

3 – UTILITIES

Compilation Number	Ordinance Number	Subject
3-1	[Repealed]	
3-2	[Repealed]	
3-3	[Repealed]	
3-4	[Repealed]	
3-5	[Repealed]	
3-6	[Repealed]	
3-7	[Repealed]	
3-8	1866 as amended by 1933 1973, 1975, 2008	Water Regulations and Rates
3-9	[Repealed]	
3-10	1965 as amended by 2008, 2371 and 2432	Sewer and Water Regulations
3-11	2070 as amended by 2251	System Development Charges for Water, Sewer and Parks and Recreation
3-12	2111 as amended by 2154 and 2249	Traffic Impacts Fees and 2249 System Development Charges for Stormwater Drainage
3-13	[Repealed by 2438]	
3-14	2250	Methodology for Parks & Recreation System Development Charges
3-15	2405	Provision of Municipal Sewer and Water Service to Properties Located Outside City Boundaries
3-16	2416	Process for the Forced Conversion of Electric and Communication Facilities
3-17	2438	Transportation System Development Charges

ORDINANCE NO. 1866

**AN ORDINANCE ESTABLISHING REGULATIONS AND RATES FOR THE CITY WATER SYSTEM;
AND REPEALING ORDINANCE NO. 1378, 1595, 1596, 1622 AND 1804.****THE CITY OF WOODBURN ORDAINS AS FOLLOWS:****Section 1. Definitions.**

(1) Customer. The owner of property which is served by the City water system. A person, corporation, association or agency which rents or leases premises shall be considered an agent of the property owner.

(2) Mains. Distribution pipe lines that are part of the City water system.

(3) Premises. The integral property or area, including improvements thereon, to which water service is or will be provided.

(4) Service Connection. The pipe, valves and other equipment by means of which the City conducts water from its mains to and through the meter to the property line, but not including piping from the property line to the premises served.

Service Provided**Section 2. Regular Service.**

(1) The City shall furnish and install a service connection of such size and location as a customer requests, provided that the request is reasonable. The service will be installed from the main to a point between the curb line and the property line of the premises if the main is in the street, or to a point in a City right-of-way or easement.

(2) The customer shall, at his own risk and expense, furnish, install and keep in good and safe condition equipment that may be required for receiving, controlling, applying and utilizing water. The City shall not be responsible for loss or damage caused by the improper installation of the equipment, or the negligence, want of proper care or wrongful act of the customer in installing, maintaining, using, operating or interfering with the equipment.

(3) The City shall not be responsible for damage to property caused by a spigot, faucet, valve or other equipment that is open when the water is turned on at the meter.

(4) A customer making any material change in the size, character or extent of the equipment or operation utilizing water service, or whose change in operations results in a large increase in the use of water, shall immediately give the City written notice of the nature of the change and, if requested, amend his application.

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(5) The service connection, whether located on public or private property, is the property of the City; and the City reserves the right to repair, maintain and replace it.

Section 3. Temporary Service.

(1) Charges for water furnished through a temporary service connection shall be the established rates for other customers.

(2) The applicant for temporary service will be required:

(a) To pay to the City, in advance at the option of the City, the estimated cost of installing and removing the facilities to furnish the service.

(b) To deposit an amount sufficient to cover bills for water during the entire period temporary service may be used, or to establish credit approved by the City.

(c) To deposit with the City an amount equal to the value of equipment loaned by the City. This deposit shall be refundable, less cost of any necessary repairs as provided in Subsection (3).

(3) The customer shall use all possible care to prevent damage to the meter or other equipment loaned by the City which are involved in furnishing the temporary service from the time they are installed until they are removed, or until 48 hours notice in writing has been given to the City that the contractor or other person is through with the meter and other equipment. If the meter or other equipment is damaged, the cost of making repairs shall be paid by the customer.

(4) Temporary service connections shall be disconnected and terminated within six months after installation unless an extension of time is granted in writing by the City.

Meters**Section 4. Meters.**

(1) Meters shall be furnished and owned by the City.

(2) No rent or other charges shall be paid by the City for a meter or other equipment located on the customer's premises.

(3) Meters may be sealed by the City at the time of installation, and no seal shall be altered or broken except by one of its authorized agents.

(4) If a change in size of a meter and service is required, the installation shall be accomplished on the basis of a new connection.

Section 5. Meter Error. A customer may request the City to test the meter serving his premises. The customer shall deposit an amount to cover the reasonable cost of the test. This deposit will be returned if the meter is found to register more than 2 per cent fast. The deposit required of a customer requesting a meter test shall be as follows:

5/8 inch - 3/4 inch	\$ 20.00
1 inch	30.00
1-1/2 inch	65.00
2 inch	100.00
3 inch	130.00
4 inch	150.00
6 inch	165.00
8 inch	175.00

Fees, Charges and Rates

Section 6. Applications.

(A) All water service connections, installations and alterations in the City shall be initiated by written application of each water customer. Each application shall be filed with the City and shall be accompanied by full payment of a water service installation charge and a water systems capacity fee in the amounts required by this ordinance.

(B) The Council may establish by motion a policy of connecting to an undersized main and recovery of associated costs. Yearly increases may be added to the established costs.

Section 7. Water Service Installation Charges.

(1) The water service installation charges in the City shall be as follows:

(a) For installation of a 3/4-inch service line and a 5/8-inch water meter: \$150.00.

(b) For installation of a 1-inch service line, including meter: \$300.00

(c) For installation of 1-1/2-inch and larger service lines and meters, the charge shall be actual cost of labor and materials furnished by the City, plus 15 per cent of said cost for administrative and overhead expense. Each [applicant] shall deposit the amount estimated by the water division with the application, and the final amount may be adjusted after installation is completed.

(2) All payments received by the City under the provisions of this section shall be deposited in, and credited to, the water fund of the City.

Section 8. Water System Capacity Fee.

(1) The water system capacity fee of the City shall be as follows:

(a) For single-family dwellings, trailers, manufactured dwelling units: \$750.00.

(b) (i) For apartments and other multiple-family dwellings: \$750.00 for the first unit and \$375.00 for each unit in excess of one.

(b) (ii) For motel, hotel and R.V. park units: \$750.00 for the first unit and \$210.00 for each unit in excess of one.

(c) All other structures and facilities shall be charged according to options below:

(i) Requiring meter sizes up to 1½ inches: \$750.000 plus \$30.00 for each 1,000 square feet of area, or portion thereof, in excess of 2,000 square feet.

(ii) Requiring meter sizes above 1½ inches:

<u>Size of Meter</u>	<u>System Capacity Fee</u>
2"	\$ 1,200.00
3"	2,625.00
4"	4,500.00
6"	9,750.00
Above 6"	Council approval necessary

(iii)The demand increase by a larger size meter will require an amount equal to the new size fee less the old size fee.

(d) No system capacity fee shall be charged to the services used for fire protection only, if the regular system capacity fee has been charged to serve the premises.

(e) All existing structures constructed prior to May 1977, and remaining on the same site to which the City was unable to provide a connection shall be charged greater of one-half the rate outlined above, or \$375.00.

(2) All payments received by the City under the provisions of this section shall be deposited in, and credited to, the Capital Improvement Water Fund. [Section 8 amended by Ordinance No. 1973, passed April 13, 1987.]

Section 9. Water Rates. The rates and charges for the supply and use of water from the water system and mains of the City of Woodburn shall be as follows:

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(a) Metered Services:

<u>Service Size (Inches)</u>	<u>Quantity Allowed (Cubic Feet)</u>	<u>Minimum Monthly Charge (Dollars)</u>
5/8" - 3/4"	400	\$4.50
1"	800	6.80
1-1/2"	1,800	12.20
2"	3,200	19.95
3"	7,500	41.55
4"	15,000	83.10
6"	32,000	171.70
8"	57,000	299.10

These minimum charges are based on the size of service line, from main to meter, and entitle the user to the quantity shown per month.

(b) Water Consumed above minimum quantity allowed per month - \$0.52 per 100 cubic feet.

(c-i) Single Residential: As per subsections "a" and "b" above.

(c-ii) Multiple Residential: \$4.50 per unit per month in establishing the minimum for each service. Quantity allowed shall be the number of units times 400 cubic feet, or the above established quantity allowed for size of service, whichever is greater. Unless water service to premises is disconnected entirely, the minimum charge will apply to all units whether occupied or not. However, an adjustment may be made for the unoccupied units of a newly constructed multiple structure for a period of 6 months from the date of first occupancy. The owner is responsible for providing written information and facilitating City's inspection.

(c-iii) Commercial and Industrial. Rate shall be based on the size of the service line and quantity used as established in [subsections] "a" and "b" of this [section].

(c-iv) Flat Rate. Residential accounts shall be \$8.05 per month. All flat rate accounts having water meters shall be billed as regular metered accounts starting January 1, 1988. [Section 9 (c-iv) amended by Ordinance No. 1975, passed April 13, 1987.]

(d) Fire Sprinkler Connections. \$3.00 per diameter inch of service line per month.

(e) Bulk Rate. For first 500 cubic feet, the minimum charge shall be \$20.00, including one time turn-on and turn-off of meter and valve device each day at one location. These charges will be doubled for the services necessitated on the week-ends, holidays and after 4:00 p.m. on regular work days. Public Works Department may make estimates for small flows. Summer bulk rate sale shall be limited by the Public Works Department, allowed generally in the early mornings. Public right-of-way construction and other public use may be exempted from the bulk rate charge.

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(f) Minimum Charge at Start/Closing. The bills shall be prorated according to the usage, however, the minimum charge shall accrue to the end of the billing period for the services turned off during a billing cycle for nonpayment.

(g) Outside City Limits. A factor of 1.5 shall be applied to all rates and charges for services outside the City.

(h) The monies collected pursuant to the provisions of this section shall be used to pay the costs of operation, maintenance and expansion of the water supply and distribution systems, and related facilities and services, including administrative and engineering costs.

Section 10. Prior Agreements. All prior Council approved service agreements between the City and a customer will remain in force for the term of the agreement. However, the requirements of this ordinance and other applicable ordinances, including the rate increase provisions, must be met. [Section 10 added by Ordinance No. 1933, passed December 11, 1985.]

[Sections 11 through 33 renumbered by Ordinance No. 1933, passed December 11, 1985.]

Section 11. Leak Adjustments. In case of leakage, an adjustment for one billing or a two month period [shall] be made if the leak has been promptly repaired and the request for leak adjustment has been made within 6 months. Such adjustments shall not exceed 100% of the estimated excess flow attributable to the leak. A charge of \$10.00 will be made for leak adjustment service after the current flat rate services have been metered.

Section 12. Rate and Fee Increases. Unless otherwise modified by the City Council, all rates and charges detailed in Section 9(a) and 9(d) shall be automatically increased by approximately five and one-half percent (5.5%) effective with the billings for service beginning December 1, 1985, and again by said percentage beginning December 1, 1986. Thereafter, rate adjustments will be established by Council action at a frequency and amount determined to be fiscally responsible to support service obligations. [Section 12 amended by Ordinance No. 1933, passed December 11, 1985.]

Discontinuance of Service

Section 13. Unsafe Apparatus.

(1) The City may refuse to furnish water and may discontinue service to a premises where an apparatus, appliance or other equipment using water is dangerous, unsafe or is being used in violation of laws, ordinances or legal regulations.

(2) The City does not assume liability for inspecting apparatus on the customer's property. The City does reserve the right of inspection, however, if there is reason to believe that unsafe or illegal apparatus is in use.

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Section 14. Service Detrimental to Others. The City may refuse to furnish water and may discontinue service to premises where excessive demand by one customer will result in inadequate service to others.

Section 15. Fraud and Abuse. The City shall have the right to refuse or to discontinue water service to a premises to protect itself against fraud or abuse.

Section 16. Noncompliance. The City may discontinue water service to a customer for noncompliance with a City regulation if the customer fails to comply with the regulation within five days after receiving written notice of the City's intention to discontinue service. If such noncompliance affects matters of health or safety or other conditions that warrant such action, the City may discontinue water service immediately.

Section 17. Water Waste. Where wasteful or negligent water use seriously affects the general service, the City may discontinue the service if such conditions are not corrected within five days after the customer is given written notice. Knowingly allowing water to leak and not repairing it will constitute water waste.

Section 18. Abandoned and Nonrevenue-producing Services. When a service connection to a premises has been abandoned or not used for a period of one year or longer, the City may remove it or the City may start charging the minimum fee. New service shall be placed only upon the customer's applying and paying for a new service connection and water system capacity fee.

Section 19. Materials Used. Sizes of meters, pipes and other materials to be used in water connection and installation shall be determined by the City.

General

Section 20. Pools and Tanks. When an abnormally large quantity of water is desired for filling a swimming pool, log pond or for other purposes, arrangements shall be made with the City prior to taking such water. Permission to take water in unusual quantities shall be given only if it can be safely delivered and if other customers will not be inconvenienced.

Section 21. Damage to City Property. The customer shall be liable for damage to a meter or other equipment or property owned by the City which is caused by an act of the customer, his tenants or agents. The damage shall include the breaking or destruction of seals by the customer on or near a meter and damage to a meter that may result from hot water or steam from a boiler or heater on the customer's premises. The City shall be reimbursed by the customer for such damage promptly on presentation of a bill.

