

## ORDINANCE NO. NS-2491

### 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: Mayor Melanie Kebler  
Mayor Pro Tem Megan Perkins  
Councilor Barb Campbell  
Councilor Anthony Broadman  
Councilor Ariel Méndez  
Councilor Mike Riley  
Councilor Megan Norris

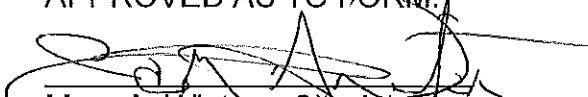
NO: none

  
\_\_\_\_\_  
Melanie Kebler, Mayor

ATTEST:

*FOR*   
Robyn Christie, City Recorder

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Mary A. Winters, City Attorney



Note:

Underlined text are additions to the code

~~Strikethrough~~ text indicates deletions

**Red text** shows changes made following City Council review on December 6, 2023

## **Chapter 12.10**

### **SYSTEM DEVELOPMENT CHARGES**

Sections:

<b>12.10.010</b>	<b>Purpose.</b>
<b>12.10.020</b>	<b>Scope and Interpretation.</b>
<b>12.10.030</b>	<b>Definitions.</b>
<b>12.10.040</b>	<b>System Development Charges Imposed – Method for Establishment.</b>
<b>12.10.050</b>	<b>Methodology.</b>
<b>12.10.060</b>	<b>Authorized Expenditures.</b>
<b>12.10.070</b>	<b>Expenditure Restrictions.</b>
<b>12.10.080</b>	<b>SDC Project List.</b>
<b>12.10.090</b>	<b>Adoption or Amendment of Methodology.</b>
<b>12.10.100</b>	<b>Collection of Charge, <del>Deferral, Appeal.</del></b>
<b>12.10.105</b>	<b>Payment Deferral <del>for Commercial Development.</del></b>
<b>12.10.110</b>	<b>Installment Payments.</b>
<b>12.10.120</b>	<b>Exemptions.</b>
<b>12.10.130</b>	<b>Credits.</b>
<b>12.10.140</b>	<b><u>Notice-Interested Persons List.</u></b>
<b>12.10.150</b>	<b>Segregation and Use of Revenue.</b>
<b>12.10.160</b>	<b>Refunds.</b>
<b>12.10.170</b>	<b>Appeals.</b>
<b>12.10.180</b>	<b>Prohibited Connection.</b>
<b>12.10.190</b>	<b><del>Deferral.</del> <u>Enforcement.</u></b>

#### **12.10.010 Purpose.**

This chapter is intended to authorize system development charges (“SDCs”) to impose an equitable share ~~portion~~ of the cost of capital improvements for water, sewer and wastewater, storm drainage, and transportation on developments and redevelopments that create the need

for or increase the demands on capital improvements, consistent with State law. The provisions of this chapter are to be interpreted to be consistent with State law.

### **12.10.020 Scope and Interpretation.**

A. The SDCs authorized imposed by this chapter are separate from and in addition to any applicable tax, assessment, charge, or fee in lieu of assessment, exaction, dedication, or fee otherwise provided by law or imposed as a condition of approval in a development application. SDCs are not taxes on property or on a property owner as a direct consequence of ownership of property within the meaning of Article XI, Section 11B of the Oregon Constitution or the legislation implementing that section and are not subject to the limitations imposed by that section.

B. The City Manager is authorized to adopt administrative regulations, policies, and guidelines to implement the provisions of this Chapter 12.10.

### **12.10.030 Definitions.**

The following definitions apply in this chapter, except where context clearly indicates a different meaning. If a definition is not provided, definitions from the Bend Development Code control.

A. **Active use** means day-to-day residential, commercial, industrial or institutional use.

B. **Applicant** means the person who applies for a residential, commercial, industrial, or other connection to the City's water supply system or sanitary sewer system and/or who develops property within the City or within the City's Urban Growth Boundary.

C. **Building** means any structure, either temporary or permanent, built for the support, shelter, or enclosure of persons or property of any kind and for any public, commercial, industrial, or other use. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintenance during the term of a building permit.

A. **Advance credit** means a balance against which future SDCs payable are deducted, for a qualified public improvement that has not yet been constructed, under an advance credit agreement.

B. **Building permit** means permission or authorization from the City to perform work on a property; may be a permit for construction, electrical, mechanical, plumbing, grading, or other work.

CD. **Capital improvements** means public facilities or assets used for:



1. Wastewater collection, transmission, treatment and disposal, or any combination.
2. Water supply, treatment, distribution, storage, metering, fire protection, or any combination.
- ~~3. Drainage and flood control.~~
- ~~34. Transportation facilities including include facilities for vehicle and/or multi-modal uses, including but not limited to streets, sidewalks, bicycle lanes, multi-modal paths, street lights, traffic signs and signals, pavement markings, street trees, swales, public transportation, vehicle parking, and bridges.~~

~~D.E. **Cost of a qualified public improvement** means the actual cost of constructing the qualified public improvement, adjusted by the percentage that the public improvement is SDC improvement fee eligible (the growth portion). "Cost of a qualified public improvement" does not include permit fees, administrative charges, and similar charges. Only immediate acquisition, construction, design and engineering costs are included in the cost of a qualified public improvement. Immediate acquisition costs include only the cost of acquiring rights-of-way or easements required as a condition of development approval and do not include property already owned by the applicant at the time of the development application. Engineering and design costs must not exceed 15 percent of actual construction costs. Costs of financing are not included. When the cost is the incremental cost of providing excess capacity, engineering and design costs shall be allocated in the same percentage as the qualified construction cost as a portion of the total construction costs.~~

~~F. **Developer** means the person who constructs a qualified public improvement entitled to a credit for the cost of the qualified public improvement.~~

~~G. **Development** means any construction of improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and water and sewer fixtures. Development includes redevelopment of property requiring a building permit. Development includes improved open areas such as plazas and walkways. This~~

~~E. **Growth Portion or Growth Percentage** means the portion of a project needed to serve future growth or future demand on the system as shown on the SDC Project List.~~

~~F. **Improvement fee** means a fee for costs associated with capital improvements to be constructed after the date of the adoption of the methodology used to establish the fee.~~

~~H. **Owner** means the owner or owners of record title or the purchaser(s) under a recorded land sales agreement, and other persons having an interest of record in the described real property.~~

G. **Pass-through credit** means a payment of SDC improvement fees collected from payors within a development to the person who constructed a qualified public improvement serving the development and signed an agreement with the City entitling them to receive such SDC fees paid, or their successors or assignees.

~~I. **Permittee** means the person to whom a building permit, development permit, a permit or plan approval to connect to the sewer system, City water system, or right-of-way access permit is issued.~~

Hj. **Qualified public improvement** means a capital improvement that is:

1. Required as a condition of development approval;
2. Included in an adopted SDC project list, and either:
  - a. Not located on or contiguous to a ~~parcel of land~~ the property that is the subject of the development approval; 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.

For the purposes of this definition, **contiguous** includes improvements within a right-of-way that abuts the parcel.

I. **Redevelopment means** alteration, addition, replacement, and/or change in use of a site that has an existing or previously existing use, including conversions of existing buildings from commercial to residential uses.

