

Tualatin Valley Water District



**BOARD OF COMMISSIONERS
1850 SW 170th AVENUE
BEAVERTON, OR 97006
JUNE 20, 2012
REGULAR MEETING - 7:00 PM**

**Listening devices are available upon request
48 hours prior to the day of the meeting (503-642-1511)
Streaming live at www.tvwd.org
Broadcast by TVCTV (at a later date)**

**AN EXECUTIVE SESSION IS SCHEDULED AT 6:00 P.M. CALLED UNDER ORS
192.660 2 (f) AND ORS 192.502 (9) TO CONSIDER INFORMATION OR RECORDS
EXEMPT BY LAW FROM PUBLIC INSPECTION**

ALL VERBAL TESTIMONY IS ELECTRONICALLY RECORDED

1. CALL TO ORDER – REGULAR MEETING
2. REPORTS BY THE CHIEF EXECUTIVE OFFICER AND MANAGEMENT STAFF
3. COMMISSIONER COMMUNICATION
 - 3.1 -Reports of Meetings Attended
 - 3.2 -Topics to be raised by the Commissioners
4. PUBLIC COMMENT:
This time is set aside for persons wishing to address the Board on items on the Consent Agenda, and matters not on the Agenda. Additional public comment will be invited on agenda items as they are presented. Each participant is limited to five minutes, unless an extension is granted by the Board.

CONSENT AGENDA: These items are considered to be routine and may be enacted in one motion without separate discussion. Any Board member may request that an item be removed by motion for discussion and separate action.

ITEMS REMOVED FOR SEPARATE DISCUSSION: Any items requested to be removed from the consent agenda for separate discussion, will be considered immediately after the Board of Commissioners have approved those items which do not need discussion.

5. CONSENT AGENDA ITEMS
 - 5.1 - Work Session Minutes of May 8, 2012
 - 5.2 - Regular Meeting Minutes of May 16, 2012.....

BUSINESS AGENDA ITEMS:

Time will be set aside for public comment for each business item. Each participant is limited to five minutes unless the Board grants an extension, or the agenda item is noted for a specific amount of time for public comment.

6. RESOLUTION 08-12 ENDORSING ANNEXATION OF PARCEL 1N1 15CC 00400
ON NW JACOBSON ROAD (MOTION TO ADOPT)

7. EXEMPT LEAVE AND VACATION SCHEDULE (MOTION TO APPROVE)

8. ORDINANCE 01-12 AMENDING AND RESTATING SYSTEM DEVELOPMENT
CHARGES - FIRST READING (MOTION TO READ BY TITLE ONLY AND OPEN
PUBLIC HEARING).....

- 8.1 - OPEN PUBLIC HEARING
- 8.2 - CLOSE PUBLIC HEARING

9. ADJOURNMENT (MOTION)

**TUALATIN VALLEY WATER DISTRICT
REGULAR BOARD MEETING AGENDA ITEM**

MEETING DATE: JUNE 20, 2012

TITLE: RESOLUTION 08-12 ENDORSING ANNEXATION OF PARCEL 1N2 15CC 00400 ON NW JACOBSON ROAD

ITEM: This item consists of TVWD Board endorsement of the proposed annexation of one property north of NW Jacobson Road into the TVWD service area. This proposed annexation includes one parcel located generally north of NW Jacobson Road, south of NW Schaaf Road and east of NW Helvetia Road. The property is specifically identified as Tax Lot 400 on Washington County Assessor’s Tax Map 1N2 15CC and is addressed as 23745 NW Jacobson Road, as shown on the attached map.

The purpose of the annexation is to facilitate connection to the TVWD water system. Previously the dwelling on this lot received water from the adjacent trailer park’s well system. That source is no longer an option.

If approved by the TVWD Board, this resolution will be filed with the Washington County Board of Commissioners as soon as practical.

STAFF RECOMMENDATION: Staff recommends approval of Resolution No. 08-12 endorsing annexation of the above described parcel and as shown in the attached Exhibit A.

