

**ORDINANCE NO. 748**

**AN ORDINANCE ESTABLISHING SYSTEMS DEVELOPMENT CHARGES FOR: WATER SUPPLY, TREATMENT AND DISTRIBUTION; WASTEWATER COLLECTION, TRANSMISSION, TREATMENT, AND DISPOSAL; DRAINAGE AND FLOOD CONTROL; TRANSPORTATION; AND PARKS AND RECREATION FACILITIES; ESTABLISHING A METHODOLOGY FOR DETERMINING COSTS, PROVIDING FOR THE COLLECTION AND DISBURSEMENT OF SUCH FEES, PROVIDING FOR APPEALS, REPEALING ORDINANCE NO. 538, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Madras has found the need to make provisions for future needed improvements to the City's facilities; and

**WHEREAS**, the need for said improvements are created primarily by new development and the demands this new development places on the City's systems; and

**WHEREAS**, the City has had prepared and adopted a capital improvement plan, public facilities plan, master plan or comparable plan that includes a list of the capital improvements that the City intends to fund, in whole or in part, with revenues from an improvement fee and estimated cost, timing and percentage of costs eligible to be funded with revenues from the improvement fee for each improvement to a City system; and

**WHEREAS**, from time-to-time, there are changes in Oregon Revised Statutes that require commensurate changes to the City of Madras' Systems Development Charges (SDC's) ordinance; and

**WHEREAS**, the City of Madras contracted with an independent consultant who is an expert in the area of SDC's and capital project and operational cost analysis to identify areas of the City's current SDC Ordinance that needed updating; and

**WHEREAS**, Ordinance No. 748 has been prepared to establish a methodology for determining future costs, as well as to provide for the equitable apportionment of said costs which result from the needed improvements to the facilities and incorporates those changes necessary to be in compliance with current Oregon Revised Statutes and recommendations of the consultant.

**NOW, THEREFORE**, the City of Madras ordains as follows:

**SECTION 1.1: PURPOSE AND POLICY**

The purpose of this ordinance is to provide for the equitable apportionment of costs of impacts to the City facilities which result from new development within the City of Madras.

This ordinance addresses costs associated with demands placed upon the water supply, treatment and distribution system; wastewater collection, transmission, treatment, and disposal system; drainage and flood control, transportation, and park and recreation facilities.

All System Development Charges (SDC's), assessed, collected, and disbursed shall be based upon a capital improvement plan for such facilities, and shall be determined according to the provisions of this ordinance. Said facility's capital improvement plan shall be reviewed and amended from time to time as conditions may dictate.

All SDC's, and credits for construction of a qualified public improvement, shall be established from time to time by resolution, and shall not exceed, but may be less than the actual cost apportioned to providing the capital improvements according to the methods set forth in this ordinance or resolution. SDC's may be applied to remediation of the existing deficiencies, repayment of existing debt, as well as for future needs.

**SECTION 1.2: SCOPE**

The Systems 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.

**SECTION 1.3: DEFINITIONS****a. Active Use of Property**

Is defined as day to day residential, commercial, industrial or institutional use as defined by the City's land development ordinances. Seasonal or temporary uses per the City's Business License Ordinance would not qualify as active use.

[Definition of Active Use of Property added by Ordinance No. 851, Passed by Council on January 8, 2013.]

**b. Biochemical Oxygen Demand (B.O.D.)**

The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at 20 degree centigrade expressed in terms of weight and concentration (milligrams per liter (mg/l)).

**c. Capital Improvements**

Facilities or assets used for:

1. Water supply, treatment and distribution;
2. Wastewater collection, transmission, treatment, and disposal;
3. Drainage and flood control;
4. Transportation; or
5. Parks and recreation.

**d. Chemical Oxygen Demand (C.O.D.)**

The quantity of oxygen utilized in the reduction of wastewater utilizing a strong chemical oxidant under standard laboratory procedure. When wastewater contains only readily oxidizable organic material and not material that is toxic to bacteria, C.O.D. test results are a good estimate of B.O.D. values.

