

CHAPTER 11

INFRASTRUCTURE

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Article 11.05

SYSTEM DEVELOPMENT CHARGES

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11.05.010 Purpose.

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

(Ord. No. 1773, Enacted, 07/01/2017)

11.05.020 Definitions.

In addition to the definitions set forth in GRC 1.05.010, unless the context requires otherwise, for purposes of this article, the following mean:

Allocated System Capacity. The system capacity that the manager determines that a specific property may utilize subject to compliance with applicable laws and payment of user fees. The allocated system capacity shall be based on the SDC methodology in effect at the time of the determination.

Capital Improvement. Facilities or assets used for the following:

- (1) water supply, treatment, and distribution;
- (2) wastewater collection, transmission, treatment, and disposal;
- (3) stormwater including drainage, water quality, and flood control;
- (4) transportation; or
- (5) parks and recreation including trails and city managed open spaces.

Improvement Fee. The fee for costs associated with capital improvements to be constructed.

Qualified Public Improvements. 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.

Reimbursement Fee. The fee for costs associated with capital improvements already constructed, or under construction when the fee is established, for which the city determines that unallocated system capacity exists.

System. Capital improvements owned or operated by the City of Gresham to provide the services for which a system development charge is collected.

System Development Charge (SDC). A reimbursement fee, an improvement fee, or a combination thereof assessed or collected at the time of increased usage of a capital improvement or issuance of a building permit.

System Development Charge (SDC) Credit. The amount, expressed in units or dollars, which can be applied to the improvement fee portion of a

system development charge, based on the construction of a qualified public improvement or as otherwise authorized by this article.
(Ord. No. 1773, Enacted, 07/01/2017)

11.05.030 Authorized Expenditure of System Development Charges.

(1) A reimbursement fee system development charge may be spent only on capital improvements associated with the systems for which the fees are assessed including expenditures relating to repayment of indebtedness.

(2) An improvement fee system development charge may be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity may be established if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to the need for increased capacity to provide service for future users.

(3) Any capital improvement being funded wholly or in part with system development charge revenues must be included in the plan and list that meets the requirements of ORS 223.309.

(4) System development charge revenues may also be expended on the cost of a master plan for a system, the design of capital improvements to be built with SDC revenue, and the cost of complying with the provisions of ORS 223.297 to 223.314, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.

(5) System development charges may not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements or for the expenses of the operation or maintenance of the systems.
(Ord. No. 1773, Enacted, 07/01/2017)

11.05.040 System Development Charge Methodology.

The methodology by which the amount of the system development charge is determined shall be set by council resolution.
(Ord. No. 1773, Enacted, 07/01/2017)

11.05.050 Payment of System Development Charges.

(1) For construction, system development charges are due upon issuance of the initial structural building permit, except when a shell building is being constructed for later improvement. In that case, Transportation SDC's will be due upon issuance of the initial tenant improvement building permit for each tenant space as it is developed.

(2) System development charges unrelated to construction, including but not limited to a change in use or operations, or an improvement that does not require a structural building permit, which increases the utilization of the system, are due at the time of change or improvement.

(3) System development charges for manufactured homes are due upon placement of the manufactured home.
(Ord. No. 1773, Enacted, 07/01/2017)

11.05.060 System Development Charge Credits.

(1) Upon acceptance for ownership and operation, an SDC credit shall be given for a qualified public improvement as described in the applicable SDC methodology in effect at the time the associated development permit is issued.

(2) Upon recording in the deed records, an SDC credit shall be given for the conveyance or dedication of land or easement necessary for the future construction of capital improvements, or a conservation easement, as described in the applicable SDC methodology.

(3) (a) An SDC credit shall be given for the following:

(i) site-specific park master plan;

(ii) park conceptual site design; or

(iii) engineered plans and specifications for a qualified public improvement, provided that the manager has entered into an agreement with the person receiving the SDC credits related to preparing the engineered plans and specification.

(b) The manager shall issue the SDC credits for plans only if the project is included in the applicable SDC project list and

(i) the plan, design, and specifications are in compliance with all applicable standards;

(ii) the plan, design, and specifications are submitted to and approved by the manager;

(iii) the plan, design, and specifications are submitted in a format specified by the manager; and

(iv) the city has received full ownership of or, at the option of the city, an unrestricted license to use, all work products related to the plan, design and specification, executed by the licensed design professional, the client of the design professional, and the person that will receive the SDC credit.

(4) The SDC credit for a qualified public improvement shall not exceed the amount that is included in the project list for the applicable SDC methodology in effect at the time the associated development permit is issued.

(5) Council, when forming a local improvement district (GRC Article 11.10) or a reimbursement district (GRC Article 11.15), may provide that a property required to pay a local improvement district assessment or reimbursement district charge may receive system development charge credits in an amount based on the extent the applicable improvement

was included in the methodology establishing the system development charge.

(6) The SDC credit for qualified public improvements may only be used for the improvement fee portion of the system development charge. Notwithstanding ORS 223.304(5), the SDC credit may be granted for the cost of that portion of such improvement that includes the governmental unit’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.

(7) SDC credits shall expire 10 years from the date the credit is issued.