Section 22. Water Source Development. No water source development will be made within the City limits without prior approval from the City Engineer.

Section 23. Cross Connections.

(A) Health regulations. Unprotected cross connections between the public water supply and any unapproved source of water are prohibited.

(B) Definition. A cross connection is defined as an interconnection between the utility water supply and any unapproved water supply, or a connection between a water distribution pipe and any fixture installed in such a manner that unsafe water, waste or sewage may be drawn into the utility water system. Cross connections may be divided into two classifications as follows:

(1) Connections in which pure and impure water are separated by gate valves, check valves, or both.

(2) Connections which permit pollution to enter when the pressure in the utility water system falls below atmospheric pressure, thus creating a vacuum. This process of water pollution is known as back siphonage.

(C) Use of private water and City water. Customers desiring to use both a utility water supply and a supply of water other than that furnished by the utility may obtain water at meter rates upon the following conditions and not otherwise. Under no circumstances shall a physical connection, direct or indirect, exist or be made in any manner, even temporarily, between the utility water supply and that of a private water supply. Where such a connection is found to exist, or where provision is made to connect the two systems by means of a spacer or otherwise, the utility water supply shall be shut off from the premises without notice. In case of such discontinuance, service shall not be re-established until satisfactory proof is furnished that the cross connection has been completely and permanently severed.

Section 24. Access to Premises.

(A) The City or its duly authorized agents shall at all reasonable times have the right to enter or leave the customer's premises for any cross connection inspection with the service of water to the premises.

(B) The requirements of State Health Department and other appropriate agencies will provide guidelines to the City to its enforcement responsibility.

Water Conservation

Section 25. Declaration of Emergency. When the Mayor is informed that the City water supply has become, or is about to become, depleted to such an extent as to cause a serious water shortage in the City, the Mayor shall have the authority to declare an emergency water shortage and to direct that the provisions of Section [26] through [30] of this ordinance be enforced.

Section 26. Notice of Declaration of Emergency. When a declaration of emergency is pronounced by the Mayor, the City Administrator or his designate shall make the declaration public in a manner reasonably calculated to provide actual notice to the public. This provision shall not be construed as requiring personal delivery or service of notice or notice by mail.

Section 27. Prohibited Uses of Water. When a declaration of emergency is pronounced and notice has been given in accordance with Section [25] and [26] above, the use and withdrawal of water by any person for the following purposes shall be prohibited:

- (1) Sprinkling, watering or irrigating shrubbery, trees, lawns, grass, ground covers, plants, vines, gardens, vegetables, flowers or any other vegetation.
- (2) Washing automobiles, trucks, trailers, trailerhouses, railroad cars or any other type of mobile equipment.
- (3) Washing sidewalks, driveways, filling station aprons, porches and other surfaces.
- (4) Washing the outside of dwellings; washing the inside or outside of office buildings.
- (5) Washing and cleaning any business or industrial equipment and machinery.
- (6) Operating any ornamental fountain or other structure making a similar use of water.
- (7) Swimming and wading pools not employing a filter and recirculating system.
- (8) Permitting the escape of water through defective plumbing.

Section 28. Exemptions. At the discretion of the Mayor, one or more of the above uses may be exempted from the provisions of this section. The exemption shall be made public as provided in Section [26] of this ordinance.

Section 29. Exception to Maintain Sanitation. The City Administrator shall have the authority to permit a reasonable use of water necessary to maintain adequate health and sanitation standards.

Section 30. Enforcement. Department of Public Works will be responsible for the interpretation and administration of this ordinance.

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Section 31. Civil Infraction Assessment. A violation of any provision of this ordinance constitutes a class 2 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998. [Section 30 amended by Ordinance No. 2008, passed October 24, 1988.]

Section 32. Severability. The sections and subsections of this ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections.

Section 33. Repeal. Ordinance No. 1378, enacted October 8, 1973; Ordinance No. 1595, enacted March 21, 1978; Ordinance No. 1596, enacted March 21, 1978; Ordinance No. 1622, enacted June 27, 1978; and Ordinance No. 1804, enacted January 10, 1983, are repealed.

Passed by the Council April 23, 1984, and approved by the Mayor April 24, 1984.

ORDINANCE NO. 1965

AN ORDINANCE PROVIDING RULES, REGULATIONS, AND ENFORCEMENT FOR THE USE AND SUPPLY OF CITY SANITARY SEWER SERVICE AND WATER SERVICE, REPEALING ORDINANCE NO. 1931, AND DECLARING AN EMERGENCY.**THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

Section 1. Deposit Application. Application for City sanitary sewer and water services, other than connection and meter installation service, shall be by written application on forms provided at the Recorder's Office. Each application for the use of sanitary sewer and water service must specifically designate the property to be served and the owner thereof and must be accompanied by a deposit in the sum of not less than \$40.00 or an amount equal to estimated 3 months bill at the discretion of the City. However, any resident of Woodburn (a person who has established credit with the City of Woodburn by having water and/or sewer service in his/her own name) will be allowed to move from one location within the City limits without having to pay a deposit if that resident has lived in Woodburn for at least three (3) years, has had City of Woodburn water and/or sewer service in his/her own name, and has not been delinquent in paying for water and/or sewer service within the past three years.

Section 2. Deposit Refund.

(A) A refund of the water and sewer service deposit will occur when a customer shows a satisfactory credit performance for three years. If it becomes necessary to make one or more visits to enforce collection and/or shut-off for non-payment during the three year period, the City shall retain the deposit. The deposit will be held for an additional three years from the date of the last visit to the customer's premise for collection for non-payment of a bill. (Definition of visit - hand delivery of notice of shut-off to the customer's premise. Definition of satisfactory credit - no water shut-off notices hand delivered and /or temporary shut-off service for non-payment during a three-year period).

(B) A refund of the deposit will occur upon the applicant's requesting discontinuance of service provided that all outstanding bills are paid in full. The deposit may be applied to the final bill.

(C) If an account is shut-off for non-payment, the deposit shall be held as security until the outstanding balance is paid. The deposit will only be applied to the outstanding balance when the account is closed and no further water or sewer service is required by the customer. The remaining balance of the deposit not used to pay the outstanding bill will be refunded to the customer.

(D) Upon refund of the cash deposit to the applicant for satisfactory credit performance or upon termination of service, the deposit shall be refunded together with interest thereon at the rate of one-half percent (1/2%) below the average annual interest rate received by the City. However, no interest shall be allowed or paid by the City of Woodburn on deposits which have been deposited with the City for less than 30

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days. All cash deposits so paid to the City of Woodburn by water users shall be credited by the Finance Department into a special account to be known as "Water Deposit Trust Account".

Section 3. Disconnect Procedure.

(A) All Charges for sanitary sewer and water service furnished or rendered by the City of Woodburn shall be chargeable to the premises or property where sanitary sewer and water service is supplied and, in addition, all persons signing an application for the use of sanitary sewer and water service shall be personally liable for all charges accrued against the property designated within the application. The City reserves the right to cut off and disconnect sanitary sewer and water service to the premises without further notice when charges for sanitary sewer and water service have not been paid within 30 days after the due date, and the expense thereof shall be borne by the property to which such service has been supplied. The City shall provide 3 to 5 days notice by a door hanger or by mail prior to water service disconnect.

(B) Fees charged for delinquency, disconnection and restoration of sanitary sewer services and water services shall be in accordance with the Master Fee Schedule. After the City water service has been disconnected for non-payment, it shall not be restored until the past due amount and all fees have been paid in full. [Section 3(B) as amended by Ordinance No. 2432 passed March 10, 2008 and effective May 1, 2008.]

(C) The charges for turn-off and/or turn-on for reasons other than non-payment of water bill shall be \$10.00. No charge shall be made for water turn-on service for a new customer with a deposit or an established three-year credit, and for the turn-on and/or turn-off services necessitated by an emergency such as waterline or equipment breakage.

(D) A renter or owner shall not be allowed to have City utility services at a new location unless the current billings have been satisfied. The non-delinquent bills after deposit deduction remains with the property.

(E) The disconnect notice shall be sent to the renter as well as the property owner at the time of termination of service for non-payment of bill. It is the property owner's responsibility to inform the City of its ownership. If the City fails to provide notice to the property owner, who has informed the City of its ownership and is on the City's current records, then the said property will not be liable for City's utility charges exceeding 15 working days beyond delinquency. Also, this provision will apply if the City fails to turn-off the water to the premises. Any charges exceeding 15 working days beyond delinquency must be collected from the renter or user of utility services, and failing to do so, the revenues shall be considered uncollectible and deleted from the City resources. The City may charge 1% interest per month on delinquent accounts.

(F) If a property served by City utilities is purchased by a bona fide purchaser with no knowledge of unpaid charges for prior utility service to the same property, the

purchaser of the property shall not be responsible for any of the charges that the former owner fails to pay.

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[Section 3F added by Ordinance 2371, passed September 13, 2004.]

Section 4. Lien Procedure. Any and all sanitary sewer and water service bills not paid within 45 days after the due date shall be recorded by the City Recorder in the docket of City liens. When so docketed, said sum shall be a lien or charge against the estate and interest of the respective owners and the parties interested in such land which shall have been supplied with sanitary sewer and water service. Said persons shall make payment within 10 days from the time of entering the same in the docket of City liens and, if not so paid, the same shall be deemed delinquent and thereupon shall be collected in the manner provided for the collection of delinquent assessments. In addition to the City's property lien process, the City may use State statutes to collect the sewer bills.

Section 5. Notice. Notice to the City of the desire of any person to have the water turned off or at any premises shall be given to the Recorder at least 24 hours before the water is to be so turned on or off. In no event shall any person, other than the duly authorized employees of the City, turn on the supply of City water after the same has been shut off by the City on account of discontinuance of service for any reason whatsoever.

Section 6. Permit. No person supplied with sanitary sewer and water service shall be permitted to supply or furnish such services in any way to other persons or premises without a permit from the City Council.

Section 7. Repairs. The City reserves the right to shut off water from the mains, without notice, for repairs or other necessary purposes. For normal, routine repairs, the City shall take reasonable precaution to notify occupants of affected premises of the intention to shut off the water supply. In no event shall the City, its officers, employees or agents be responsible for any damage resulting from shutting off the City water supply. Water for steam boilers for power purposes shall not be furnished by direct pressure from the City water main. Owners of steam boilers shall maintain tanks for holding an ample reserve of water.

Section 8. Alterations. No person, other than an agent of the City, shall tap the City sanitary sewer or water mains, or make alterations in any conduit, pipe, or other fixture connected therewith, between the main and the property line.

Section 9. Access. The City shall have free access to all parts of the building or premises which are served by City sanitary sewer and water service for the purpose of inspecting the pipes and fixtures.

Section 10. Rates.

(A) The City Council of the City of Woodburn shall from time to time establish, by ordinance, all rates, surcharges, and connection fees for the use of the City of

Woodburn sanitary sewer and water service. The Public Works Director shall conduct an annual review of rates contained in this ordinance.

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(B) Outside City Limits. A factor of 1.5 shall be applied to all rates and charges for service outside the City.

(C) Hardship Relief. Hardship cases may apply for and be granted a monthly charge reduction of 40% to the bill. Hardship may be established by submitting proof of \$6,000 or less yearly income. To remain eligible for reduction, the water consumption must not exceed the average, and the City may at its option install a meter for this monitoring.

Section 11. Civil Infraction Assessment. A violation of any provision of this ordinance constitutes a class 3 civil infraction and shall be dealt with in according to the procedures established by Ordinance 1998. [Section 11 as amended by Ordinance No. 2008, passed October 28, 1988.]

Section 12. Severability. The sections and subsections of this ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections.

Section 13. Repeal. Ordinance No. 1931 is hereby specifically repealed.

Section 14. [Emergency clause.]

Passed by the Council February 9, 1987, and approved by the Mayor February 11, 1987.

ORDINANCE NO. 2070

AN ORDINANCE ESTABLISHING SYSTEM DEVELOPMENT CHARGES FOR WATER AND SEWER.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions.

(A) "Applicant" shall mean the owner or other person who applies for a building permit, development permit, or connection to the City's water or sewer system.

(B) "Building" shall mean any structure, either temporary or permanent, built for the support, shelter or enclosure of persons, chattels or property of any kind. This term shall include tents, trailers, mobile homes or any vehicles serving in any way the function of a building. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a building permit.

(C) "Building permit" shall mean an official document or certificate authorizing the construction or siting of any building. For purposes of this ordinance, the term "building permit" shall also include any construction or installation permits which may be required for those structures or buildings, such as a mobile home, that do not require a building permit in order to be occupied.

(D) "Capital improvements" shall mean public facilities or assets used for any of the following:

- 1) Water supply, treatment, storage, and transmission/conveyance;
- 2) Sewer collection/conveyance, treatment, and disposal; or

[Section 1(D) as amended by Ordinance 2251 passed November 22, 1999, and effective January 1, 2000.]