**e. 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 (2) or more parcels (including partitions and subdivisions), and creating or terminating a right of access.

**f. Equivalent Dwelling Unit (E.D.U.)**

A unit of value representing the demand or load placed upon a City system, based upon the average load placed upon such system by one single-family residence of average size within the City. The City may further and more specifically define the particulars of what constitutes an individual unit of E.D.U. for a particular City system, within this ordinance or by resolution.

**g. Impervious Surface**

Surfaces which impede the normal percolation of rainwater into the soil and would cause runoff or rainwater at a higher rate than would be expected from the natural state of the existing soils. Impervious surfaces include concrete, asphalt, stone, tile, roofing, awnings, and other materials not native to the site.

**h. Improvement Fee**

A fee for costs associated with capital improvements to be constructed after the date the fee is adopted.

**i. 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 purposes.

**j. Minimum Facility Size**

Minimum standard facility size or capacity, if not otherwise specified in a capital facilities plan, capital improvement plan, master plan or similar such document, shall be that facility size or capacity as determined by the City of Madras Public Works Director.

**k. 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.

**l. 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.

**m. Parks**

Areas and facilities reserved for public enjoyment, recreation, and/or preservation of wildlife or open space. The term parks may include developed recreation areas, as well as undeveloped or natural areas which provide some measure of recreation open space, or diversion from the urban environment.

**n. Permittee**

Means the 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.

**o. Qualified Public Improvements**

A capital improvement that is:

- (1) Required as a condition of development approval;
- (2) Identified in the capital plan adopted for such facilities; and
- (3) Not located on or contiguous to a parcel of land that is the subject of the development approval; or
- (4) 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.
- (5) For purposes of this definition, contiguous means in a public way which abuts the parcel.

**p. Reimbursement Fee**

A fee for costs associated with capital improvements already constructed, or under construction when the fee is established, for which the City of Madras determines that capacity exists.

**q. Residential Drainage Equivalent (R.D.E.)**

A unit of measure relating to the average area of impervious surface found in conjunction with a single-family residence on a residential lot.

r. **System Development Charges (SDC's)**

Charges imposed by the City of Madras to help mitigate the effects of stress, loading or demand placed by new development upon City systems or services.

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 sewer or water system connection charge that is greater than the amount necessary to reimburse the City for its average cost of inspecting and installing connections with water and sewer facilities. "System Development Charge" does not include 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 of conditions imposed by a land use decision.

s. **Suspended Solids (T.S.S.) (S.S.)**

The total suspended matter that floats on the surface of, or is suspended in water, wastewater or other liquids, and which is removable by laboratory filtering.

**SECTION 2: WATER**

The Common Council of the City of Madras may establish System Development Charges by resolution based upon the demand placed upon the water system for new development to provide adequate facilities for water treatment, water storage, water supply and water distribution necessary to accommodate the development. Such improvements may include but are not limited to replacement or enlargement of mains, construction or enlargement of storage facilities, addition or replacement of fire hydrants, providing necessary treatment facilities, and construction, improvement, or acquisition of sources of supply.

Where Systems Development Charges are apportioned to new development, they shall be based upon the expected demand to the system according to the equivalent demand of a single-family Equivalent Dwelling Unit where such demand is determined by the rated capacity of a standard residential meter of 20 gpm. Costs shall be apportioned to the Systems Development Charges for water based upon the

flow demand of the development proportional to the costs of systems improvements relative to the existing or projected system demands.

Therefore, one, water Equivalent Dwelling Unit (E.D.U.) equals 20 gpm capacity and Systems Development Charges for water shall be based upon the rated or design flows of the proposed development according to the E.D.U.'s. Each 20 gpm potential demand equals one E.D.U. and each fraction thereof shall be rounded up to one Equivalent Dwelling Unit.