BUDGET IMPACT: Approval of Resolution No. 08-12 has no impact to the budget.

ADDITIONAL INFORMATION: Mark Knudson, Chief Engineer, 503-848-3027, markk@tvwd.org or Stewart Davis, Sr. Engineer, 503-848-3025, stu@tvwd.org.

ATTACHMENTS: Resolution No. 08-12, Exhibit A – Proposed Parcel Annexation Endorsement

APPROVING MANAGERS INITIALS

CHIEF EXECUTIVE OFFICER_____		HUMAN RESOURCES	N/A
FIELD OPERATIONS	N/A	INTERGOV. RELATIONS	N/A
FINANCIAL SERVICES	N/A	CUSTOMER SERVICES	N/A
ENGINEERING SERV.	_____		

BOARD ACTION:

APPROVED _____
DENIED _____



RESOLUTION NO. 08-12

**A RESOLUTION ENDORSING ANNEXATION OF
PARCEL 1N2 15CC 00400 ON NW JACOBSON ROAD**

WHEREAS, this matter has come before the Board of Commissioners of the Tualatin Valley Water District, hereinafter referred as the Board; and

WHEREAS, the Owner of said parcel, through the City of Hillsboro, has requested annexation of the property into the TVWD service area as shown on Exhibit A, attached hereto and incorporated by reference; and

WHEREAS, the Board under ORS 198.850 endorses property for annexation as each Parcel is proposed therefore,

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TUALATIN VALLEY WATER DISTRICT AS FOLLOWS:

Section 1: That in accordance with ORS 198.850, the Board by this Resolution endorses the proposed annexation of one tax lot as shown in attached Exhibit A that depicts the area to be annexed, and

Section 2: That the Secretary of the Board or Chief Executive Officer of the District is hereby directed to file this Resolution with the Washington County Board.

INTRODUCED AND ADOPTED THIS 20th DAY OF JUNE 2012.

TUALATIN VALLEY WATER DISTRICT

BY _____ BY _____
Dick Schmidt, President James Duggan, Secretary

15

IN DISTRICT

C

1N215CC00400
23445 NW Jacobsen Rd.
OUT OF DISTRICT

GROVELAND DR.

HELVETIA

JACOBSON

CASPER PL.

PINEFARM



NORTH

Tualatin Valley Water District

EXHIBIT A

DWG. BY SLD REV. DATE 5/21/2012

**TUALATIN VALLEY WATER DISTRICT
REGULAR BOARD MEETING AGENDA ITEM**

MEETING DATE: JUNE 20, 2012

TITLE: EXEMPT LEAVE AND VACATION SCHEDULE

ITEM: The purpose of changing the vacation schedule will result in having one vacation chart for all employees. The exempt leave benefit will allow newly classified exempt employees the opportunity to be awarded additional leave in lieu of receiving overtime.

STAFF RECOMMENDATION: Staff recommends the Board move to approve the revised vacation leave schedule and the addition of exempt leave.

BUDGET IMPACT: There is potentially a budget impact of approximately \$13,000 to the current budget if the reclassified exempt employees request that their compensatory banks be paid out. To comply with accounting requirements, the District recorded the labor expense for the \$13,000 at the time the employee accrued the overtime. This expense is recorded as a liability on the District's books and this change in exemptions will not change the total expenses to the District.

ADDITIONAL INFORMATION: Greg DiLoreto, CEO, 503-848-3032, greg@tvwd.org, Todd Heidgerken, AIC, 503-848-3013, toddh@tvwd.org, Amy Heinlen, HR Director, 503-848-3015, amy@tvwd.org.