(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1773, Enacted, 07/01/2017)

11.05.070 System Development Charges Attach to the Land.

(1) A system development charge shall be the obligation of the property for which an SDC is due and shall not be personal to the person paying the system development charge. System development charges shall be a lien on the property from the date due. The lien may be foreclosed in any manner provided by ORS 223.505 to ORS 223.650 or as otherwise provided by law.

(2) SDC credits and allocated system capacity shall not be personal to any person but shall run with the land and shall not be transferred to other properties, except as follows:

(a) An SDC credit in an amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, may be applied against improvement fees that accrue in subsequent phases of an original development that is a “phased development project” or “phased subdivision” as defined by the Gresham Community Development Code.

(b) The manager may authorize a transfer of SDC credits to other properties if the public interest would be furthered by the transfer. In the event the SDC methodology includes an area specific SDC, transfers are limited to the area in which the development is located.

(3) The city owns the system, system capacity, and allocated system capacity. The property, and the owner(s) or tenant(s) of the property, shall have no right, title, or interest of any kind in the system, system capacity, and allocated system capacity except having use of the system subject to compliance with applicable laws and payment of user fees.
(Ord. No. 1773, Enacted, 07/01/2017)

11.05.080 Determination of Allocated System Capacity.

(1) Upon receipt of an application that may result in the payment of a system development charge, the manager shall make a written determination of the current allocated system capacity for the subject property. The manager shall base the determination on the property's current or past use of each system, whichever is larger, and such other information that is known and reasonably available to the manager. The applicant may submit information to the manager regarding a property's allocated system capacity, including but not limited to information about the subject property's use of the system since, but not before, the initial adoption of the associated SDC.

(a) If the determination of proposed allocated system capacity is greater than the current use of system capacity, no refund of previously paid system development charges shall be made.

(b) If the determination of proposed allocated system capacity is less than the current use of system capacity, no system development charge shall be due except for any portion of the current use that was an unauthorized or illegal use of the system.

(2) Unrelated to a development application, the manager may determine, or any person may

request the manager to determine, a property's allocated system capacity. The fee for a request for determination shall be set by council resolution.

(3) Unauthorized or illegal uses of a system shall not accrue allocated system capacity.
(Ord. No. 1773, Enacted, 07/01/2017)

11.05.090 Deferral and/or City Financing of System Development Charges.

(1) The council, by resolution, shall establish a program for the deferral and/or financing of system development charges by the city consistent with good business practices, state law and the goal of promoting economic development.

(2) Except as otherwise provided in the resolution, financing shall be in the same manner as provided for the financing of assessments for local improvements. Foreclosure of SDC financing agreements shall occur in the same manner as foreclosure of assessments.

(3) The city does not waive its priority lien position with regards to deferral and/or financing of system development charges unless specifically authorized in the SDC deferral or financing agreement and adequate alternative security, as determined by the manager, is provided.

(4) The council, by resolution, may establish fees for the deferral, financing or apportionment of system development charges.
(Ord. No. 1773, Enacted, 07/01/2017)

11.05.100 Review Procedures.

(1) A person may challenge the calculation of a system development charge, the calculation of allocated system capacity, or the propriety of an expenditure of system development charge revenues.

(2) The manager's decision regarding the calculation of a system development charge or allocated system capacity may be protested to a hearings officer in the manner and time provided by GRC 7.50.030. The manager shall give

adequate notice regarding the procedure for review.

(3) A decision regarding an expenditure may be appealed to council on the record pursuant to GRC 1.05.025. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure.

(4) The decision maker shall determine whether the calculation, allocation, or expenditure is in accordance with this article and the provisions of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decision. If the decision maker determines that there has been improper expenditure of system development charge revenues, a sum equal to the misspent amount must be deposited within one year to the credit of the account or fund from which it was spent.

(5) In the decision regarding the calculation of a system development charge, the decision maker shall advise the person of the right to petition for review pursuant to ORS 34.010 to 34.100.

(Ord. No. 1773, Enacted, 07/01/2017)

Article 11.10

LOCAL IMPROVEMENT DISTRICT ASSESSMENTS AND LIENS

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11.10.010 Initiation.

(1) The council may initiate any public street, park, trail, open space, water, wastewater, sidewalk, stormwater or other local improvement

district on its own motion or upon the petition of the owners of a majority of the square footage of real property in the proposed local improvement district. The improvement shall be paid for in whole or in part by special assessment according to benefit.

(2) A district may include lots and parcels within the corporate limits of the city and within the city’s urban service area boundary as shown on the Gresham Urban Services Boundary map, Appendix B, Volume 2, Policies, Gresham Community Development Plan. (Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1773, Enacted, 07/01/2017)

11.10.015 Multiple Owners.

For purposes of initiation and remonstrances, multiple owners of a single lot or parcel have a total of one "vote" and their single "vote" shall be divided according to ownership percentage. (Ord. No. 1773, Enacted, 07/01/2017)

11.10.020 Report.

The manager shall make a written preliminary engineering report for the proposed local improvement project, which shall contain the following:

(1) A map or plat showing the general nature, location and extent of the proposed improvement, the lots or parcels and the city adopted plan designation of the land to be assessed for the payment of any part of the cost.

(2) An estimate of the cost of the improvement, including, but not limited to master planning, construction and any legal, administrative and engineering costs attributable to the improvement.

(3) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the properties specially benefited.

(4) An estimate of the assessment amount for each benefited lot and parcel based on the recommended method of assessment.