J. **Reimbursement fee** means a fee for costs associated with capital improvements already constructed or under construction on the date of the adoption of the methodology used to establish the fee.

K. **True credit** means a balance against which SDCs payable are deducted, for a qualified public improvement constructed, pursuant to an SDC credit agreement.

## 12.10.040 System Development Charges Imposed – Method for Establishment.

~~A. The amount of system development charges may be set and revised by resolution of the City Council. Any resolutions setting or amending the amount of any SDC shall state the amount of the charge and the methodology used to set the amount of the charge.~~

~~A. B. Unless exempted in BC [12.10.120](#), SDCs for water, wastewater, stormwater, and transportation are imposed on all development within the City, on all development outside the City that connects to the water and/or sewer facilities of the City, and on all other development that increases the usage of the water and/or sewer system or that contributes to the need for additional or enlarged capital improvements, unless the development is exempt from payment of SDCs by the provisions of this Chapter or other state or local law. The owner of the property on which the activity for which an SDC is imposed is ultimately responsible for payment of SDCs, regardless of whether the owner is also the entity engaged in the activity requiring payment of SDCs. SDCs must be paid to the City at the time established under BC 12.10.100.A. This includes new construction and the alteration, expansion or replacement of a building or development if the alteration, expansion or replacement results in a change in any of the components of the formula for determining the amount of SDCs to be paid.~~

~~B. The amount of system development charges will be set and revised by resolution of the City Council, relying on a methodology adopted by resolution. Any resolutions setting or revising the amount of any SDC will state the amount of the charge and the methodology used to set the amount of the charge, and, if the charge applies to a geographic area smaller than the entire city, the geographic area subject to the charge.~~

- ~~1. Changes in the system development charges will also be adopted by resolution.~~
- ~~2. The resolution and/or methodology may include definitions of categories for determining the amount of SDC due for certain types of development, which may be updated by resolution. If a particular development or type of use is not clearly included in a specified category, the City may make a case-by-case determination of the amount payable for the development using any methodology reasonably calculated to determine impacts on the system (transportation, water, and/or sewer) of the development or use. **Either the City or the developer/applicant may request a case-by-case determination of impacts to determine the amount of SDCs owed, but the choice to make a case-by-case determination shall be the City's.** The City may request any additional information from applicant to justify a rate; if additional information is not provided the City will determine the applicable rate based on~~

available information and the City's assessment of impacts to the system(s) from the development and/or use. The City may make a case-by-case determination of the amount payable by any development at the time of the application or development that requires the payment of SDCs. City actions and determinations for case-by-case determinations under this section are at the sole discretion of the City.

C. The SDC project list, methodology and amount of charge may be adopted in a single resolution, and more than one type of SDC (water, sewer, and transportation) may be included in a single resolution.

D. The provisions of the Bend Code and adopted Fee Resolutions control over any inconsistent statement in an adopted SDC methodology regarding assignment of use categories or City administration of SDCs.

### **12.10.050 Methodology.**

A. The methodology used to establish or modify a ~~Reimbursement Fee shall~~ must be based on the cost of then-existing facilities, including design, financing and construction costs; the value of unused capacity available to future system users or the cost of the existing facilities; rate-making principles employed to finance publicly owned capital improvements; prior contributions by other users; gifts or grants from federal or state government or private persons; and other relevant factors identified by the City Council, consistent with applicable law. The methodology ~~shall~~ must promote the objective ~~that of~~ future systems users ~~shall~~ be contributing an equitable share of the cost of then-existing facilities.

B. The methodology used to establish or modify ~~the an~~ an improvement ~~Fee shall~~ must consider the estimated cost of projected capital improvements identified in an SDC Project List that are needed to increase the capacity of the systems to which the fee is related and other relevant factors identified by the Council. ~~The methodology shall~~ Improvement Fee must be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.

C. The methodology used to establish or modify improvement fees or reimbursement fees, or both, must be available for public inspection and shall be adopted and may be amended by Council resolution.

### **12.10.060 Authorized Expenditures.**

- A. Reimbursement ~~Fees shall~~must be applied only to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of debt for such improvements.
- B. Improvement ~~Fees shall~~must be spent only on capacity increasing capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of ~~indebtedness 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 must be related to the need for increased capacity to provide for future users demands created by current or projected development.
- C. SDC proceeds ~~may are~~required to be expended only on projects identified in the SDC ~~capital improvement P~~project List or on the direct costs of complying with the provisions of this chapter or relevant state law (including the costs of developing SDC methodologies), system planning, providing an annual accounting of SDC expenditures and other costs directly related to or required for the administration and operation of this SDC program.

### **12.10.070 Expenditure Restrictions.**

- A. SDCs ~~shall~~may not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- B. SDCs ~~shall~~may not be expended for costs of the operation or routine maintenance of capital improvements.

### **12.10.080 SDC Project List.**

- A. The Council has adopted, and may amend or replace by resolution, SDC project lists for the various types of SDC (each, being the "SDC Project List" for the SDC for that improvement type). Such SDC project lists must include that list:
1. The capital improvements that the City intends to fund in whole or in part with the improvement fee revenues; and

2. The estimated cost, timing of construction, and of each improvement and the percentage of that cost eligible to be funded with improvement fee revenues for each improvement.

The project list included in the most recently adopted methodology ~~is shall be considered to be~~ the SDC ~~P~~project ~~L~~list if no other list has been adopted or amended by resolution.

B. In amending the SDC project lists, the City may incorporate, by reference, all or a portion of any public facilities plan, master plan, capital improvement plan or similar plan that contains the information required by this section.

C. If the amount of SDC charges will be increased by a proposed modification to the SDC project list, the City ~~shall~~must:

1. Provide at least 30-days' notice prior to adopting the modification to those who have requested notice pursuant to this Chapter or state law; and
2. Hold a public hearing if a written request for a hearing is received at least seven days prior to the date scheduled for adoption of the proposed modification.

D. Notice under subsection (C) of this section is not required for a resolution amending an SDC project list if the amendment does not change the total cost of projects on the list and results in no change to the SDC charged.

E. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge methodology if the change in amount is based on:

1. A change in the cost of materials, labor, or real property applied to projects or project capacity on an SDC Project List;
2. The periodic application of one or more specific cost indexes or other periodic data sources, including the cost index identified in the methodology establishing the charge. A specific cost index or periodic data source must be:
  - a. A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property, or a combination of the three;
  - b. Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and

- c. Incorporated as part of the established methodology or identified and adopted by the City Council in a separate resolution, or if no other index is identified in the established methodology, then the City will use information published by the Engineering News Record (ENR) Construction Cost index for Seattle to determine the annual inflationary adjustment.

### **12.10.090 Adoption or Amendment of Methodology.**

A. The City Council shall ~~shall~~ must hold a public hearing prior to adopting or amending the methodology on which any SDC is based.

B. The ~~Council~~ City shall ~~shall~~ will provide written notice to persons who have requested notice of any adoption or modification of SDC methodology at least 90 days before the first public hearing on the matter. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the City. If no one has requested notice, the City ~~shall~~ must publish notice in a newspaper of general circulation in the City at least 90 days before the hearing. If the City fails to provide sufficient notice, it can cure the defect by issuing a new notice and holding a new hearing. The City may consider comments submitted at improperly noticed hearings.