### **SECTION 3: WASTEWATER**

The Common Council of the City of Madras may establish Systems Development Charges by resolution based upon the expected impact to the wastewater system from the new development, and to provide for capital improvements to the wastewater collection, transmission, treatment, and disposal systems necessary to provide for the development. Such improvements may include but are not limited to replacement or enlargement of mains, enlargement, expansion, or improvement of treatment facilities, increases in pumping capacity, increased or improved storage capacity, improvements of transmission facilities, and/or improvement, enlargement, or enhancement of disposal facilities.

When Systems Development Charges are apportioned for wastewater facilities to new developments they shall be based upon the expected demand to the wastewater system according to the demand equal to a single-family Equivalent Dwelling Unit (E.D.U.). When determining the E.D.U. impact upon the system at least the following criteria shall be considered: total daily flow, B.O.D. concentration, C.O.D. concentration, suspended solids concentration, and potential or actual toxicity of the expected discharge. For general purposes one E.D.U. assumes 360.5 gallons per day at a B.O.D. loading of 200 mg/l and a suspended solids loading of 216 mg/l. For industrial users the average between the C.O.D. concentration and B.O.D. concentration may be used for factoring the Equivalent Dwelling Unit.

For convenience, the City Council may establish a schedule for determining E.D.U.'s for normal residential, non-residential, and commercial uses based on experience with those uses. Such a schedule may be established by ordinance or resolution and may be amended from time to time as conditions warrant but shall not preclude setting E.D.U.'s according to actual wastewater discharges when there are unusual circumstances and/or when it would be in the City's best interest to do so.

All Systems Development Charges for wastewater assessed, collected, and disbursed shall be based upon a Public Facilities Plan or Wastewater Capital Improvement Plan for such facilities, and shall be determined according to the demand equal to one single-family Equivalent Dwelling Unit. Costs shall be apportioned to the Systems Development Charges for wastewater proportional to the costs of systems improvements relative to the existing or projected demands.

**SECTION 4: DRAINAGE AND FLOOD CONTROL**

Systems Development Charges for drainage and/or flood control may be established from time to time by resolution of the Common Council of the City of Madras.

Apportionment of Systems Development Charges for drainage and/or flood control shall be based upon the square footage of impervious surfaces proposed for any new construction, relative to the costs of providing drainage or flood control as may established in the Storm Drainage Capital Improvement Plan or the Public Facilities Plan.

Each 3,000 square feet of impervious surface within a proposed development shall be considered to be one Residential Drainage Equivalent (R.D.E.).

Where on-site drainage disposal is to be constructed along with a development, the Residential Drainage Equivalent Systems Development Charges may be reduced proportional to the expected effectiveness of the on-site drainage. In no case shall the credit for on-site disposal exceed ninety percent (90%) of the R.D.E. for the development.

**SECTION 5: TRANSPORTATION**

Charges for systems development for transportation facilities may be established from time to time by resolution of the Common Council of the City of Madras according to the expected impact of new development on the transportation system.

SDC's for transportation facilities may be applied to but shall not be limited to road improvements, mass transit facilities, bicycle trails or facilities, and pedestrian facilities as defined and identified in the Public Facilities Plan, or the Transportation Facilities Plan.

Charges for systems development for transportation shall be allocated to a proposed development based upon the relative impact of the development upon the transportation system against the costs described in the Public Facilities Plan or the

Transportation Facilities Plan. The criteria used when apportioning costs may include expected trip generation, parking spaces provided and/or other reasonable methods which may be established.

**SECTION 6: PARKS**

The City Council may establish from time to time by resolution, Systems Development Charges for the development and improvement of parks based upon the recognized need for parks and open space relative to the population. Such improvements may include, but are not limited to land acquisition, park improvements, recreation equipment, development of trails, and building construction.

Where SDC's are apportioned to new development for parks, they shall be based upon the expected demand for parks and recreation facilities according to the population increase resulting from the project with respect to the ratio of park costs to population.

Costs identified in the Public Facilities Improvement Plan or the Park and Recreation Facilities Plan, or as required in the Subdivision Ordinance, shall be used to compute park Systems Development Charges. The demand for park and recreation facilities may be expressed in Equivalent Dwelling Units (E.D.U.'s) where one E.D.U. would be the equivalent population of one single-family dwelling. The needs and costs for park and recreation facilities divided by the population of the City may be used as a basis for determining the cost per Equivalent Dwelling Unit for parks systems development.