(E) "Citizen or other interested person" shall mean any person who is a legal resident of the City of Woodburn as evidenced by registration as a voter in the City, or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within the city limits or is otherwise subject to the imposition of system development charges, as outlined in Section (3) of this ordinance.

(F) "Development" shall mean a building or other land construction, 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 will contribute to the need for additional or enlarged capital improvements.

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(G) "Development permit" shall mean an official document or certificate, other than a building permit, authorizing development.

(H) "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.

(I) "Encumbered" shall mean monies committed by contract or purchase order in a manner that obligates the City to expend the encumbered amount upon delivery of goods, the rendering of services, or the conveyance of real property provided by a vendor, supplier, contractor or owner.

(J) "Improvement fee" shall mean a fee for costs associated with capital improvements to be constructed after the effective date of this ordinance.

(K) "Owner" shall mean the person holding legal title to the real property upon which development is to occur.

(L) "Person" shall mean an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(M) "Qualified public improvement" shall mean a capital improvement that is:

- 1) Required as a condition of development approval;
- 2) Identified in the adopted capital improvement plan (CIP); and

either

- a) not located on or contiguous to property that is the subject of 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.

[Section 1 (M) as amended by Ordinance 2251 passed November 22, 1999, and effective January 1, 2000.]

(N) "Reimbursement fee" shall mean a fee for costs associated with capital improvements already constructed or under construction on the effective date of this ordinance.

(O) "System development charge" shall mean 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

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charges are separate from and in addition to any applicable tax, assessment, fee in lieu of assessment, or other fee or charge provided by law or imposed as a condition of development. System development charges do not include connection or hook-up fees that reimburse the City for the average cost of inspecting and installing connections to water and sewer capital improvements.

(P) "System development charge study" shall mean the study adopted pursuant to Section (3)(B), as amended and supplemental pursuant to Section (3)(H).

Section 2. Rules of Construction. For the purposes of administration and enforcement of this ordinance, unless otherwise stated in this ordinance, the following rules of construction shall apply:

(A) In case of any difference of meaning implication between the text of this ordinance and any caption, illustration, summary table, or illustrative table, the text shall control.

(B) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

(C) Words used in the present tense shall include the future; words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; and use of the masculine gender shall include the feminine gender.

(D) The phrase "used for" includes "arranged for", "designed for", "maintained for", or "occupied for".

(E) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and", "or" or "either"...or", the conjunction shall be interpreted as follows:

(1) "And" indicates that all the connected terms, conditions, provisions or events shall apply.

(2) "Or" indicates that the connected items, conditions, or provisions or events may apply singly or in any combination.

(3) "Either...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(F) The word "includes" shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

Section 3. Imposition of System Development Charges. System development charges are hereby imposed, subject to the following conditions.

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(A) Development Subject to Charges. System Development Charges are imposed on all development within the city for capital improvements for water and sewer. System Development Charges are imposed on any development outside the city boundary for water and sewer capital improvements, if such development connects to or otherwise uses the city's water or sewer systems. The System Development Charges shall be paid in addition to all other fees, charges and assessments due for development, and are intended to provide funds only for capital improvements necessitated by new development.

(Section 3 (A) as amended by Ordinance 2251 passed November 22, 1999, and effective January 1, 2000.)

(B) Rates of Charges:

(1) For the purpose of setting Water and Sewer System Development Charges, the city hereby adopts and incorporates by reference the study entitled "System Development Charges for Woodburn, Oregon" dated July 29, 1991, particularly the assumptions, conclusions and findings in such study as to the determination of anticipated costs of capital improvements required to accommodate growth and the rates for system development charges to reimburse the city for such capital improvements.

(Section 3 (B)(1) as amended by Ordinance 2251 passed November 22, 1999, and effective January 1, 2000.)

(2) System development charges shall be imposed and calculated for the alteration, expansion or replacement of a building or dwelling unit if such alteration, expansion or replacement results in an increase in the use of capital improvements compared to the present use of the development. The amount of the system development charge 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.

(3) The City shall, based upon the study referred to in subsection (1) above, adopt by resolution the amounts of system development charges.

(C) Payment of Charges. Except as otherwise provided in this ordinance, applicants for building permits, development permits, or connection to City water or sewer systems shall pay the applicable system development charges prior to the issuance of the permit or connection by the City.

(D) Alternative Rate Calculation. Applicants may submit alternative rates for system development charges, subject to the following conditions:

(1) In the event an applicant believes that the impact on City capital improvements resulting from his development is less than the fee established in Section (3)(B), such applicant may submit a calculation of an alternative system development charge to the City Council.

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(2) The alternative system development charges rate calculations shall be based on data, information and assumptions contained in this ordinance and the adopted system development charges study or an independent source, provided that the independent source is a local study supported by a data base adequate for the conclusions contained in such study performed pursuant to a generally accepted methodology and based upon generally accepted standard sources of information relating to facilities planning, cost analysis and demographics.

(3) If the City Council determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates comply with the requirements of this Section by using a generally accepted methodology, the alternative system development charges rates shall be paid in lieu of the rates set forth in Section (3)(B).

(4) If the City Council determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates do not comply with the requirements of this Section or were not calculated by a generally accepted methodology, then the City Council shall provide to the applicant (by certified mail, return receipt requested) written notification of the rejection of the alternative system development charges rates and the reason therefor.

(5) Any applicant who has submitted a proposed alternative system development charges rate pursuant to this Section and desires the immediate issuance of a building permit, development permit, or connection shall pay the applicable system development charges rates pursuant to Section (3)(B). Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any right of review. Any difference between the amount paid and the amount due, as determined by the Council, shall be refunded to the applicant.

(E) Exemptions. The following development shall be exempt from payment of the system development charges:

(1) Alterations, expansion or replacement of an existing dwelling unit where not additional dwelling units are created and no change in use has occurred.

(2) The construction of accessory buildings or structures which will not create additional dwelling units and which do not create additional demands on the City's capital improvements.

(3) The issuance of a permit for a mobile home installation on the property which applicable system development charges have previously been made for such installation as documented by receipts issued by the City for such prior payment.

(4) Development with vested rights, determined as follows:

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(a) Any owner of land which was the subject of a building permit or development permit issued prior to the effective date of this ordinance may petition the City for a vested rights determination which would exempt the landowner from the provisions of this ordinance. Such petition shall be evaluated in writing by the City Attorney and a decision made by the City Council based on the following criteria:

(i) The existence of a valid, unexpired permit issued by the City authorizing the specific development for which a determination is sought;

(ii) Substantial expenditures or obligations made or incurred in reliance upon the authorizing governmental act;

(iii) Other factors that demonstrate it is highly inequitable to deny the owner the opportunity to complete the previously approved development under the conditions of approval by requiring the owner to comply with the requirement of this ordinance. For the purposes of this paragraph, the following factors shall be considered in determining whether it is inequitable to deny the owner the opportunity to complete the previously approved development:

(aa) Whether the injury suffered by the owner outweighs the public cost of allowing the development to go forward without payment of the system development charges required by this ordinance; and

(bb) Whether the expenses or obligations for the development were made or incurred prior to the effective date of this Ordinance.

(F) Credits for Development Contributions of Qualified Public Improvements. The City shall grant a credit against the system development charges imposed pursuant to Section (3)(A) and (B) for the donation of land as permitted by Ordinance 1807, or for the construction of any qualified public improvements. Such land donation and construction shall be subject to the approval of the City.

(1) The amount of developer contribution credit to be applied shall be determined according to the following standards of valuation:

(a) 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

(b) The cost of anticipated construction of qualified public improvements shall be based upon cost estimates certified by a professional architect or engineer.

(2) Prior to issuance of a building permit, development permit, or connection, the applicant shall submit to the City Administrator a proposed plan and estimate of cost for contributions of qualified public improvements. The proposed plan and estimate shall include:

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- (a) A designation of the development for which the proposed plan is being submitted;
 - (b) A legal description of any land proposed to be donated pursuant to Chapter 39 of the Woodburn Zoning Ordinance, Ordinance 1807, and a written appraisal prepared in conformity with subsection (1)(a) of this Section.
 - (c) A list of the contemplated capital improvements contained within the plan;
 - (d) An estimate of proposed construction costs certified by a professional architect or engineer; and
 - (e) A proposed time schedule for completion of the proposed
- (3) The City Administrator shall determine if the proposed qualified public improvement is:
- (a) Required as a condition of development approval;
 - (b) Identified in the adopted capital improvement plan (CIP); and either
 - i) Not located on or contiguous to property that is the subject of development approval; or
 - ii) 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.

(Section 3 (F)(3) as amended by Ordinance 2251 passed November 22, 1999, and effective January 1, 2000.)

(4) Any applicant who submits a proposed plan pursuant to this Section and desires the immediate issuance of a building permit, development permit, or connection, shall pay the applicable system development charges. Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid the amount due, as determined by the City Administrator, shall be refunded to the applicant. In no event shall a refund by City under this subsection exceed the amount originally paid by the applicant.

(5) In the event the amount of developer contribution determined to be applicable by the City Administrator pursuant to an approved plan of contribution exceeds the total amount of system development charges due by the applicant, the City may execute with the applicant an agreement for future reimbursement of the excess of such contribution credit from future receipts by the City of other system development charges. Such agreement of reimbursement shall be subject to City

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Council Approval and not be for a period in excess of five years from the date of completion of the approved plan of contribution and shall provide for a forfeiture of any remaining reimbursement balance at the end of such five year period.

(G) Appeals and Review Hearings.

(1) An applicant who is required to pay system development charges shall have the right to request a hearing to review the denial by the City Administrator of any of the following:

(a) A proposed credit for contribution of qualified public improvements pursuant to Section (3)(F).

(2) Such hearing shall be requested by the applicant within fifteen (15) days of the date of first receipt of the denial by the City Administrator. Failure to request a hearing within the time provided shall be deemed a waiver of such right.

(3) The request for hearing shall be filed with the City Administrator and shall contain the following:

(a) The name and address of the applicant;

(b) The legal description of the property in question;

(c) If issued, the date the building permit, development permit, or connection was issued;

(d) A brief description of the nature of the development being undertaken pursuant to the building permit, development permit, or connection;

(e) If paid, the date the system development charges were paid; and

(f) A statement of the reasons why the applicant is requesting the hearing.

(4) Upon receipt of such request, the City Administrator shall schedule a hearing before the City Council at a regularly scheduled 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.

(5) Such hearing shall be before the City Council and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedures 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.

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(6) Any applicant who requests a hearing pursuant to this Section and desires the immediate issuance of a building permit, development permit, or connection shall pay prior to or at the time the request for hearing is filed the applicable system development charges pursuant to Section (3)(B). Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights.

(7) An applicant may request a hearing under this Section without paying the applicable system development charges, but no building permit, development permit, or connection shall be issued until such system development charges are paid in the amount initially calculated or the amount approved upon completion of the review provided in this Section.

(H) Review of Study and Rates. This ordinance and the system development charges study shall be reviewed at least once every four years. 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 study adopted by Section (3)(B). The purpose of this review is to evaluate and revise, if necessary, the rates of the system development charges to assure that they do not exceed the reasonably anticipated costs of the City's capital improvements. In the event the review of the ordinance or the study alters or changes the assumptions, conclusions and findings of the study, or alters or changes the assumptions, conclusions and findings of the study, or alters or changes the amount of system development charges, the study adopted by reference in Section (3)(B) shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and Section (3)(B) shall be amended to adopt by reference such updated studies.

Section 4. Receipt and Expenditure of System Development Charges.

(A) Trust Accounts. The city hereby establishes a separate trust account for each type of System Development Charge to be designated as the "Water SDC Account" and the "Sewer SDC Account," which shall be maintained separate and apart from all other accounts of the city. All System Development Charge payments shall be deposited into the appropriate trust account immediately upon receipt.

(Section 4 (A) as amended by Ordinance 2251 passed November 22, 1999, and effective January 1, 2000.)

(B) Use of System Development Charges. The monies deposited into the trust accounts shall be used solely for the purpose of providing capital improvements necessitated by development, including, but not limited to:

- (1) Design and construction plan preparation;
- (2) Permitting and fees;

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- (3) Land and materials acquisition, including any costs of acquisition or condemnation;
- (4) Construction of improvements and structures;
- (5) Design and construction of new drainage facilities required by the construction of capital improvements and structures;
- (6) Relocating utilities required by the construction of improvements and structures;
- (7) Landscaping;
- (8) Construction management and inspection;
- (9) Surveying, soils and material 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;
- (12) Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the City to fund capital improvements;
- (13) Direct costs of complying with the provisions of ORS 223.297 to 223.314, including the costs of developing system development charges methodologies and providing an annual accounting of system development charges expenditures.

(C) Prohibited Uses of System Development Charges. Funds on deposit in system development charge trust accounts shall not be used for:

- (1) Any expenditure that would be classified as a routine maintenance or repair expense; or
- (2) Costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

(D) Capital Improvements Authorized to be Financed by System Development Charges. Any capital improvement being funded wholly or in part with system development charges revenue shall be included in the City's capital improvement program. The capital improvement program shall:

- (1) List the specific capital improvement projects that may be funded with system development charges revenue;

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(2) Provide the cost of each capital improvement project, and an estimate of the amounts of each revenue source, including system development charges, that will be used to fund each project;

(3) Provide the estimated timing of each capital improvement project;
and

(4) Be updated at least once every four years.

