ORDINANCE NO. 172-B

AN ORDINANCE AUTHORIZING THE ESTABLISHMENT OF SYSTEM DEVELOPMENT CHARGES FOR THE CITY OF COBURG AND REPEALING CONFLICTING ORDINANCES.

THE CITY OF COBURG ORDAINS AS FOLLOWS:

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

(1) Capital Improvements

(a) Facilities or assets used for:

(I) Water supply, treatment or distribution or any combination;

(II) Waste water collection, transmission, treatment or disposal or any combination;

(III) Drainage or flood control;

(IV) Transportation; or

(V) Parks and recreation

(b) "Capital improvement" does not include costs of the operation or routine maintenance of capital improvements.

(2) Development Development means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities. Development includes redevelopment of property. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved lands. Development includes any change in capacity or demand to use a capital improvement.

(3) 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.

(4) 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 for a public scenic or preservation purpose.

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

(6) Parcel of Land. A lot, parcel, block, or other tract of land that in accordance with City regulations is occupied or may be occupied by one or more structures or other use, and that includes the yards and other open spaces required under the zoning, subdivisions, or other development ordinances.

(7) Permittee. A person to whom a building permit, development permit, a permit or plan approval to connect to the sewer or water system, or right-of-way access permit is issued.

(8) Qualified Public Improvements. A capital improvement that is required as a condition of development approval, identified in the plan adopted pursuant to Section 8 of this Ordinance; and either:

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

(b) Located in whole of 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.

(c) For purposes of this definition, contiguous means in a public way which abuts the parcel.

(9) 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 and for which the City determines that capacity exists.

(10) 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.

(a) A system development charge includes that portion of a sewer system connection charge that is greater than the amount necessary to reimburse the City for its average cost of inspecting and installing connections with sewer facilities.

(b) A system development charge does not include fees assessed or collected as part of or in lieu of a local improvement district assessment or the cost of complying with requirements or conditions imposed by a land use, limited land use, or expedited land division decision.

(c) A system development charge may be a combination of a reimbursement fee and an improvement fee if the methodology

demonstrates that the charge is not based upon providing the same system capacity.

Section 4. System Development Charge Established.

(1) A system development charge shall be established and may be revised by resolution of the City Council. The resolution shall set the amount of the charge, the type of permit to which the charge applies, and, if the charge applies to a geographic area smaller than the entire City, the geographic area subject to the charge.

(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 City, upon the act of making a connection to the City water or sewer system within the City, and upon all development outside the boundary of the City that connects to or otherwise uses the sewer facilities, storm sewers, or water facilities of the City.

Section 5. Methodology.

(1) The methodology used to establish or modify the reimbursement fee shall consider the cost of then-existing facilities including without limitation design, financing and construction costs, prior contributions by then-existing users, gifts or grants from federal or state government or private persons, the value of unused capacity available to future system users, rate-making principals employed to finance publicly owned capital improvements, and other relevant factors identified by the City Council. The methodology shall promote the objective that future system users shall contribute no more than an equitable share of the cost of then-existing facilities.

(2) The methodology used to establish or modify the improvement fee shall consider the estimated cost of projected capital improvements identified in the Improvement Plan needed to increase the capacity of the system to which the fee is related that will be required to serve the demands placed on the system by future users. The methodology shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future system users.

(3) The methodology used to establish or modify the improvement fee or the reimbursement fee, or both, shall be contained in a resolution adopted by the City Council.

(4) The methodology used to establish the improvement fee or the reimbursement fee shall not:

(a) Include or incorporate any method or system under which the payment of the fee or the amount of the amount of the fee is determined by the number of employee of an employer without regard to new construction, new development or new use of an existing structure by the employer;

(b) Include or incorporate any method or system under which the payment of the fee or the amount of the fee is based on the

number of individuals hired by the employer after a specified date; or

(c) Assume that costs are necessarily incurred for capital improvements when an employer hires an additional employee.

(5) All methodology shall be available for public inspection.

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) Improvement fees shall be spent only on capacity-increasing capital improvements associated with the system for which the fee is assessed, including expenditures relating to repayment of 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.

(3) The portion of the capital improvements funded by improvement fees must be related to current or projected development. 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 City pursuant to Section 8 of the Ordinance.

(4) Notwithstanding subsections (1) and (2) of this section, system development charge revenues may be expended on the direct costs of complying with the provision 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.

(1) Prior to the establishment of a system development charge, the City Council shall adopt a plan that includes a list of:

(a) The capital improvements that may be funded with improvement fee revenues;

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

(c) A description of the process for modifying the plan.

(2) In adopting this plan, the council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section. The City Council may modify such plan and list at any time.

(3) The improvement plan may be modified at any time. If a system development charge will be increased by a proposed modification of the improvement plan to include a capacity increasing capital improvement:

(a) Notice of the proposed modification shall be sent to those persons who have requested written notice pursuant to Section 14(1) of this Ordinance at least 30 days prior to the adoption of the modification.

(b) A public hearing on the proposed modification shall be held if a written request for a hearing on the proposed modification is received within seven days of the date that the proposed modification is scheduled for adoption.