**SECTION 7: CREDITS FOR DEVELOPMENT**

- (a) The City will provide a credit against an improvement fee for the construction of a qualified public improvement. A "qualified public improvement" means a capital improvement that is required as a condition of development approval, identified in the plan and list adopted pursuant to ORS 223.309 and either:
- (1) Not located on or contiguous to property that is the subject of development approval; or
  - (2) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

- (b) The credit provided for in Section 7 (a) above is only for the improvement fee charged for the type of improvement being constructed, and credit for qualified public improvements may be granted only for the cost of that portion of such 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 Section. The City may deny the credit provided for in this Section if the City demonstrates:
- (1) The application does not meet the requirements of Section 7 (a); or
  - (2) By reference to the list adopted pursuant to ORS 223.309, that the improvement for which credit is being sought was not included in the plan and list adopted pursuant to ORS 223.309.
- (c) When a proposed development shall construct or provide a portion of facilities identified in the Public Facilities Plan, Waster Systems Capital Improvement Plan, Wastewater Capital Improvement Plan, Transportation System Plan, Drainage and Flood Control Plan, or Parks and Recreation Plan, the City Council may elect to provide additional funds to enhance the facility in conformance with the appropriate plan. Such participation by the City may only be in excess of the developer's obligation according to this or other ordinances, and is generally referred to as a "Marginal Cost Method." The City will extend a credit whenever the cost of constructing a qualified public improvement exceeds the credit for the improvement fee, to future phases of the same development. The City will not allow for transferability of credits. The City may adopt from time to time by resolution, requirements and credit policy practices particular and/or unique to each City system.
- (d) When development, redevelopment or change in use occurs that is subject to a system development charge(s) (SDC), and SDC will be assessed for the net increase in use upon the system(s). If the new use or change in the use results in less demand upon the system, no SDC shall be required, and no refund or credit shall be given.

The City may provide a system development charge credit for any active use of the property during the 20 years immediately prior to the filing of the building permit application with the Jefferson County Building Department. No SDC credit shall be provided under this subsection if there has been no active use of the property for 20 years or more. The credit shall be based on the highest active use of the property within the last 20 years

from the date of the filing of the building permit application with the Jefferson County Building Department.

The applicant shall have the burden of substantiating any prior active use of property pursuant to the provisions of this section.

The Public Works Director shall make the final determination of any credit given for prior active use of property pursuant to the provisions of this section. An applicant may appeal the Public Works Director's final determination of prior use in accordance with the provisions of Section 10 of this ordinance.

[Subsection (d) added by Ordinance No. 851, Passed by Council on January 8, 2013]

#### **SECTION 8: ANNUAL UPDATES FOR INFLATION**

Oregon Revised Statutes, Section 223.304 (8)(b) allows that periodic adjustments to System Development Charges to reflect cost increases is allowed and not considered a change in the Systems Development Charges methodology. Therefore, the Common Council of the City of Madras finds that all Systems Development Charges levied by the City of Madras shall be automatically adjusted effective July 1, of each year, commencing July 1, 2006, for:

- (a) Changes in the cost of materials, labor or real property applied to projects or project capacity as set forth on Capital Improvement Plan(s) or Public Facility Plan(s) adopted by resolution of the Common Council; or
- (b) The application of one or more specific cost indexes or other periodic data sources. A specific cost index or periodic data source must be:
  - (1) 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;
  - (2) 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
  - (3) Shall be adopted from time to time by Resolution of the Common Council.

**SECTION 9: EXEMPTIONS**

- (a) Structures and uses established and existing on or before June 25, 1991 are exempt from a System Development Charge, except water and sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the water or sewer system.
- (b) 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.
- (c) A project financed by City revenues is exempt from all portions of the System Development Charge.
- (d) Sidewalks constructed upon City right-of-ways, required as a condition of development, shall not be included in calculating impervious surfaces for drainage impact SDC's. Such constructed sidewalks will not be subject to credits for transportation facilities SDC's.