ATTACHMENTS: Vacation Schedule and Exempt Leave Schedule

APPROVING MANAGERS INITIAL:

CHIEF EXECUTIVE OFFICER	_____	HUMAN RESOURCES	_____
FIELD OPERATIONS	N/A	INTERGOV. RELATIONS	_____
FINANCIAL SERVICES	N/A	CUSTOMER SERVICES	N/A
ENGINEERING SERV.	N/A		

BOARD ACTION:

APPROVED _____
DENIED _____

Proposed
Vacation Schedule and Exempt Leave Benefit

Years Employed	Annual Vacation Hours (change for managers who previously earned a maximum of 160 hours annually)	Annual Exempt Leave Hours (for the newly classified exempt employees)
0 thru 4	80	40
>4 thru 9	120	40
>9 thru 13	144	40
>13 thru 19	160	40
>19 thru 20	168	40
>20 thru 21	176	40
>21 thru 22	184	40
>22 thru 23	192	40
>23	200	40

**TUALATIN VALLEY WATER DISTRICT
REGULAR BOARD MEETING AGENDA ITEM**

MEETING DATE: JUNE 20, 2012

TITLE: ORDINANCE 01-12 AMENDING AND RESTATING SYSTEM DEVELOPMENT CHARGES

ITEM: The District routinely reviews its system development charges (SDCs) to ensure these charges are fair to all customers. There are two elements of the SDC that are reviewed. The first element is the methodology. The methodology is specifically identified in Oregon law and describes the technical basis for calculation of the SDC. The second elements are our ordinances and resolutions. The ordinances and resolutions provide the legal structure under which the SDC is applied and managed.

During the recent review of our SDCs, staff determined that our SDC resolutions would benefit from being updated. The basis for our SDCs dates back to a resolution (01-91) adopted by the District in 1991. There have been numerous legal changes that suggest a newer ordinance would benefit the District.

It is important to note that staff is not recommending changing the amount of the SDC or the methodology under which the SDC is calculated. Rather, staff is only recommending an updated ordinance that will set forth how the SDC is applied and managed.

STAFF RECOMMENDATION: Move to read Ordinance 01-12 by title only, and open the public hearing

BUDGET IMPACT: There is no direct budget impact from this Ordinance

ADDITIONAL INFORMATION: Paul Matthews, paulm@tvwd.org, (503) 848-3017, Mark Knudson, MarkK@tvwd.org, (503) 848-3027

ATTACHMENTS: Ordinance 01-12

APPROVING MANAGERS INITIAL:

CHIEF EXECUTIVE OFFICER	_____	HUMAN RESOURCES	N/A
FIELD OPERATIONS	N/A	INTERGOV. RELATIONS	N/A
FINANCIAL SERVICES	_____	CUSTOMER SERVICES	N/A
ENGINEERING SERV.	_____		

BOARD ACTION:

APPROVED	_____
DENIED	_____



TUALATIN VALLEY WATER DISTRICT

ORDINANCE 01-12

**AN ORDINANCE AMENDING AND RESTATING SYSTEM
DEVELOPMENT CHARGES**

WHEREAS, through Resolution No. 1-91, the Board of Commissioners established a methodology to determine the amount of System Development Charges for the Tualatin Valley Water District pursuant to Oregon Revised Statutes (ORS) 223.297 to 223.314, and the charges therefore which have been amended from time to time by various Resolutions; and

WHEREAS, Oregon Revised Statutes 223.297 to 223.314 establish procedures to provide a uniform framework for the imposition of System Development Charges by governmental units for specified purposes and to establish that the charges may be used for Capital Improvements; and

WHEREAS, Oregon Revised Statutes, under 223.297 to 223.314 provides procedures for establishing a Methodology to determine System Development Charges; and

WHEREAS, by this Ordinance, the District intends to reconfirm the authorization for system development charges for capital improvements pursuant to ORS 223.297 to 223.314 for the purpose of creating a source of funds to pay for existing system capacity and/or the installation, construction and extension of capital improvements to accommodate new connections to the system; and

WHEREAS, this Ordinance is adopted to restate existing provisions of the previously adopted Resolution 1-91 as amended and to provide updated provisions consistent with the statutes, but without change to the methodology for calculations of charges; and

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

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

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TUALATIN VALLEY WATER DISTRICT THAT:

Section 1. Title

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

Section 2. Definitions

- A. “Applicant” shall mean the owner or other person who applies for a residential, commercial, industrial or other connection to the District water system.
- B. “Board” means the Board of Commissioners of the Tualatin Valley Water District.

