

NETARTS-OCEANSIDE SANITARY DISTRICT

ORDINANCE NO. 22-02

AN ORDINANCE ADOPTING SYSTEM DEVELOPMENT CHARGES

WHEREAS, the Board of Directors desire to establish a methodology to determine the amount of System Development Charges for the Netarts-Oceanside Sanitary District pursuant to ORS 223.297-223.316 ; and

WHEREAS, Oregon Revised Statute 223.297 establishes procedures to provide a uniform framework for the imposition of System Development Charges by governmental units for specified purposes and to establish that the charges may be used for Capital Improvements; and

WHEREAS, Oregon Revised Statutes, under 223.297 - 223.316 provides procedures for establishing a Methodology to determine System Development Charges; and

WHEREAS, by this Ordinance, the District intends to provide authorization for System Development Charges for capital improvements pursuant to ORS 223.297 - 223.316 for the purpose of creating a source of funds to pay for existing system capacity and/or the installation, construction and extension of capital improvements to accommodate new connections to the system; and

WHEREAS these charges shall be due and payable at the time of permitted increased usage of the capital improvements that generate a need for those facilities; and

WHEREAS, the System Development Charges imposed are separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development, and being fully advised

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE NETARTS-OCEANSIDE SANITARY DISTRICT THAT:

Section 1. Title

This Ordinance shall be known as “Sanitary Sewer System Development Charge Ordinance” and may be so referred to.

Section 2. Definitions

- A. “Applicant” shall mean the owner or other person who applies for a residential, commercial, industrial or other connection to the District wastewater system.
- B. “Board” means the Board of Directors of the Netarts-Oceanside Sanitary District.

- C. “Building” shall mean any structure, either temporary or permanent, built for the support, shelter or enclosure of persons or property of any kind or for any public, commercial, industrial or other use. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a building permit.
- D. “Capital Improvements” shall mean public facilities or assets used for sanitary sewer collection, supply, transmission, and treatment.
- E. “Citizen or Other Interested Person” shall mean any person whose legal residence is within the boundaries of the District, as evidenced by registration as a voter within the District or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within District boundaries or is otherwise subject to the imposition of System Development Charges, as outlined in Section 3 of this ordinance.
- F. “Connection” or “Connection Permit” shall mean connection to, or a permit to connect to, the capital improvements of the District.
- G. “District” shall mean the Netarts-Oceanside Sanitary District, an Oregon municipal corporation.
- H. “Development” shall mean a building or other construction activity, or making a physical change in the use of a structure or land, in a manner which increases the usage of any capital improvements or which may contribute to the need for additional or enlarged capital improvements, as determined by the Board.
- I. “Dwelling Unit” shall mean a building or a portion of a building designed for residential occupancy, consisting of one or more rooms which are arranged, designed or used as living quarters for one family only.
- J. “Encumbered” shall mean monies committed by contract or purchase order in a manner that obligates the District to expend the encumbered amount upon delivery of goods, the rendering of services, or the conveyance of a real property provided by a vendor, supplier, contractor or owner.
- K. “Equivalent Dwelling Unit (EDU)” shall mean the base element of the formula by which System Development Charge rates are determined, for various buildings or developments, based on usage of a single-family residence.
- L. “Improvement Fee” shall mean a fee for costs associated with capital improvements to be constructed after the effective date of this ordinance.
- M. “Manufactured Housing” shall mean a dwelling unit which is constructed primarily at one location and is then transported to another location for either permanent or temporary siting.

- N. "Methodology" shall mean the System Development Charge methodology required by ORS 223.304(1) and (2).
- O. "Owner" shall mean the person holding legal title to the real property upon which development is to occur, or a contract purchaser of such property.
- P. "Person" shall mean an individual, corporation, partnership, incorporated association, or any other similar entity.
- Q. "Qualified Public Improvement" shall be defined as provided in ORS 223.304(4).
- R. "Single-family housing" shall mean a detached dwelling unit, constructed on-site, and located on an individual lot.
- S. "System Development Charge" shall mean a reimbursement fee and/or an improvement fee assessed or collected at the time of increased usage of, or connection to a capital improvement.