**SECTION 10: APPEALS**

- (a) 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 and the expenditure from which the person appeals. An appeal of an expenditure must be filed within two (2) years of the date of the alleged improper expenditure.
- (b) Appeals of any other decision, which were required or permitted to be made by the applicant/developer under this ordinance must be filed with ten (10) days of the date of the decision.
- (c) After providing notice to the appellant, the Council shall determine whether the City's decision or the expenditure is in accordance with this ordinance and the provisions of ORS 223.297 to ORS 223.314 and may affirm, modify, or overrule the decisions. If the 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 Council shall be reviewed only as provided in ORS 34.010 to ORS 34.100, and not otherwise.

- (d) A legal action challenging the methodology adopted by the Council shall not be filed later than sixty (60) days after the 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.

**SECTION 11:            COLLECTION OF CHARGE**

- (a) The System Development Charge is payable upon issuance of:
- (1) A building permit (when issued by the City) or Construction Application approval by the City;  
  
[Section 11, Subsection (a), Item (1), Amended by Ordinance No. 814, Passed by Council on January 27, 2009]
  - (2) A development permit;
  - (3) A development permit for development not requiring the issuance of a building permit;
  - (4) A permit or approval to connect to the water system;
  - (5) A permit or approval to connect to the sewer system;
  - (6) A right-of-way access permit; or  
  
[Section 11, Subsection (a), Item (6), Amended by Ordinance No. 814, Passed by Council on January 27, 2009]
  - (7) As established by a System Development Charge Deferred Payment Agreement.  
  
[Section 11, Subsection (a), Item (7), Added by Ordinance No. 814, Passed by Council on January 27, 2009]

- (b) If no building, development, or connection permit is required, a System Development Charge will be payable at any time there has been a change of use of an improvement which creates additional demand on any capital improvement.

[Section 11, Subsection (b), Amended by Ordinance No. 833, Passed by Council on October 12, 2010]

- (c) If development is commenced or connection is made to the water or sewer systems without an appropriate permit, or a signed System Development Charge Deferred Payment Agreement, the System Development Charge is immediately payable upon the earliest date that a permit was required.

[Section 11, Subsection (c), Amended by Ordinance No. 814, Passed by Council on January 27, 2009]

- (d) The City Treasurer, Finance Director or designee shall collect the applicable System Development Charge from the permittee when a permit that allows building or development of a parcel is issued, when a connection to the water or sewer system of the City is made or as set forth in a System Development Charge Deferred Payment Agreement but not later than occupancy approval by the building official or nine months from the date of the Deferred Payment Agreement, whichever is earlier.

[Section 11, Subsection (d), Amended by Ordinance No. 814, Passed by Council on January 27, 2009]

- (e) Notwithstanding the above or as more specifically set forth in Section 14 Penalty, the City may withhold or terminate any City service until all appropriate SDC's have been paid in full. "Paid in full" means that City will have received either through a Bank Letter of Credit or cash, full cash payment of the SDCs.

[Section 11, Subsection (e), Amended by Ordinance No. 814, Passed by Council on January 27, 2009]

- (f) Time of payment. Payment in full can be accomplished by one of three means: (1) cash payment prior to issuance of a building permit (when issued by the City) or Construction Application approval by the City; (2) deferred payment agreement with Bank Letter of Credit ensuring full payment of deferred SDCs at the time an occupancy permit is issued by

the building official or nine months from the date of Deferred Payment Agreement, whichever is less; or (3) a System Development Charge Deferred Payment Agreement with conditions ensuring full payment of deferred SDCs at the time an occupancy permit is issued by the building official or nine months from the date of the Deferred Payment Agreement. The City Administrator shall develop a "System Development Charge Deferred Payment Agreement" subject to the terms, conditions and penalties herein described.

