

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: July 24, 2012 **Approx Start Time:** 3:30 PM **Approx Length:** 30 min.

Presentation Title: 2012 Transportation System Development Charge Ordinance Amendments

Department: DTD-Administration

Presenters: Cam Gilmour, Director DTD and Diedre Landon, Policy Analyst

Other Invitees: Michael Walter, Happy Valley Economic & Community Development Director

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

County staff has been working closely with the City of Happy Valley to draft amendments to the Transportation System Development Charge (TSDC) Ordinance, County Code Chapter 11.03. Many of the recommended changes target economic development incentives through TSDC reductions that are based on mixed-use development and proximity to transit. These developments are proven to reduce the traffic on surrounding roadways when the development hosts the right mix of users. Prior to bringing the new language to the BCC for adoption, would the Board recommend changes to the proposed revisions or like any additional information on the proposals prior to adoption?

EXECUTIVE SUMMARY:

Highlights of the economic development incentives focus on improvements that benefit development, and include:

- An incentive for developments that reduce trips on adjacent roadways through the right mix of use in the development or proximity to transit.
- Removing language that treats an existing structure as a new use after sitting vacant for a short period of time.
- Providing an extension on credit vouchers to mirror Oregon Revised Statues.
- Implementing a sliding scale interest rate for County financing.

The proposed amendments include "housekeeping" to improve program administration and these changes are a result of comments and questions that arose during since the last ordinance amendment in 2008, such as:

- Changing one of the cost indexes used to calculate the annual adjustment factor. Oregon Department of Transportation is no longer tracking Construction Cost trends, so data will not be available for future adjustments.
- The amendments include reference to a resolution adopting fees to cover administration of the credit voucher program for capital improvements, refund processing, and preparation of development agreements to memorialize reductions for transit-oriented or mixed-use.
- Improving definitions to provide clarity for developers and staff.

FINANCIAL IMPLICATIONS (current year and ongoing):

SDC revenue collection is difficult to predict with changing economic conditions. Costs to administer refunds, credit voucher transfers, and prepare development agreements will no longer drain program revenues if fees are adopted to cover these program components.

LEGAL/POLICY REQUIREMENTS:

The proposed modifications conform to local statutory and code requirements.

PUBLIC/GOVERNMENTAL PARTICIPATION:

The proposed amendments have been reviewed by Cam Gilmour (DTD Director), Mike Bezner (Engineering Manager), Scot Sideras (County Counsel), Ernie Platt & Justin Wood (Portland Metro Home Builders Association), Trell Anderson (Clackamas County - Health, Housing & Human Services).

The modifications were presented to the Development Liaison Committee (DLC) for review and discussion and redlines were distributed to interested developers and credit voucher holders in Clackamas County and the City of Happy Valley.

OPTIONS:

- 1) Take no action – keep existing ordinance without modifications.
- 2) Ask for additional information before adopting the revised ordinance.
- 3) Make modifications to the proposed ordinance and adopt the modified version.
- 4) Accept the ordinance revisions as presented by staff.


RECOMMENDATION:


County staff respectfully recommends that the Board of County Commissioners accept the attached modifications as presented and direct staff to adopt the revised TSDC Ordinance.

ATTACHMENTS:

Overview of Proposed Ordinance Amendments – STAFF SUMMARY
Transportation System Development Charge (TSDC) Ordinance, Chapter 11.03 - REDLINES

SUBMITTED BY:

Division Director/Head Approval 

Department Director/Head Approval 

County Administrator Approval _____

For information on this issue or copies of attachments,
please contact Diedre Landon @ 503-742-4411.

Economic Development Incentives | Development Focused TSDC Improvements

The Transportation System Development Charge (TSDC) economic development incentives focus on improvements that benefit development. They include:

- Incentives for developments that reduce trips on adjacent roadways through the right mix of uses in the development and/or proximity to transit.
- Removing language that treats existing structures as a new use after vacancy.
- Providing an extension on credit vouchers to mirror Oregon Revised Statutes.
- Implementing a sliding scale interest rate (Prime plus 1.5% - 3.0%) for County financing as determined by beginning principal balance.

Incentives for Developments that Reduce Trips on Adjacent Roadways

Mixed-use development and the development's proximity to transit are proven to reduce the traffic on surrounding roadways when the development hosts the right mix of users or falls within a certain diameter of the transit facility. The mixed-use and transit oriented reductions can be combined when a development qualifies for both.