- C. “Building” shall mean any structure, either temporary or permanent, built for the support, shelter or enclosure of persons or property of any kind or for any public, commercial, industrial or other use. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a building permit.
- D. “Capital Improvements” shall mean public facilities or assets used for water supply, treatment and distribution.
- E. “Capital Improvement Plan” shall mean any Plan, Public Facilities Plan, Master Plan, Capital Improvements Plan or similar plan that contains capital improvements upon which system development charges are calculated.
- F. “Citizen or Other Interested Person” shall mean any person whose legal residence is within the boundaries of the District, as evidenced by registration as a voter within the District or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within District boundaries or is otherwise subject to the imposition of system development charges, as outlined in Section 3 of this ordinance.
- G. “Connection” or “Connection Permit” shall mean connection to, or a permit to connect to, the capital improvements of the District.
- H. “District” shall mean the Tualatin Valley Water District, a unit of local government under ORS 174.116.
- I. “Development” shall mean a building or other 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 may contribute to the need for additional or enlarged capital improvements, as determined by the Board.
- J. “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.
- K. “Encumbered” shall mean monies committed by contract or purchase order in a manner that obligates the District to expend the encumbered amount upon delivery of goods, the rendering of services, or the conveyance of a real property provided by a vendor, supplier, contractor or owner.
- L. “Equivalent Residential Unit (ERU)” shall mean the base element of the formula by which system development charge rates are determined, for various buildings or developments.
- M. “Improvement Fee” shall mean a fee for costs associated with capital improvements to be constructed after the effective date of this ordinance.
- N. “Manufactured Housing” shall mean a dwelling unit, which is constructed primarily at one location and is then transported to another location for either permanent or temporary siting.
- O. “Methodology” shall mean the system development charge methodology required by ORS 223.304(1) and (2).

- P. "Owner" shall mean the person holding legal title to the real property upon which development is to occur, or a contract purchaser of such property.
- Q. "Person" shall mean an individual, corporation, partnership, incorporated association, or any other similar entity.
- R. "Qualified Public Improvement" shall be defined as provided in ORS 223.304(3).
- S. "Reimbursement Fee" shall mean fee for costs associated with capital improvements already constructed or under construction when the fee is established and for which capacity exists.
- T. "Single-family housing" shall mean a detached dwelling unit, constructed on-site, and located on an individual lot.
- U. "System Development Charge" or "SDC" shall mean a reimbursement fee and/or an improvement fee assessed or collected at the time of increased usage of, or connection to a capital improvement.

Section 3. Assessment of Charge

- A. A System Development Charge is hereby imposed upon all new development within the District, which connects to a capital improvement or which increases the usage of any capital improvements, or which contributes to the need for additional or enlarged capital improvements. The system development charge shall apply to new development and alteration, expansion or replacement of an existing building, structure or development if such alteration, expansion or replacement results in an increase in the number of residential dwelling units, equivalent residential units (ERUs) or fixtures compared to the present number of dwelling units, ERUs, or fixtures. For alterations, expansions and replacements, the amount of the system development charge to be paid shall be the difference between the SDC amount for the proposed development and the amount of SDC paid for the development prior to the alteration, expansion or replacement.
- B. System development charge rates per ERU shall be established, and may be revised from time to time, by resolution of the District.
- C. The system development charges imposed by this ordinance are separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development.
- D. For any meter larger than 1 1/2 inches, the owner shall execute a SDC Agreement to pay an SDC for that meter, subject to adjustment for actual usage. The SDC Agreement will have a term of five years (60 months). If actual usage is greater than 110% of anticipated volume during any 12-month period of time, during the 5-year (60 month) term from the date of the agreement, an additional SDC may be charged by calculating peak day and storage ERUs and multiplying the peak day SDC cost per ERU and the storage cost per ERU then in effect. If the District finds a violation of the SDC Agreement or exceedance of the volume limitation by the Owner, then it may extend the SDC Agreement for an additional five years along with the recalculation of the SDC rate.
- E. The SDC paid for a property shall be deemed to run with the land and is not transferrable to another parcel except as specified herein.