(c) No pubic hearing is required if a written request for a hearing is not received.

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;

(d) a permit to connect to the sewer system;

(e) a permit to connect to the water system, or

(f) a right–of–way access permit.

(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 based on changes in the use of the property unrelated to seasonal or ordinary fluctuations in usage.

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

(4) The City Recorder shall collect the applicable system development charge from the permittee when a permit that allows building or development of a parcel is issued or when a connection to the water or sewer system of the City is made.

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

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

Section 10. Delinquent Charges; Hearing.

(1) When, for any reason, the system development charge has not been paid, the City Administrator shall report to the City Council 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 City Council 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 City Administrator'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 City Council may accept, reject, or modify the determination of the City Administrator as set forth in the report. If the City Council finds that a system development charge is unpaid and uncollected, it shall docket the unpaid and uncollected system development charge in the lien docket.

(4) Upon completion of the docketing, the City shall have a lien against the described land for the full amount of the unpaid charge, together with interest at the legal rate of 10 percent and with the City's actual cost of serving notice of the hearing on the owners. The lien shall be enforceable in the manner provided in ORS Chapter 223.

Section 11 Installment Payment.

(1) When a system development charge of $200 or more is due and collectible, the owner of the parcel of land subject to the development charge may apply for payment in 20 semi-annual installments, to include interest on the unpaid balance, in accordance with ORS 223.208.

(2) The City recorder shall provide application forms for installment payments, which shall include a waiver of all rights to contest validity of the lien, except for the correction of computational errors.

(3) An applicant for installment payments shall have the burden of demonstrating the applicant's authority to assent to the imposition of a

lien on the parcel and that the property interest of the applicant is adequate to secure payment of the lien.

(4) The City Recorder shall report to the City Treasurer the amount of the system development charge, the dates on which payments are due, the name of the owner, and the description of the parcel.

(5) The City Recorder shall docket the lien in the lien docket. From that time the City shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the City Council. The lien shall be enforceable in the manner provided in ORS Chapter 223.

(6) Upon written request of the Public Works Department, the City Administrator is authorized to cancel assessments of SDCs, without further City Council action, where the new development approved by the building permit is not constructed and the building permit is cancelled. In no case will an administrative fee be refunded, unless necessary as a result of City error.

(7) For property that has been subject to a cancellation of assessment of SDCs, a new installment payment contract shall be subject to the code provisions applicable to SDCs and installment payment contracts on file on the date the new contract is received by the City.

Section 12 Exemptions.

(1) Structures and capital improvement uses established and legally existing or currently under construction with an approved building permit on or before the effective date of this Ordinance are subject to the provisions of Ordinance A–172-A.

(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 a parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge

Section 13. Credits and Impact Reductions

(1) When a development occurs that is subject to a system development charge, the system development charge for the existing use, if applicable, shall be calculated and if it is less than the system development charge for the use that will result from the development, the difference between the system development charge for the existing use and the system development charge for the proposed use shall be the system development charge. If the change in the use results in the system development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required. No refund or credit shall be given unless provided for by another subsection of this Section.

(2) A credit shall be given to the permittee for the cost of a qualified public improvement upon acceptance by the City of the public improvement.

The credit shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee and shall only be for the improvement fee charged for the type of improvement being constructed. For wastewater systems, the construction of a STEP system (or systems) of a size sufficient to serve the expected development, any pretreatment or other systems required by City Ordinance to bring the effluent within City specifications, and the required connection to the City wastewater collection system, shall not be a qualified public improvement, even when accepted by the City.

(3) If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the City's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the City.

(4) When the construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project.

(5) Notwithstanding subsections 1-4, when establishing a methodology for a system development charge, the City may provide for a credit against the improvement fee, the reimbursement fee, or both, for capital improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the council finds reasonable.

(6) When establishing a methodology for a system development charge, the City may provide for a process for demonstrating impact reductions involving the decrease of demand for the capital improvements of the infrastructure system.

(7) Credits shall not be transferable from one development to another.

(8) Credits shall not be transferable from type of system development charge to another.

(9) Credits shall be used within 10 years from the date the credit is given.

(10) An application for a credit shall be denied if it does not meet the requirements of this section or the improvement for which a credit is sought is not included in the Improvement Plan.

Section 14 Notice

(1) The City shall maintain a list of persons who have made a written

request for notification prior to adoption or modification of a methodology for any system development charge. Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a system development charge. The methodology supporting the system development charge shall be available at least 60 days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the City.

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

Section 15. Segregation and Use of Revenue.

(1) All funds derived from the system development charge are to be segregated by accounting practices from all other funds of the City. The system development charge calculated and collected shall be used for no purpose other than those set forth in Section 6 of this Ordinance.

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

Section 16 Refunds.

(1) Refunds may be given by the City Administrator upon finding that there was a clerical error in the calculation of the SDC. Partial refunds may be allowed as prescribed by resolution of the City Council pertaining to system development charge methodology.