- Mixed-Use Development
 - Reductions of 7-18% depending on floor area ratio (FAR) and residential/retail/commercial mixtures on the site.
- Transit Oriented Development
 - Reductions of 5-20% depending on floor area ratio (FAR), proximity to transit, and type of transit system.
 - Applies to permanent transit routes/lines (such as SAM, CAT, SMART, or TriMet).

Legal Occupancy of an Existing Structure

- Currently if an existing building, built prior to 1993, is vacant for 2-3 years before a use is resumed the new occupancy would trigger a TSDC (as a new structure). This language is being removed; only construction of a new dwelling unit, a change in use, addition, or other change that could increase vehicle trips to an existing building would be charged.

Credit Vouchers

- Three (3) year extension (10-year credit life is maximum Allowed by ORS 223.304(5)(d)).
- No change to the current voucher transfer process between years 1-7.
- Transfer limitations (may only be transferred between parties through a land sale deed between years 7-10, no private party transactions).

Annual Adjustment Factor

- If the annual adjustment factor results in a factor of less than one (1) percent, the County and City will not increase the TSDC rates that calendar year.

Housekeeping | TSDC Program Administration Improvements

The proposed amendments include "housekeeping" to improve program administration and these changes are a result of comments and questions that arose after the last ordinance amendment in 2008, such as:

- Changing one of the three (3) cost indexes used to calculate the annual adjustment factor from the Oregon Department of Transportation (ODOT) to the Washington State Department of Transportation (WSDOT) construction cost trends. Oregon Department of Transportation is no longer tracking construction cost trends, so we are proposing a new source of data.
- Insert reference to adoption of fees by resolution:
 - Hearings officer appeal (existing fee).
 - Credit voucher transfers in excess of six transfers per year.
 - Development agreements preparation to memorialize transit-oriented or mixed-use reductions.
 - Refund processing.
- Adding and improving definitions to provide clarity for developers and staff.
 - "Accessory Dwelling Unit" (apartment unit) versus "Guest Home" (no laundry or kitchen facilities).
 - "Bus Transit Corridor" includes urban and rural area fixed-route transit providers.
 - A "Development Agreement" will secure a developer's compliance with the commitment to build-out a phased project qualifying for a Transit Area or Mixed-Use reduction(s) under 11.03.030(G)(1).
 - "Floor Area Ratio" provides formula for developer and staff to calculate the floor area ratio (FAR) of a development when applying the Mixed-Use or Transit Area reduction(s).
 - Various additions (such as "Bus Transit Corridor", "Light Rail Transit Station Area, "Station Area") to assist staff and developers in a clear and consistent application of the Mixed-Use and Transit Area reductions.
- Modify language so that ordinance refers to both Countywide and Joint program application. City of Happy Valley adopts the ordinance by reference to ensure consistent application of the program.

Fees

- Refunds up to 180 days after paying the assessment -- otherwise it stays with the parcel. The refund will be reduced by the adopted administration fee.
- Credit voucher transfers, can pay cash or reduce the credit voucher to cover administration costs.
- Development agreements – deposit prior to drafting the agreement. The applicant will be charged actual costs.

Housekeeping

- Clarify the language starting the clock for determining the vacancy of properties that were purchased for right-of-way to build a capital project.

