February to August of 2023. This code update is intended to simplify and clarify current City practice relating to SDCs, as well as update processes relating to deferrals and exemptions based on feedback heard from stakeholders throughout the 2023 SDC methodology update process.
- F. BMC 12.10.105 currently allows deferral of payment of SDCs from time of building permit issuance to certificate of occupancy, for multi-family residential developments, with the amount due calculated at the rate in place at the end of the deferral. The proposed code phases in this deferral opportunity to all development, over the next two years, and changes the calculation of the amount due to the rate in place at the beginning of the deferral. This change is intended to balance the City's needed cash flow for SDC-funded projects while creating more certainty for developers in the amount that will be owing for deferred SDCs.
- G. In 2015, the City Council adopted an ordinance exempting certain affordable housing developments from up to \$1 million per year in SDCs. The exemption was modified in 2017 and 2022, removing the \$1 million cap and extending the required time for continuation of the affordable housing from five years to twenty years. In 2018, the City Council adopted an ordinance exempting new childcare facilities from 70% of

transportation SDCs. The exemption was modified in 2020 and 2022, increasing the exemption to 100% of transportation SDCs. Both exemptions sunset in 2024, to give time for the methodology and code update projects in 2023 to address exemptions from SDCs.

H. The need for both affordable housing and childcare in Bend is critical. Market rate housing prices continue to climb, leading to increased demand for affordable housing. Area median income is not rising to meet the costs of housing. Construction costs and other market factors including interest rates have also put pressure on housing costs, making the cost of housing further out of reach for households making 80% of the area median income or less. The number of people experiencing homelessness in Central Oregon grew by 17% between 2021 and 2022, with a large proportion unsheltered. There is a continued need for additional shelter beds. Constructing and operating homeless shelter facilities by non-profit, religious, government or other entities is often cost prohibitive, and supporting such facilities benefits the health and safety of those in need and the entire community. In addition, the COVID-19 pandemic led to closures of existing childcare facilities and few new facilities open in the City, exacerbating a pre-existing lack of childcare spaces.

I. In 2020, the Oregon legislature adopted HB 4212 and HB 2006, later codified at ORS 197.782, requiring cities to permit emergency shelters that meet the requirements of the statute, without regard to local zoning codes. These changes to state law have led to the creation of additional shelters, but some are on leased land and cannot enter into a 20-year deed restriction. The numbers of people experiencing homelessness in the City continues to rise, and shelters of all kinds are needed, including shelters that cannot enter into a 20-year deed restriction.

J. The proposed methodologies, adopted by Council in a separate action, include a City policy to exempt homeless shelters, housing affordable for households making 80% or less of area median income, and childcare facilities from all City transportation, water, and sewer SDCs. Moving the exemptions into the methodology is consistent with ORS 223.297 that SDCs are intended to be established under a “uniform framework.” Placing the exempt uses in the methodology furthers this requirement to have a uniform framework for assessing SDCs for new development. Future changes to exempt uses would require an update to the methodology.

K. The proposed changes to BMC 12.10.120 allow both childcare and temporary shelter facilities to enter into a deed restriction without duration, that provides that SDCs will be charged in full for a subsequent non-exempt use on the same property. The proposed code continues the requirement that permanent affordable housing enter into a 20-year deed restriction. On fulfillment of the deed restriction duration, no SDCs would be due for subsequent market-rate housing, but on redevelopment to a non-residential use, full SDCs would be owing. This policy balances the City’s need for housing, shelters, and childcare, with the City’s need to fund infrastructure to serve new development through collection of SDC revenue.

L. The proposed code changes how the City calculates credits for existing uses, removing a calculation of SDCs actually paid by a property and instead providing credit

for a use that existed in the preceding ten years under the present rate schedule, providing administrative clarity and simplicity for applicants and City staff.

M. ORS 223.304 requires the City provide credits for the cost of private construction of improvements on the SDC project list (“qualified public improvements”). The credit may be only for the improvement portion of the SDC for the type of improvement constructed, and is for the cost of that portion of such improvement that exceeds the local government’s minimum standard facility size or capacity needed to serve the particular development project or property. The proposed changes to BMC 12.10.130.B. set out how the City will provide these credits, and adds new terminology for the City’s existing credit agreements.