(5) The description and assessed value of each lot, parcel of land, or portion thereof, to be specially benefited by the improvement, with the names of the record owners and, when available, the names of any contract purchasers.

(6) A statement of outstanding assessments against the property to be assessed.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.025 Informational Meeting.

(1) After completion of the report and at least 14 days prior to council action on the report pursuant to GRC 11.10.030, the lead petitioner shall conduct an informational meeting regarding the proposed local improvement district. The lead petitioner shall mail a Notice of Informational Meeting to the owners of record of all properties within the proposed local improvement district at least 14 days prior to the informational meeting. The notice shall contain the time and place of the meeting and such additional information as directed by the manager. A signed affidavit of mailing shall be submitted to the city within five days of mailing the notice. At the informational meeting, the lead petitioner shall describe the proposed local improvement district, city staff shall explain the local improvement district process, and all owners and/or their representatives may comment and/or request additional information. The lead petitioner shall submit to the manager an attendee sign-in sheet and meeting notes within 10 days of the meeting.

(2) If the council initiates the local improvement district on its own motion, the manager shall conduct the informational meeting as provided in GRC 11.10.025(1).
(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1773, Enacted, 07/01/2017)

11.10.030 Council Action on Report.

The council may approve the report, modify the report and approve it, or abandon the proposed local improvement.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.040 Resolution of Intent to Form Local Improvement District.

(1) If council approves the report or modifies and approves the report, council shall declare by resolution its intention to make the local improvement by formation of a local improvement district. This resolution shall include specific findings stating the reasons it is in the public interest to proceed with the local improvement. The resolution shall include the engineering report as approved or modified, and the estimated costs assigned to each parcel.

(2) In the resolution declaring the intent to form a local improvement district, the council may provide that the engineering and construction work shall be done in whole or in part by the city, by a contract, by another governmental agency, or by any combination thereof.
(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1773, Enacted, 07/01/2017)

11.10.045 Notice of Public Hearing.

(1) Notice of public hearing shall be provided by mail and publication as provided by this section.

(2) The published notice and mailed notice shall state:

(a) the report on the improvement is subject to public examination in the Gresham City Hall and include a link on the city's website where it may be accessed;

(b) the council will hold a public hearing on the proposed improvement on a specified date, which shall not be earlier than 14 days following the publication of notice, at which time objections and remonstrances to the improvement will be heard;

(c) if there are valid written remonstrances from both 1) the owners of a majority of the square footage of real property in the proposed local improvement district and 2) the owners of a majority of the lots and parcels in the proposed local improvement district, then no further action to affect the improvement will be taken for six months;

(d) the estimated total cost of the improvement to be paid by special assessment;

(e) an estimate of the cost to each property specially benefited; and

(f) a legal description of the specific property to be specially benefited by the improvement.

(3) The published notice shall contain a general description of the project together with:

(a) a map showing the boundaries of the local improvement district and the lots as shown on the Multnomah County Assessor's map, or

(b) a general description of all the property to be specially benefited by the improvement, including a list of the owners of the property. The published notice need not contain the item described in GRC 11.10.045(2)(f).

(4) The published notice shall provide contact information for property owners to request a copy of the report or additional information.

(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1773, Enacted, 07/01/2017)

11.10.050 Hearing.

At the time set forth in the notice pursuant to GRC 11.10.045, council will hold a public hearing on the proposed improvement at which time objections and remonstrances to the improvement will be heard.

(Ord. No. 1773, Enacted, 07/01/2017)

11.10.055 Resolution Forming the Local Improvement District.

If at the time of the public hearing on the proposed local improvement the number of valid written remonstrances is less than a majority from both 1) the owners of a majority of the square footage of real property in the proposed local improvement district and 2) the owners of a majority of the lots and parcels in the proposed local improvement district, the council may, by resolution, form the local improvement district and authorize the improvement to be carried out in accordance with the resolution declaring the intent to form the local improvement district. Unless the time period is extended by council, the resolution shall be adopted within 60 days of the hearing. The resolution may specify the time period for the manager to commence and complete construction of the improvement.

(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1773, Enacted, 07/01/2017)

11.10.060 Estimated Assessment.

The city may elect to make an estimated assessment for the local improvement at any time after forming the local improvement district and prior to completion of the project. The estimated assessment shall follow the procedures for making the final assessment as provided in GRC 11.10.140. Upon completion of the project, the city shall make the final assessment. The estimated assessment resolution may be adopted at the same council meeting as the formation resolution.

(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1773, Enacted, 07/01/2017)

11.10.070 Call for Bids.

The council may direct the manager to advertise for proposals for engineering and bids for construction of all or any part of the local improvement project at any time after council initiates the local improvement district. No contract for engineering or construction of the improvement may be entered into until after the local improvement district is formed. When the proposed project is to be carried out in cooperation with any other governmental agency,

the manager may adopt the plans, specifications, and estimates of the agency. Either agency may bid the project.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.080 Financing Resolution.

The council may provide by resolution for the financing of the local improvement by authorizing warrants or bonds pursuant to the applicable provisions of ORS Chapter 287A and ORS 223.235. The financing resolution may be adopted at the same council meeting as the formation resolution, but the two actions shall not be combined into a single resolution.
(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1773, Enacted, 07/01/2017)

11.10.090 Proposed Assessment.

After the work is done and the actual cost is known, the manager shall prepare the proposed assessment for all property within the assessment district. The proposed assessment shall be presented to council for review.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.095 Proposed Assessment Hearing.