C. The revised methodology ~~shall~~ must be available to the public at least 60 days before the first public hearing ~~on~~ of the adoption or amendment of the methodology. ~~The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the City. If the City fails to provide sufficient notice, it can cure the defect by issuing a new notice and holding a new hearing. The City may consider comments submitted at improperly noticed hearings.~~

D. 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 a change in project costs, including cost of materials, labor and real property, or on a provision for a periodic adjustment included in the methodology or adopted by separate ordinance or resolution, consistent with State law, and therefore the notices described in subsection (B) are not required.

E. A change in the amount of an improvement fee is not a modification of the SDC methodology if the change is the result of a change in the SDC project list adopted in accordance with this chapter, and therefore the notices described in subsection (B) are not needed.

### **12.10.100 Collection of Charge, Deferral, Appeal.**

A. The SDC is payable upon ~~on~~:

1. Notification by the City that issuance of a building permit is ready for issuance, commencement of any construction activity for which a building permit is required but not obtained, or commencement of any development that creates the need for or increases the demands on sewer, water, or transportation capital improvements but which does not require a building permit.
2. Issuance of a development permit or approval for of a development under a land use application not requiring the issuance of a building permit.
3. Issuance of a permit or approval to connect to the water system or actual connection to the water system if a permit is not obtained. For extraterritorial water connections payment is due as described in the agreement for service.
4. Issuance of a permit or approval to connect to the sewer system or actual connection to the sewer system if a permit is not obtained. For extraterritorial sewer connections payment is due as described in the agreement for service.
5. For manufactured home parks or similar development, the SDCs are payable upon issuance of a building permit for construction of the park facilities or commencement of construction or park facilities if no building permit is required or a building permit was required but not obtained, not placement of the manufactured dwelling. For a manufactured home park or similar development developed before July 1, 2024, for which SDCs were not paid prior to placement of a manufactured dwelling, the SDC charge is payable on placement of the manufactured dwelling.

B. If no building, development, or connection permit is required, the system development charge is due at the time the usage of the capital improvement is increased based on changes in the use of the property unrelated to seasonal or ordinary fluctuations in usage.

C. If development is commenced or connection is made to the transportation, water, or sewer system without an appropriate permit, the SDC is immediately payable upon the earliest date that a permit was required, and it is unlawful for anyone to continue with the construction or associated use until the system development charge has been paid. The City may issue a "stop work" order, proceed under a civil infraction enforcement proceeding, or take any other action authorized by law to seek payment of SDCs that are due and have not been paid.

DB. SDCs are payable only for those types of improvements affected by the development, permit or connection. For example, a permit to connect an existing structure to the sewer system does not necessarily trigger an obligation to pay water or transportation SDCs.

EC. The amount of SDC payable is the amount in effect on the date the SDC first became payable for the development. shall be established by resolution relying on an approved



~~methodology and SDC project list. The SDC project list, methodology and amount of charge may be adopted in a single resolution, and more than one type of SDC (water, sewer, storm, and transportation) may be included in a single resolution. The resolution may allow for a case-by-case determination of the amount payable under specific circumstances. [Note: Most of this section moved to 12.10.040]~~

~~FD. Unless payment is deferred under subsection (E) of this section, The City will not issue a no permit or approval listed in subsection (A) of this section may be issued unless applicable SDCs have been paid or an agreement entered to pay over time as allowed by this chapter BC 12.10.110, or an application for deferral of payment has been approved under BC 12.10.105, or the development is exempt from payment of SDCs under BC 12.10.120. The City will not issue a No certificate of occupancy or final inspection approval may be issued for a structure if SDCs are unpaid, unless an agreement to pay over time has been entered into for installment payments is in effect, under BC 12.10.110 or the development is exempt from payment of SDCs under BC 12.10.120.~~

~~GE. The City Council may by an ordinance allow categorical dDeferral of SDC payments is allowed pursuant to BC 12.10.105, for a period of time not to extend beyond the occupancy date. Individual dDeferrals not in compliance with this Chapter are not permitted.~~

~~HF. The City may also collect Parks SDCs payable to the Bend Metropolitan Parks and Recreation District at the time that City SDCs are payable, if so provided by an intergovernmental agreement between the City and the Parks and Recreation District.~~

### **12.10.105 Payment Deferral for Commercial Development.**

~~A. As authorized by BC 12.10.100(E), any multifamily residential development The City may defer payment of SDCs from the time payment is otherwise due until the time an occupancy permit a certificate of occupancy is issued or final inspection is approved or the City accepts public infrastructure, as applicable to the particular development for which SDCs are due, subject to the provisions of this section. Deferral is not available for development for which SDCs are applicable and no building permit, certificate of occupancy, or City acceptance of infrastructure is required.~~

~~B. To qualify for the deferral, the person applying for deferral must, at the time of building permit application, (A) pay a fee established by Council resolution to the City to cover all the City's costs associated with the deferral, and (B) agree to pay all SDCs prior to issuance of an occupancy permit or actual occupancy. The amount of SDCs due shall be determined as of the date the occupancy permit is applied for An application for deferral must be submitted and the~~

deferral approved by the City before the SDC is payable under Section 12.10.100.A. or before the building permit or other development approval is accepted. An application for a deferral under this section must be accompanied by and pay a fee established by Council resolution to cover all the City's costs associated with the deferral. **The City may charge interest on deferred SDCs, at a rate established by resolution.** No additional agreement is necessary to receive a deferral under this section.

C. All deferred SDCs must be paid before the City will issue an occupancy permit or final inspection.

D. Occupancy of the development before payment of the applicable SDCs is prohibited.

E. **Beginning July 1, 2024,** the amount of SDCs due is the amount due at the time the SDC became payable under 12.10.100.A., regardless of whether the SDC rates have increased by the time payment is due under a deferral under this section. For deferral agreements in place prior to July 1, 2024, the calculation of the amount due is as provided in the agreement. **For deferral applications made before July 1, 2024, the amount of SDCs due shall be determined as of the date the occupancy permit is applied for.**

F. The deferral under this section is available on the following schedule:

1. Multi-unit residential development and mixed-use development including multi-unit residential, upon the effective date of this Chapter. For the purposes of this deferral schedule only, "multi-unit residential" means developments including 3 or more dwelling units.
2. All other residential development, beginning on January 1, 2025.
3. Development of any other type, beginning on January 1, 2026.

### **12.10.110 Installment Payments.**

A. The owner of the parcel of land subject to a systems development charge may apply for payment in 20 semi-annual installments, to include interest on the unpaid balance, in accordance with State law. A shorter payment plan is acceptable if approved by the City. The ~~parcel of land shall be~~ subject to a lien for the unpaid balance.

B. ~~The City will provide~~ Application forms for installment payments, ~~which shall~~ **must** include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.

C. An applicant for installment payment ~~shall have~~ has the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that the property interest of the applicant is adequate to secure payment of the lien.

