ORDINANCE 2021-02

AN ORDINANCE GOVERNING SYSTEM DEVELOPMENT CHARGES AND DECLARING AN EMERGENCY.

THE CITY OF MONROE ORDAINS AS FOLLOWS:

Section 1. Purpose. The purpose of the system development charge is to impose an equitable share of the public costs of capital improvements for water, sewers and wastewater drainage, streets, flood control, and parks upon those developments and redevelopments that create the need for or increase the demands on capital improvements.

Section 2. Scope. The system development charges as imposed by this Section are separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment, exaction, dedication, or fee otherwise provided by law or imposed as a condition of development approval application.

Section 3. Definitions. For purposes of this ordinance, the following mean:

A. "Administrative Charge" means the amount charged to each development to cover the cost of developing the methodologies, providing an annual accounting of system development charge expenditures, implementation, and operational costs associated with the system development charge program.

B. "Capital Improvement" means public facilities or assets used for the following:

   1) Water supply, treatment, and distribution;

   2) Waste water collection, transmission, treatment, and disposal;

   3) Drainage and flood control;

   4) Transportation, including, but not limited to, streets, sidewalks, bicycle lanes, multi-use paths, street lights, traffic signs and signals, pavement markings, street trees, swales, public transportation, vehicle parking, and bridges; or

   5) Parks and recreation, including, but not limited to, community parks, public open space and trail systems, recreational buildings, courts, fields, and other like facilities.

C. "Capital Improvement" does not include costs of the operation or routine maintenance of capital improvements.

D. "Developer" means the person, builder, applicant, permittee, or firm developing land, making the improvement, or building or modifying a structure.

E. "Development" means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage, or activities, any building permit resulting in increased usage of

capital improvements, and any new connection or increased size connection for a capital improvement. Development includes the redevelopment of property. Development also includes improved open areas such as plazas and walkways but does not include natural geologic forms or unimproved lands.

F. "Improvement fee" means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 4 of this ordinance.

G. "Land Area" means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane, with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or for a public scenic or preservation purpose.

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

I. "Parcel of land" means a lot, parcel, block, or other tract of land that is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.

J. "Qualified Public Improvements" means a capital improvement that is required as a condition of development approval, identified in the plan adopted pursuant to Section 8 of this ordinance; and either

    1) Not located on or contiguous to property that is the subject of the development approval; or
    2) 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.

K. "Reimbursement fee" means a fee for costs associated with capital improvements already constructed, or under construction when the fee is established, for which the city council determines that capacity exists.

L. "System development charge" means a reimbursement fee, an improvement fee, or a combination thereof, assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit, building permit, or connection to the capital improvement. "System development charge" includes the portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the city for its average cost of inspecting and installing connections with water and sewer facilities. "System development charge" does not include any fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed upon a land use decision, expedited land use division, or limited land use decision.

Section 4. System Development Charge Established.

A. System development charges shall be established and may be revised by resolution of the city council. The resolution shall set the amount of the charge through a methodology developed pursuant to Section 5 herein, the type of permit to which the charge applies, and, if the charge applies to a geographic area smaller than the entire city, the geographic area subject to the charge. Changes in the system development charges shall also be adopted by resolution, excepting those changes resulting solely from inflationary cost impacts.

B. All system development charges will be indexed. The indexing will be based on the Engineering News Record Construction Cost Index for Seattle, Washington for December of each year and they will be increased on April 1st each subsequent year.

C. Unless otherwise exempted by the provisions of this ordinance, or by other local or state law, a system development charge is hereby imposed upon all development within the city, upon issuance of permit as stated in Section 9 herein or upon the act of making a connection to the city water or sewer system within the city, whichever occurs first, and upon all development outside the boundary of the city that connects to or otherwise uses the sewer facilities, storm sewers, or water facilities of the city.

D. Administrative costs for the City's system development charge program are estimated and include the periodic and on-going direct and indirect costs associated with complying with the requirement of state law and the cost of administering system development charges. An administrative charge shall be incurred when one of the following occurs:

    1) When a redevelopment occurs that changes the use of a building in its entirety and it is determined that usage of any capital improvement is increased or there is need of additional capital improvements, the associated administrative fee will be calculated either as a percentage rate of the net charge after credits are applied or at a flat rate, whichever is higher, as listed in subsection E of this Section 4.