After review by council, notice of the proposed assessment shall be mailed to the owner of each property to be assessed. Council shall hold a public hearing to receive objections to the proposed assessments. Each notice shall state the amount of assessment proposed on that property, the date by which objections must be filed with the manager, and the date, time and place a public hearing will be held to receive objections to the proposed assessment. All objections shall be in writing and state the grounds of the objections.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.100 Assessment Resolution.

After the public hearing, council shall consider all objections and may adopt, correct, or revise the proposed assessments. The council shall determine the amount of the final assessment to be charged against each property within the district, according to the special and peculiar benefits accruing to the property from the local improvement, and shall levy the final assessment by resolution.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.110 Method of Assessment.

In assessing the costs of the local improvement, the council may:

(1) use any just and reasonable method of determining the extent of an improvement district consistent with the benefits derived;

(2) use any just and reasonable method of apportioning the sum to be assessed among the properties determined to be specially benefited; and

(3) authorize payment by the city of all or part of the cost of the improvement when, in the opinion of the council, the topographical or physical conditions, or unusual or excessive public travel, or other character of the work involved warrants only a partial payment or no payment of the total costs of the improvement by the benefited property.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.120 Alternate Financing Methods.

(1) Nothing contained in GRC 11.10.110 shall preclude the council from using any other available means of financing local improvements, including but not limited to city funds, federal or state grants-in-aid, user charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance. In the event that such other means of financing improvements are used, the council may make assessments according to the benefits derived to pay any remaining part of the total costs of the improvement.

(2) The council, in the resolution forming the local improvement district, may provide that a property required to pay a local improvement district assessment may receive system development charge credits in an amount based on the extent the improvement was included in the methodology establishing the system development charge. The credit shall only be applied to the improvement fee system development charge collected for the type of improvement being constructed and only in the amount the improvements is funded with system development charges in the SDC Methodology.

Alternately, council may provide that system development charges paid may offset an equal amount of the local improvement district assessment to the extent the improvement was included in the methodology establishing the system development charge.

(Ord. No. 1773, Enacted, 07/01/2017)

11.10.130 Remedies.

Subject to the curative provisions of GRC 11.10.250 and the rights of the city to reassess as provided in GRC 11.10.210 and GRC 11.10.220, legal actions may be filed not earlier than 30 days nor later than 60 days after the adoption of an assessment resolution as provided in GRC 11.10.100. A property owner who has filed written objections with the manager within the time provided may apply for a writ of review on the grounds that the council acted erroneously, arbitrarily, or exceeded its jurisdiction if the facts supporting the grounds have been specifically set forth in the written objections. A property owner who has filed written objections with the manager prior to the adoption of the assessment resolution may commence an action for equitable relief on the grounds that the city is without jurisdiction. No provision of this section shall lengthen any period of redemption or affect the running of any statute of limitation. Any writ of review or legal action shall be abated if the council acts to remedy or cure the alleged errors or defects.

(Ord. No. 1773, Enacted, 07/01/2017)

11.10.140 Notice of Assessment.

Within 14 days of adoption of the assessment resolution, the manager shall cause notice of the final assessment. The notice shall identify the local improvement for which the assessment is to be made, each lot to be assessed, and the final assessment for each lot. The notice shall state that the owner of any property to be assessed shall have the right to make application to the city for payment of the final assessment in installments as provided in ORS 223.210. The notice shall also state that if neither payment in full nor an application for installment payments is made within 20 days from the date of the notice, interest will be charged on the assessment from the date of adoption of the assessment resolution and the

property assessed will be subject to foreclosure. The notice shall be sent by certified and regular mail or personally delivered to the owner of each lot or parcel to be assessed. The city may also post the assessments in three public places and/or publish in the newspaper of record.

(Ord. No. 1773, Enacted, 07/01/2017)

11.10.150 Bancroft Bonding Act.

(1) The city adopts the definitions contained in the Oregon Bancroft Bonding Act and shall follow its provisions as they relate to local improvements except for the provisions of ORS 223.285 or to the extent the provisions of state law conflict with GRC Article 11.10.

(2) As used herein Bancrofted Assessments mean assessments that will be paid in installments. NonBancrofted Assessments means assessments that will not be paid in installments.

(Ord. No. 1773, Enacted, 07/01/2017)

11.10.160 Authority to Issue Bonds.

(1) The manager may issue local improvement bonds upon the receipt of eligible applications that total \$25,000 or more and if it is in the best interest of the city.

(2) The terms of each bond sale shall be determined by council at the time of issuance.

(Ord. No. 1773, Enacted, 07/01/2017)

11.10.170 Lien Records and Recording.

After enactment of the assessment resolution, the manager shall enter in the docket of city liens a statement of the amounts assessed against each lot, parcel of land, or portion of land, together with a description of the local improvement, the name of the owners, and the number and date of the assessment resolution. Upon entry in the city lien docket the amount entered shall become a lien against the respective lots, parcels of land, or portions of land that have been assessed for the improvement. All assessment liens of the city shall be superior and prior to all other liens or encumbrances on property as permitted by state law. The manager may also record the

assessment resolution in the Multnomah County deed records.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.180 Interest.