D. The lien ~~shall will~~ be docketed in the City's lien docket. From that time, the City ~~shall have~~ will have a lien on the described parcel for the unpaid balance, together with interest on the unpaid balance at a rate established by the City Council by resolution. The lien may also be recorded in the Deschutes County property records. ~~The lien shall be enforceable~~ City may enforce the lien in any manner authorized or permitted by State law.

### **12.10.120 Exemptions.**

~~The following actions~~ Certain developments are exempt from payment of SDCs, as described below.

A. Through June 30, 2024, a additions to single-family dwelling that do not constitute the addition of a dwelling unit. Beginning July 4, 2024, additions to single-unit dwellings that do not increase the square footage of the dwelling unit to the next tier of SDCs as shown in the SDC fee schedule.

B. An alteration, addition, replacement, change in use or permit or connection that does not increase the parcel's or structure's use or potential use of a public improvement system ~~is exempt from payment for the SDC payment applicable to that type of improvement.~~ The City will determine increase in use or potential use of a public improvement system under this section; this determination is subject to appeal as provided in section 12.10.170. Some redevelopment may be subject to some types of SDCs and not to others.

C. Beginning July 1, 2024, r reconstruction or repair of a building or structure, or portion thereof, which was damaged or destroyed by earthquake, fire, flood, or other natural causes over which the owner had no control, but only if:

1. Such reconstruction or repair is done pursuant to a building permit issued within two years after such damage or destruction, or later if approved by the City and reconstruction design or other work began within two years and is being diligently pursued to completion as determined by the City; and

2. The reconstruction is substantially similar in size to the destroyed building or structure, and does not result in a development in a higher SDC tier (i.e., addition of square footage moving the development into the next highest tier for the SDC charge or change in use that changes the category for assessment of SDCs), as determined by the City. If the

redevelopment results in a development in a higher SDC tier, the difference between the prior use and the new use is due; no refunds will be given if the redevelopment results in a lower SDC due.

D. Temporary uses described under BDC Chapter 3.6, including temporary construction sheds or trailers erected to assist in construction and maintenance during the term of a building permit, or temporary sales trailer. Notwithstanding the foregoing, if a temporary use connects to the sewer or water system, water or sewer SDCs may be due, in the determination of the Community and Economic Development Director.

E. Other types of development exempted from SDCs according to the methodology most recently adopted by the City. The City Manager or designee is authorized to determine whether a development is exempt as described in the most recent methodology, and process deed restrictions and loan documents to fulfill these exemptions, without further review by the City Council or any of the City's advisory committees. To be eligible for an exemption, a recorded covenant or deed restriction satisfactory to the City must be recorded, requiring that the exempted SDCs will be paid upon the subsequent use of the property, or that the exempted use will continue for a sufficient period of time to justify the exemption. Deed restrictions must be one of the following:

1. For affordable housing intended to be offered for rental for terms of at least 30-days or owner occupancy, a deed restriction stating that in the event the property for which an exemption is granted ceases to qualify for the exemption or is sold or transferred for use other than affordable housing or homeless shelter within 20 years from the date the project is completed, the amount of the exempted SDCs must be repaid, plus interest of nine percent per annum from the date the exemption was recorded. Upon satisfaction of the covenant for the full duration, **the continued residential use will be considered an "existing use" for purposes of calculating credits against future SDCs due. No credit for existing use will be provided on redevelopment to a non-residential use, at any time following satisfaction covenant for the full duration.**
2. For all other uses or affordable housing or shelters that cannot record a 20-year restriction as determined by the City, a deed restriction stating that in the event the property is redeveloped with a use other than the exempt use, full SDCs must be paid for the new use, without credit for the existing use that was exempt from payment of SDCs.

F. Where development consists of only part of one or more of the uses exempt from payment of SDCs under this section or the SDC methodology, only the portion of the development that qualifies for an exemption will be exempted from payment of SDCs. The balance of the

development that does not qualify for any exemption under this section is subject to the full SDC. This section applies to mixed-use developments that include standalone uses, and does not apply to uses accessory to residential or shelter developments intended for use of the residents and not the general public (i.e.: laundry, pet care, etc.).

~~C. Development of housing for which the developer or property owner agrees to record a deed restriction to maintain the property as affordable housing, is within any of the categories in this section and is approved through the process set forth in subsections (D) and (E) of this section is exempt from 100 percent of water, sewer and transportation SDCs:~~

- ~~1. Rental housing that is affordable for households with an income at or below 80 percent of the area median income ("AMI") as determined by the State Housing Council based on information from the United States Department of Housing and Urban Development.~~
- ~~2. Owner-occupied or lease-to-purchase housing for households with an income at or below 80 percent of the AMI as determined by the State Housing Council based on information from the United States Department of Housing and Urban Development.~~
- ~~3. Homeless shelter developments.~~

~~D. Exemption applications shall be evaluated by the Affordable Housing Advisory Committee to decide whether requested exemptions meet the standards set forth in this section.~~

~~E. The City shall record documentation of the exemption with the Deschutes County Clerk's office by the time the project receives a certificate of occupancy or final inspection. In the event the property for which an exemption is granted ceases to qualify for the exemption or is sold or transferred for use other than affordable housing within 20 years from the date the project is completed, the person or entity to whom the exemption was granted shall be required to pay the City the amount of the exempted SDCs, plus interest at the statutory rate for interest on a judgment from the date the exemption was recorded. A transfer from an owner to whom an exemption was granted to the initial lessee under a lease to purchase agreement shall not be deemed a transfer of ownership for purposes of this subsection.~~

~~F. The affordable housing exemption authorized by subsections (C) through (E) of this section will automatically sunset and cease to be effective as of December 31, 2024.~~

~~G. Development of new day care facilities or expansion of existing day care facilities is exempt from 100 percent of transportation SDCs. The exemption authorized by this subsection (G) will automatically sunset and cease to be effective as of December 31, 2024. [Ord. NS-2457, 2022; Ord. NS-2393, 2020; Ord. NS-2322, 2018; Ord. NS-2298, 2017; Ord. NS-2247, 2015; Ord. NS-2161, 2011]~~

### 12.10.130 Credits.

A. The City will allow credits against SDCs payable for a development as set forth in this section. The person seeking the credit has the burden of proof to justify the credit and the amount of the credit. Credits must be applied for, **if an application is required**, and determined before the City will issue a building permit or other authorization that makes an SDC payable under Section 12.10.100.A. of this Chapter.

B. Credit at Time of Change in Use or Redevelopment for Existing Use or Development.

1. When redevelopment or change in use occurs, the amount of the SDC payable will be the difference between the SDC payable for the existing use or most intensive use within the preceding ten years under the current SDC fee schedule and the SDC for the proposed use, **as determined by the City**. If the amount of the SDC payable for the prior use is not clearly identifiable in the adopted Fee Resolution, the City may apply an average or assign a category on a case-by-case basis in its sole discretion.

a. No credit will be provided for an existing use that was exempt from the payment of SDCs under an exemption from the Bend Municipal Code in effect at the time SDCs were payable for the prior use or under an adopted SDC methodology, except as provided in BC 12.10.120.E.

b. The extent of the property being developed will be considered in determining the amount of credit available. For example, a development on a property that has been partitioned or subdivided or reduced in size by condemnation may be eligible for the full or only a partial credit for an existing use, as determined by the City.