- F. Where an existing meter is located on property that is partitioned or subdivided, the owner may apply to the District to assign the meter and any existing system development charge payment to a lot or apportioned among the lots that comprised the original property. The existing credit shall apply to the first property to develop.
- G. Where contiguous properties under the same ownership with existing connections wish to combine and seek a credit for the value of existing connections, such credit may be granted if:
1. The ownership is the same by or by closely related parties;
 2. The separate contiguous lots are combined into one tax lot; and
 3. All services and connections for the previous lots are abandoned so that there will only be one connection for the consolidated lot.
- H. When a request or requirement for a larger meter is made to the District by an owner for properties within the District, SDC credit for the existing meter at the property will be granted.
1. The credit for meters 1.5 inches or less will be based on the current SDC rate in effect at the time of the requested or required upsizing. For meters 2 inches and larger, the credit will be calculated based on anticipated water use as agreed to by the property owner at the time the original service connection was installed, or the most recent subsequent agreements between the property owners and the District when the connection was resized. If no anticipated water use agreement exists for the property, the Chief Engineer will determine, by examining information the Chief Engineer deems pertinent, an equivalent anticipated water use for the existing connection. In cases where the Chief Engineer makes such determination, the credit will be based on the SDC for customers with the determined anticipated water use using the SDC rate in effect at the time of the requested or required upsizing.
 - (2) Credit shall be given for inactive or previously removed meters that can be verified by District records. The credit will be determined as stated in Section H (1) above.
 - (3) Credits as computed will be subtracted from the determined SDC amount based on the District's current adopted SDC schedule. If an available credit exceeds the SDC amount, the balance shall remain with the parcel previously receiving water service for no more than two years from the date the credit is first used. No cash refunds shall be provided for the amount of this credit.
 - (4) SDC credits are non-transferrable to other properties within the District unless contiguous parcels under the same ownership within the District's service area are combined to facilitate development.
 - (5) SDC credits will only apply to parcels with accounts with the District that are in good standing and have no unpaid charges.
- I. The SDC paid for a residential ¾-inch or 1-inch water meter, in the circumstance where a larger meter is required only for the purpose of meeting a residential multi-purpose fire sprinkler system requirement, will consist of the SDC for the appropriate size meter that would

be required without the multi-purpose fire sprinkler system plus a percentage of the difference between the price of the SDC for the meter size meeting the domestic water requirements and the SDC for the meter size meeting the fire sprinkler requirement. The percentage adjustment factor will be determined annually by the District's Chief Engineer and represent the approximate storage cost component of the SDC. Should the customer regularly use the capacity of the ¾" or 1" meter to meet their domestic needs, they will be required to pay the remainder of the SDC at the current rate in effect.

- J. If the customer has been charged by the District for an illegal connection and requests a contract for payment of the SDC, the District may withhold the option of providing a contract for said payment of SDC.
- K. If the SDC is financed as permitted by ORS 223.028, the financing charge established by the District shall be the maximum rate as authorized in ORS 82.010 Legal rate of Interest, which is currently 9.0%.

Section 4. System Development Charge Methodology

- A. The methodology used to establish the reimbursement fee portion of the system development charge shall take into account the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, generally accepted rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the District. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.
- B. The methodology used to establish the improvement fee portion of the system development charge shall take into account the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related and other relevant factors identified by the Board.
- C. The methodology used to establish the improvement fee and the reimbursement fee was developed and previously adopted by the District. Amendments thereto or adoption of a new methodology may be adopted by ordinance or resolution of the District.

Section 5. System Development Charge Plan

The Board has adopted the Capital Improvement Plan (CIP) which is periodically updated. This Plan

Lists the planned capital improvements that may be funded with improvement fee revenues; and

Lists the estimated cost and time of construction of each improvement.