(E) Investment of Trust Account Revenue. Any funds on deposit in system development charges trust accounts which are not immediately necessary for expenditure shall be invested by the City. All income derived from such investments shall be deposited in the system development trust accounts and used as provided herein.

(F) Refunds of System Development Charges. 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 building permit, development permit or connection has expired and the development authorized by such permit is not complete; or

b) The system development charges have not been expended or encumbered prior to the end of the fiscal year immediately following the ninth anniversary of the date upon which such charges were paid. For the purposes of this section, system development charges were paid. For the purposes of this section, system development charges collected shall be deemed to be expended or encumbered on the basis of the first system development charges in shall be the first system development charges out.

(2) The application for refund shall be filed with the City Administrator 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 system development charges were paid, including proof of ownership, such as a certified copy of the latest recorded deed;

d) The date the system development charges were paid;

e) A copy of the receipt of payment for the system development charges; and, if appropriate;

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f) The date the building permit, development permit, or connection 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, or within ninety (90) days of the end of the fiscal year following the ninth anniversary of the date upon which the system development charges were paid. Failure to timely apply for a refund of the system development charges shall waive any right to a refund.

(4) Within thirty (30) days from the date of receipt of a petition for refund, the City Administrator 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 building permit, development permit, or connection which is subsequently issued for a development on the same property which was the subject of a refund shall pay the systems development charges as required by Section (3).

(G) Annual Accounting Reports. The City shall prepare an annual report accounting for system development charges, including the total amount of system development charges revenue collected in each trust account, and the capital improvement projects that were funded.

(H) Challenge of Expenditures. Any citizen or other interested person (as defined in Section (1) (F) may challenge an expenditure of system development charges revenues.

(1) Such challenge shall be submitted, in writing, to the City Administrator 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 expenditure;

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 City Administrator determines that the expenditure was not made in accordance with the provisions of this ordinance and other relevant laws, a reimbursement of system development charges trust account revenues from other revenue sources shall be made within one year following the determination that the expenditures were not appropriate.

(3) The City Administrator 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.

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Section 5. 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.

***Passed by the Council September 9, 1991 and approved by the Mayor
September 10, 1991.***

ORDINANCE NO. 2111

AN ORDINANCE ESTABLISHING A METHODOLOGY FOR TRAFFIC IMPACT FEES (TIF) AND STORMWATER DRAINAGE SYSTEM DEVELOPMENT CHARGES; AND REPEALING ORDINANCE NO. 1842.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. The following definitions apply:

(A) "Applicant" shall mean the owner or other person who applies for a building permit or development permit.

(B) "Bancroft Bond" shall mean a bond issued by the city to finance a capital improvement in accordance with ORS 223.205 - 223.295.

(C) "Building" shall mean any structure, either temporary or permanent, built for the support, shelter or enclosure of persons, chattels or property of any kind. This term shall include tents, trailers, mobile homes or any vehicles serving in any way the function of a building. 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) "Building Permit" shall mean an official document or certificate authorizing the construction or siting of any building. For purposes of this ordinance, the term "Building Permit" shall also include any construction or installation permits which may be required for those structures or buildings, such as a mobile home, that do not require a building permit in order to be occupied.

(E) "Capital Improvements" shall mean public facilities or assets used for stormwater drainage.

(Section 1 (E) as amended by Ordinance 2249 passed November 22, 1999, effective January 1, 2000.)

(F) "Citizen or Other Interested Person" shall mean any person who is a legal resident of the City of Woodburn as evidenced by registration as a voter in the city, or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within the city limits or is otherwise subject to the imposition of system development charges, as outlined in Section 3 of this ordinance.

(G) "City" shall mean the City of Woodburn, Oregon.

(H) "Credit" shall mean the amount of money by which the TIF or Stormwater Drainage SDC for a specific development may be reduced because of construction of eligible capital facilities as outlined in this ordinance.

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(I) "Development" shall mean a building or other land construction, or making a change in the use of a structure or land, in a manner which increases the usage of any capital improvements or which will contribute to the need for additional or enlarged capital improvements.

(J) "Development Permit" shall mean an official document or certificate, other than a building permit, authorizing development.

(K) "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.

(L) "Encumbered" shall mean monies committed by contract or purchase order in a manner that obligates the city to expend the encumbered amount upon delivery of goods, the rendering of services, or the conveyance of real property provided by a vendor, supplier, contractor or Owner.

(M) "Improvement Fee" shall mean a fee for costs associated with capital improvements to be constructed after the effective date of this ordinance. Notwithstanding anything in this ordinance to the contrary, it is an incurred charge or cost based upon the use of or the availability for use of the systems and capital improvements required to provide services and facilities necessary to meet the routine obligations of the use and ownership of property, and to provide for the public health and safety upon development.

(N) "Off-site" shall mean not located on or contiguous to property that is the subject of development approval.

(O) "On-site" shall mean located on or contiguous to property that is the subject of developmental approval.

(P) "Owner" shall mean the person holding legal title to the real property upon which development is to occur.

(Q) "Person" shall mean an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(R) "Prime Rate of Interest" shall mean the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks as posted in the Wall Street Journal.

(S) "Qualified Public Improvement" shall mean a capital improvement that is:

- 1) Required as a condition of residential development approval;
- 2) Identified in the adopted capital improvement plan (CIP); and

either

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a) not located on or contiguous to property that is the subject of 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

(Section 1 (S) as amended by Ordinance 2249 passed November 22, 1999, effective January 1,2000.)

(T) "Right-of-Way" shall mean that portion of land that is dedicated for public use.

(U) "System Development Charge" shall mean an improvement fee assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit or building permit. System development charges are separate from and in addition to any applicable tax, assessment, fee in lieu of assessment, or other fee or charge provided by law or imposed as a condition of development.

(V) This subsection was repealed by Ordinance 2249 passed November 22, 1999.

(W) "Traffic Impact Fee and Stormwater Drainage System Development Charge Methodology Report" shall mean the report adopted pursuant to Section (3)(B), as amended and supplemented pursuant to Section (3)(H).

Section 2. Rules of Construction. For the purposes of administration and enforcement of this ordinance, unless otherwise stated in this ordinance, the following rules of construction shall apply:

(A) In case of any difference of meaning or implication between the text of this ordinance and any caption, illustration, summary table, or illustrative table, the text shall control.

(B) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

(C) Words used in the present tense shall include the future; words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; and use of the masculine gender shall include the feminine gender.

(D) The phrase "used for" includes "arranged for", "designed for", "maintained for", or "occupied for".

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(E) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and", "or" or "either...or", the conjunction shall be interpreted as follows:

- 1) "And" indicates that all the connected terms, conditions, provisions or events shall apply.
- 2) "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
- 3) "Either"...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(F) The word "includes" shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

Section 3. Imposition of System Development Charges. System development charges are hereby imposed, subject to the following conditions:

(A) Development Subject to Charges. System development charges are imposed on all new development within the city for capital improvements for transportation and stormwater drainage. The system development charges shall be paid in addition to all other fees, charges and assessments due for development, and are intended to provide funds only for capital improvements necessitated by new development.

(B) Rates of Charges.

1) The city hereby adopts and incorporates by reference the report entitled "City of Woodburn Traffic Impact Fee and Stormwater Drainage System Development Charges Methodology Report", dated June 30, 1993, particularly the assumptions, conclusions and findings in such study as to the determination of anticipated costs of capital improvements required to accommodate growth and the rates for system development charges to reimburse the city for such capital improvements.

2) System development charges shall be imposed and calculated for the change in use, alternation, expansion or replacement of a building or dwelling unit if such change in use, alternation, expansion or replacement results in an increase in the use of capital improvements compared to the present use of the development. The amount of the system development charges 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 change in use, alternation, expansion or replacement.

3) The city shall, based upon the report referred to in subsection (1) above, adopt by resolution the amounts of system development charges.

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4) An additional systems development charge may be assessed by the city if the demand placed on the city's capital facilities exceeds the amount initially estimated at the time systems development charges are paid. The additional charge shall be for the increased demand or for the demand above the underestimate, and it shall be based upon the fee that is in effect at the time the additional demand impact is determined, and not upon the fee structure that may have been in effect at the time the initial systems development charge was paid. This provision does not apply to single family or other residential units unless additional rental units are created.

(C) Payment of Charges. Applicants for building permits or development permits shall pay the applicable system development charges prior to the issuance of the permits by the city.

(Section 3 (C) as amended by Ordinance 2249 passed November 22, 1999, effective January 1, 2000.)

(D) Alternative Rate Calculation. Applicants may submit alternative rates for system development charges, subject to the following conditions:

1) In the event an applicant believes that the impact on city capital improvements resulting from a development is less than the fee established in Section (3) (b), the applicant may submit alternative system development charge rate calculations, accompanied by the alternative rate review fee established by resolution for this purpose, to the City Administrator. The city may hire a consultant to review the alternative system development charge rate calculations, and may pay the consulting fees from system development charges revenues.

2) The alternative system development charge rate calculations shall be based on data, information and assumptions contained in this ordinance and the adopted system development charges study or an independent source, provided that the independent source is a local study supported by a data base adequate for the conclusions contained in such study performed pursuant to a generally accepted methodology and based upon generally accepted standard sources of information relating to facilities planning, cost analysis and demographics.

3) If the city council determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates comply with the requirements of this section by using a generally accepted methodology, the alternative system development charges rates shall be paid in lieu of the rates set forth in Section (3)(B).

4) If the city council determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates do not comply with the requirements of this section or were not calculated by a generally accepted methodology, then the city council shall provide to the applicant (by certified mail, return receipt requested) written notification of the rejection of the alternative system development charges rates and the reason therefor.

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5) Any applicant who has submitted a proposed alternative system development charges rate pursuant to this section and desires the immediate issuance of a building permit or development permit shall pay the applicable system development charges rates pursuant to Section (3)(B). Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any right of review. Any difference between the amount paid and the amount due, as determined by the city council, shall be refunded to the applicant.

(E) Exemptions. The following development shall be exempt from payment of the system development charges:

1) Alternations, expansion or replacement of an existing dwelling unit where no additional dwelling units are created.

2) The construction of accessory buildings or structures which will not create additional dwelling units and which do not create additional demands on the city's capital improvements.

3) The issuance of a permit for a mobile home on which applicable system development charges have previously been made as documented by receipts issued by the city for such prior payment.

4) Development with vested right, determined as follows:

a) Any owner of land which was the subject of a building permit or development permit issued prior to the effective date of this ordinance may petition the city for a vested rights determination which would exempt the landowner from the provision of this ordinance. Such petition shall be evaluated by the City Attorney and a decision made by the city council based on the following criteria:

i) The existence of a valid, unexpired permit issued by the city authorizing the specific development for which a determination is sought;

ii) Substantial expenditures or obligations made or incurred in reliance upon the authorizing governmental act;

iii) Other factors that demonstrate it is highly inequitable to deny the owner the opportunity to complete the previously approved development under the conditions of approval by requiring the owner to comply with the requirements of this ordinance. For the purposes of this paragraph, the following factors shall be considered in determining whether it is inequitable to deny the owner the opportunity to complete the previously approved development:

aa) Whether the injury suffered by the owner outweighs the public cost of allowing the development to go forward without payment of the system development charges required by this ordinance; and

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bb) Whether the expenses or obligations for the development were made or incurred prior to the effective date of this ordinance.

(F) Credits for Developer Contributions of Qualified Public Improvements. The city shall grant a credit, not to exceed 100% of the applicable TIF or SDC, against the system development charges imposed pursuant to Section (3)(A) and (B) for the donation of land as permitted by Ordinance 1807, or for the construction of any qualified public improvements. Such land donation and construction shall be subject to the approval of the city.

1) The amount of developer contribution credit to be applied shall be determined according to the following standards of valuation:

a) 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

b) The cost of anticipated construction of qualified public improvements shall be based upon cost estimates certified by a professional architect or engineer.

2) Prior to issuance of a building permit or development permit, the applicant shall submit to the City Administrator a proposed plan and estimate of cost for contributions of qualified public improvements. The proposed plan and estimate shall include:

a) a designation of the development for which the proposed plan is being submitted.

b) a legal description of any land proposed to be donated pursuant to Chapter 39 of the Woodburn Zoning Ordinance, Ordinance 1807, and a written appraisal prepared in conformity with subsection (1)(a) of this section;

c) a list of the contemplated capital improvements contained within the plan;

d) an estimate of proposed construction costs certified by a professional architect or engineer; and

e) a proposed time schedule for completion of the proposed plan.

3) The City Administrator shall determine if the proposed qualified public improvement is:

a) Required as a condition of development approval;

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b) Identified in the adopted capital improvement plan (CIP);
and either

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

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

c) Not located on or contiguous to property that is the subject of residential development approval.

4) The decision of the City Administrator as to whether to accept the proposed plan of contribution and the value of such contribution shall be in writing and issued within fifteen (15) working days of the review. A copy shall be provided to the applicant.