    2) When a redevelopment permit application (other than for redevelopment that changes the use of a building in its entirety) requires a detailed review to determine that there will be no increased usage of any capital improvement and no additional capital improvements will be needed, the associated administrative fee will be applied at a flat rate as listed in subsection E of this Section 4.

    3) When an SDC is imposed for all other development, the associated administrative fee will be calculated as a percentage rate of the net charge after credits for previous use and impact reduction are applied or at a flat rate, whichever is higher, as listed in subsection E of this Section 4.

E. The administration fees charged in accordance with the above subsection will be as follows:

    1) If based on percentage, as described in subsection D of this Section 4 5.0%

    2) If based on flat rate, as described in subsection D of this Section 4 $100.00

F. An administrative charge calculated shall not exceed a maximum amount of $30,000.00 for a single permit issued. If multiple permits are issued for different phases of the same development, the maximum administrative charge shall be applied to each permit independently.

Section 5. Methodology.

A. The methodology used to establish or modify a reimbursement fee shall promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities and be available for public inspection. The methodology used to establish or modify a reimbursement fee shall, where applicable, be based on:

1) Ratemaking principles employed to finance publicly owned capital improvements;
2) Prior contributions by existing users;
3) Gifts or grants from federal or state government or private persons;
4) The value of unused capacity available to future system users or the cost of the existing facilities; and
5) Other relevant factors identified by the city council.

B. The methodology used to establish or modify an improvement fee shall, where applicable, demonstrate consideration of the estimated cost of projected capital improvements identified in an improvement plan (*see* Section 8) that are needed to increase the capacity of the systems to which the fee is related. The methodology shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future system users.

C. The methodology used to establish or modify a reimbursement fee or improvement fee shall be contained in a resolution adopted by the city council and reviewed annually.

Section 6. Authorized Expenditures.

A. Reimbursement fees shall be spent only on capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

B. Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity may be established if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to the need for increased capacity to provide service for future users.

C. Notwithstanding subsections (A) and (B) of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this article, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.

Section 7. Expenditure Restrictions.

A. System development charges 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 or for the expenses of the operation or maintenance of the facilities constructed with system development charge revenues.

B. Any capital improvement being funded wholly or in part with system development charge revenues must be included in the plan and list adopted by the city council pursuant to ORS 223.309 and Section 8 of this ordinance.

Section 8. Improvement Plan.

A. Prior to the establishment of a system development charge, the city council shall prepare a capital improvement plan, public facilities plan, master plan, or other comparable plan that includes:

1) A list of the capital improvements that the city council intends to fund, in whole or in part, with revenues from improvement fees;

2) The estimated cost of construction of each improvement and the percentage of that cost eligible to be funded with improvement fee revenue; and

3) A description of the process for modifying the plan.

B. In adopting a plan under Section 8(A) of this ordinance, the city council may incorporate by reference all or a portion of any capital improvement plan, public facilities plan, master plan, or other comparable plan that contains the information required by this section.

C. The city council may modify such plan and list, as described in Section 8(A) of this ordinance, at any time. If a system development charge will be increased by a proposed modification to the list to include a capacity increasing public improvement, the city council will:

1) At least thirty (30) days prior to the adoption of the proposed modification, provide written notice to persons who have requested notice pursuant to Section 13 of this ordinance;

2) Hold a public hearing if a written request for a hearing is received within seven (7) days of the date of the proposed modification.

D. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge if the change in amount is based on the periodic application of the indexing provisions of this ordinance or a modification to any of the factors related to the rate therein that are incorporated in the established methodology.

Section 9. Collection of Charge.

A. The system development charge is payable upon the issuance of:

1) A building permit;
2) A development permit;
3) A development permit for development not requiring the issuance of a building permit;
4) A permit or approval to connect to the water system;
5) A permit or approval to connect to the sewer system; or
6) A right-of-way access permit.

B. If no building, development, or connection permit is required, the system development charge is payable 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 water or sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required, and it will be unlawful for anyone to continue with the construction or associated use until the system development charge has been paid.

D. The City Administrator shall collect the applicable system development charge from the permittee when a permit that allows building or development of a parcel is issued or when a connection to the water or sewer system of the city is made. The applicable charge is the charge in place at the time of collection, not the time of permit application.