In adopting this CIP, the Board 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 Board may modify the projects listed in that Plan at any time through the adoption of a resolution.

Section 6. Collection

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

Alterations, expansion or replacement of a building or development where no additional equivalent residential unit is created or plumbing fixtures added.

The construction of accessory buildings or structures which will not create additional equivalent residential units or plumbing fixtures and which do not create additional demands on the District's capital facilities.

The issuance of a permit for a manufactured housing unit on which applicable system development charges have previously been paid.

Development with vested rights, 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 Ordinance No. 01-12 may petition the District for a vested rights determination which would exempt the landowner from the provisions of this ordinance. Such petition shall be evaluated by the Board and a decision made based on *all three* of the following criteria being met:
 - (1) The existence of a valid, unexpired building or development permit authorizing the specific development for which a determination is sought, and;
 - (2) Substantial expenditures or obligations made or incurred in reliance upon such permit, and;

- (3) Other factors that demonstrate it is inequitable to deny the owner the opportunity to complete the previously approved development under the prior 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:
 - (a) 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
 - (b) Whether the expenses or obligations for the development were made or incurred prior to the effective date of this ordinance.
- b. The Chief Executive Officer shall make a written determination as to whether the owner has established a vested right in the development and, if so, whether the development would be exempt from the provisions of this ordinance.
- (5) Fire only service connections.
- (6) Temporary connections for Irrigation Purposes.

Section 7. Credits for Developer Contributions of Qualified Public Improvements

- A. The District may grant a credit against the improvement fee component of system development charges imposed pursuant to Section 3 for the donation of land for, or for the actual cost of construction of, any qualified public water improvements set forth in the CIP.
- B. Prior to issuance of a building permit or development permit, the applicant shall submit to the District a proposed plan and estimate of cost for contributions of qualified public water improvements. The proposed plan and estimate shall include:
 - (1.) A designation of the development for which the proposed plan is being submitted;
 - (2.) A legal description of any land proposed to be donated and a written appraisal prepared in conformity with Section 7c1.;
 - (3.) A list of the contemplated capital improvements contained within the plan;
 - (4.) An estimate of proposed construction costs certified by a professional engineer; and
 - (5.) A proposed time schedule for completion of the proposed plan.

- C. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit. The amount of credit to be applied shall be tentatively determined according to the following standards of valuation:
- (1.) The value of donated lands shall be based upon a written appraisal of fair market value by a qualified and professional appraiser acceptable to the District. The appraisal will be based upon comparable sales of similar property between unrelated parties in a bargaining transaction; and
 - (2.) The cost of anticipated construction of qualified public improvements shall be based upon cost estimates certified by a professional engineer and relevant District data as determined by the Chief Engineer.
- D. Upon completion of construction and placement of the improvement in service the actual credit shall be calculated based upon the land value, if any, and the actual cost of the qualified public improvement based on a verified accounting of costs provided to the Chief Executive Officer. The District may require such documentation as it deems necessary to evaluate actual costs.
- E. This credit shall be only for the improvement fee charged for the type of improvement being constructed. Credit under this Section may be granted only for the cost of that portion of the improvement that exceeds the facility size or capacity needed to serve the development project and their oversizing provides capital usable by the District.
- F. If a donation or construction of a qualified public improvement gives rise to a credit amount greater than the amount of the system development charge that would otherwise be levied against the project receiving development approval, the excess credit may be applied against system development charges that accrue in subsequent phases of the original development project. Any excess credit must be used not later than ten years from the date it is given.
- G. The decision of the Chief Executive Officer as to whether to accept the proposed improvement and the value of such contribution shall be in writing and issued within fifteen (15) working days of the date all data is received for review. Notification shall be provided to the applicant via regular mail.
- H. After completion of a qualified public improvement, the applicant shall, within 30 days of completion, submit to the District an accounting of actual costs. Upon District verification of such costs, the credit shall be increased or reduced accordingly. If reduced, the applicant shall pay to the District the amount of such reduction in cash within 20 days of notice of such reduction.
- I. Any applicant who submits a proposed plan pursuant to this Section and desires the immediate issuance of a building permit or development permit shall pay the applicable system development charges. Said payment shall not be construed as a waiver of any credit. Any difference between the amount paid and the amount due, as determined by the Board, shall be refunded to the applicant. In no event shall refund by the District under this subsection exceed the amount originally paid by the applicant.
- J. Credits shall be apportioned against the property, which was subject to the requirements to construct an improvement eligible for credit. Unless otherwise requested, apportionment against lots or parcels constituting the property shall be proportionate to the anticipated public facility service requirements generated by the respective lots or parcels. Upon written

