Appendix 2

League of Oregon Cities: System Development Charges Overview and Amendments

Including those becoming effective in 2004

System Development Charges

System Development Charges Overview

The system development charge (SDC) statute was adopted in 1989 and was sponsored jointly by the Homebuilders Association and the League of Oregon Cities. Following a very intense debate between Homebuilders and local governments, Governor Goldschmidt vetoed a 1987 SDC bill that was sponsored by the Homebuilders. Throughout the 1988 Interim, a small group of city and homebuilder representatives developed a compromise bill that was the original SDC law. Local governments had imposed SDCs for many years and the purpose of the law was to outline a framework for how those charges would be developed and imposed so that the potential for costly litigation would be reduced.

Since that time, the SDC statute has been amended three times, following discussions and negotiations between the homebuilders and public agencies. Despite differences in perspective, there is an understanding that infrastructure and development must be managed together at the community level where there are a variety of facts and challenges associated with providing that infrastructure. Homebuilders cannot build without the required water, road and other related infrastructure, and local governments are responsible for providing the infrastructure at a cost that is fair for both new and existing residents.

However, in 2003 not every bill relating to SDCs was introduced in the spirit of cooperation among affected parties.

✧✧✧SYSTEM DEVELOPMENT CHARGES - PASSED BILLS✧✧✧

SB 939: Negotiated SDC Bill
Effective Date: January 1, 2004 and July 1, 2004 (see below) Chapter 765

In 2003, the Oregon Building Industry Association came forward requesting another series of changes to SDC statutes. Their original proposal, HB 2983 included a number of unworkable provisions, as follows:

- Eliminating open space or natural areas from parks SDC, rendering it impossible to bank park land for use by future development.
- Prolonging the period in which SDC expenditures could be challenged (from two to five years) causing potential delays and additional expense.
- Requiring improvement fees (which are prospective in nature) to be charged only

for specific infrastructure components, to the detriment of complete infrastructure systems. This would have resulted in a delay in building the completed project for developers who needed the projects to serve new development.

- Restricting improvement fee charges to those based only on minimum standard facility size, rather than the capacity and quality of facility that the government determines is needed;

- Prohibiting changes to the SDC project list if the changes resulted in increases to SDC fees or the deletion of a project needed to serve new development. This would have effectively hamstrung the ability of local governments to adequately plan for the accommodation of new development and reflect changing circumstances.

After lengthy discussions with local government representatives, the builders realized that these provisions would likely cause delays and in some cases increase the charges assessed to developers. The parties then moved to address other concerns and issues. SB 939 is the product of meetings that occurred almost every week since the beginning of session and represents a consensus of those participating - cities, counties, special districts and the builders. The changes in SB 939 were first contained HB 2983; due to unrelated political issues, HB 2983 stalled. SB 930 then became the vehicle but the negotiated changes were finally passed under a new bill number, SB 939.

SB 939 contained the following provisions:

Intent: Add "intent" language stating that SDCs are intended to provide equitable funding for orderly growth and development;

Capacity: Clarify that local government has the ability to determine whether capacity exists so that residents can be assured of having reliable infrastructure systems;

Components of a reimbursement fee: Provide guidance to local governments as to what the components of a reimbursement fee calculation should be, while still allowing a degree of flexibility to accommodate considerations that may be unique to the local area, and preserving the local government's ability to determine the value of the system for which they are being reimbursed. The new language replaces the direction that local governments "consider" the factors of a reimbursement fee with the instruction that the fee should be "based on" identified factors as applicable to the particular situation.

Improvement fee: Specify that a local government must now, through its methodology and other documentation, *demonstrate* that certain factors were taken into account in establishing improvement fee charges. An implicit notion – that improvement fee charges must be tied to the need for increased capacity and that increased capacity is in

turn tied to need created by future users of the system – is now explicitly stated. And stylistic changes strengthen the tie between a government's capital improvement plan and the list of projects eligible for SDC funding based on that plan. We hope this language will help stakeholders gain a better understanding of the factors, principles and elements of SDC methodology, in hopes of better discussions and fewer lawsuits.

Combined fees: In some circumstances, a complex project may have a number of components, and a reimbursement or an improvement fee may be calculated for each component; the addition of all component fees would equal one system development charge. New language in SB 939 makes explicit the implied intention that while a local government can charge a reimbursement fee, an improvement fee, or some combination of both, they cannot impose both a reimbursement fee and an improvement fee for the identical capacity.