~~When redevelopment or change in use occurs, the amount of SDCs payable shall be determined by the following rules:~~

~~1. *SDCs Previously Paid on Property.* If SDCs had been previously paid for the property, a credit in the amount of the SDCs that would be payable for the existing structure and use under the current rate schedule shall be provided. For purposes of this section, **existing structure and use** means the structure and use for which SDCs have been paid. At the time of redevelopment, if the SDCs payable for the new structure and/or use exceed the amount of the credit, the difference shall be paid to the City. This rule applies regardless of the length of time between the end of the prior use and the redevelopment. Redevelopment to a use that results in a lower SDC amount does not reduce the amount of credit to be provided at the time of any future redevelopments. Any credits provided under subsection of this section shall be deducted from the credits authorized by this section.~~

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Examples:

- a. ~~SDCs had been paid for three dwelling units on a property and the property is redeveloped with five dwelling units. A credit for three dwelling units' worth of SDCs will be provided, so the amount payable would be the amount for two dwelling units.~~
- b. ~~SDCs had been paid for two dwelling units and the property is redeveloped with a large retail use, with both residential units eliminated. The SDCs would be the difference between the SDCs payable for the new commercial structure and use and the SDCs that would be charged for two dwelling units.~~
- c. ~~SDCs were paid based on restaurant use, but then the property was converted to another retail use with lower SDCs. The property is then reconverted back to restaurant use, using exactly the same configuration as the original restaurant. At the time of the conversion to retail use, no SDCs are payable, because the amount payable is less than the credit. The credit for restaurant use remains with the property, so at the time of reconversion to restaurant use, no additional SDCs are payable because the credit remained in effect and the credit for the original use is exactly the same as the amount that is owed. Thus, no payment is required, even if the SDC rates have increased in the interim.~~

~~2. SDCs Not Previously Paid.~~

- a. ~~*Vacant Land.* If SDCs have not been previously paid for the property, a credit in the amount of the SDC charges under the current rate schedule shall be provided for any structure on the property during the 10 years immediately prior to the filing of the building permit application. No SDC credit shall be provided under this subsection if there has been no structure on the property for 10 years or more. The credits shall be based on the predominant use of the structure in the last 10 years, or if there has been no use in the last 10 years, on the last use of the structure.~~

2b. *No Prior Water Connection.* Even if there is or has been a structure on the property, no water SDC credit shall be provided if the property has never been connected to the City water system.

3c. *No Prior Sewer Connection.* Even if there is or has been a structure on the property, no sewer SDC credit shall be provided if the property has never been connected to the City sewer system.

~~d. *Burden of Proof.* The property owner shall have the burden to establish the facts to support the granting of a credit.~~

~~4e. *No Refund.* No refund or credit shall will be given if the change in use or redevelopment results in a lower SDC for the present development or use of the property.~~

~~5. Credits under this section for existing or prior uses are not transferrable to other properties.~~

~~f. *Implementation.* The 10-year time period referred to in subsection (A)(2)(a) of this section starts on the date that a property is demolished or July 1, 2011, whichever occurs later.~~

CB. *Credit of Cost of Qualified Public Improvement.*

1. The City will grant a credit against the Improvement Fee due for a development for the construction of a qualified public improvement as set forth in this section. The credit may be a true credit, a pass-through credit (formerly reimbursement agreement), or an advance credit, or combination thereof. The credit is only for the improvement fee charged for the type of improvement being constructed and is not transferrable from one type of SDC to another. The person seeking the credit has the burden of demonstrating that a particular improvement qualifies for credit under this section.

~~2. The amount of the credit for construction of a qualified public improvement is for the cost of that portion of such improvement that exceeds the City's minimum standard facility size or capacity needed to serve the particular development project or property. The amount of the credit will be the cost of the portion of the qualified public improvement that exceeds the improvements needed to serve the development; For sewer or water lift stations, pressure reducing valves, booster stations and similar improvements as determined by the City, and transportation improvements, the City will may determine this the amount of the credit by multiplying the cost of the qualified public improvement by the growth factor for the improvement shown in the most recently adopted SDC Project List, or in any other manner reasonably calculated, in the sole discretion of the City, to measure the capacity provided by the improvement that exceeds the capacity needed to serve the particular development or property. For sewer and water pipelines, credit may be determined by difference in cost between the cost of the improvement needed to serve the development, and cost of improvement needed to add capacity. The City will determine which method will be used to calculate the amount of the credit, in its sole discretion. Notwithstanding the foregoing, until June 30, 2024, the credit for transportation improvements shall be the full cost of the improvements as determined by the City.~~



a. The cost of the qualified improvement is the actual cost of constructing the qualified public improvement, including only immediate acquisition, construction, design and engineering costs. Immediate acquisition costs include only the cost of acquiring rights-of-way or easements required as a condition of development approval, including costs of litigation if applicable, and do not include property already owned by the person seeking the credit at the time of the development approval. Engineering and design costs must not exceed 15 percent of actual construction costs. Permit fees, administrative charges, and similar charges are not included in the cost of a qualified public improvement.

b. The person seeking a credit based on providing a qualified public improvement has the burden of proving the cost of the qualified public improvement. The applicant must provide all documentation requested by the City to justify construction cost, including but not limited to receipts, cancelled checks or other written proof of actual costs incurred.

3. An application for an agreement for credit for the cost of a public improvement under this section must be submitted and an agreement approved and signed by the City prior to the start of construction of the qualified public improvement, unless otherwise approved by the City. The City will deny the credit if the City determines that the application does not meet the requirements of this section or if the improvement for which credit is sought is not included in the SDC project list. No interest accrues on a credit for a qualified public improvement. The agreement will set forth whether the credit is provided as a true credit, a pass-through credit, or an advance credit. An agreement for advanced credits must be approved by the City Council, unless a financial guarantee satisfactory to the City, such as a performance bond, has been provided for construction of the improvement and accepted by the City. Approval of an application for advance credits may be approved or denied in the sole discretion of the City and may not be appealed under this Chapter.

a. The extent of the property ("credit area") to be considered in computing and allocating credit for construction of a qualified public improvement must be stated in the application for the credit. Two or more contiguous properties being developed under a common application or development proposal, or properties within the same Master Plan or Area Plan under BDC Chapter 4.5, may pool SDC credit rights for cost of a public improvement. Noncontiguous property not part of a Master Plan may not be included as a property for determining where the credit may be issued or used. If the application or agreement does not state an allocation scheme for the credit, the City will provide credits on a first-come-first-serve basis. Owners of all the property proposed to be included in the credit area must sign the application or provide written authorization

for the application. If properties under different ownership are developed together, the application must specify where any credits for the provision of capital improvements may be used and under which circumstances. If a property within the credit area is sold, credits may be fully or partially assigned through an agreement approved by the City that establishes where credits may be used and under what circumstances.