Section 3. Assessment of Charge

- A. A System Development Charge (SDC) is hereby imposed upon all new development within the District, or that is served by the District, which connects to a capital improvement, or which increases the usage of any capital improvements, or which contributes to the need for additional or enlarged capital improvements. This shall include new construction and alteration, expansion or replacement of a building or development if such alteration, expansion or replacement results in an increased usage of the sewerage system. For alterations, expansions and replacements, the amount of the SDC to be paid shall be the difference between the rate for the proposed development and the rate that would be imposed for the development prior to the alteration, expansion or replacement.
- B. System Development Charge rates shall be established, and may be revised from time to time, by resolution of the District.
- C. The System Development Charges imposed by this ordinance are separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development.

Section 4. System Development Charge Methodology

- A. The methodology used to establish the reimbursement fee portion of the System Development Charge shall take into account the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, generally accepted rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the District. The methodology shall promote the

objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.

- B. The methodology used to establish the improvement fee portion of the System Development Charge shall take into account the cost of projected capital improvements in the plan described in Section 5 below and needed to increase the capacity of the systems to which the fee is related.
- C. The methodology used to establish the improvement fee and the reimbursement fee shall be adopted or amended by resolution of the District.

Section 5. System Development Charge Plans

- A. The Board will periodically adopt and amend capital improvement plans, facilities plans, master plans, or comparable plans that include a list of capital improvements and for each improvement:
 - (1) Estimated costs.
 - (2) Timing of construction.
 - (3) Percentage of costs eligible to be funded with revenues from the improvement fee.
- B. The Board may modify the list of capital improvement projects at any time through the adoption of an appropriate resolution.

Section 6. Collection

- A. The System Development Charge shall be due and payable at the time of issuance of a permit or approval by the District to connect to the District system or upon such connection or upon increased usage of the District's system. This ordinance shall apply to any building or development for which connection approval has not been given prior to the adoption hereof.
- B. If development is commenced or connection is made to the system provided by the District without an appropriate permit, the System Development Charge is immediately payable upon the earliest date that a permit was required or increased usage occurred.
- C. The District shall not issue such permit or allow connection or increased usage of the system(s) until the charge has been paid in full, unless an exemption is granted pursuant to Section 6(E).
- D. Notwithstanding Section 3(A), the following developments shall be exempt from payment of the System Development Charges:

- (1) Alterations, expansion or replacement of a building or development where no additional dwelling unit is created, or water meter size is increased, or usage of the wastewater system is not increased.
- (2) The construction of accessory buildings or structures which will not create additional dwelling units or does not create additional demands on the District's capital facilities.
- (3) The issuance of a permit for a manufactured housing unit on which applicable System Development Charges have previously been paid.

Section 7. Credits for Developer Contributions of Qualified Public Improvements

- A. The District may grant a credit against the System Development Charges imposed pursuant to Section 3 for the donation of land for, or for the actual cost of construction of, any qualified public wastewater improvements.
- B. Prior to issuance of a building permit or development permit, the applicant shall submit to the Board a proposed plan and estimate of cost for contributions of qualified public wastewater improvements. The proposed plan and estimate shall include:
 - (1) A designation of the development for which the proposed plan is being submitted;
 - (2) A legal description of any land proposed to be donated and a written appraisal prepared in conformity with Section 7(C)(1);
 - (3) A list of the contemplated capital improvements contained within the plan;
 - (4) An estimate of proposed construction costs certified by a professional architect or engineer; and
 - (5) A proposed time schedule for completion of the proposed plan.
- C. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit. The amount of credit to be applied shall be determined according to the following standards of valuation:
 - (1) The value of donated lands shall be based upon a written appraisal of fair market value by a qualified and professional appraiser based upon comparable sales of similar property between unrelated parties in a bargaining transaction; and
 - (2) The cost of anticipated construction of qualified public improvements shall be based upon cost estimates certified by a professional architect or engineer.