5) A proposed improvement which does not meet all three (3) of the criteria included in Section 3(F)(3) above shall not be considered a qualified public improvement and the city is not required under ORS 223.297 - 223.314 to provide a credit for such an improvement. However, the city shall grant a credit, in an amount not to exceed fifty percent (50%) of the total amount of the applicable SDC, for certain other contributions of capital facilities under the following conditions:

a) The capital facilities being contributed must exceed the local stormwater drainage capacity (for SDC) required for the specific type of development (i.e., residential, industrial, etc.); and

b) Only the value of the contribution which exceeds the local stormwater drainage capacity (for SDC) required for the specific type of development (i.e., residential, industrial, etc.) shall be considered when calculating the credit; and

c) Donations for on-site right-of-way are not eligible for the credit.

(Section 3(F)(5) as amended by Ordinance 2259 passed November 22, 1999, effective January 1, 2000.)

6) 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 be deemed paid under "protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due, as determined by the City Administrator, shall be refunded to the applicant. In no event shall a refund by city under this subsection exceed the amount originally paid by the applicant.

3-12.3**3-12.3**(G) Appeals and Review Hearings.

1) An applicant who is required to pay system development charges shall have the right to request a hearing to review the denial by the City Administrator of a proposed credit for contribution of qualified public improvements pursuant to Section (3)(F).

(Section 3 (G)(1) as amended by Ordinance 2249 passed November 22, 1999, effective January 1, 2000.)

2) Such hearing shall be requested by the applicant within fifteen (15) days of the date of first receipt of the denial by the City Administrator. Failure to request a hearing within the time provided shall be deemed a waiver of such right.

3) The request for hearing shall be filed with the City Administrator and shall contain the following:

- a) The name and address of the applicant;
- b) The legal description of the property in question;
- c) If issued, the date the building permit or development permit was issued;
- d) A brief description of the nature of the development being undertaken pursuant to the building permit or development permit;
- e) If paid, the date the system development charges were paid; and
- f) A statement of the reasons why the applicant is requesting the hearing.

4) Upon receipt of such request, the City Administrator shall schedule a hearing before the city council at a regularly scheduled 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.

5) Such hearing shall be before the city council and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedures 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.

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6) Any applicant who requests a hearing pursuant to this section and desires the immediate issuance of a building permit or development permit shall pay prior to or at the time the request for hearing is filed the applicable system development charges pursuant to Section (3)(B). Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights.

7) An applicant may request a hearing under this section without paying the applicable system development charges, but no building permit or development permit shall be issued until such system development charges are paid in the amount initially calculated or the amount approved upon completion of the review provided in this section.

(H) Review of Study and Rates. This ordinance and the Traffic Impact Fee and Stormwater Drainage System Development Charge Methodology Report shall be reviewed at least once every five (5) years. 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 report adopted by Section (3)(B). The purpose of this review is to evaluate and revise, if necessary, the rates of the system development charges to assure that they do not exceed the reasonably anticipated costs of the city's capital improvements. In the event the review of the ordinance or the report alters or changes the assumptions, conclusions and findings of the report, or alters or changes the amount of system development charges, the report adopted by reference in Section (3)(B) shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and Section (3)(B) shall be amended to adopt by reference such updated reports.

Section 4. Receipt and Expenditure of System Development Charges.

(A) Trust Accounts. The City hereby establishes a separate trust account for each type of system development charge to be designated as the "Stormwater SDC", which shall be maintained separate and apart from all other accounts of the city. All system development charge payments shall be deposited into the appropriate trust account immediately upon receipt.

(Section 4(A) as amended by Ordinance 2249 passed November 22, 1999, effective January 1, 2000.)

(B) Use of System Development Charges. The monies deposited into the trust accounts shall be used solely for the purpose of providing capital improvements necessitated by development, including, but not limited to:

- 1) design and construction plan preparation;
- 2) permitting and fees;
- 3) land and materials acquisition, including any costs of acquisition or condemnation;

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- 4) construction of improvements and structures;
- 5) design and construction of new drainage facilities required by the construction of capital improvements and structures;
- 6) relocating utilities required by the construction of improvements and structures;
- 7) landscaping;
- 8) construction management and inspection;
- 9) surveying, soils and material 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;
- 12) payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the city to fund capital improvements;
- 13) direct costs of complying with the provisions of ORS 223.297 to 223.314, including the costs of developing system development charges methodologies and providing an annual accounting of system development charges expenditures.
- 14) consulting costs for the review of alternative rates as provided for in Section (3)(D) of this ordinance.

(C) Prohibited Uses of System Development Charges. Funds on deposit in system development charge trust accounts shall not be used for:

- 1) any expenditure that would be classified as a routine maintenance or repair expense; or
- 2) costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

(D) Capital Improvements Authorized to be Financed by System Development Charges. Any capital improvement being funded wholly or in part with system development charges revenue shall be included in the city's capital improvement program. The capital improvement program shall:

- 1) list the specific capital improvement projects that may be funded with system development charges revenues;

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- 2) provide the cost of each capital improvement project, and an estimate of the amounts of each revenue source, including system development charges, that will be used to fund each project;
 - 3) provide the estimated timing of each capital improvement project;
- and
- 4) be updated at least once every five (5) years.

(E) Investment of Trust Account Revenue. Any funds on deposit in system development charges trust accounts which are not immediately necessary for expenditure shall be invested by the city. All income derived from such investments shall be deposited in the system development charges trust accounts and used as provided herein.

(F) Refunds of System Development Charges. System development charges shall be refunded in accordance with the following requirements:

- 1) An applicant or owner shall be eligible to apply for a full or partial refund if:
 - a) The building permit or development permit has expired and the development authorized by such permit is not complete;
 - b) An error was made in calculating the amount of the system development charges resulting in overpayment, and the error is discovered within three months of the date the SDC was paid. The amount of the refund will be limited to the amount collected in excess of the appropriate SDC.
 - c) The system development charges have not been expended or encumbered prior to the end of the fiscal year immediately following the ninth anniversary of the date upon which such charges were paid. For the purposes of this section, system development charges collected shall be deemed to be expended or encumbered on the basis of the first system development charges in shall be the first system development charges out.
- 2) The application for refund shall be filed with the City Administrator 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 system development charges were paid, including proof of ownership, such as a certified copy of the latest recorded deed;

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- d) The date the system development charges were paid;
 - e) A copy of the receipt of payment for the system development charges; 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 or development permit or within ninety (90) days of the end of the fiscal year following the ninth anniversary of the date upon which the system development charges were paid. Failure to timely apply for a refund of the system development charges shall waive any right to a refund.
- 4) Within thirty (30) days from the date of receipt of a petition for refund, the City Administrator 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) Refunds will not be granted based on a change in use of the property which results in a reduced impact on the city's capital facilities.
- 6) A building permit or development 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 as required by Section (3).

(G) Annual Accounting Reports. The city shall prepare an annual report accounting for system development charges, including the total amount of system development charges revenue collected in each trust account, and the capital improvement projects that were funded.

(H) Challenge of Expenditures. Any citizen or other interested person may challenge an expenditure of system development charges revenues.

1) Such challenge shall be submitted, in writing, to the City Administrator 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 expenditure;
- 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.

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2) If the City Administrator determines that the expenditure was not made in accordance with the provisions of this ordinance and other relevant laws, a reimbursement of system development charges trust account revenues from other revenue sources shall be made within one year following the determination that the expenditures were not appropriate.

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

Section 5. 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 incorporate herein.

Section 6. Repeal. Ordinance No. 1842 shall be repealed at 11:59 p.m. on December 31, 1993.

***Passed by the Council September 13, 1993 and approved by the Mayor
September 16, 1993.***

ORDINANCE NO. 2250

AN ORDINANCE ESTABLISHING A METHODOLOGY FOR PARKS AND RECREATION SYSTEM DEVELOPMENT CHARGES; AND SETTING AN EFFECTIVE DATE.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. The following definitions apply:

(A) "Applicant" shall mean the owner or other person who applies for a building permit or development permit.

(B) "Bancroft Bond" shall mean a bond issued by the city to finance a capital improvement in accordance with ORS 223.205 - 223.295.

(C) "Building" shall mean any structure, either temporary or permanent, built for the support, shelter or enclosure of persons, chattels or property of any kind. This term shall include tents, trailers, mobile homes or any vehicles serving in any way the function of a building. 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) "Building Permit" shall mean an official document or certificate authorizing the construction or siting of any building. For purposes of this ordinance, the term "Building Permit" shall also include any construction or installation permits which may be required for those structures or buildings, such as a mobile home, that do not require a building permit in order to be occupied.

(E) "Capital Improvements" shall mean public facilities or assets used for Parks and Recreation.

(F) "Citizen or Other Interested Person" shall mean any person who is a legal resident of the City of Woodburn as evidenced by registration as a voter in the city, or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within the city limits or is otherwise subject to the imposition of system development charges, as outlined in Section 3 of this ordinance.

(G) "City" shall mean the City of Woodburn, Oregon.

(H) "Credit" shall mean the amount of money by which the SDC for a specific development may be reduced because of construction of eligible capital facilities as outlined in this ordinance.

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(I) "Development" shall mean a building or other land construction, or **making a change in the use** of a structure or land, in a manner which increases the usage of any capital improvements or which will contribute to the need for additional or enlarged capital improvements.

(J) "Development Permit" shall mean an official document or certificate, other than a building permit, authorizing development.

(K) "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.

(L) "Encumbered" shall mean monies committed by contract or purchase order in a manner that obligates the city to expend the encumbered amount upon delivery of goods, the rendering of services, or the conveyance of real property provided by a vendor, supplier, contractor or Owner.

(M) "Improvement Fee" shall mean a fee for costs associated with capital improvements to be constructed after the effective date of this ordinance. Notwithstanding anything in this ordinance to the contrary, it is an incurred charge or cost based upon the use of or the availability for use of the systems and capital improvements required to provide services and facilities necessary to meet the routine obligations of the use and ownership of property, and to provide for the public health and safety upon development.

(N) "Off-site" shall mean not located on or contiguous to property that is the subject of development approval.

(O) "On-site" shall mean located on or contiguous to property that is the subject of developmental approval.

(P) "Owner" shall mean the person holding legal title to the real property upon which development is to occur.

(Q) "Person" shall mean an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(R) "Prime Rate of Interest" shall mean the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks as posted in the Wall Street Journal.

(S) "Qualified Public Improvement" shall mean a capital improvement that is:

- 1) Required as a condition of development approval;
- 2) Identified in the adopted capital improvement plan (CIP);and

either

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3) a) Not located on or contiguous to property that is the subject of 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

(T) "Right-of-Way" shall mean that portion of land that is dedicated for public use.

(U) "System Development Charge" shall mean an improvement fee assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit or building permit. System development charges are separate from and in addition to any applicable tax, assessment, fee in lieu of assessment, or other fee or charge provided by law or imposed as a condition of development.

(V) "Parks and Recreation System Development Charges Executive Summary, Methodology, and Rate Study Update" shall mean the report adopted pursuant to Section (3)(B), as amended and supplemented pursuant to Section (3)(H).

Section 2. Rules of Construction. For the purposes of administration and enforcement of this ordinance, unless otherwise stated in this ordinance, the following rules of construction shall apply:

(A) In case of any difference of meaning or implication between the text of this ordinance and any caption, illustration, summary table, or illustrative table, the text shall control.

(B) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

(C) Words used in the present tense shall include the future; words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; and use of the masculine gender shall include the feminine gender.

(D) The phrase "used for" includes "arranged for", "designed for", "maintained for", or "occupied for".

(E) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and", "or" or "either...or", the conjunction shall be interpreted as follows:

1) "And" indicates that all the connected terms, conditions, provisions or events shall apply.

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2) "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

3) "Either"...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(F) The word "includes" shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

Section 3. Imposition of System Development Charges. System development charges are hereby imposed, subject to the following conditions:

(A) Development Subject to Charges. System development charges are imposed on all new development within the city for capital improvements for transportation . The system development charges shall be paid in addition to all other fees, charges and assessments due for development, and are intended to provide funds only for capital improvements necessitated by new development.

(B) Rates of Charges.

1) The city hereby adopts and incorporates by reference the report entitled "Parks and Recreation Systems Development Charges Executive Summary, Methodology, and Rate Study Update" dated September 30, 1999, particularly the assumptions, conclusions and findings in such study as to the determination of anticipated costs of capital improvements required to accommodate growth and the rates for system development charges to reimburse the city for such capital improvements.

2) System development charges shall be imposed and calculated for the change in use, alternation, expansion or replacement of a building or dwelling unit if such change in use, alternation, expansion or replacement results in an increase in the use of capital improvements compared to the present use of the development. The amount of the system development charges 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 change in use, alternation, expansion or replacement.

3) The city shall, based upon the report referred to in subsection (1) above, adopt by resolution the amounts of system development charges.

4) An additional systems development charge may be assessed by the city if the demand placed on the city's capital facilities exceeds the amount initially estimated at the time systems development charges are paid. The additional charge shall be for the increased demand or for the demand above the underestimate, and it shall be based upon the fee that is in effect at the time the additional demand impact is determined, and not upon the fee structure that may have been in effect at the time the initial systems development charge was paid. This provision does not apply to single family or other residential units unless additional rental units are created.