b. The application for an agreement for a credit for a qualified public improvement must indicate whether the credit will be a true credit, pass-through credit, or if the applicant is seeking an advance credit. Once an option is chosen, the option cannot be changed and will be applied to all SDC credits for qualified public improvements and phases as set forth in the agreement. If no phases are specified in the SDC credit agreement, the option will apply to all phases of development on the property.

i. A true credit establishes an amount against which the improvement fee payable for uses or development on the property is deducted until the credit is exhausted or expires;

ii. A pass-through credit establishes an amount to be paid to the person who constructed the qualified public improvement or their successor or assign, from improvement fees collected for development on the property. Payments for a pass-through credit will be made annually by the City on or before January 31 for SDC improvement fees collected in the previous calendar year. No interest will accrue on any amounts received by the City.

iii. Advanced credit. The City may provide a credit for construction a qualified public improvement that is available prior to construction of the qualified public improvement. The City may require a performance bond for the public improvement in the amount required for other performance bonds for construction of public improvements in Bend Development Code section 4.2.700, measured off the anticipated cost of the qualified public improvement. The credit provided by an agreement under this section will only be a true credit and will not be a pass-through credit. If the improvement is not built within the time period set forth in the credit agreement, the City may require the person responsible for constructing the improvement to reimburse the City for any SDC credits provided under the agreement, or may call in the bond to construct the improvement, or both, or any other remedy available to the City. Following completion of the qualified public improvement as provided in the credit agreement, the amount of the credit will be adjusted to be the actual cost of construction as determined by the City Engineer.

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4. Credits for the cost of qualified public improvements may only be used in the credit area as set forth in the credit agreement, ~~unless transferred pursuant to this Chapter, and are not transferable from one property to another.~~ Credits for the cost of qualified public improvements may be used for future phases of development, redevelopment or change in use of the credit area, as defined in the credit agreement.
  5. Credits for qualified public improvements are transferable only as provided in this section.
    - a. Credits granted to the Bend LaPine School District are transferrable between all properties owned by the Bend LaPine School District within the limits of the City of Bend, as such limits may change by annexation.
    - b. If so provided in a credit agreement, credit for construction of a qualified public improvement may be transferred to other property, benefitted by the qualified public improvement as determined by the City and identified in the credit agreement. Transfer of credits is only available if the anticipated credit for the qualified public improvement exceeds the amount of SDCs anticipated to be payable by the property or development that led to the construction of the qualified public improvement by at least \$250,000, as determined by the City. Credits may only be transferred by an agreement approved by the City. The transferred credit may only be applied against the improvement portion of the SDC charged for the type of improvement constructed.
  6. Advance credits for qualified public improvements are deemed given on the date of the last signature on the agreement. True-credits and pass-through credits are deemed given on the date the improvement is accepted by the City. All credits for the cost of public improvements expire 10 years after the date given. No pass-through or true credits will be given for SDCs payable prior to the date of acceptance of a public improvement. For pass-through credits, the 10-year expiration applies to the date the SDC is paid to the City, not when the payment is due to be paid from the City to the credit holder.
  7. The total amount of credit under a credit agreement for qualified public improvements must not exceed the approved cost of the public improvement.
  8. Credits under agreements with the City in effect at the time this code becomes effective remain effective and are not changed by the provisions of this code.
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1. ~~A credit for the improvement fee portion of the SDC shall be given to a developer for the cost of a qualified public improvement upon acceptance by the City of the qualified public improvement and compliance with this section. For transportation improvements, the credit shall be the full cost of the improvements as determined by the City. For water, sewer and other non-transportation improvements, the amount of the credit shall be the cost of the portion of the qualified public improvement that exceeds the improvements needed to serve the development as determined by the City. An application for credit for the cost of a qualified public improvement must be submitted and approved prior to the start of construction of the qualified public improvement. The City shall deny the credit if the City determines that the application does not meet the requirements of this section or if the improvement for which credit is sought is not included in the SDC project list. No interest shall accrue on a credit.~~

2. ~~The person seeking a credit based on providing a qualified public improvement has the burden of proving the cost of the qualified public improvement. Only immediate acquisition, construction, design and engineering costs may be included in the cost of a qualified public improvement. Immediate acquisition costs include only the cost of acquiring rights of way or easements required as a condition of development approval and do not include property already owned by the applicant. Engineering and design costs shall not exceed 15 percent of actual construction costs. When the cost is the incremental cost of providing excess capacity, engineering and design costs shall be allocated in the same percentage as the qualified construction cost as a portion of the total construction costs. The City Engineer's determination of the cost of a qualified public improvement shall be final.~~

3. ~~Credits for the cost of qualified public improvements shall not be transferable from one property to another but may be used for future phases of development, redevelopment or change in use of the property. For property owned by the Bend LaPine School District, **property** includes all properties owned by the Bend LaPine School District within the same high school attendance boundary.~~

4. ~~Credit for qualified public improvements shall be only for the type of improvement provided and shall not be transferable from one type of capital improvement to another.~~

5. ~~Credits for qualified public improvements may be used only within 10 years from the date the qualified public improvement was accepted by the City.~~

6. ~~The extent of the property to be considered in computing and allocating credit for construction of a qualified public improvement shall be stated in the application for the~~

credit, which will be accepted only if authorized in writing by the property owner(s). If properties under different ownership are developed together, the City may require specification where any credits for the provision of capital improvements may be used and under which circumstances. Two or more contiguous properties may pool existing SDC credit rights as part of a common scheme for development of the contiguous properties. Noncontiguous property may not be included as a property for determining where the credit may be issued or used.

7. At the time of application for the credit for a qualified public improvement, the applicant shall indicate which option for using the credit is to be used. Once an option is chosen, the option cannot be changed and will be applied to all SDC credits for qualified public improvements of all types for all phases of development on the property. The two options are:

- a. A credit usable at the time SDCs become payable within the property to reduce the amount of the improvement fee payable; and
- b. A credit personal to the person providing the qualified public improvement to be paid from improvement fees collected for development on the property. If this option is chosen, payment amounts shall be payable annually by the City on or before January 31 for SDC improvement fees collected in the previous calendar year. If this option is chosen, the 10-year expiration applies to the date the SDC is paid to the City, not the date the City passes on the payment. No interest shall accrue on any amounts received by the City.

The following example is provided as an illustration of how the credit for qualified public improvements under subsection (B)(7)(a) of this section is applied. A developer plans to build an off-site qualified public transportation improvement. The developer must apply for the credit before starting the improvement. If the City approves the credit and the developer completes the project and proves that the qualified costs total \$400,000 for the qualified transportation public improvement that is 100 percent SDC eligible under the SDC project list, the developer would be entitled to a credit of \$400,000 on acceptance of the completed capital improvement. If the amount of transportation improvement fees payable is less than \$400,000, no transportation improvement fees would be paid and a credit for the difference would be provided to be usable for future development of the property. If the amount of transportation improvement fees is more than \$400,000, the developer would pay the difference between \$400,000 and the amount of the credit.