application to the District, however, credits shall be reapportioned from any lot or parcel to any other lot or parcel within the confines of the property originally eligible for the credit.

Section 8. Appeals and Review Hearings

- A. An applicant who is required to pay system development charges shall have the right to request a hearing before the Board to review the denial by the Chief Executive Officer of any of the following:
 - (1.) A petition for vested rights pursuant to Section 6(E)(4).
 - (2.) A proposed credit for contribution of qualified public improvements pursuant to Section 7.
 - (3.) A decision of the Chief Executive Officer interpreting the provisions of this Ordinance.
- B. Such hearing shall be requested by the applicant within thirty (30) days of the date of first receipt of the denial. Failure to request a hearing within the time provided shall be deemed a waiver of such right.
- C. The request for hearing shall be filed with the Chief Executive Officer and shall contain the following:
 - (1.) The name and address of the applicant;
 - (2.) The legal description of the property in question;
 - (3.) If issued, the date the building permit or development permit was issued;
 - (4.) A brief description of the nature of the development being undertaken pursuant to the building or development permit;
 - (5.) If paid, the date the system development charges were paid; and
 - (6.) A statement of the reasons why the applicant is requesting review.
- D. Upon receipt of such request, the Chief Executive Officer shall schedule a hearing before the Board of Commissioners 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.
- E. Such hearing shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing as determined by the Board. Formal rules of civil procedure and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.
- F. Any applicant who requests a hearing pursuant to this Section and desires the immediate issuance of a connection permit or dwelling shall pay prior to or at the time the request for

hearing is filed the applicable system development charges. Said payment shall not be construed as a waiver of any review rights.

- G. An applicant may request review under this Section without paying the applicable system development charges as long as no connection permit or approval has been issued and no connection has occurred.
- H. The decision of the Board shall be subject to writ of review under ORS 34.010 to 34.100.

Section 9. Review of Methodology and Rates

- A. This ordinance, the system development charge methodology, and the capital improvement plan required by ORS 223.309 shall be reviewed by the Board of Commissioners at intervals it deems appropriate. The review shall consider new estimates of population and other socioeconomic data, changes in the cost of construction and land acquisition, and adjustments to the assumptions, conclusions or findings set forth in the methodology. The purpose of this review is to evaluate and revise, if necessary, the rates of the system development charges to ensure that they do not exceed the actual or reasonably anticipated costs of the District's capital improvements.
- B. Notwithstanding any adjustments made under Section 9.A. of this Ordinance, annually the District shall review the SDC methodology and rates in relation to the Engineering News Record (ENR) Construction Cost Index (CCI) for Seattle, Washington, or comparable index as adopted by the Board, for the geographical region for which such index is prepared that more appropriately reflects cost indexing for the Portland Metropolitan Area. The Board may, by resolution, modify the District's SDC charges in keeping with such index. A change in an SDC under this subsection shall not be considered a modification to the SDC or methodology under ORS 223.297 through ORS 223.314.
- C. In the event the review of the ordinance or the methodology alters or changes the assumptions, conclusions and findings of the methodology, or alters or changes the amount of system development charges, the methodology shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews. If changes in the methodology are undertaken by the District, the District shall comply with the requirements of ORS 223.297 through ORS 223.314, and coordinate such changes with other affected jurisdictions as necessary.