Interest shall be charged on all applications to pay assessments for local improvements in installments as provided by state law. The interest rate shall apply to unpaid assessments or installments. The rate shall be uniform for all assessments within a local improvement district for each bond issue.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.190 Interest Rates and Penalty Fees.

The council may establish, in the assessment resolution, or by other resolution, interest rates, penalties, late payment charges, and collection charges on bonded and unbonded assessments. The interest rate shall take into account the city's financial and administrative costs relating to assessments, issuance of bonds and collection.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.200 Errors in Assessment Calculations.

Alleged errors in the calculation of assessments shall be brought to the attention of the manager, who shall determine whether there has been an error in fact. If the manager finds that there has been an error, the manager shall recommend to the council an amendment to the assessment resolution to correct the error. Upon adoption of the amendment, the manager shall make the necessary correction in the docket of city liens and mail correct notices of assessment to affected property owners.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.210 Deficit Assessment.

(1) If an assessment is made before the total cost of the local improvement is ascertained, and it is found that the amount of the assessment is insufficient to pay the costs of the improvement, the council may by motion declare the deficit and instruct the manager to prepare a proposed deficit assessment. The council shall set a time for a hearing of objections to the deficit assessment

and direct the manager to give notice according to GRC 11.10.140.

(2) After a hearing, the council shall consider any objections and make an equitable deficit assessment by resolution, which shall be entered in the docket of city liens as provided by GRC 11.10.170. The notice of the deficit assessment shall be published and mailed, and the collection of the assessment shall be made in accordance with GRC 11.10.170 and GRC 11.10.180.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.220 Reassessment.

When an assessment or deficit assessment for any local improvement which has been made by the city is set aside, or its enforcement restrained by any court, or when the council questions the validity of the assessment or deficit assessment, the council may make a reassessment in the manner provided by state law.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.230 Rebates.

If the assessment levied is greater than the actual costs of the local improvement, the council shall determine the amount and declare it by resolution. When so declared, the excess amounts shall be entered on the lien docket as a credit against the appropriate assessment. If an assessment has been paid, the property owner who paid the assessment shall be entitled to repayment of the excess or the portion that exceeds the amount unpaid on the original assessment.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.240 Abandonment.

The council may abandon local improvements made under this chapter at any time prior to the completion of the improvements. If liens have been assessed against any property, they shall be canceled, and any payments made on the assessments shall be refunded.
(Ord. No. 1773, Enacted, 07/01/2017)

11.10.250 Curative Provision.

No local improvement assessment shall be invalid because the manager's report fails to contain all of the information required by GRC 11.10.020; or because the declaring resolution, the assessment resolution, the lien docket or required notices do not contain the required information; or by the failure to list the name of, or mail notice to, the owner of any property as required by GRC 11.10.040, GRC 11.10.090 and GRC 11.10.140; or by reason of any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps specified. The council may correct all assessments that are unfair or unjust. (Ord. No. 1773, Enacted, 07/01/2017)

11.10.260 Bancrofted Assessments.

(1) Before property owners are issued property related permits, owners must make all Bancrofted assessment accounts current for all their accounts with the city. Bancrofted assessment accounts must be current prior to individual sales of property.

(a) Property related permits include development permits, building permits, wastewater permits, water permits, stormwater permits, driveway permits, sidewalk permits, and street opening permits.

(b) To make a Bancrofted assessment account current, all delinquent principal, interest, and penalties must be paid.

(2) For a land division, if the assessment balance is made current, the remaining principal balance of the assessment may be apportioned among the newly created lots according to the percent of benefit to each lot. The manager shall determine the percent of benefit to the newly created lots. A land division shall include a partition, subdivision, or condominium plat.

(3) If property owners wish to divide parcels of land and to have assessment balances apportioned among the newly created lots, they must make such requests in writing.

(4) The council may establish by resolution a breakout fee for apportioning the assessment balance among the newly created lots. (Ord. No. 1773, Enacted, 07/01/2017)

11.10.270 NonBancrofted Assessments.

(1) NonBancrofted assessments are due in full 30 days after enactment of the assessing ordinance and are subject to foreclosure if not paid within that time. The city may bid for property at foreclosure sales, which shall be prior to all bids except those by persons entitled to redeem such property under state law.

(2) The entire assessment balance on an unpaid, NonBancrofted assessment must be paid in full prior to sale of the property or before the city issues a property related permit. Property related permits are defined in GRC 11.10.260(1)(a). (Ord. No. 1773, Enacted, 07/01/2017)

11.10.280 Foreclosure.

(1) The city will implement collection procedures to collect payment of delinquent assessments. If efforts to collect delinquent assessments fail, the city may initiate foreclosure proceedings in any manner provided by ORS 223.505 to ORS 223.650 or as otherwise provided by law. The manager shall establish administrative procedures for foreclosure.

(2) Actual costs for materials and services, and personal services shall be charged to each foreclosure account. The costs shall be charged as they are incurred during the foreclosure process.

(3) A purchaser of real property at a foreclosure sale may incur costs authorized by the city for maintaining or improving the property during the period allowed for redemption. If the property is subsequently redeemed, the manager may return to the purchaser all or part of the penalty paid by the person redeeming the property. (Ord. No. 1773, Enacted, 07/01/2017)

Article 11.15

REIMBURSEMENT DISTRICTS

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11.15.010 Definitions.