~~8. The credit for the cost of qualified public improvements is in addition to other methods of financing public improvements and may be combined with other means of financing public improvement agreements, including reimbursement agreements under this chapter or developer agreements; provided, that the total amount of credit under a reimbursement agreement and a credit for qualified public improvements shall not exceed the approved cost of the public improvement.~~

~~9. If a developer has applied for a credit for qualified public improvements, the developer may defer payment of the improvement fee for the type of improvement provided in an amount reasonably estimated to not exceed the amount of anticipated credit. Payment shall not be deferred more than one year unless an extension is provided and may not be deferred beyond the date of occupancy. An extension of the one-year deadline may be provided if satisfactory progress is being made towards completion of the qualified public improvement. Deferral under this section is available only if the development does not involve a land division.~~

~~C. *Advance Credit for Qualified Public Improvement.* The City, by a development agreement approved by Council, may provide a credit for construction of a public improvement on the SDC project list. The credit shall be a credit only towards improvement fees of the same type of SDC. The locations where the credit may be used and transferability of the credits shall be established in the development agreement. The credit provided by this section shall be used only as a credit and the credit recipient shall not be provided the right to payment from SDCs collected by the City. The credit provided by this section may be used only within 10 years of the date the improvement was accepted by the City.~~

~~D. On termination of a use for which SDCs have been paid, a credit certificate shall be issued on written request of the property owner.~~

~~1. The credit shall be for water, sewer and transportation SDC improvement fees only.~~

~~2. The credit shall be based on a "unit" basis, not on a "dollar" basis. The credit shall be for a specific number of trips, square footage, dwelling units or other units on which the SDC amount is calculated.~~

~~3. The amount of the credit issued in the certificate shall be deducted from the credit authorized by subsection [\(A\)\(1\)](#) of this section for the property where the use was terminated. The deduction may not remove all credit from the property unless all structures are removed from the property. A credit in the lowest reasonable amount for any remaining structure must be maintained on the property. The credit in the certificate~~

~~shall be the difference between the total amount of credit authorized by subsection (A)(1) of this section and the amount to be retained on the property.~~

~~4. The credit certificate may be transferred and used anywhere in the City within five years of the date of issuance. If the credit is not used within five years, it shall be automatically applied to the property where the use was terminated.~~

~~E. For all credits, the applicant has the burden of proof to justify the credit. For credits based on the cost of a qualified public improvement, the applicant shall provide receipts, cancelled checks or other written proof of actual costs incurred.~~

### **12.10.140 Notice Interested Persons List.**

A. The City ~~shall~~ will maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for any SDC. The City will provide mailed, w~~Written notice shall be mailed~~ to persons as provided in this chapter. If a person has requested notice but not provided a mailing address, the City is not required to provide mailed notice to the person. The failure of a person on the list to receive notice that was mailed does not invalidate the action of the City.

B. The City may periodically delete names from the list, but at least 30 days prior to removing a name from the list, the City must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

### **12.10.150 Segregation and Use of Revenue.**

A. All SDC proceeds ~~are to~~ must be segregated by accounting practices from all other funds of the City. SDC proceeds ~~shall~~ must be used only for capital improvement of the type for which they were collected and authorized costs and overhead.

B. The City Manager ~~shall~~ is directed to provide the City Council with an annual accounting, based on the City's fiscal year, for SDCs showing the total amount of SDC revenues collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amounts spent on each project funded in whole or in part with SDC revenues ~~shall~~ must be included in the annual accounting.

C. The monies deposited into each SDC account ~~shall~~ must be used solely as allowed by this chapter and State law, including, but not limited to:

1. Design and construction plan preparation;
2. Permitting and fees;
3. Land, easements, and materials acquisition, including any cost of acquisition or condemnation, including financing, legal and other costs;
4. Construction of capital improvements;
5. Design and construction of new utility facilities required by the construction of capital improvements and structures;
6. Relocating utilities required by the construction of improvements;
7. Landscaping;
8. Construction management and inspection;
9. Surveys, soils, and materials testing;
10. Acquisition of capital equipment;
11. Repayment of monies transferred or borrowed from any budgetary fund of the City which were used to fund any of the capital improvements as herein provided; and
12. Payment of principal and interest, necessary reserves and cost of issuance under bonds or other indebtedness issued by the City to fund capital improvements.

### **12.10.160 Refunds.**

A. ~~Refunds or partial refunds of SDCs paid~~ may be given ~~by the City~~ upon the City finding that there was a clerical error in the calculation of the SDC.

B. ~~The City will not provide R~~refunds ~~shall not be allowed~~ if the applicant fails to timely claim a credit or fails to timely seek an alternative SDC rate calculation prior to paying an SDC, except for clerical errors as stated above.

C. Refunds may be given ~~on application of a permittee~~ if the development did not occur and all permits for the development have been withdrawn. The person who paid an SDC must apply to the City for a refund under this section.



## 12.10.170 Appeals.

### A. Appeals of Expenditures.

1. A person challenging the propriety of an expenditure of SDC revenues may appeal the ~~decision of the expenditure to the City Council by filing a written request with the City Manager describing with particularity the decision and the expenditure from which the person appeals and the reason(s) it was improper.~~ An appeal of the expenditure must be filed within two years of the date of the ~~alleged improper~~ expenditure.
2. After providing notice to the appellant, the City Council ~~shall~~ will determine whether the ~~appeal and/or the City Manager's decision or the expenditure is in accordance with this chapter and State law. The Council has discretion to conduct its review of the appeal in any manner consistent with applicable law, and may allow but is not required to conduct a public hearing where the appellant may address the Council. The Council may make its decision verbally, and may but is not required to adopt a written decision. The Council may deny the appeal, or affirm, modify, or overrule the decision expenditure.~~ If the Council determines that there has been an improper expenditure of SDC revenues, the Council shall direct that a sum equal to the ~~misspent expenditure~~ amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the Council shall be ~~subject to review reviewed~~ only by writ of review.
3. ~~A legal action challenging the methodology adopted by the City Council shall not be filed later than 60 days after adoption and shall use the writ of review process.~~

### B. Appeals of Methodology.

1. Any legal action challenging the methodology adopted by the City Council must be filed no later than 60 days after adoption and is subject to the writ of review process.

### C. ~~B.~~ Appeal of Objections to Calculation of Amount Charged.

1. A person responsible for paying City SDCs (the "payor") may ~~object to request review of~~ the amount of City SDCs or City SDC credits calculated by staff and avail themselves of the City's formal process by submitting a written ~~objection request for review~~ to the Director of the Community and Economic Development Department ("the Director"), Engineer ("CDD-Engineer") within 60 days of the date SDCs become payable or permits are ready for issuance, whichever date is earlier. At any time prior to filing an objection under this section, a payor may engage in informal discussions with City staff designated by the