E. The applicant for a connection permit shall be required to state in writing the intended use of the building in sufficient detail to enable the City to determine the appropriate category of use. If the use of a building changes or if the stated use is incorrect, the occupant shall report the change of use to the City within thirty (30) days and promptly pay any additional system development charges. If the occupant fails to report a correct statement of use or a change of use within thirty (30) days or fails to pay the additional system development charge within ten (10) days after invoice, the occupant shall pay a penalty of 10% of the balance due plus interest on the unpaid balance at the rate of 1.5% per month.

F. The City Administrator shall not issue such permit or allow such connection until the charge has been paid in full, or until provision for installment payments has been made pursuant to Section 11 of this ordinance, or unless an exemption is granted pursuant to Section 12 of this ordinance.

Section 10. Delinquent charges – Hearing**.**

A. When, for any reason, the system development charge has not been paid, the city manager shall report to the city council the amount of the uncollected charge, the description of the development to which the charge is attributable, the date upon which the charge was due, and the name of the developer.

B. The City Council shall schedule a public hearing on the matter and direct that notice of the hearing be given to each developer with a copy of the city manager report concerning the unpaid charge. Notice of the hearing shall be given either personally or by certified mail, return receipt requested, or by both personal and mailed notice, and by posting notice on the parcel at least 10 days before the date set for the hearing.

C. At the hearing, the City Council may accept, reject, or modify the determination of the City Administrator as set forth in the report. If the City Council finds that a system development charge is unpaid and uncollected, it shall direct the City Administrator to enter the unpaid and uncollected system development charge in the lien docket. Upon completion of the docketing, the city shall have a lien against the described land for the full amount of the unpaid charge, together with interest at the legal rate of 10 percent and with the City's actual cost of serving notice of the hearing on the owners. The lien shall be enforceable in the manner provided in ORS Chapter 223.

Section 11. Installment Payments.

A. An owner of property obligated to pay a system development charge in an amount exceeding $2,500 may apply to pay the charge in semiannual installments over a period not to exceed 10 years, but will pay minimum semiannual installments of not less than $1,250. Installments shall include interest on the unpaid balance at the rate equal to three percent per annum above the prime rate of interest quoted by the Wall Street Journal as of January 2nd of the year in which the charge is imposed in accordance with ORS chapter 223.

B. The City Administrator shall provide application forms for installment payments, which shall 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 payments shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that applicant's property interest in the parcel is adequate to secure payment of the lien.

D. The City Administrator shall report to the City Council the amount of the system development charge, the dates on which payments are due, the name of the owner, and the description of the parcel.

E. The City Administrator shall docket the lien. From the time the lien is docketed the city shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at a rate established by the city council via resolution. The lien shall be enforceable in the manner provided in ORS chapter 223.

F. Upon written request of the City Council, the City Administrator is authorized to cancel assessments of system development charges, without further city council action, where a new development approved by a building permit is not constructed and the building permit is cancelled. Any system development charges paid to the city pursuant to the

cancelled permit shall be refunded upon request of the applicant. Such refund will be in the amount paid at the time of the payment to the city, unadjusted for inflation.

Section 12. Exemptions.

A. Structures and uses established and legally existing on or before the effective date of this ordinance are exempt from a system development charge, except water and sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the water or sewer system.

B. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the Oregon Uniform Building Code, are exempt from all portions of the system development charge.

C. An alteration, addition, replacement, or change in use that does not increase a parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge.

D. Up to two low or moderate income single-family residential projects for certified nonprofit entities per calendar year will be granted a waiver for wastewater and water system development charges by the city manager on a first come, first served basis.

E. Except as provided in subsection (D) of this section, no waiver of system development charges shall be made.

Section 13. Credits.

A. A system development charge shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given for the computed system development charge to the extent that prior structures existed and services were established on or after the effective date of the ordinance. The credit so computed shall not exceed the calculated system development charge. No refund shall be made on account of such credit.

B. The city will grant to an applicant a credit against any improvement fee assessed when the applicant, or the developer from whom the applicant purchased a lot, constructs, or dedicates a qualified public improvement as part of the development. The initial determination on all credit requests shall be a decision by the City Administrator, and the applicant bears the burden of evidence and persuasion in establishing entitlement to a system development charge credit and the amount of credit in accordance with the requirements of this Section. The city may deny the credit provided for in this section if the city demonstrates that the application does not meet the requirements of this section or if the improvement for which credit is sought was not included in the improvement plan.