[Section 11, Subsection (f), Added by Ordinance No. 814, Passed by Council on January 27, 2009]

1. Cash Payment. SDCs paid in full prior to issuance of a building permit or as required at the time of approval for a change in use as described in Section 2-7.11 (b), shall be discounted by the current interest earned by the City through the Local Government Investment Pool, not to exceed five percent (5%). The discount shall be based on the reported rate on the day the SDC is paid, as determined by the City's Finance Director.

[Section 11, Subsection (f), Item 1, Added by Ordinance No. 814, Passed by Council on January 27, 2009]

2. Deferred Payment Agreement with Bank Letter of Credit for improvements. The Owner may elect to defer payment of SDCs until occupancy is approved by the building official, or nine months from the date of the System Development Charge Deferred Payment Agreement, whichever is less, by providing the City with a

Bank Letter of Credit that ensures payment in full of the SDC within the time limits herein described. The Bank Letter of Credit must be in a form approved by the City Attorney and assure that the City at its sole option can exercise the Bank Letter of Payment for Payment in Full of the required SDCs. The Owner must complete, sign and record with the City a "System Development Charge Deferred Payment Agreement." The Owner is responsible for all costs associated with the Bank Letter of Credit. There is no discount for SDCs paid in this manner. By signing the System Development Charge Deferred Payment Agreement the Owner agrees to the amounts of the System Development Charges described on the Agreement and waives all future right to appeal said System Development Charges.

[Section 11, Subsection (f), Item 2, Added by Ordinance No. 814, Passed by Council on January 27, 2009]

[Section 11, Subsection (f), Item 2, Amended by Ordinance No. 833, Passed by Council on October 12, 2010]

3. Changes of Use System Development Charge Installment Payment Agreement. When there is a Change of Use as described in Section 2-7.11 (b), the Owner may elect to pay the required SDCs in monthly installments not to exceed 60 months and with the conditions set forth by this Ordinance.

[Section 11, Subsection (f), Item 3, Added by Ordinance No. 833, Passed by Council on October 12, 2010]

4. Deferred Payment Agreement with Property Lien and Personal Guarantee for Improvements. The Owner may elect to defer payment of SDCs until occupancy is approved by the building official or nine months from the date of the deferred payment agreement, whichever is less, by:

[Section 11, Subsection (f), Item 3 (now Item 4), Added by Ordinance No. 814, Passed by Council on January 27, 2009]

[Section 11, Subsection (f), Item 4 (formerly Item 3), Amended by Ordinance No. 833, Passed by Council on October 12, 2010]

- (A) Completing and filing with the City a "System Development Charge Deferred Payment Agreement";

[Section 11, Subsection (f), Item 3(A) (now Item 4 (A)), Added by Ordinance No. 814, Passed by Council on January 27, 2009]

- (B) Agreeing to and paying the cost for a lien to be placed on the property for full payment of the SDCs and any other cost recoverable by City ordinance including interest, legal fees and administrative charges;

[Section 11, Subsection (f), Item 3(B) (now Item 4(B)), Added by Ordinance No. 814, Passed by Council on January 27, 2009]

- (C) Providing the City with a signed Personal Guarantee as an additional assurance that the SDCs will be paid in full when occupancy is approved by the building official or nine months from the date of the Deferred Payment Agreement, whichever is earlier;

[Section 11, Subsection (f), Item 3(C) (now Item 4 (C)), Added by Ordinance No. 814, Passed by Council on January 27, 2009]

- (D) Owner shall not request an Occupancy Permit or Certification from the Building Official until payment in full of the SDCs (and any additional sanctions described in Section 14 Penalty) is made to the City;

[Section 11, Subsection (f), Item 3(D) (now Item 4 (D)), Added by Ordinance No. 814, Passed by Council on January 27, 2009]

- (E) Owner agrees not to occupy structure or transfer ownership of property prior to satisfying the City's requirement of payment in full of the required SDCs (and any additional sanctions described in Section 14 Penalty);

[Section 11, Subsection (f), Item 3(E) (now Item 4 (E)), Added by Ordinance No. 814, Passed by Council on January 27, 2009]

- (F) Owner agrees to disclose the System Development Charge Deferred Payment Agreement to any lender or other individual or entity with a financial, ownership, or possessory interest in the property, and;

[Section 11, Subsection (f), Item 3(F) (now 4 (F)), Added by Ordinance No. 814, Passed by Council on January 27, 2009]

- (G) By signing the System Development Charge Deferred Payment Agreement the Owner agrees to the amounts of the System Development Charges described on the Agreement and waives all future right to appeal said System Development Charges. There is no discount for SDCs paid in this manner.