~~Director to try to resolve the issue(s).~~ prior to paying the SDCs, at the same time as the SDCs are paid, or ~~iof appealing the credit calculation and/or SDCs after payment, within five working days of being notified of the amount of SDC credits or SDCs.~~ The request for ~~review~~objection must state the amount in dispute and ~~must provide the reasons why the payor believes the amount charged is incorrect, the amount the payor believes is appropriate with an explanation of that amount, and a request for a meeting if the payor desires one.~~ Following payment by the payor of any required objection fee provided by Council resolution, the Director and/or their designee(s) ~~CDD Engineer~~ shall respond in writing to the ~~request for review~~objection within 10 ~~business~~working days unless ~~the payor requested a meeting between the payor and CDD Engineer is requested.~~ If a meeting is requested, the ~~Director and/or their designee(s) CDD Engineer~~ shall meet with the payor within a reasonable period of time. In the event a meeting is held, the Director and/or their ~~designee(s) will issue a written response to the objection and issue the response no later than five working~~ ten business days after the meeting. The ~~CDD Engineer's~~ response may be to affirm the original amount, reduce the original amount, or to require additional information, including but not limited to a traffic report prepared by a licensed traffic engineer. A decision requiring a traffic report or other additional information is not ~~the City's response~~a final decision. If a traffic report or other information is requested and provided pursuant to parameters established by the City, the ~~CDD Engineer~~ City shall provide ~~its response to the objection a final decision~~ within 15 ~~business~~working days of receiving the traffic report or additional information~~receiving the report.~~

2. The payor may appeal the City's response to the objection by submitting a written appeal to the City Manager and pay an appeal fee in an amount set by Council resolution. The written appeal and any required appeal fee must be received by the City Manager within ten business days of the date of the City's response to the objection, and may include evidence and written argument and a request for a meeting. The appeal must include the payor's explanation of why they believe the City's response to the objection was not correct. The payor may submit additional evidence and written argument within ten business days of the date the appeal is submitted to the City Manager. The appeal will be determined by the City Manager and/or their designee(s), ~~final decision of the CDD Engineer to a panel comprised of the City Manager, the Community Development Director, and the Public Works Director, by submitting a written appeal to the Permit Center stating the amount in dispute and specifying why the amount charged is incorrect. The appeal must be filed with the City within five working days of delivery to payor of the CDD Engineer's decision. A mailed decision shall be deemed to be delivered three days after mailing. If the SDCs have not been paid in full at the time of the appeal, the payor shall pay an appeal fee in an amount set by Council resolution.~~ The permittee may provide additional written

~~argument or evidence regarding the amount within 10 days after filing the appeal. The City shall provide a final written decision on the appeal within 30 calendar days of the filing of the appeal or within 10 business days of a meeting, whichever is later. The City's decision shall be subject to review only by writ of review. The appeal panel shall meet with the payor if requested in the appeal document.~~

3. A payor challenging the amount of SDCs may pay the SDCs in full any time after the objection request for review is submitted filed. The payor may also pay the uncontested portion of the SDCs any time after the request for review is filed provided the uncontested amount is reasonable as determined by the CDD Engineer. No building No permit connected to the SDC objection and/or appeal will be issued unless the SDCs determined by the City to be payable are paid in full, until the uncontested amount of the SDCs is paid unless deferral of payment is allowed under some other provision of law. If the uncontested amount of SDCs is paid and a building permit issued, the payor shall pay any additional amounts determined to be payable within 30 days of the City's final decision on review or appeal. Failure to pay the additional amounts within 30 days will result in interest of 12 percent charged on the additional amounts from the date of the building permit. No certificate of occupancy will be issued or final inspection approved until SDCs determined by the City to be payable are paid in full. If the amount originally charged by the City is paid in full and the final City decision reduces the amount payable, the City shall refund the difference. If the payor has paid the \$250.00 appeal fee and the City reduces the amount payable on appeal, the appeal fee shall be refunded. No interest shall accrue on the amounts to be refunded to the payor.

4. The procedures and rights in this section apply only to City of Bend SDCs, and not to SDCs of any other entity.

~~C. *Delegation of Authority.* The responsibilities of the CDD Director, CDD Engineer, City Manager and Public Works Director under this section may be exercised by the persons in those offices or their designees. Authority to act shall be delegated if needed to meet decision deadlines.~~

### **12.10.180 Prohibited Connection.**

No person may connect to the transportation, water or sewer system of the City or obtain a building permit or certificate of occupancy unless the appropriate SDCs have been paid, or the installment payment method has been applied for, approved, and the first payment made, unless the payment is deferred under a uniform system established by ordinance an agreement entered to pay over time as allowed by BC 12.10.110, an application for deferral of

payment has been approved under BC 12.10.105, or the development is exempt from payment of SDCs under BC 12.10.120.

### **12.10.190 Deferral.**

~~A. Qualified builders may be eligible to defer payment of transportation, water and sewer SDCs for up to nine months, or through the time of application for an occupancy permit for a particular structure, whichever is earlier.~~

~~B. To qualify, builders must undergo an application process which may include a credit review and shall include the submission of a preliminary title report. Application for deferral shall be filed when the application for a building permit is submitted to the Community Development Department. Deferral of SDCs will not be granted if the application is not filed in accordance with this chapter.~~

~~C. A lien in the amount of the SDCs deferred will be placed on the property unless security in a form acceptable to the City is provided to cover the amount deferred. In order to participate in the program, builders may be required to execute and record a trust deed regarding the applicable real estate and securing the amount of the SDCs.~~

~~D. Interest will be charged at 12 percent annually in the event that the SDCs are not paid when due as provided for in subsection (A) of this section. In addition, participating builders will be required to waive all rights to contest the amount and means of calculating the SDC.~~

~~E. The deferral program established by this section will expire on August 31, 2015. The City reserves the right to terminate the program at any time. The City Manager is authorized to establish additional rules and application forms for the implementation of this program.~~

~~F. This program shall apply City-wide to residential and nonresidential developments, except for properties in the Juniper Ridge real property contained in the Juniper Ridge Conceptual Master Plan adopted in 2008; properties that are subject to existing development or settlement agreements or properties for which applications for a building permit have already been submitted.~~

### **12.10.190. Enforcement.**

The provisions of this Chapter may be enforced by any means legally available to the City, including but not limited to the following.

A. Stop Work Order. The Building Official is authorized to issue a stop work order if construction has begun or occupancy of a development in the case of a deferral of SDCs, for which SDCs are due, without payment of the applicable SDCs. The stop work order must be in writing and given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order must state the reason for the order, and that work will be permitted to resume when SDCs have been paid.

B. Civil Infraction. Commencement of construction or occupancy of a development in the case of a deferral or appeal of SDCs, for which SDCs are due, without payment of the applicable SDCs, is a Class A civil infraction. Each day that a violation continues to exist constitutes a separate violation, and a separate penalty may be assessed for each day the violation continues.

C. A system development charge is the obligation of the property for which an SDC is due and is not personal to the person paying the SDC. SDCs that remain unpaid after they become due will be a lien on the property, which may be recorded in the City lien docket and/or in the real property records of Deschutes County. Liens for unpaid SDCs may be foreclosed in any manner provided by ORS 223.505 to 223.650 or as otherwise provided by law.

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

1. Refuse to issue any permits of any kind to the delinquent party for any development;

2. Refuse to honor any credits held by the delinquent party for any development;

3. Condition any development approval of the delinquent party on payment in full, including penalties and interest;

4. Revoke any previous deferrals issued to the delinquent party, in which case the amount immediately shall be due, and refuse to issue any new deferrals;

5. Withdraw the amount due, including penalties and interest, from any offset account held by the jurisdiction for the delinquent party.