C. To obtain a system development charge credit, the applicant must make the request, in writing, prior to the city's issuance of the first building permit for the development in question. In the request, the applicant must state the following:

1) Identify the improvement for which the credit is sought;

2) Explain how the improvement is a qualified public improvement; and

3) Document, with credible evidence, the value of the improvement for which credit is sought.

D. The system development charge credit shall be an amount equal to the fair market value of the improvement. Fair market value shall be determined by the City Administrator based on credible evidence of the following:

1) For dedicated lands, value shall be based upon a written appraisal of fair market value by a qualified, professional appraiser based upon comparable sales of similar property between unrelated parties in an arms-length transaction;

2) For a qualified public improvement yet to be constructed, value shall be based upon the anticipated cost of construction. Any such cost estimates shall be certified by a registered professional architect or engineer or based on a fixed price bid from a contractor ready and able to construct the improvement(s) for which the system development charge credit is sought;

3) For a qualified public improvement already constructed, value shall be based on the actual cost of construction as verified by receipts submitted by the applicant; or

4) For a qualified public improvement located on, or contiguous to, the site of the development, only the over-capacity portion as described in the definition of qualified public improvement is eligible for a system development charge credit. There is a rebuttable presumption that the over-capacity portion of such a qualified public improvement is limited to the portion constructed larger, or of greater capacity, than the city's minimum standard facility capacity or size needed to serve the particular development.

E. Form of Credit and Limitation on Use. When given, system development charge credits will be for a particular dollar value as a credit against a system development charge assessed on a development. Credits may only be used to defray or pay the system development charge for the particular capital improvement system to which the qualified public improvement is related, *e.g.*, credit from a qualified public improvement for sewer may only be used to pay or defray a sewer system development charge.

F. System Development Charge Credit Carry-Forward. Where the amount of a system development charge credit approved under this Section exceeds the amount of a system

development charge assessed on a development for a particular capital improvement system, the excess credit may be carried forward pursuant to the following rules:

1) A system development charge credit carry-forward will be issued by the City Administrator for a particular dollar value to the developer who earned the system development charge credit and may be used by the developer to satisfy system development charge requirements for any other development applied for by the developer within the city. System development charge credit carry-forwards are not negotiable or transferable to any party other than the one to whom they are issued.

2) The city will accept a system development charge credit carry-forward presented by a developer as full or partial payment for the system development charge due on any of the developer's developments.

3) System development charge credit carry-forwards are void and of no value if not redeemed with the city for payment of a system development charge of the same type of capital improvement system for which the credit was issued within five (5) years of the date of issuance.

4) System development charge credits cannot be indexed for inflation or redeemed for cash.

G. System Development Charge Credit Deadline. For all other system development charge credits not carried forward, the applicant must formally request the system development charge credit to the City Administrator no later than sixty (60) days after the later of the following two conditions occurs:

1) Acceptance of the applicable improvement by the city; and

2) The applicant paying sufficient system development charges for the development to cover the approved system development charge credit.

Section 14. Notice.

A. The city shall maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for any system development charge. Written notice shall be mailed to persons on the list at least ninety (90) days prior to the first hearing to establish or modify a system development charge. The methodology supporting the system development charge shall be available at least sixty (60) days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a 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 thirty (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.

Section 15. Segregation and Use of Revenue.

A. All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds of the city. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than that set forth in Section 6 of this ordinance.

B. The City Administrator shall provide the city council with an annual accounting, by January 1 of each year, for system development charges showing the total amount of system development charge revenue collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amount spent on each project funded, in whole or in part, with system development charge revenue shall be included in the annual accounting.

Section 16. Refunds.

A. Refunds shall be given by the City Administrator upon finding that there was a clerical error in the calculation of a system development charge.

B. Refunds shall not be allowed for failure to timely claim a credit under Section 13 of this ordinance, or for failure to seek an alternative system development charge rate calculation at the time of submission of an application for a building permit.

C. The city shall refund to an applicant any system development charge revenues not expended within ten years of receipt from the applicant. Such refund will be in the amount paid at the time, unadjusted for inflation.