- (3) The actual cost of a qualified public improvement shall be based on a verified accounting of actual costs, but such cost shall not exceed the inflation adjusted cost of the qualified public improvement contained in the District's applicable list of capital improvements defined in Section 5, above. The inflation adjustment shall be calculated using the 20-city average of the Construction Cost Index published by McGraw Hill, Inc. or its successor.
- D. This credit shall be only for the improvement fee charged for the type of improvement being constructed. Credit under this Section may be granted only for the cost of that portion of the improvement, that is off-site as defined in ORS 223.304 (4)(a), or on-site, but exceeds the facility size or capacity needed to serve the development project and where the oversizing provides capital usable by the District.
- E. Applying the adopted methodology, the District may grant a credit against the reimbursement charge for capital facilities provided as part of the development that reduces the development's demand upon existing capital improvements or the need for further capital improvements or that would otherwise have to be constructed at District expense under the then-existing Board policies.
- F. If a donation or construction of a qualified public improvement gives rise to a credit amount greater than the amount of the System Development Charge that would otherwise be levied against the project receiving development approval, the excess credit may be applied against SDCs that accrue in subsequent phases of the original development project. Any excess credit must be used not later than ten (10) years from the date it is given.
- G. The decision of the Board as to whether to accept the proposed plan of contribution of a qualified public improvement and the value of such contribution shall be in writing and issued within thirty (30) working days of the date all data is received for review. Notification shall be provided to the applicant via regular mail.
- H. After completion of a qualified public improvement, the applicant shall, within 30 days of completion, submit to the District an accounting of actual costs. Upon District verification of such costs, the credit shall be increased or reduced accordingly up to the maximum specified in Section 7(C)(3) above. If reduced, the applicant shall pay to the District the amount of reduction in cash within 30 days of notice of such reduction.
- I. Any applicant who submits a proposed plan pursuant to this Section and desires the immediate issuance of a building permit or development permit shall pay the applicable System Development Charges. Said payment shall not be construed as a waiver of any credit. Any difference between the amount paid and the amount due, as determined by the Board, shall be refunded to the applicant. In no event shall refund by the District under this subsection exceed the amount originally paid by the applicant.
- J. Credits shall be apportioned against the property, which was subject to the requirements to construct an improvement eligible for credit. Unless otherwise requested,

apportionment against lots or parcels constituting the property shall be proportionate to the anticipated public facility service requirements generated by the respective lots or parcels. Upon written application to the District, however, credits shall be reapportioned from any lot or parcel to any other lot or parcel within the confines of the property originally eligible for the credit. Reapportionment shall be noted on the original credit form retained by the District.

Section 8. Appeals and Review Hearings

- A. An applicant who is required to pay System Development Charges shall have the right to request a hearing to review any of the following:
 - (1) Denial of a proposed credit for contribution of qualified public improvements pursuant to Section 7.
 - (2) The expenditure of SDC revenues if filed within two years of the challenged expenditure in accordance with Section 10(H).
- B. Such hearing shall be requested by the applicant within thirty (30) days of the date of first receipt of the denial or expenditure of System Development Charge revenues. Failure to request a hearing within the time provided shall be deemed a waiver of such right.
- C. The request for hearing shall be filed with the Board and shall contain the following:
 - (1) The name and address of the applicant;
 - (2) The legal description of the property in question;
 - (3) If issued, the date the building permit or development permit was issued;
 - (4) A brief description of the nature of the development being undertaken pursuant to the building or development permit;
 - (5) If paid, the date the SDCs were paid; and
 - (6) A statement of the reasons why the applicant is requesting review.
- D. Upon receipt of such request, a hearing shall be scheduled before the Board of Directors at a regular Board meeting or a special meeting called for the purpose of conducting the hearing and shall provide the applicant written notice of the time and place of the hearing. Such hearing shall be held within forty-five (45) days of the date the request for hearing was filed.
- E. Such hearing shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedure and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial

manner with each party having an opportunity to be heard and to present information and evidence.

- F. Any applicant who requests a hearing pursuant to this Section and desires the immediate issuance of a connection permit shall pay prior to or at the time the request for hearing is filed the applicable System Development Charges. Said payment shall not be construed as a waiver of any review rights.
- G. An applicant may request review under this Section without paying the applicable System Development Charges as long as no connection permit or approval has been issued and no connection has occurred.
- H. The decision of the Board shall be subject to writ of review under ORS 34.010 to 34.100.

Section 9. Review of Methodology and Rates

- A. This ordinance, the System Development Charge methodology, and the capital improvement project list required by ORS 223.309 shall be reviewed by the Board of Directors in its discretion. The review shall consider new estimates of population and other socioeconomic data, changes in the cost of construction and land acquisition, and adjustments to the assumptions, conclusions or findings set forth in the methodology. The purpose of this review is to evaluate and revise, if necessary, the rates of the System Development Charges to ensure that they do not exceed the actual or reasonably anticipated costs of the District's capital improvements.
- B. Notwithstanding any adjustments made under Section 9(A) of this Ordinance, in January of each year the Board shall review the System Development Charge methodology and rates in relation to the Engineering News Record (ENR) 20-City average of the Construction Cost Index (CCI), or comparable index as adopted by the Board. The Board may, by resolution, modify the District's SDC charges in keeping with such index. A change in an SDC under this subsection shall not be considered a modification to the SDC or methodology under ORS 223.297 through ORS 223.316.
- C. In the event the review of the ordinance or the methodology alters or changes the assumptions, conclusions and findings of the methodology, or alters or changes the amount of System Development Charges, the methodology shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews. If changes in the methodology are undertaken by the District, the District shall comply with the requirements of ORS 223.297 through ORS 223.316, and coordinate such changes with other affected jurisdictions as necessary.