In addition to the definitions set forth in GRC 1.05.010, as used in GRC Article 11.15, the following mean:

Formation Resolution. The resolution that determines the boundaries of the reimbursement district, identifies which properties have the opportunity to benefit from the improvement and each property’s estimated share of the cost of the improvement.

Master Planning. A plan that reviews and refines Plan Map sub-district boundaries to guide the design and development of specific land to create livable communities in accordance with the

Comprehensive Plan and ensures that land is planned with an overall intent to create cohesive and livable neighborhoods, mixed use centers, employment areas, and open spaces. Master Plans are intended to display conceptual designs for land use, transportation, parks and open spaces, natural resource areas, and other physical attributes of the subject property. Similarly, public facility information is intended to be submitted at a conceptual level of detail sufficient to demonstrate compliance with the approval criteria.

Public Improvement or Improvement. The construction of wastewater, water, stormwater, street, park, trail, open space or other improvements.

Reimbursement Charge. The charge required to be paid by benefited property owners and identified in the reimbursement resolution adopted by the city council.

Reimbursement District. The area which the city council determines has the opportunity to derive a benefit from master planning or the construction of public improvements financed in whole or in part by a person or the city.

Reimbursement Resolution. The resolution that determines each property’s share of the actual costs of improvement.
(Ord. No. 1773, Enacted, 07/01/2017)

11.15.020 Purpose and Scope.

(1) The purpose of this ordinance is to provide a method to reimburse the city or a person who finances master planning or the construction of public improvements which benefit other properties. It is intended to be used to mitigate the cost of financing such master planning and public improvements by distributing those costs to other benefited property owners at the time those benefited property owners connect to, make use of or derive a benefit from the master planning or improvements.

(2) Property owners are not obligated to pay the reimbursement charge until they connect to, make use or derive a benefit from the master

planning or improvements. Property owners whose property would be subject to the reimbursement charge will be provided an opportunity to review and comment on pertinent information prior to the city establishing a reimbursement district charge.

(3) The process set forth in GRC Article 11.15 is jurisdictional and cannot be waived or extended and failure of a person to follow the provisions of GRC Article 11.15 shall result in the rejection of the application for a reimbursement district.

(4) A reimbursement district may include lots or parcels within the corporate limits of the city and within the city’s urban service boundary as shown on the Gresham Urban Services Boundary Map, Appendix B, Volume 2, Policies, Gresham Community Development Plan.

(5) In addition to construction of improvements, a reimbursement district may be formed to reimburse costs incurred to provide master planning.

(Ord. No. 1773, Enacted, 07/01/2017)

11.15.030 Application for a Reimbursement District.

(1) Any person who chooses or is required as a condition of a development or building permit approval to construct a public improvement or conduct master planning which will or could provide service or benefit to property other than property owned by the person may apply to the city to form a reimbursement district. The public improvement must be in addition to or in a size greater than those which would otherwise ordinarily be required in connection with an application for development or building permit approval. The city may also initiate formation of a reimbursement district.

(2) The Reimbursement District Application shall include the following:

(a) A written description of the master planning or the location, type, size, and cost of the public improvement for which reimbursement is sought, and the estimated

date of completion of the public improvements or masterplan.

(b) A map showing:

(i) the proposed master planning or the improvement; and

(ii) the properties to be included in the proposed reimbursement district; the land use designation for each of the properties; the front footage abutting the public improvement, if any, the square footage of each of the properties, or similar data necessary for calculating the apportionment of the costs; and the properties owned by the applicant.

(c) A proposed methodology for distributing costs among the benefited properties.

(d) The estimated cost of the improvements as evidenced by at least three bid proposals or the engineer’s estimate. The applicant shall show the estimated cost in an itemized quantity, unit, and price table format including but not limited to labor, materials, equipment, bonding, and overhead. Except when the city is the applicant, the city’s Non-Collusion Affidavit must accompany each bid proposal or the engineer’s estimate submitted to the manager. For master planning, the estimated cost of the master planning as evidenced by multiple bid proposals or the architect’s or designer’s estimate.

(e) A deposit established by council resolution sufficient to cover the administrative review and notice costs of processing the application.

(3) The application for formation of a reimbursement district must be made prior to commencement of master planning or the issuance of a Notice to Proceed with the construction of the public improvement. The Notice to Proceed shall only be issued when all the necessary easements and/or rights-of-way for the improvements have been acquired. The

manager may waive the requirement that easements and/or rights-of-way be acquired prior to the Notice to Proceed if to do so is in the best interest of the city and providing the city and the applicant have an agreement regarding the acquisition of the property.

(4) The application for formation of a reimbursement district must be made prior to commencing the master planning.

(5) The applicant may proceed with master planning or the construction of the improvements at their own risk prior to council authorizing the reimbursement district. If the council does not authorize the reimbursement district, the applicant will be responsible for the full cost of the master planning or the improvement.