N. Under existing code, the definition of the cost of construction of a qualified public improvement includes a reduction in cost by the amount of the improvement calculated to provide future capacity, but the code also provides that transportation qualified public improvements should be credited at the full cost of construction. The proposed code changes the definition of cost of construction to remove this reduction, and clarifies that credits for all improvements, transportation, sewer, and water, will be provided for the additional capacity. This change will balance the need for additional infrastructure to serve new growth with the City’s need to raise revenue for construction of new projects to serve new growth, providing the credits as required under state law.

O. ORS 223.304 allows cities to establish a system providing for the transferability of credits for qualified public improvements. Transfers would encourage developers to build infrastructure improvements that are needed to serve their developments and provide additional capacity for future City growth, at the time of development. BMC 12.10.130 is proposed to add an option for developers that construct a qualified public improvement and add capacity at a cost that exceeds the amount of SDCs anticipated to be paid by the development by \$250,000, to transfer these excess credits to other developments benefitted by the improvement. This change is intended to help facilitate construction of infrastructure projects needed to serve development, even when the cost of construction of those projects exceeds the anticipated SDCs to be paid by the development constructing the project. Existing credit agreements for cost of construction of qualified public improvements typically have ranged from \$300,000 to more than \$4,000,000, depending on the cost of the improvement and the SDCs anticipated to be generated by the development. Because under the existing SDC code, credits cannot be transferred to other developments, developers are typically not willing to agree to construct improvements with capacity larger than what is needed to serve the development, if the development is not anticipated to generate SDC fees in the amount of constructing that excess capacity. Allowing transfers only for credits exceeding anticipated SDCs to be paid by \$250,000 balances the administrative effort to manage a transfer program, and makes the program available for projects and developments constructing larger infrastructure projects that will provide additional capacity to serve other users.

P. BMC 12.10.170 governs appeals of City expenditures of SDCs collected, adoption of an SDC methodology, and objections to the amount of SDCs charged to a particular development. The existing code provides process that exceeds statutory and

due process requirements, and is confusing and inefficient for both appellants and City staff. Proposed changes simplify the local appeals process, and continue to exceed minimum requirements of statute.

Q. Other changes to the code modernize and simplify language, and update the code to match model codes and current best practices for SDC administration across cities in Oregon, including clarity on City options for enforcement if SDCs are unpaid after payment is due.

R. Notice of the public hearing on proposed changes to the methodology and fee schedule was provided to persons who had requested such notification and to the general public on October 16, 2023, at least 90 days before the first public hearing on the methodology. The methodology was made available for public review on the City's website and in person at City Hall beginning on November 17, 2023, at least 60 days prior to adoption. The Bend City Council heard a staff presentation and discussed the methodology, fee schedules and changes to the Municipal Code at a work session on Dec. 6, 2023. Council held a public hearing and considered adoption of the SDC methodology reports, projects lists, fee schedules, and changes to the Bend Municipal Code at the City Council meeting on January 17, 2024. Comments on the methodology and proposed code were taken at the public hearing at the City Council meeting on January 17, 2024. In addition, Council considered written comments submitted before the close of the public hearing.

S. The changes to the SDC methodologies and accompanying fee schedules are proposed to go into effect July 1, 2024. To give staff time to implement accompanying process changes, the effective dates of BMC 12.10.130, Credits, is deferred to July 1, 2024, and other provisions of the code apply to SDCs due after July 1, 2024.

Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The provisions of Bend Municipal Code (BMC) Chapter 12.10 are amended as shown on the attached Exhibit A.

Section 2. The effective date of the changes to BMC 12.10.130, Credits, is July 1, 2024. All other changes made by this ordinance go into effect 30 days after second reading.

Section 3. If any provision, section, phrase, or word of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

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Section 4. All other provisions of the Bend Municipal Code remain unchanged by this ordinance and remain in effect.

First Reading Date: January 17, 2024

Second Reading and adopted by roll call vote on February 7, 2024

YES: NO:

Mayor Melanie Kebler

ATTEST:

Robyn Christie, City Recorder

APPROVED AS TO FORM:

Mary A. Winters, City Attorney