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5) Notwithstanding any other provision, the SDC rates adopted pursuant to this ordinance may on January 1st of each year, after the first year that the ordinance is effective, be adjusted by the City Administrator to account for changes in the costs of acquiring and constructing facilities. The adjustment factor shall be based on the change in average market value of all land in the city, according to the records of the County Tax Assessor, and the change in construction costs according to the engineering News Record (ENR) Northwest (Seattle, Washington) Construction Cost Index; and shall be determined as follows:

$$\begin{array}{r}
 \text{Change in Average Market Value X 0.50} \\
 + \text{Change in Construction Cost Index X 0.50} \\
 \hline
 = \text{System Development Charge Adjustment Factor}
 \end{array}$$

The System Development Charge Adjustment Factor shall be used to adjust the System Development Charge rates, unless they are otherwise adjusted by action of the City Council based on adoption of an updated methodology or capital improvements plan (master plan).

(C) Payment of Charges. Applicants for building permits or development permits shall pay the applicable system development charges prior to the issuance of the permits by the city.

(D) Alternative Rate Calculation. Applicants may submit alternative rates for system development charges, subject to the following conditions:

1) In the event an applicant believes that the impact on city capital improvements resulting from a development is less than the fee established in Section (3) (B), the applicant may submit alternative system development charge rate calculations, accompanied by the alternative rate review fee established by resolution for this purpose, to the City Administrator. The city may hire a consultant to review the alternative system development charge rate calculations, and may pay the consulting fees from system development charges revenues.

2) The alternative system development charge rate calculations shall be based on data, information and assumptions contained in this ordinance and the adopted system development charges study or an independent source, provided that the independent source is a local study supported by a data base adequate for the conclusions contained in such study performed pursuant to a generally accepted methodology and based upon generally accepted standard sources of information relating to facilities planning, cost analysis and demographics.

3) If the city council determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates comply with the requirements of this section by using a generally accepted methodology, the alternative system development charges rates shall be paid in lieu of the rates set forth in Section (3)(B).

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4) If the city council determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates do not comply with the requirements of this section or were not calculated by a generally accepted methodology, then the city council shall provide to the applicant (by certified mail, return receipt requested) written notification of the rejection of the alternative system development charges rates and the reason therefor.

5) Any applicant who has submitted a proposed alternative system development charges rate pursuant to this section and desires the immediate issuance of a building permit or development permit shall pay the applicable system development charges rates pursuant to Section (3)(B). Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any right of review. Any difference between the amount paid and the amount due, as determined by the city council, shall be refunded to the applicant.

E) Exemptions. The following development shall be exempt from payment of the system development charges:

1) Alternations, expansion or replacement of an existing dwelling unit where no additional dwelling units are created.

2) The construction of accessory buildings or structures which will not create additional dwelling units and which do not create additional demands on the city's capital improvements.

3) The issuance of a permit for a mobile home on which applicable system development charges have previously been made as documented by receipts issued by the city for such prior payment.

(F) Credits for Developer Contributions of Qualified Public Improvements. The city shall grant a credit, not to exceed 100% of the applicable Parks and Recreation SDC, against the system development charges imposed pursuant to Section (3)(A) and (B) for the donation of land as permitted by Ordinance 1807, or for the construction of any qualified public improvements. Such land donation and construction shall be subject to the approval of the city.

1) The amount of developer contribution credit to be applied shall be determined according to the following standards of valuation:

a) 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

b) The cost of anticipated construction of qualified public improvements shall be based upon cost estimates certified by a professional architect or engineer.

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2) Prior to issuance of a building permit or development permit, the applicant shall submit to the City Administrator a proposed plan and estimate of cost for contributions of qualified public improvements. The proposed plan and estimate shall include:

a) a designation of the development for which the proposed plan is being submitted.

b) a legal description of any land proposed to be donated pursuant to Chapter 39 of the Woodburn Zoning Ordinance, Ordinance 1807, and a written appraisal prepared in conformity with subsection (1)(a) of this section;

c) a list of the contemplated capital improvements contained within the plan;

d) an estimate of proposed construction costs certified by a professional architect or engineer; and

e) a proposed time schedule for completion of the proposed plan.

3) The City Administrator shall determine if the proposed qualified public improvement is:

a) Required as a condition of development approval;

b) Identified in the adopted capital improvement plan (CIP);and either

c) i) Not located on or contiguous to property that is the subject of development approval; or

ii) 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

4) The decision of the City Administrator as to whether to accept the proposed plan of contribution and the value of such contribution shall be in writing and issued within fifteen (15) working days of the review. A copy shall be provided to the applicant.

5) A proposed improvement which does not meet all three (3) of the criteria included in Section 3(F)(3) above shall not be considered a qualified public improvement and the city is not required ORS 223.297 - 223.314 to provide a credit for such an improvement. However, the city shall grant a credit, in an amount not to exceed fifty percent (50%) of the total amount of the applicable Parks and Recreation SDC, for certain other contributions of capital facilities under the following conditions:

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a) The capital facilities being contributed must exceed the city standard required for the specific type of development (i.e., residential, industrial, etc.); and

b) Only the value of the contribution which exceeds the city standard required for the specific type of development (i.e., residential, industrial, etc.) shall be considered when calculating the credit; and

6) 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 be deemed paid under "protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due, as determined by the City Administrator, shall be refunded to the applicant. In no event shall a refund by city under this subsection exceed the amount originally paid by the applicant.

(G) Appeals and Review Hearings.

1) An applicant who is required to pay system development charges shall have the right to request a hearing to review the denial by the City Administrator of a proposed credit for contribution of qualified public improvements pursuant to Section (3)(F).

2) Such hearing shall be requested by the applicant within fifteen (15) days of the date of first receipt of the denial by the City Administrator. Failure to request a hearing within the time provided shall be deemed a waiver of such right.

3) The request for hearing shall be filed with the City Administrator and shall contain the following:

- a) The name and address of the applicant;
- b) The legal description of the property in question;
- c) If issued, the date the building permit or development permit was issued;
- d) A brief description of the nature of the development being undertaken pursuant to the building permit or development permit;
- e) If paid, the date the system development charges were paid; and
- f) A statement of the reasons why the applicant is requesting the hearing.

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4) Upon receipt of such request, the City Administrator shall schedule a hearing before the city council at a regularly scheduled 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.

5) Such hearing shall be before the city council and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedures 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.

6) Any applicant who requests a hearing pursuant to this section and desires the immediate issuance of a building permit or development permit shall pay prior to or at the time the request for hearing is filed the applicable system development charges pursuant to Section (3)(B). Said payment shall be deemed paid under "protest" and shall not construed as a waiver of any review rights.

7) An applicant may request a hearing under this section without paying the applicable system development charges, but no building permit or development permit shall be issued until such system development charges are paid in the amount initially calculated or the amount approved upon completion of the review provided in this section.

(H) Review of Study and Rates. This ordinance and the Parks and Recreation System Development Charges Executive Summary, Methodology, and Rate Study shall be reviewed at least once every five (5) years. 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 report adopted by Section (3)(B). The purpose of this review is to evaluate and revise, if necessary, the rates of the system development charges to assure that they do not exceed the reasonably anticipated costs of the city's capital improvements. In the event the review of the ordinance or the report alters or changes the assumptions, conclusions and findings of the report, or alters or changes the amount of system development charges, the report adopted by reference in Section (3)(B) shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and Section (3)(B) shall be amended to adopt by reference such updated reports.

Section 4. Receipt and Expenditure of System Development Charges.

(A) Trust Accounts. The City hereby establishes a separate trust account for each type of system development charge to be designated as the "Parks and Recreation SDC" which shall be maintained separate and apart from all other accounts of the city. All system development charge payments shall be deposited into the appropriate trust account immediately upon receipt.

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(B) Use of System Development Charges. The monies deposited into the trust accounts shall be used solely for the purpose of providing capital improvements necessitated by development, including, but not limited to:

- 1) design and construction plan preparation;
- 2) permitting and fees;
- 3) land and materials acquisition, including any costs of acquisition or condemnation;
- 4) construction of improvements and structures;
- 5) design and construction of new drainage facilities required by the construction of capital improvements and structures;
- 6) relocating utilities required by the construction of improvements and structures;
- 7) landscaping;
- 8) construction management and inspection;
- 9) surveying, soils and material 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;
- 12) payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the city to fund capital improvements;
- 13) direct costs of complying with the provisions of ORS 223.297 to 223.314, including the costs of developing system development charges methodologies and providing an annual accounting of system development charges expenditures.
- 14) consulting costs for the review of alternative rates as provided for in Section (3)(D) of this ordinance.

(C) Prohibited Uses of System Development Charges. Funds on deposit in system development charge trust accounts shall not be used for:

- 1) any expenditure that would be classified as a routine maintenance or repair expense; or

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2) costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

(D) Capital Improvements Authorized to be Financed by System Development Charges. Any capital improvement being funded wholly or in part with system development charges revenue shall be included in the city's capital improvement program. The capital improvement program shall:

- 1) list the specific capital improvement projects that may be funded with system development charges revenues;
 - 2) provide the cost of each capital improvement project, and an estimate of the amounts of each revenue source, including system development charges, that will be used to fund each project;
 - 3) provide the estimated timing of each capital improvement project;
- and
- 4) be updated at least once every five (5) years.

(E) Investment of Trust Account Revenue. Any funds on deposit in system development charges trust accounts which are not immediately necessary for expenditure shall be invested by the city. All income derived from such investments shall be deposited in the system development charges trust accounts and used as provided herein.

(F) Refunds of System Development Charges. System development charges shall be refunded in accordance with the following requirements:

- 1) An applicant or owner shall be eligible to apply for a full or partial refund if:
 - a) The building permit or development permit has expired and the development authorized by such permit is not complete;
 - b) An error was made in calculating the amount of the system development charges resulting in overpayment, and the error is discovered within three months of the date the SDC was paid. The amount of the refund will be limited to the amount collected in excess of the appropriate SDC.
 - c) The system development charges have not been expended or encumbered prior to the end of the fiscal year immediately following the ninth anniversary of the date upon which such charges were paid. For the purposes of this section, system development charges collected shall be deemed to be expended or encumbered on the basis of the first system development charges in shall be the first system development charges out.

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2) The application for refund shall be filed with the City Administrator 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 system development charges were paid, including proof of ownership, such as a certified copy of the latest recorded deed;
- d) The date the system development charges were paid;
- e) A copy of the receipt of payment for the system development charges; 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 or development permit or within ninety (90) days of the end of the fiscal year following the ninth anniversary of the date upon which the system development charges were paid. Failure to timely apply for a refund of the system development charges shall waive any right to a refund.

4) Within thirty (30) days from the date of receipt of a petition for refund, the City Administrator 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) Refunds will not be granted based on a change in use of the property which results in a reduced impact on the city's capital facilities.

6) A building permit or development 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 as required by Section (3).

(G) Annual Accounting Reports. The city shall prepare an annual report accounting for system development charges, including the total amount of system development charges revenue collected in each trust account, and the capital improvement projects that were funded.

(H) Challenge of Expenditures. Any citizen or other interested person may challenge an expenditure of system development charges revenues.

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1) Such challenge shall be submitted, in writing, to the City Administrator 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 expenditure;

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 City Administrator determines that the expenditure was not made in accordance with the provisions of this ordinance and other relevant laws, a reimbursement of system development charges trust account revenues from other revenue sources shall be made within one year following the determination that the expenditures were not appropriate.

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

Section 5. 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 incorporate herein.

Section 6. Effective Date. This ordinance shall be legally effective on January 1, 2000.

Passed by the Council and approved by the Mayor November 23, 1999.

ORDINANCE NO. 2405**AN ORDINANCE ESTABLISHING POLICY FOR THE PROVISION OF MUNICIPAL SEWER AND WATER SERVICE TO PROPERTIES LOCATED OUTSIDE CITY BOUNDARIES.**

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Municipal water and/or sewer service will not be provided to properties located outside City boundaries except as provided in this Ordinance.

Section 2. Property outside City boundaries that is not currently provided water and/or sewer service by the City may obtain a connection to municipal water and/or sewer service only if the property is first annexed into the City.

Section 3. Property outside City boundaries that is currently provided water and/or sewer service by the City shall continue to receive such service unless any of the following events occur:

- A. Municipal water and/or sewer use on the property ceases for a continuous period of at least six (6) months; or
- B. A change in use; or
- C. A change in operations resulting in a material increase in the use of water and/or sewer service; or
- D. A change in ownership or title to the property

Section 4. Municipal water and/or sewer service will not be discontinued until notice and an opportunity for a hearing have been given to the occupant and to the owner of record of the involved property. The notice shall be personally served or mailed by certified mail and shall state that thirty (30) days after the date of which the notice is given, service to the property will be discontinued. The notice shall also state that, before such date, a hearing may be requested on the matter, in which case service will not be discontinued until after the hearing is held. If a hearing is requested, a hearing date shall be set and all interested parties shall have the opportunity to address the City Council on the discontinuance of municipal water and/or sewer service. The City Council will then decide whether service shall be discontinued.

