

ORDINANCE N^o 1094-1

An Ordinance of the SEAL ROCK WATER DISTRICT, Imposing a portion of the cost of capital improvements for water upon those developments that create the need for or increase the demands on capital improvements. Establishing Rules and Regulations, providing Penalties for Violation Thereof, and declaring an emergency.

The Board of Commissioners of SEAL ROCK WATER DISTRICT does enact as follows:

Section 1. Purpose. The purpose of the system development charge is to impose a portion of the cost of capital improvements for water upon those developments that create the need for or increase the demands on capital improvements.

Section 2. Scope. The system development charge imposed by this ordinance is separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development.

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

Capital improvements. Facilities or assets used for Water supply, treatment and distribution;

Development. Conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, dividing land into two or more parcels (including partitions and subdivisions), and creating or terminating a right of access.

Improvement fee. A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to section 4 of this ordinance.

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

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

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

Qualified public improvements. A capital improvement that is:

- (1) Required as a condition of residential development approval;
- (2) Identified in the plan adopted pursuant to section 8 of this ordinance; and
- (3) Not located on or contiguous to a parcel of land that is the subject of the residential development approval.

Reimbursement fee. A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to section 4 of this ordinance.

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

Section 4. System Development Charge Established.

(1) System development charges shall be established and may be revised by resolution of the Board of Commissioners.

(2) Unless otherwise exempted by the provisions of this ordinance or other local or state law, a system development charge is hereby imposed upon all parcels of land within the District, and upon all lands outside the boundary of the District that connect to or otherwise use the water facilities of the District

Section 5. Methodology.

(1) The methodology used to establish the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, rate-making principals employed to finance publicly owned capital improvements, and other relevant factors identified by the Board of Commissioners. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.

(2) The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related.

(3) The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be contained in an ordinance adopted by the Board of Commissioners.

Section 6. Authorized Expenditures.

(1) Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating

to repayment of indebtedness.

(2) (a) Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the capital improvements funded by improvement fees must be related to demands created by development.

(b) A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the District pursuant to section 8 of this ordinance.

(3) Notwithstanding subsections (1) and (2) of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.

Section 7. Expenditure Restrictions.

(1) System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

(2) System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

Section 8. Improvement Plan. The Board of Commissioners shall adopt a plan that:

(1) Lists the capital improvements that may be funded with improvement fee revenues;

(2) Lists the estimated cost and time of construction of each improvement; and

(3) Describes the process for modifying the plan.

Section 9. Collection of Charge.

(1) The system development charge is payable upon issuance of;

(a) A building permit;

(b) A development permit;

(c) A development permit for development not requiring the issuance of a building permit; or

(d) A permit to connect to the water system;

(2) If no building, development, or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.

(3) If development is commenced or connection is made to the water system without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.

(4) The District Treasurer shall collect the applicable system development charge when a permit that allows building or development of a parcel is issued or when a

connection to the water system of the District is made.

(5) The District Office Manager shall not issue such permit or allow such connection until the charge has been paid in full, or unless an exemption is granted pursuant to section 11 of this ordinance.

Section 10. Delinquent Charges; Hearing.

(1) When, for any reason, the system development charge has not been paid, the District Office Manager shall report to the Board of Commissioners the amount of the uncollected charge, the description of the real property to which the charge is attributable, the date upon which the charge was due, and the name of the owner.

(2) The Board of Commissioners shall schedule a public hearing on the matter and direct that notice of the hearing be given to each owner with a copy of the District Office Manager's report concerning the unpaid charge. Notice of the hearing shall be given either personally or by certified mail, return receipt requested, or by both personal and mailed notice, and by posting notice on the parcel at least 10 days before the date set for the hearing.

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

Section 11. Exemptions.

(1) Structures and uses established and existing on or before October 13, 1994 are exempt from a system development charge, except water charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the water system.

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

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

Section 12. Credits.

(1) A system development charge shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given for the computed system development charge to the extent that prior structures existed and services were established on or after October

13, 1994. The credit so computed shall not exceed the calculated system development charge. No refund shall be made on account of such credit.

(2) A credit shall be given for the cost of a qualified public improvement associated with a residential development. If a qualified public improvement is located partially on and partially off the parcel that is the subject of the residential development approval, the credit shall be given only for the cost of the portion of the improvement not located on or wholly contiguous to the property. The credit provided for by this subsection shall be only for the improvement fee charged for the type of improvement being constructed and shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee.

(3) Credit shall not be transferable from one development to another except in compliance with standards adopted by the Board of Commissioners

(4) Credit shall not be transferable from one type of capital improvement to another.

Section 13. Segregation and Use of Revenue.

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

(2) The District Office Manager shall provide the Board of Commissioners with an annual accounting, based on the district's fiscal year, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account.

Section 14. Appeal Procedure.

(1) A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the Board of Commissioners by filing a written request with the District Office Manager describing with particularity the decision of the District Office Manager and the expenditure from which the person appeals. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure.

(2) Appeals of any other decision required or permitted to be made by the District Office Manager under this ordinance must be filed within 10 days of the date of the decision.

(3) After providing notice to the appellant, the Board of Commissioners shall determine whether the District Office Manager's decision or the expenditure is in accordance with this ordinance and the provisions of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decisions. If the Board of Commissioners determines that there has been an improper expenditure of system development charge revenues, the Board of Commissioners shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent.

(4) A legal action challenging the methodology adopted by the Board of Commissioners pursuant to section 5 shall not be filed later than 60 days after the adoption.

Section 15. Prohibited Connection. No person may connect to the water system of the District unless the appropriate system development charge has been paid.

Section 16. Penalty. Violation of section 15 of this ordinance is punishable by a fine not to exceed \$250.00.

Section 17. Construction. The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this ordinance.

Section 18. Severability. The invalidity of a section or subsection of this ordinance shall not affect the validity of the remaining sections or subsections.

Section 19. Effective Date. The Board of commissioners desires and deems it necessary and advisable for the immediate preservation of the health, peace, and safety of the District that this Ordinance become effective at once, for the reason that the water facilities of said District are inadequate to meet its needs and plans for the acquisition, construction, extension improvements must be commenced at once to be ready for use as soon as possible and, therefore, an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after its passage and approval.

~~This ordinance shall become effective 30 days after its passage by the Board of Commissioners and approval by the Chairman of the Board of Commissioners.~~ *as stated on minutes page of 10/13/94*

PASSED by the Board of commissioners the 13 day of October, 1994.


AYES: UNANIMOUS.

NAYES: _____.

Submitted to and approved by the Chairman on this 13 day of October, 1994.


Chairman, Board of commissioners

ATTEST


Secretary, Board of commissioners