[Section 11, Subsection (f), Item 3(G) (now Item 4 (G)), Added by Ordinance No. 814, Passed by Council on January 27, 2009]

5. Change of Use System Development Charge Installment Payment Agreement. The Owner may elect to make installment payments of SDCs required by a Change of Use, by:
  - (A) completing and filing with the City a “Change of Use System Development Charge Installment Payment Agreement”;
  - (B) agreeing to and paying the cost for a lien to be placed on the property for full payment of the SDCs and any other cost recoverable by City ordinance including interest, legal fees, and administrative charges;
  - (C) providing the City with a signed Personal Guarantee as an additional assurance that the SDCs will be paid in full by the 60<sup>th</sup> month of the date of the Change of Use System Development Charge Installment Payment Agreement;
  - (D) Owner agrees not to transfer ownership of property prior to satisfying the City’s requirement of payment in full of the required SDCs (and any additional sanctions described in Section 14, Penalty);
  - (E) Owner agrees to disclose the Change of Use System Development Charge Installment Payment Agreement to any lender or other individual or entity with a financial, ownership, or possessory interest in the property, and;
  - (F) By signing the Change of Use System Development Charge Installment Payment Agreement, the Owner agrees to the amounts of the System Development Charges described on

the Agreement and waives all future right to appeal said System Development Charges. There is no discount for SDCs paid in this manner.

[Section 11, Subsection (f), Item 5, Sub-items A, B, C, D, E, and F added by Ordinance No. 833, Passed by Council on October 12, 2010]

- (g) Temporary Change of Use. Notwithstanding Section 2-7-11 (b), SDCs are not required for a Temporary Change of Use. The following conditions must be met in order to qualify as a Temporary Change of Use:
- The change of use cannot exceed 24 months.
  - There can be no structural changes to the existing building, such as a drive up window. Interior modifications such as installing office walls and doors are not considered structural modifications for the purpose of defining a Temporary Change of Use.
  - Must be a use already allowed in the planning Zone.
  - Cannot add more than 30 peak hour trips or increase PHTs by more than 33% above that already approved for the existing improvement and use.
  - There can be only one “temporary” change of use deferral in any five year period.
  - Multiple Temporary Changes of Use at the same time are not allowed.
  - The property owner must enter into a Temporary Change of Use Deferred Payment Agreement that includes a personal guarantee and understands that in the event the temporary use conditions are violated the City shall place a lien on the property (see payment in full) and withhold issuance of City business licenses for business activities at the premises, withhold water and wastewater services for the Premises and to the extent allowed by law withhold issuance of occupancy or use permits at the Premises.
  - Pay for and agree to the filing of a property lien that recognizes the deferred payment agreement.

[Section 11, Subsection (g), Added by Ordinance No. 833, Passed by Council on October 12, 2010]

**SECTION 12:        SEGREGATION AND USE OF REVENUE**

- (a) All funds derived from a particular type of System Development Charge are to be segregated by accounting practices from all other funds of the City. That portion of the System Development Charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in Sections 2, 3, 4, 5 and 6 of the ordinance.
- (b) The appropriate city official shall provide the City Council with an annual accounting, based on the City'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 13:        NOTICE**

- (a) The City shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any System Development Charge. Written notice shall be mailed to persons on the list at least ninety (90) days prior to the first hearing to adopt or amend a System Development Charge. The methodology supporting the adoption or amendment shall be available at least sixty (60) days prior to the first hearing to adopt or amend a System Development Charge. The failure of a person on the list to receive a notice that was mailed shall not invalidate the action of the City.
- (b) The City may periodically delete names from the list, but at least thirty (30) days prior to removing a name from the list, the City must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