Section 5. Nothing in this Ordinance shall limit the power of the City Council and City Administrator to contract with parties to provide municipal water and/or sewer service to property located inside or outside the corporate City boundaries.

Passed by the Council July 10, 2006 and approved by the Mayor July 12, 2006.

ORDINANCE NO. 2416

AN ORDINANCE PROVIDING A PROCESS FOR THE FORCED CONVERSION OF ELECTRIC AND COMMUNICATION FACILITIES UNDER THE AUTHORITY DELEGATED BY THE STATE OF OREGON

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. Whenever in this Ordinance the words or phrases defined in this Ordinance are used, they shall have the respective meanings assigned to them in the following definitions:

- A. "Commission" means the Public Utility Commission of the State of Oregon.
- B. "Underground utility district" or "district" means that area in the City within which poles, overhead wires, and associated overhead structures are prohibited as such area is described in a resolution adopted pursuant to the provisions of this Ordinance.
- C. "Person" means and includes individuals, firms, corporations, and partnerships, and their agents and employees.
- D. "Poles, overhead wires, and associated overhead structures" mean poles, towers, supports, wires, conductors, guys, stubs, platforms, cross arms, braces, transformers, insulators, cutouts, switches, communication circuits, appliances, attachments, and appurtenances located aboveground within a district and used or useful in supplying electric, communication, or similar or associated service.
- E. "Utility" or "utilities" mean all energy utilities and large telecommunications utilities as defined by OAR 860-022-0001.

Section 2. Public Hearing. The City Council may from time to time call public hearings to ascertain whether the public necessity, health, safety, or welfare requires the removal of poles, overhead wires, and associated overhead structures within designated areas of the City and the underground installation of wires and facilities for supplying electric, communication, or similar or associated service. The City Administrator shall notify all affected property owners, as shown on the last equalized assessment roll, and the involved utilities, by mail of the date, time, and place of such hearings at least ten days prior to the date thereof. Each such hearing shall be open to the public and may be continued from time to time. At each such hearing all persons interested shall be given an opportunity to be heard.

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Section 3. Designation of Underground Utility Districts by Resolution. If, after any such public hearing, the City Council finds that the public necessity, health, safety, or welfare requires such removal and such underground installation within a designated area, the City Council may, by resolution, declare such designated area an underground utility district and order such removal and underground installation. Such resolution shall include a description of the area comprising such district and shall fix the date by which such removal and underground installation shall be accomplished and within which affected property owners shall be ready to receive underground service. A reasonable time shall be allowed for such removal and underground installation, having due regard for the availability of labor, materials, and equipment necessary for such removal and for the installation of such underground facilities as may be occasioned thereby. The decision of the City Council as set forth in the resolution shall be final and conclusive.

Section 4. Unlawful Acts. Whenever the City Council creates an underground utility district and orders the removal of poles, overhead wires, and associated overhead structures therein as provided in this Ordinance, it shall be unlawful for any person or utility to erect, construct, place, keep, maintain, continue, employ, or operate poles, overhead wires, and associated overhead structures in the district after the date when such overhead facilities are required to be removed by such resolution, except as such overhead facilities may be required to furnish service to an owner or occupant of property prior to the performance by such owner or occupant of the underground work necessary for such owner or occupant to continue to receive utility service as provided in this Ordinance.

Section 5. Emergency or Unusual Circumstances. Notwithstanding the provisions of this Ordinance, overhead facilities may be installed and maintained for a period, not to exceed 10 days, without authority of the City Administrator, in order to provide utilities in the event of an emergency or unusual circumstances. The City Administrator may, under such emergency or unusual circumstances, extend or grant special permission, on such terms as the City Administrator may deem appropriate, without discrimination as to any person or utility, to erect, construct, install, maintain, use, or operate poles, overhead wires, and associated overhead structures on a temporary or permanent basis. Any such decisions by the City Administrator shall be subject to appeal to the City Council by filing a written notice of appeal with the office of the City Administrator within 10 days after the City Administrator's decision is mailed.

Section 6. Exceptions. The provisions of this Ordinance and any resolution adopted pursuant to the provisions of this Ordinance shall, unless otherwise provided in such resolution, not apply to the following types of facilities:

- A. Any municipal facilities or equipment installed under the supervision and to the satisfaction of the City Administrator;
- B. Poles or fixtures and other appurtenances used exclusively for street lighting;

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C. Overhead wires (exclusive of supporting structures) crossing any portion of a district within which overhead wires have been prohibited, or connecting to buildings on the perimeter of a district, where such wires originate in an area from which poles, overhead wires, and associated overhead structures are not prohibited;

D. Poles, overhead wires, and associated overhead structures used for the transmission of electric energy at nominal voltages in excess of 35,000 volts;

E. Overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street;

F. Antennae, associated equipment, and supporting structures used by a utility for furnishing communication services;

G. Equipment appurtenant to underground facilities, such as pad mounted switches, surface-mounted transformers, pedestal-mounted terminal boxes and meter cabinets, and concealed ducts; and

H. Temporary poles, overhead wires, and associated overhead structures used or to be used in conjunction with construction projects.

Section 7. Notices to Property Owners and Utilities. Within 10 days after the effective date of a resolution adopted pursuant to this Ordinance, the City Administrator shall notify all affected utilities and all persons owning real property within the district created by such resolution of the adoption thereof. The City Administrator shall further notify such affected property owners of the necessity that, if they or any person occupying such property desire to continue to receive electric, communication, or similar or associated service, they or such occupant shall provide all necessary facility changes on their premises so as to receive such service from the lines of the supplying utility or utilities at a new location, subject to the applicable rules, regulations, and tariffs of the respective utility or utilities on file with the Commission. Notification by the City Administrator shall be made by mailing a copy of the resolution adopted pursuant to this Ordinance to affected property owners as such are shown on the last equalized assessment roll and to the affected utilities.

Section 8. Responsibility of Utility Companies. If utility poles, overhead wires, and associated overhead structures must be removed and replaced with underground facilities and equipment in order to continue utility service within a district created by any resolution adopted pursuant to this Ordinance, the supplying utility shall, at its cost, perform such conversion in accordance with its applicable rules, regulations, and tariffs on file with the Commission.

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Section 9. Responsibility of Property Owners.

A. Every person owning, operating, leasing, occupying, or renting a building or structures within a district shall perform construction and provide that portion of the service connection on their property between the facilities referred to in this Ordinance and the termination facility on or within such building or structure being served, all in accordance with the applicable rules, regulations, and tariffs of the respective utility or utilities on file with the Commission.

B. In the event any person owning, operating, leasing, occupying, or renting such property does not comply with the provisions of this Ordinance within the time provided for in the resolution enacted pursuant to this Ordinance, the City Administrator shall post written notice on the property being served and thirty days thereafter shall have the authority to order the disconnection and removal of any and all overhead service wires and associated facilities supplying utility service to such property. A decision by the City Administrator to order the disconnection and removal of overhead service shall be subject to appeal to the City Council by filing a written notice of appeal with the office of the City Administrator within ten days of the posting of such written notice.

Section 10. Responsibility of City. The City shall remove, at its own expense, all City-owned equipment from all poles required to be removed hereunder in ample time to enable the owner or user of such poles to remove the same within the time specified in the resolution enacted pursuant to this Ordinance.

Section 11. Penalties.

A. Abatement. Any use or structure established, operated, erected, moved, altered, enlarged, painted, or maintained contrary to this Ordinance is unlawful and a public nuisance, and may be abated.

B. Civil Proceeding Initiated by City Attorney. The City Attorney, after obtaining authorization from the City Council, may initiate a civil proceeding on behalf of the City to enforce the provisions of this Ordinance. This civil proceeding may include, but is not limited to, injunction, mandamus, abatement, or other appropriate proceedings.

C. Civil Infraction. In addition to, and not in lieu of any other enforcement mechanisms, a violation of any provision of this Ordinance constitutes a Class 1 Civil Infraction which shall be processed according to the procedures contained in the Woodburn Civil Infraction ordinance.

D. Separate Infractions. Each violation of this Ordinance constitutes a separate Civil Infraction, and each day that a violation of this Ordinance is committed or permitted to continue shall constitute a separate Civil Infraction.

E. Remedies – Cumulative. The remedies provided for in this Section are cumulative and not mutually exclusive.

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Section 12. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Passed by the Council July 10, 2006 and approved by the Mayor March 12, 2007.

ORDINANCE NO. 2438

AN ORDINANCE IMPOSING TRANSPORTATION SYSTEM DEVELOPMENT CHARGES BASED UPON AN ESTABLISHED METHODOLOGY; PROVIDING PROCESSES FOR ALTERNATIVE CALCULATIONS; AND REQUIRING THAT FUNDS BE ACCOUNTED FOR AND USED PURSUANT TO STATE LAW; AND REPEALING ORDINANCE 2248

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. General Findings. The City Council makes the following General Findings regarding Transportation SDCs.

A. Development within the City contributes to the need for capacity increases for roads, multi-modal transportation and related transportation improvements.

B. Development should pay its fair share for the cost of these improvements and additions to transportation facilities necessary to accommodate the capacity needs created by growth.

C. ORS 223.297 *et. seq.* grants to the City the authority to impose Transportation SDCs to equitably spread the costs of essential capacity increasing Capital Improvements.

D. Transportation SDCs are incurred upon application to develop property for a specific use or at a specific density and are collected by the City when a building permit is issued. The decision regarding uses, densities, and/or intensities causes direct and proportional changes in the amount of the incurred charge.

E. Transportation SDCs are separate from other fees provided by law or imposed as a condition of development.

F. Transportation SDCs are fees for service because they contemplate a development's receipt of transportation services based upon the nature of that development.

G. Transportation SDCs are imposed by this Ordinance not as a tax 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 legislation implementing that section.

Section 2. Findings for Interchange Development Charge. The City Council makes the following Findings regarding the IDC:

A. In 2005, the cost of the needed improvements to the Woodburn Interchange was estimated to be \$50 million.

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B. Pursuant to Intergovernmental Agreement No. 23,240, which serves as a funding plan for completion of the Woodburn Interchange modernization, the City must provide a total of \$8 million towards completion of this project.

C. The IDC is established under this Ordinance under the authority of ORS 223.297-223.314.

D. The City Council finds that developing properties within the IDC boundary will create a greater impact on the Woodburn Interchange than similarly zoned developing properties located in the City but outside of the IDC boundary.

E. The City Council finds that developing properties within the IDC boundary will receive greater benefit by an improved Woodburn Interchange than similarly zoned developing properties located in the City but outside of the IDC boundary.

F. Based upon their greater developmental impact on the Woodburn Interchange and the greater benefit that they will receive when the Woodburn Interchange is improved, the City Council, consistent with ORS 223.297-223.314, makes the determination that it is fair and equitable to impose the IDC.

G. The IDC is an "improvement fee" as defined in ORS 223.299 since the charge to the developer is for costs associated with Capital Improvements yet to be constructed.

H. An argument was raised before the City Council that the IDC is unlawful because it "represents the effective establishment of a transportation special district without undergoing the adoption methods required by ORS Chapter 267.510 *et seq.*" The City Council finds that this argument is not well founded in law because the City is asserting no jurisdictional authority outside of its corporate boundary.

I. Pursuant to ORS Chapter 267.510 *et seq.*, a transportation district, like other special districts, exercises jurisdictional authority within the area of its boundary. By establishing the IDC boundary, the City Council, consistent with ORS 223.297-223.314, is merely establishing a charge that is collectible within the City. A Transportation SDC must be paid only: (1) if the involved property is annexed to the City, and (2) if the involved property develops. This is legal and within the City's jurisdiction.

J. Another argument was raised before the City Council that the IDC charge is inequitable. As stated above, the City Council finds that this is not the case because developing properties within the IDC boundary will create a greater developmental impact and also will receive a greater benefit by an improved Woodburn Interchange.

K. Finally, an argument was raised before the City Council that the IDC charge violates constitutional principles. The City Council finds that this argument is also not well founded in law. In *Roger's Machinery v. Washington County*, 181 Or.App 369, 45 P.3d 966 (2002), the Court addressed the argument that traffic impact fees imposed under ORS 223.297-223.314 constituted an unconstitutional taking in violation of the Fifth

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Amendment. The Court ruled that the traffic impact fees were not physical exactions and were not subject to *Dolan's* heightened scrutiny test, which is used to determine whether a property development condition constitutes an improper taking under the Fifth Amendment. The Court stated that no individualized determination was required before assessing the fee against a particular property in compliance with the Oregon SDC statutes.

Section 3 **Definitions.** The following definitions apply:

A. **APPLICANT.** A person seeking to obtain a Building Permit or to develop property within the City.

B. **BUILDING.** Any structure, either temporary or permanent, built for the support, shelter or enclosure of persons, chattels or property of any kind. This term shall include tents, trailers, mobile homes or any vehicles serving in any way the function of a building. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a Building Permit.

C. **BUILDING PERMIT.** A permit issued by the Building Department for the construction, alteration, repair or placement of any Building under the state building code.