Section 10. Receipt and Expenditure of System Development Charges

- A. The District shall establish a separate account for the wastewater System Development Charge which shall be maintained apart from all other accounts of the District. All System Development Charge payments shall be deposited in the appropriate account immediately upon receipt.
- B. Reimbursement fees shall be applied only to capital improvements associated with the wastewater system, including expenditures relating to repayment of indebtedness.
- C. Improvement fees shall be applied only to capacity-increasing capital improvements, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the capital improvements funded by improvement fees shall be related to the need for increased capacity to provide service for future users. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the capital improvement plan, master plan, or other comparable plan or project list adopted by the District pursuant to ORS 223.309.
- D. Notwithstanding subsections (B) and (C) of this Section, System Development Charge revenues may also be expended on the direct costs of complying with the provisions of this ordinance, including, but not limited to, the costs of developing SDC methodologies and providing an annual accounting system for development charge expenditures.
- E. Any funds on deposit in System Development Charge accounts which are not immediately necessary for expenditure shall be invested by the District. All income derived from such investments shall be deposited in the SDC trust accounts and used as provided herein.
- F. System Development Charges shall be refunded in accordance with the following requirements:
 - (1) An applicant or owner shall be eligible to apply for a refund if:
 - a. The connection permit has expired and the development associated with such permit was not commenced within that time of permit validity.
 - (2) The application for refund shall be filed with the District and contain the following:
 - a. The name and address of the applicant;
 - b. The location of the property which was the subject of the System Development Charges;

- c. A notarized sworn statement that the petitioner is the then current owner of the property on behalf of which the SDCs were paid, including proof of ownership, such as a certified copy of the latest recorded deed;
 - d. The date the SDCs were paid;
 - e. A copy of the receipt of payment for the SDCs; and, if appropriate;
 - f. The date the building permit or development permit was issued and the date of expiration.
- (3) The application shall be filed within ninety (90) days of the expiration of the building permit, development permit, or connection permit. Failure to timely apply for a refund of the SDCs shall waive any right to a refund.
 - (4) Within thirty (30) days from the date of receipt of a petition for refund, the District will advise the petitioner of the status of the request for refund, and if such request is valid, the System Development Charges shall be returned to the petitioner.
 - (5) A connection permit, which is subsequently issued for a development on the same property which was the subject of a refund, shall pay the Systems Development Charges required by Section 6.
- G. The District shall prepare an annual report accounting for System Development Charges, including the total amount of SDC revenue collected in the accounts, and the capital improvement projects that were funded.
- H. Any citizen or other interested person may challenge an expenditure of System Development Charge revenues.
- (1) Such challenge shall be submitted, in writing, to the Board for review within two years following the subject expenditure, and shall include the following information:
 - a. The name and address of the citizen or other interested person challenging the expenditures;
 - b. The amount of the expenditure, the project, payee or purpose, and the approximate date on which it was made; and
 - c. The reason why the expenditure is being challenged.
 - (2) If the Board determines that the expenditure was not made in accordance with the provisions of this ordinance and other relevant laws, a reimbursement of System Development Charge account revenues from other revenue sources shall be made

within one year following the determination that the expenditures were not appropriate.

- (3) The Board shall make written notification of the results of the expenditure review to the citizen or other interested person who requested the review within ten (10) days of completion of the review.

Section 11. Severability

If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

Section 12. Implementing Regulations

The Board may adopt regulations to implement the provisions of this ordinance.

Section 13. Emergency Clause

In order to finance the improvements designated in the District’s master plan and capital improvement plan or other comparable plan, it is necessary that commencement of System Development Charges begin immediately. Therefore, the District finds that it is necessary to preserve the public safety and service that this Ordinance takes effect at the earliest possible time. An emergency is therefore declared to exist, and this ordinance shall take effect upon adoption.

ADOPTED _____, 2022.

John Prather, Board Chair

ATTEST:

Elizabeth Wipperman, Secretary