(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1773, Enacted, 07/01/2017)

11.15.040 Manager’s Report.

The manager shall review the application for the establishment of a reimbursement district. The applicant shall submit, from time to time, during the review of the application other relevant information requested by the manager. The manager shall prepare a written report for the council within 90 days of the application. The manager may extend the time to submit the report if in the best interest of the city. The manager’s report shall:

(1) recommend whether the reimbursement district should be formed;

(2) recommend the area to be included in the reimbursement district;

(3) state the estimated cost of master planning or public improvement within the area of the proposed reimbursement district and the portion of the cost for which the applicant should be reimbursed;

(4) recommend a methodology for spreading the cost among the parcels within the reimbursement district and where appropriate defining a "unit" for applying the cost to property which may be partitioned, altered, modified, or

subdivided as some future date. The methodology should consider the cost of the master planning or improvements, prior contributions by property owners, the value of the unused capacity, rate-making principles employed to finance public improvements, and other factors deemed relevant by the manager. The methodology may include a safety net, which would provide a reduced cost to connect a single home to new infrastructure if the reimbursement district contains existing single-family homes on dividable lots. The remaining cost would be paid at the time of redevelopment of a property to a higher use. Prior contributions by property owners will only be considered if the contribution was for the same type of improvement and at the same location.

(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1773, Enacted, 07/01/2017)

11.15.045 Informational Meeting.

After completion of the report and at least 14 days prior to the public hearing pursuant to GRC 11.15.060, the applicant shall conduct an informational meeting regarding the proposed reimbursement district. Applicant shall mail a Notice of Application and Informational Meeting to the owners of record of all properties within the proposed reimbursement district at least 14 days prior to the informational meeting. The notice shall contain the time and place of the meeting and such additional information as directed by the manager. A signed affidavit of mailing shall be submitted to the city within five days of mailing the notice. At the informational meeting, the applicant shall describe the proposed reimbursement district, city staff shall explain the reimbursement process, and all owners and/or their representatives may comment and/or request additional information. The applicant shall submit to the manager an attendance sign-in sheet and meeting notes within 10 days of the meeting. The manager may modify the report based on comments received at the informational meeting.

(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1773, Enacted, 07/01/2017)

11.15.050 Amount to be Reimbursed.

(1) The cost to be reimbursed to the applicant shall be limited to the reasonable actual cost of master planning, design, engineering, acquisition costs of property, public easements and right-of-ways, surveying, permit fees, project construction, legal expenses, construction bonding, construction financing costs, and the applicant's overhead for the public improvement. Actual costs shall not be deemed reasonable if the city determines that such costs significantly exceed the prevailing market rate for similar projects constructed during the months of May through October. The city may reduce the costs to the prevailing market rate for purposes of reimbursement.

(2) A reimbursement charge for the improvements shall be computed by the applicant and is subject to the review and approval of the city. The reimbursement charge will be allocated to all properties which have an opportunity to benefit from the improvements, including the applicant's property. No payment shall be made to the applicant forming the reimbursement district for the portion of the improvements that benefits the applicant's own property.

(3) The applicant may request that the reimbursement charge be adjusted for inflation. The council, in the reimbursement resolution, may provide that the reimbursement charge be adjusted for inflation.

(4) The council, in the reimbursement resolution, may provide that the amount to be reimbursed be reduced by the depreciation of the improvement.
(Ord. No. 1773, Enacted, 07/01/2017)

11.15.055 Alternate Financing Methods.

(1) Nothing contained in GRC Article 11.15 shall preclude the manager or council from using any other available means of financing public improvements, including but not limited to city funds, federal or state grants-in-aid, user charges or fees, system development charges, revenue bonds, general obligation bonds, or any other legal means of finance. In the event that such

other means of financing improvements are used, the manager shall recommend and the council shall allocate costs to properties according to the benefits derived to pay any remaining part of the reasonable actual costs of the public improvement.

(2) The council, in the reimbursement resolution, may provide that a property required to pay a reimbursement charge receive system development charge credits in an amount based on the extent the improvement was included in the methodology establishing the system development charge. The credit shall only be applied to the improvement fee system development charge collected for the type of improvement being constructed and only in the amount the improvements is funded with system development charges in the SDC Methodology.
(Ord. No. 1773, Enacted, 07/01/2017)

11.15.060 Public Hearing.

(1) The council shall hold a public hearing on the proposed reimbursement district at which time any person may comment on the proposal. The hearing shall be held at the next practical time after the neighborhood meeting.

(2) The formation of the reimbursement district does not result in an assessment against property or lien against property. Therefore, the process is not subject to mandatory termination because of remonstrances.

(3) The city council has the sole discretion after the public hearing to decide whether a resolution forming the reimbursement district shall be adopted.
(Ord. No. 1773, Enacted, 07/01/2017)

11.15.070 Notice to Applicant and Affected Property Owners of Public Hearing.

Notice of the hearing shall be mailed by the city to the applicant and all owners of property within the proposed district as shown on the most recent county assessor's assessment roll. Notice shall be deemed effective on the date of mailing. Failure of the applicant or any affected property owner to

receive the notice shall not invalidate or otherwise affect public hearing or the formation of the reimbursement district. Notice of the hearing shall be mailed by regular mail at least 14 days before the date of the hearing. The notice shall:

(1) State that a reimbursement district has been proposed that includes the property of the person receiving notice.

(2) Briefly describe the reimbursement district, the master planning or public improvements to be reimbursed, the estimated amount of the reimbursement charge, and the circumstances under which the charge must be paid.

(3) Include a link on the city's website where the manager's report may be accessed.

(4) State the time, date and place of the public hearing and that any person may appear and be heard.