**SECTION 14:      PENALTY**

Violation of Section 11 of this ordinance is punishable by a fine not to exceed \$300.00 per day. In addition, if the Owner elects to utilize a System Development Charge Deferred Payment Agreement for improvements, a Change of Use Systems Development Charge Installment Payment Agreement, or a Temporary Change of Use Systems Development Charge Deferred Payment Agreement the following additional sanctions shall be imposed for failure to abide by the terms of the agreement:

[Amended by Ordinance No. 814, Passed by Council on January 27, 2009]

[Amended by Ordinance No. 833, Passed by Council on October 12, 2010]

- a. A lien shall be placed on the property for the amount of any unpaid SDCs with the Owner responsible for all costs associated with recording the lien (if not already in-place).

[Section 14, Item a, Added by Ordinance No. 814, Passed by Council on January 27, 2009]

- b. Termination of all water and sewer services to the property.

[Section 14, Item b, Added by Ordinance No. 814, Passed by Council on January 27, 2009]

- c. The City shall withhold any business licenses for business activities at the Property.

[Section 14, Item c, Added by Ordinance No. 814, Passed by Council on January 27, 2009]

- d. The City shall impose a 25% surcharge to the total System Development Charge (subject to adjustment by the City Administrator for extenuating circumstances).

[Section 14, Item d, Added by Ordinance No. 814, Passed by Council on January 27, 2009]

- e. Interest (equal to the prime lending rate plus 2.5%) will accrue from the time of Certificate of Occupancy or within nine (9) months of the Deferred Payment Agreement for improvements, whichever is earlier to the time of payment in full; for Change of Use System Development Charge Installment Payment Agreement from the date an installment payment is due to the time installment payments are current or the SDCs are paid in full; and for a Temporary Change of use System Development Charge Deferred Payment Agreement from the initial date of the agreement.

[Section 14, Item e, Added by Ordinance No. 814, Passed by Council on January 27, 2009]

[Section 14, Item e, Amended by Ordinance No. 833, Passed by Council on October 12, 2010]

- f. Payment of any legal fees and administrative costs incurred by the City for enforcement of the Agreements described in this Ordinance and collection of the required SDCs.

[Section 14, Item f, Added by Ordinance No. 814, Passed by Council on January 27, 2009]

[Section 14, Item f, Amended by Ordinance No. 833, Passed by Council on October 12, 2010]

- g. To the extent allowed by law, the City shall withhold a final occupancy permit.

[Section 14, Item g, Added by Ordinance No. 814, Passed by Council on January 27, 2009]

- h. Failure to abide by the terms of the Deferred Payment Agreement for improvements, the Change of Use System Development Charge Installment Payment Agreement or the Temporary Change of Use System Development Charge Deferred Payment Agreement shall exclude the Owner from entering into future System Development Charge Deferral or Installment Agreements with the City of Madras.

[Section 14, Item h, Added by Ordinance No. 814, Passed by Council on January 27, 2009]

[Section 14, Item h, Amended by Ordinance No. 833, Passed by Council on October 12, 2010]

**SECTION 15:        CONSTITUTIONALITY**

If any provision, section, sentence or phrase of this ordinance shall for any reason be adjudged or declared by a court of competent jurisdiction to be unconstitutional or invalid, such judgment or decision shall not affect the validity of the remaining portions of this ordinance.

**SECTION 16:        REPEALING CLAUSE**

Ordinance No. 538 and all other ordinances or parts of ordinances in conflict herewith, are hereby repealed as of the effective date of this ordinance.

**SECTION 17:        EFFECTIVE DATE – EMERGENCY CLAUSE**

In order to protect the health, welfare, and safety of the citizens of the City of Madras, an emergency is hereby declared to exist and this ordinance shall be in full force and effect after its passage by the Council and upon its approval by the Mayor.

**SECTION 18:        ADOPTED**

**PASSED** by the Council and signed by the Mayor February 14, 2006.