D. **CAPITAL IMPROVEMENT PLAN.** A plan prepared by the City pursuant to ORS 223.309.

E. **CAPITAL IMPROVEMENTS.** Public facilities or assets used for transportation.

F. **CITY.** The City of Woodburn, Oregon.

G. **CREDIT.** The amount of money by which the charge for a specific development may be reduced because of construction of eligible capital facilities as outlined in this Ordinance.

H. **DEVELOPMENT.** Any man-made change to improved or unimproved real estate which has the effect of generating additional weekday or weekend trips.

I. **DIRECTOR.** The Woodburn Public Works Director or designee.

J. **DWELLING UNIT.** 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.

K. **IMPROVEMENT FEE.** A fee for costs associated with Capital Improvements to be constructed after the date the fee is adopted pursuant to this Ordinance.

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L. INTERESTED PERSON. Any person who is a legal resident of the City of Woodburn as evidenced by registration as a voter in the City, or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within the city limits or is otherwise subject to the imposition of charges under this Ordinance.

M. OWNER. The owner or owners of record title or the purchaser or purchasers under a recorded land sale agreement.

N. PERSON. Any natural person, firm, partnership, association or corporation.

O. QUALIFIED PUBLIC IMPROVEMENT. A Capital Improvement that is:

1. Required as a condition of development approval;

2. Identified in the Capital Improvement Plan and is either:

a. Not located on or contiguous to property that is the subject of 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.

P. REIMBURSEMENT FEE. A fee for costs associated with Capital Improvements already constructed or under construction when the fee is adopted pursuant to this Ordinance for which the City determines that capacity exists.

Q. TRANSPORTATION SYSTEM DEVELOPMENT CHARGE ("Transportation SDC") or SYSTEM DEVELOPMENT CHARGE ("SDC"). An improvement fee and/or a reimbursement fee and/or the IDC assessed or collected at the time of increased usage of a Capital Improvement or issuance of a Building Permit. System Development Charges are separate from and in addition to any applicable tax, assessment, fee in lieu of assessment, or other fee or charge provided by law or imposed as a condition of development.

Section 4. Imposition of Transportation System Development Charges.

A. Unless otherwise exempted by this Ordinance or state law, a Transportation SDC is hereby imposed on all Development within the City.

B. Unless otherwise exempted by this Ordinance or state law, an Interchange Development Charge is hereby imposed on all Development within the City and located within the Interchange Development Charge boundary. The Interchange Development Charge boundary is depicted on Exhibit B, which is attached to this Ordinance and incorporated.

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Section 5. Methodology.

A. The methodology used to calculate Transportation System Development Charges and the Interchange Development Charge is set forth in the "Transportation System Development Charge Study" ("the Methodology") dated March 2008, which is attached as Exhibit "A" to this Ordinance and incorporated.

Section 6. System Development Charge Rate Schedule.

A. A Rate Schedule for Transportation System Development Charges and the Interchange Development Charge shall be adopted by resolution based on the Methodology attached as Exhibit "A" and incorporated into this Ordinance.

B. The Rate Schedule may on January 1st of each year, after the first year that the resolution adopting it is effective, be adjusted by the Director to account for changes in the costs of acquiring and constructing facilities. The adjustment factor shall be based on the change in construction costs according to the Engineering News Record (ENR) Northwest (Seattle, Washington) Construction Cost Index.

Section 7. Collection.

A. System Development Charges are due and payable at the time that the City issues the Building Permit. No Building Permit shall be issued for Development subject to this charge unless the System Development Charge is first paid in full. The Applicant may request that payment be made pursuant to ORS 223.205-223.785, the Bancroft Bonding Act.

Section 8. Exemptions.

- A. The following development is exempt from System Development Charges:
1. Remodeling or replacement of any single family structure, including mobile homes.
 2. Multifamily structure remodeling or replacement if no additional Dwelling Units are added.
 3. Remodeling or replacement of office, business and commercial, industrial or institutional structures if such remodeling or replacement does not result in additional peak hour trips.

Section 9. Credits for Qualified Public Improvements.

A. The City shall grant a credit, not to exceed 100% of the applicable System Development Charges for the construction of any Qualified Public Improvements.

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B. Prior to issuance of a Building Permit, the Applicant shall submit to the Director a proposed plan and estimate of cost for contributions of Qualified Public Improvements. The proposed plan and estimate shall include:

1. A designation of the Development for which the proposed plan is being submitted.
2. A list of the contemplated Capital Improvements contained within the plan;
3. An estimate of proposed construction costs certified by a professional architect or engineer; and
4. A proposed time schedule for completion of the proposed plan.

C. The Director shall determine if the proposed Qualified Public Improvement is:

1. Required as a condition of development approval;
2. Identified in the Capital Improvement Plan and is either:
 - a. Not located on or contiguous to property that is the subject of 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

D. The decision of the Director as to whether to accept the proposed plan of contribution and the value of such contribution shall be in writing and issued by the Director within 30 days after the Applicant submits the proposed plan.

E. Any Applicant who submits a proposed plan pursuant to this Section and desires the immediate issuance of a Building Permit, shall pay the applicable System Development Charges. Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due, as determined by the Director, shall be refunded to the Applicant. In no event shall a refund by City under this subsection exceed the amount originally paid by the Applicant.

Section 10. Alternative Calculation for SDC Rate, Credit or Exemption.

A. Pursuant to this Ordinance, an Applicant may request an alternative SDC calculation, alternative SDC credit determination or alternative SDC exemption, but only under the following circumstances:

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1. The Applicant believes the number of vehicle trips resulting from the development is, or will be, less than the number of trips established in the Methodology, and for that reason the Applicant's SDC should be lower than that calculated by the City.

2. The Applicant believes the City improperly excluded from consideration a Qualified Public Improvement that would qualify for credit, or the City accepted for credit a Qualified Public Improvement, but undervalued that improvement and therefore undervalued the credit.

3. The Applicant believes the City improperly rejected a request for an exemption for which the Applicant believes it is eligible.

B. Alternative SDC Rate Request:

1. If an Applicant believes the number of trips resulting from the Development is less than the number of trips established in the Methodology, the Applicant must request an alternative SDC rate calculation, under this Section, within 90 days after Building Permit issuance for the Development. The City shall not consider such a request filed after 90 days after Building Permit issuance for the Development. Upon the timely request for an alternative SDC rate calculation, the Director shall review the Applicant's calculations and supporting evidence and make a determination within 30 days of submittal as to whether the Applicant's request satisfies the requirements of this Section.

2. In support of the Alternative SDC rate request, the Applicant must provide complete and detailed documentation, including verifiable trip generation data, analyzed and certified to by a Professional Traffic Engineer. The Applicant's supporting documentation must rely upon generally accepted sampling methods, sources of information, cost analysis, traffic and growth projections and techniques of analysis as a means of supporting the proposed alternative SDC rate. The proposed Alternative SDC Rate calculation shall include an explanation by a registered engineer explaining with particularity why the rate established in the City methodology does not accurately reflect the Development's impact on the City's Capital Improvements

3. The Director shall apply the Alternative SDC Rate if, in the Director's opinion, the following are found:

a. The evidence and assumptions underlying the Alternative SDC Rate are reasonable, correct and credible and were gathered and analyzed by a suitable, competent professional in compliance with generally accepted engineering principles and methodologies and consistent with this Section, and

b. The calculation of the proposed Alternative SDC rate was by a generally accepted methodology, and

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c. The proposed alternative SDC rate better or more realistically reflects the actual traffic impact of the Development than the rate set forth in the Methodology.

4. If, in the Director's opinion, all of the above criteria are not met, the Director shall provide to the Applicant by certified mail, return receipt requested, a written decision explaining the basis for rejecting the proposed alternative SDC rate.

C. Alternative SDC Credit Request:

1. If an Applicant has requested an SDC Credit and that request has either been denied by the City or approved but at a lower value than desired, the Applicant may request an Alternative SDC Credit calculation, under this Section. Any request for an Alternative SDC Credit calculation must be filed with the Director in writing within 10 calendar days of the written decision on the initial credit request. The City shall not consider such a request filed after 10 calendar days of the written decision on the initial credit request. Upon the timely request for an Alternative SDC Credit calculation, the Director shall review the Applicant's calculations and supporting evidence and make a determination within 30 days of submittal as to whether the Applicant's request satisfies the requirements of this Section.

2. In support of the Alternative SDC credit request, the Applicant must provide complete and detailed documentation, including appraisals, cost analysis or other estimates of value, analyzed and certified to by an appropriate professional, for the improvements for which the Applicant is seeking credit. The Applicant's supporting documentation must rely upon generally accepted sources of information, cost analysis and techniques of analysis as a means of supporting the proposed Alternative SDC credit.

3. The Director shall grant the Alternative SDC Credit if, in the Director's opinion, the following are found:

a. The improvement(s) for which the SDC Credit is sought are Qualified Public Improvement(s), and

b. The evidence and assumptions underlying the Applicant's Alternative SDC Credit request are reasonable, correct and credible and were gathered and analyzed by an appropriate, competent professional in compliance with generally accepted principles and methodologies, and

c. The proposed alternative SDC Credit is based on realistic, credible valuation or benefit analysis.

4. If, in the Director's opinion, any one or more of the above criteria is not met, the Director shall deny the request and provide to the Applicant by certified mail, return receipt requested, a written decision explaining the basis for rejecting the Alternative SDC Credit proposal.

3-17.10**3-17.12****D. Alternative SDC Exemption Request:**

1. If an Applicant has requested a full or partial exemption under this Ordinance, and that request has been denied, the Applicant may request an Alternative SDC Exemption under this Section. Any request for an Alternative SDC Exemption calculation must be filed with the Director in writing within 10 calendar days of the written decision on the initial credit request. The City shall not consider such a request filed after 10 calendar days of the written decision on the initial credit request. Upon the timely request for an Alternative SDC Exemption, the Director shall review the Applicant's request and supporting evidence and make a determination within 30 days of submittal as to whether the Applicant's request satisfies the requirements under this Ordinance for exemptions.

2. In support of the Alternative SDC Exemption request, the Applicant must provide complete and detailed documentation demonstrating that the Applicant is entitled to one of the exemptions described in this Ordinance.

3. The Director shall grant the exemption if, in the Director's opinion, the Applicant has demonstrated with credible, relevant evidence that it meets the pertinent criteria.

4. If, in the Director's opinion, any one or more of the above criteria is not met, the Director shall deny the request and provide to the Applicant by certified mail, return receipt requested, a written decision explaining the basis for rejecting the Alternative SDC Exemption proposal.

Section 11. Review of Methodology and Rates.

A. This Ordinance and the Methodology shall be reviewed at least once every five (5) years. The purpose of this review is to evaluate and revise, if necessary, the rates of the System Development Charges to assure that they do not exceed the reasonably anticipated costs of the City's Capital Improvements.

Section 12. Authorized Expenditure of System Development Charges.

A. Reimbursement fees may 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 may 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.

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C. 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.

D. Any capital improvement being funded wholly or in part with system development charge revenues must be included in the Capital Improvement Plan.

E. System Development Charge revenues may be expended on the costs of complying with the provisions of ORS 223.297-223.314, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.

Section 13. Deposit of System Development Charge Revenues; Annual Accounting.

A. System development charge revenues must be deposited in accounts designated for such moneys. The City shall provide an annual accounting, to be completed by January 1 of each year, for system development charges showing the total amount of system development charge revenues collected for each system and the projects that were funded in the previous fiscal year.

B. The annual accounting shall include:

1. A list of the amount spent on each project funded, in whole or in part, with system development charge revenues; and

2. The amount of revenue collected by the local government from system development charges and attributed to the costs of complying with the provisions of ORS 223.297-223.314, as described in ORS 223.307.

Section 14. Challenge of Expenditures. In accordance with ORS 223.302, any interested person may challenge an expenditure of SDC revenues.

A. Such challenge shall be submitted, in writing, to the Director for review within two years following the subject expenditure, and shall include the following information:

1. The name and address of the interested person challenging the expenditure;

2. The amount of the expenditure, the project, payee or purpose, and the approximate date on which it was made; and

3. The reason why the expenditure is being challenged.

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B. If the Director determines that the expenditure was not made in accordance with the provisions of this Ordinance and other relevant laws, a reimbursement of System Development Charges trust account revenues from other revenue sources shall be made within one year following the determination that the expenditures were not appropriate.

C. The Director shall make written notification of the results of the expenditure review to the interested person who requested the review with ten (10) days of completion of the review.

Section 15. Institution of Legal Proceedings. The City Attorney, acting in the name of the City, may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Ordinance as an additional remedy.

Section 16. Exclusive Review in Marion County Circuit Court. All determinations made under this Ordinance shall be final and subject only to Writ of Review in the Marion County Circuit Court pursuant to ORS Chapter 34.

Section 17. Effect on Monies Previously Collected. The provisions of this Ordinance do not apply to System Development Charges collected prior to its effective date. SDCs previously collected shall be governed by the law in effect at the time of collection.

Section 18. Severability. If any clause, section, or provision of this Ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporate herein.

Section 19. Repeal. Ordinance 2248 is hereby repealed.

Passed by the Council April 28, 2008 and approved by the Mayor April 30, 2008.