SDC Credits: A developer can, under certain circumstances, get a credit against their SDC bill for capital improvements that the developer makes. New language is added to clarify that once a developer demonstrates that his improvement is eligible for an SDC credit, the local government must in turn demonstrate (through supporting documentation, for example) that a particular project is not on the list of SDC eligible improvements in order to *deny* the credit. This shares the burden of showing the qualifications for the credit with both parties. It may require greater attention to the description and detail of the capital project list for SDC eligible projects. Nothing in this change affects a local government=s authority to determine the amount of the credit. There is a delayed effective date of July 1, 2004 for this section.

Cost indexing: SB 939 adds new language to the statute to make it clear that the amount of an SDC can adjust based on a pre-adopted cost index, and to reflect changes in the cost of material, labor or real property or changes in project capacity. The cost index must be compiled from data for reasons that are independent of the SDC methodology, such as the national or regional consumer price index.

Capital improvements: Current law requires that SDC revenues are to be spent on capital improvements and not on the operation or routine maintenance of those improvements, except for the costs of complying with SDC law. SB 939 adds language to expressly prohibit local governments from using SDC revenues to pay for staff to operate or maintain capital facilities. However it is understood that in some smaller jurisdictions, the staff person that operates and maintains the facilities may also be the person who develops and updates the SDCs, accounts for SDC revenues and otherwise is responsible for compliance with SDC law.

Addition of new projects to the SDC project list: SB 939 specifies a new process for accommodating new development while providing developers with opportunity for additional input. The SDC eligible project list is a living document; estimates regarding projects, timing and costs will change over time as development occurs. The ability of a local government to move projects on and off the SDC-eligible list without a lot of attendant process and expense is preserved, but at the same time, developers can review changes to the project list if the new projects increase the amount the developer pays in SDCs. A local government retains the right to modify the project list, but if such a modification will result in an SDC fee increase, the

government must provide notice on an opportunity to comment and appeal; if no written request for a hearing is received, the modification can occur without a public hearing. This change has an effective date of July 1, 2004.

Annual Accounting: The cost of administrative compliance is added to the annual accounting of SDC revenues and expenditures that local governments are required to provide.

These changes will need to be monitored as to their efficiency and effectiveness. Input from SDC administrators has been and will continue to be vitally important in negotiating future changes to the SDC statute.

✧✧✧SYSTEM DEVELOPMENT CHARGES - FAILED BILLS✧✧✧

Expanding SDCs

A number of bills were introduced that would have allowed SDCs to be charged for the purpose of funding additional facilities, including libraries, schools, and police and fire stations. The League of Oregon Cities did not support bills to expand SDCs, choosing to focus on other priorities – such as preserving existing SDC authority and maintaining shared revenue – during the legislative session. Discussion in LOC policy and Board meetings focused on the argument that SDCs can only be used for capital projects; expanding SDCs would not address operating shortfalls being experienced by many cities for the services for which SDCs were being sought. In addition, these kinds of facilities were not considered "leader" facilities – unlike roads, water and sewer systems, new schools, police and fire stations could often be built once the additional tax base was in place to support them.

SB 682: SDC Restrictions on In Fill

Two bills were introduced that would have prohibited or restricted the amount of SDCs that could be charged on "in fill" development. SB 682 was given a hearing but a work session was never scheduled.

HB 2355: SDC Restrictions on In Fill

See SB 682 above.

HB 2906: "As Applied" Challenges to SDCs

HB 2906 was drafted at the request of Oregonians in Action, a property rights group. The bill would have allowed a challenge to SDC methodology every time a fee was assessed on an individual development. With every challenge, underlying assumptions could be reopened, subject to a 60-day period of review (and therefore delay), and could require major revision. Under this scenario, local governments could never get closure on their methodologies, and

could not predict with any confidence the revenue generated by SDCs or the revenue needed to pay for important infrastructure projects. The bill would have required local governments to be prepared to determine the impact of each individual development, and the resulting delays and expenses would likely have been passed on to developers.

The League was not given the opportunity to testify before the House Business Labor and Consumer Affairs Committee, which recommended passage of the bill. However, the League defeated the bill through a campaign of grass roots contact by cities to legislators. When it became apparent that the HB 2906 lacked the votes to pass, the bill was pulled from the schedule for consideration by the full House of Representatives.

HB 2983: Parks SDC Limit

HB 2983 would have prohibited governments from establishing SDCs for parks and recreation facilities that exceed existing levels of service. The bill would have dictated specific criteria on which parks SDCs could be based. This bill was introduced at the request of the Oregon Building Industry Association, who later abandoned it in favor of negotiated changes to the SDC law

See SB 939 above.