(2) Refunds shall not be allowed for failure to timely claim credit or for failure to timely seek an alternative SDC rate calculation at the time of submission of an application for a building permit.

(3) The City shall refund to the applicant any SDC revenues not expended within ten (10) years of receipt unless the City Administrator finds that the improvements for which the SDC revenue was collected remain valid and applicable and that the funds will be expended within a reasonable amount of time.

Section 17 Implementing Regulations; Amendments.

(1) The City Council delegates authority to the City Administrator to adopt necessary procedures to implement provisions of this Ordinance including the appointment of an SDC program administrator. All rules pursuant to this delegated authority shall be filed with the office of City Recorder and be available for public inspection.

(2) A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge if the change in

amount is based on:

(a) A change in the cost of materials, labor or real property applied to projects or project capacity as set fourth in the Improvement Plan, as provided in Section 8 of this Ordinance.

(b) The periodic application of an adopted specific cost index or other periodic data sources. A specific cost index or periodic data source must be:

(A) A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;

(B) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and

(C) Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution, or order.

(3) The City Administrator is authorized to prepare and bring to the Council, when appropriate, proposed changes in the amount of the reimbursement fees or improvement fees as set forth in paragraph (2) of this Section.

Section 18. 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 City Council by filing a written request with the City Recorder describing with particularity the decision of the City Administrator 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 City Administrator under this Ordinance must be filed in writing with the City Recorder within 15 days of the decision.

(3) After providing notice to the appellant, the City Council shall determine whether the City Administrator's decision or the expenditure is in accordance with this Ordinance and the provisions of ORS 223.297 to 223.214 and may affirm, modify, or overrule the decisions. If the City Council determines that there has been an improper expenditure of system development charge revenues, the council 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. The decision of the City Council shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.

(4) A legal action challenging the methodology adopted by the City Council pursuant to Section 5 of this Ordinance shall not be filed later than 60 days after adoption. A person shall contest the methodology used for calculating a system development charge only as provided in ORS

34.010 to ORS 34.100, and not otherwise.

(5) A person who wishes to challenge the calculation of a system development charge must make a written challenge to the calculation of the system development charge and file the challenge with the City Administrator within 15 days of receiving the calculation. The written challenge must describe with particularity the calculation that the person appeals.

(a) The written challenge shall state:

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

A person who fails to file such a written challenge within the time permitted waives his/her objections, and his/her objections shall be dismissed.

(b) After providing timely notice to the challenger, the City Administrator shall determine whether the calculation is in accordance with the resolution containing the methodology used to establish or modify the system development charge adopted by the City Council.

(c) Unless the challenger and the City agree to a longer period, a written challenge to the calculation of the system development charge shall be heard by a hearings officer within 30 working days of the receipt of the written challenge. At least 7 working days prior to the hearing, the City shall mail notice of the time and location thereof to the person who made the written challenge.

(d) The hearings officer shall hear and determine the challenge on the basis of the person's written challenge and any additional evidence he/she deems appropriate. At the hearing the challenger may present testimony and oral argument personally or by counsel. The rules of evidence as used by courts of law do not apply.

(e) The person challenging the calculation shall carry the burden of proving that the calculation being appealed is incorrect and what the correct calculation should be or how a correct calculation should be derived.

(6) A separate appeal must be filed for each decision being appealed.

(7) After exhausting the City's administrative review procedure pursuant to section 17 (5) of this ordinance, the person challenging the calculation of the system development charge may then petition for review of the City Council's determination pursuant to ORS 34.010 to 34.100.

Section 18. Prohibited Connection. No person may connect to the water or sewer systems of the City unless the appropriate system development charge has been paid or the

lien or installment payment method has been applied for and approved.

Section 19. Penalty. Violation of Section 18 of this Ordinance is punishable by a fine not to exceed $1,000.

Section 20. Construction. For the purposes of administration and enforcement of this ordinance, unless otherwise stated in this ordinance, the following rules of construction shall apply:

(1) 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.

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

(3) Words used in the present tense shall include the future; and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

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

(5) Where a regulation involves two or more connected items, conditions, provisions, or events:

(a) "And" indicates that all the connected terms, conditions, provisions or events shall apply;
(b) "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

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

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

Section 22. Repeal. Ordinance No. A–172-A enacted , November 18, 2003, is repealed.

Section 23. Saving Clause. Ordinance No A–172-A, repealed by this Ordinance, shall remain in force for prosecution, conviction, and punishment of persons who violate Ordinance No. A–172-A, before the effective date of this Ordinance.

Section 24. Effective Date. This Ordinance shall become effective 30 days after its passage by the City Council and approval by the Mayor.

This Ordinance was read once by title at the June 25, 2013 regular meeting, and once by title at the July 9, 2013 regular meeting of the Coburg City Council, whereupon it was put to a final vote. The vote of the City Council was:

Yes: 4

No: 0

Abstention: None

Passed: Yes Rejected: ---

SIGNED AND APPROVED this 9th day of July, 2013

Jae Pudewell, Mayor

Attest:

Sammy L. Egbert, City Recorder