Section 17. Implementing Regulations; Amendments. The city council delegates to the City Administrator the authority to adopt necessary procedures to implement the provisions of this ordinance. All rules developed pursuant to that delegated authority shall be filed with the office of the City Administrator and be available for public inspection.

Section 18. Appeals; Procedure.

A. A person challenging the propriety of an expenditure of system development charge revenue may appeal the decision or the expenditure to the city council by filing a written appeal petition with the City Administrator pursuant to Subsection (D) below. An appeal of an expenditure must be filed within two years of the date of the subject expenditure.

B. A person challenging the propriety of the methodology adopted by the council pursuant to Section 5 of this ordinance may appeal the decision or the expenditure to the council by filing a written appeal petition with the City Administrator pursuant to Subsection (D) below. An appeal petition challenging the adopted methodology shall be filed not later than sixty (60) days from the date of the adoption of the methodology.

C. A person challenging the calculation of a system development charge must file a written appeal petition to the calculation of the system development charge with the City Administrator within thirty (30) days of assessment of the system development charge.

D. Any person submitting an appeal petition pursuant to Subsections (A) through (C) above, must describe, with particularity, the basis for the appeal and include:

1) The name and address of the appellant;
2) The nature of the expenditure, methodology, or calculation being appealed;
3) The reason the expenditure, methodology, or calculation is allegedly incorrect; and
4) What the correct determination of the appeal should be or how the correct calculation should be derived.

E. If the appeal petition is untimely or fails to meet the requirements of Subsection (D) above, the appeal shall be dismissed by the council without a hearing.

F. If the appeal petition is timely filed and submitted in accordance with Subsection (D) above, the council shall order an investigation and direct that within sixty (60) days of receipt of the appeal petition a written report be filed by the City Administrator recommending appropriate action. Within thirty (30) days of receipt of that report, the city council shall conduct a hearing to determine whether the expenditure, methodology, or calculation was proper. The city council shall provide notice and a copy of the report to the appellant at least fourteen (14) days prior to the hearing. The appellant shall have a reasonable opportunity to present appellant's position at the hearing.

G. The appellant shall have the burden of proof. Evidence and argument shall be limited to the grounds specified in the petition. The city council shall issue a written decision stating the basis for its conclusion and directing appropriate action to be taken.

H. The city council shall render its decision within fifteen (15) days after the hearing date, and the decision of the city council will be final. The decision will be in writing, but written findings shall not be made or required unless the city council, in its discretion, elects to make findings for precedential purposes. If the city council determines that there was an improper expenditure of system development charge funds, the city council shall direct that a sum equal to the misspent amount be deposited within one (1) year of the date of the decision to the account of the fund from which it was spent.

I. Any legal action contesting the city council's decision on the appeal must be filed within sixty (60) days of the city council's decision. Review of the city council's decision shall be by writ of review pursuant to ORS 34.010 to 34.100.

Section 19. Prohibited Connection. No person may connect to the water or sewer systems of the city unless the appropriate system development charge has been paid or the lien or installment payment method has been applied for and approved.

Section 20. Penalty. Violation of Section 19 of this ordinance constitutes a violation and is punishable by a fine not to exceed $500 per day.

Section 21. Severability. The provisions of this ordinance are severable, and it is the intention of the council to confer the whole or any part of the powers herein provided for. If any clause, section, or provision of this ordinance is declared unconstitutional or invalid for any reason, the remaining portion of this ordinance shall remain in full force and effect and be valid as if such invalid portion had not been incorporated into the ordinance. It is hereby declared that the council intends that this ordinance would have been adopted had such an unconstitutional provision not been included.

Section 22. Classification. The city council hereby determines that any fee, rates, or charges imposed by this ordinance are not a tax subject to the property tax limitations of Article XI, section 11(b), of the Oregon Constitution.

Section 23. Emergency Clause. Whereas passage of this Ordinance is deemed to be necessary for the preservation of the public health, safety and welfare of the citizens of the City of Monroe, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect upon its passage by the City Council and approval of the Mayor.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR ON THIS 22th DAY OF MARCH, 2021.

_____
Dan Sheets, Mayor

ATTEST

_____
Steve Martinenko, City Recorder