(5) Provide contact information for property owners to request a copy of the manager's report or additional information.

(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1773, Enacted, 07/01/2017)

11.15.080 Establishment of Reimbursement District.

(1) After the public hearing is held, the council shall approve, reject or modify the recommendations contained in the manager's report. The council's decision, if a reimbursement district is established, shall be embodied in a formation resolution.

(2) The formation resolution shall include the manager's report as approved or modified, and identify the estimated costs assigned to each parcel.

(Ord. No. 1773, Enacted, 07/01/2017)

11.15.090 Adoption of Reimbursement Resolution.

(1) Within 60 days after the project is completed and accepted by the city, the applicant shall submit to the city the final costs and the proposed assignment of costs for each benefiting property.

(2) The actual costs and allocation of costs must be approved by the city. The applicant shall submit sufficient documentation to establish the reasonableness of the actual costs. The manager may request additional information and conduct such audit and review as deemed necessary to verify the actual costs or establish reasonableness.

(3) The manager shall prepare a proposed reimbursement resolution recommending actual costs and allocation of cost to be approved by council. The reimbursement resolution shall assign costs to each benefited parcel based on the methodology approved by council in the formation resolution.

(4) The city shall provide mailed notice of the proposed reimbursement resolution to the applicant and all owners of property within the district. The notice shall state the amount of the reimbursement charge proposed for each property and include a copy of the proposed reimbursement resolution. Notice shall be deemed effective on the date of mailing. Notice shall be mailed by regular mail at least 14 days before the date of the council action on the reimbursement resolution. Failure of the applicant or any affected property to receive the notice shall not invalidate or otherwise affect the reimbursement resolution.

(5) The manager shall submit the proposed reimbursement resolution to the council for approval.

(6) The council shall approve or modify the proposed reimbursement resolution. When the applicant is other than the city, the resolution shall instruct the manager to enter into an agreement with the applicant pertaining to the reimbursement district improvements. The

agreement shall contain such provisions as the manager deems necessary for the collection and payment of the Reimbursement Charge.
(Ord. No. 1773, Enacted, 07/01/2017)

11.15.100 Notice of Adoption Resolution.

The city shall notify all property owners within the district and the applicant of the adoption of a reimbursement resolution. The notice shall include a copy of the reimbursement resolution, the date it was adopted and a short explanation of when the property owner is obligated to pay the reimbursement charge and the amount of the charge.
(Ord. No. 1773, Enacted, 07/01/2017)

11.15.110 Recording of the Resolution.

The manager shall enter the reimbursement resolution into the city's notice docket and may record the reimbursement resolution in the Multnomah County deed records so as to provide notice to potential purchasers of property within the district. Failure to make such an entry or recording shall not affect the legality of the reimbursement resolution or the obligation to pay the reimbursement charge. The reimbursement charge shall be due as provided in the reimbursement resolution. The reimbursement charge shall be a lien on the property from the date due.
(Ord. No. 1773, Enacted, 07/01/2017)

11.15.115 Term of Reimbursement Resolution.

The reimbursement resolution shall be valid for a period of 10 years from the date of adoption. The applicant or assignee of the right to reimbursement may request that the reimbursement resolution be renewed for additional 10-year terms by giving the city written notice of such request prior to the date of expiration.
(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1773, Enacted, 07/01/2017)

11.15.120 Contesting the Reimbursement District.

A writ of review pursuant to ORS 34.010 to 34.102 shall be the exclusive means to contest ORS the formation of the district or reimbursement charge, including the amount of the charge designated for each parcel and shall be filed no earlier than the adoption of a reimbursement resolution and no later than 60 calendar days following adoption of a reimbursement resolution.
(Ord. No. 1773, Enacted, 07/01/2017)

11.15.130 Obligation to Pay.

Each property shall pay a reimbursement charge for the property's appropriate share of the cost of public improvements or master planning if that property benefits from the improvement or master plan as determined by a reimbursement resolution.
(Ord. No. 1773, Enacted, 07/01/2017)

11.15.140 Administration.

(1) The right of reimbursement is assignable and transferable. Written notice advising to whom future payments are to be made must be delivered to the manager. Notarized signatures of all parties shall be included in the Notice.

(2) Upon receipt of a reimbursement charge, the city shall cause a record to be made of that property's payment and remit the charge to the applicant or assignee no less frequently than quarterly.

(3) The reimbursement charge is not intended to replace or limit, and is in addition to, any other existing fees or charges collected by the city.

(4) Council may, by resolution, establish such fees and deposits as are necessary to implement the provision of GRC Article 11.15. Such fees may include but are not limited to an application fee, or a deposit for processing the application, and a fee for collecting and disbursing the reimbursement charges.

(Ord. No. 1787, Amended, 11/01/2018; Ord. No. 1773, Enacted, 07/01/2017)

11.15.150 Applicability.

(1) All reimbursement districts formed with costs allocated and/or reimbursement agreements executed prior to the effective date of this ordinance are hereby ratified.

(2) The provisions of the amendments to GRC Article 11.15, shall, to the extent practical, apply to all existing reimbursement districts applications currently under consideration, unless to do so will create a substantial injustice to the applicant, owner of benefiting property, other person, or is not in the best interest of the city.

(Ord. No. 1773, Enacted, 07/01/2017)