Section 10. Receipt and Expenditure of System Development Charges

- A. The District shall establish separate accounts for each type of system development charge, which shall be maintained apart from all other accounts of the District. All system development charge payments shall be deposited in the appropriate account immediately upon receipt.
- B. Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

- C. Improvement fees shall be applied only to capacity-increasing capital improvements, including expenditures relating to repayment of debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the capital improvements funded by improvement fees shall be related to demands created by development. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the Capital Improvement Plan, Master Plan or other plan adopted by the District pursuant to ORS 223.309.
- D. Notwithstanding subsections B and C of this Section, system development charge revenues may also be expended on the direct costs of complying with the provisions of this ordinance, including, but not limited to, the costs of developing system development charge methodologies and providing an annual accounting system for development charge expenditures.
- E. The monies deposited in the above accounts shall be used solely as allowed by ORS 223.307, 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 capital improvements;
 - (5.) Design and construction of new water facilities required by the construction of capital improvements and structures;
 - (6.) Relocating utilities required by the construction of improvements;
 - (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 District, 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 District to fund capital improvements;
 - (13.) Costs of complying with the provisions of ORS 223.297 to 223.314, including the consulting, legal, and administrative costs required for developing and updating the system development charges methodology report, resolution/ordinance, and capital

improvements plan; and the costs of collecting and accounting for system development charges expenditures.

- F. Funds on deposit in system development charge accounts shall not be used for:
- (1.) Any expenditure that would be classified as a maintenance expense; or
 - (2.) Costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- G. Any capital improvement being funded wholly or in part with improvement fee revenue shall be included in the District's capital improvement plan. The capital improvement plan may be modified at any time by the Board of Commissioners and shall:
- (1.) List the specific capital improvement projects that may be funded with improvement fee revenue;
 - (2.) Provide the estimated cost of each capital improvement project,
 - (3.) Provide the estimated timing of each capital improvement project; and
- H. Any funds on deposit in system development charge accounts which are not immediately necessary for expenditure may be invested by the District. All income net of the cost of investment, derived from such investments shall be deposited in the system development charges accounts and used as provided herein.
- I. System development charges shall not be refunded.
- J. The District shall prepare an annual report accounting for system development charges, including the total amount of system development charge revenue collected in the accounts, and the capital improvement projects that were funded. The report shall be completed by January 1 of each year for projects that were funded in the previous fiscal year.
- K. 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 Board for review within two years following the subject expenditure, and shall include the following information.
 - a. The name and address of the citizen or other interested person challenging the expenditures;
 - b. The amount of the expenditure, the project, payee or purpose, and the approximate date on which it was made; and
 - c. The reason why the expenditure is being challenged.
 - (2.) If the Board determines that the expenditure was not made in accordance with the purposes of this ordinance and other relevant laws, a reimbursement of system development charge account revenues from other revenue sources shall be made within one year following the determination that the expenditures were not appropriate.

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

Section 11. Severability

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

Section 12. Implementing Regulations

The Board may adopt by Resolution any regulations or administrative procedures, to implement the provisions of this ordinance.

Section 13. ORS Chapter 198.

Pursuant to Oregon Revised Statutes, Chapter 198.540, the ordinance was read at two regular meetings of the Board of Commissioners on two different days, at least six (6) days apart and prior to the adoption thereof.

Section 14. Adoption.

This ordinance was adopted by at least the affirmative vote of a majority of the members of the Board of Commissioners of Tualatin Valley Water District at a public meeting and was attested to by the Chief Executive Officer. The Secretary of the Tualatin Valley Water District is instructed to cause the ordinance to be filed in the records of Tualatin Valley Water District and file a certified copy of this ordinance with the County Clerk

Section 15.

Effective Date. **This Ordinance shall take effect at 12:01 a.m., Pacific Daylight Time, on August 17, 2012, being at least thirty (30) days from the date of its adoption.**

TUALATIN VALLEY WATER DISTRICT

BY _____ BY _____
Dick Schmidt, President James Duggan, Secretary