CHAPTER 11.03 TRANSPORTATION SYSTEM DEVELOPMENT CHARGE

11.03.010 PURPOSE

- A) New development within Unincorporated Clackamas County (Countywide Area) and within the Happy Valley/Clackamas County Joint Area will use existing, excess traffic capacity and contributes to the need for increased capacity ~~in-on~~ arterial, boulevard, and collector roads and therefore should contribute to the funding for such facilities. These Transportation System Development Charges will reimburse the County, or City, for a portion of the cost of excess capacity and fund a portion of the needed increased capacity for arterial, boulevard, and collector roads associated with such development. The County may develop and ~~impose-enact~~ system development charges jointly with cities, as demonstrated in the Happy Valley/Clackamas County Joint Area. [Amended by Section 1 of Ord. No. 01-2002, enacted 1-10-02]
- B) ORS 223.297 through 223.314 grant the County and the City the authority to impose a Transportation System Development Charge to equitably spread the costs of essential capital improvements to new development. Future developments will contribute their fair share to the cost of existing, excess capacity facilities and improvements and additions to transportation facilities required to accommodate the capacity needs created by growth. ~~In its discretion, the Board of Commissioners may choose to impose a charge on classes of development types that is less than the maximum allowed by law in the Countywide Area, or in conjunction with the City Council in the Happy Valley Joint Area, in order to promote other public policy considerations.~~ The County may ~~impose-enact~~ one or more charges in areas that are smaller than the entire unincorporated County, such as the Happy Valley/Clackamas County Joint Area. [Amended by Section 1 of Ord. No. 01-2002, enacted 1-10-02]
- C) The Transportation System Development Charge is incurred upon the issuance of a permit to develop property at a specific use, density and/or intensity. The incurred charge is less than the actual cost of providing public facilities commensurate with the needs of the chosen use, density, and/or intensity. Decisions regarding uses, densities, and/or intensities cause direct and proportional changes in the amount of the incurred charge. The Transportation System Development Charge is separate from assessments, or other fees provided by law or imposed as a condition of development. It is a fee for service because it relates a development's fee to receipt of services based upon the nature of that development.
- D) The Transportation System Development Charges imposed by this chapter are not intended to be a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Section 11b, Article XI of the Oregon Constitution or the legislation implementing that section. [Amended by Section 1 of Ord. 01-2002, enacted 1-10-02]
- E) The funding provided by this Chapter constitutes a mandatory collection method based upon the guidelines set forth in ORS 223.297 – 223.314 to assure the construction of increased capacity in

arterial, boulevard, and collector roads as shown in the County Comprehensive Plan Countywide Area and the Happy Valley Joint Area methodology, respectively.

- F) This Chapter is intended to reimburse the Clackamas County, and Clackamas County/City of Happy Valley partnership in the Happy Valley/Clackamas County Joint Area, for the costs of existing, excess capacity and to provide a financing mechanism for needed increased capacity in arterial, boulevard, and collector roads associated with new development and not for maintenance of existing roads.
- G) ~~The~~ Clackamas County hereby adopts the methodology report entitled "Countywide Transportation System Development Charges Methodology Update Report" (dated November 30, 2006), and Clackamas County and the City of Happy Valley each hereby adopt the methodology report entitled "Happy Valley/Clackamas County Joint Capital Improvement Plan Area, Transportation System Development Charges Methodology Report" (dated November 30, 2006) and incorporate the agencies incorporate by reference the assumptions, conclusions, project lists, charges and findings in the reports which refer to the determination of costs of excess capacity, and anticipated costs of capital improvements required to accommodate growth, and the rates for the Transportation System Development Charges to finance these capital improvements, in each geographic area. The charges adopted by the Countywide Methodology report do not apply in the geographic area covered by the Happy Valley/Clackamas County Joint Area, and the charges adopted by the Happy Valley Joint Area Methodology report to not apply in the unincorporated geographic area outside the joint district boundaries. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2002, 1/10/02; Amended by Ord. 02-2002, 2/28/02]

11.03.020 DEFINITIONS

All terms not defined below shall be defined by the permitting jurisdiction in the Clackamas County Zoning and Development Ordinance or City Development Code, respectively.

- A) ACCESSORY DWELLING UNIT means a unit complying with Clackamas County ZDO 301.08(G) or City of Happy Valley Planning Code 16.44.050 respectively. Accessory Dwelling Units will be charged the adopted rate for the Institute of Transportation Engineers (ITE) classification of "220 - Apartment."
- ~~A)B)~~ ARTERIAL means that term as defined and used in the Transportation Element of the County Comprehensive Plan.
- ~~B)C)~~ AVERAGE WEEKDAY TRIPS means the average ~~number~~ 24-hour total of weekday motorall vehicle trips entering counted to and leaving from a study site, from Monday through Friday. Average weekday trips are calculated by using the Institute of Transportation Engineers (ITE) Manual or as otherwise provided by this Chapter.
- ~~C)D)~~ BOARD means the Board of County Commission of Clackamas County, Oregon.

~~D)E)~~ BOULEVARD means that term as defined and used in the Transportation Element of the County Comprehensive Plan.

~~E)F)~~ BUILDING OFFICIAL means that person, or his designee, certified by the State and designated as such to administer the State Building Codes for the County or City.

G) BUILDING PERMIT means that permit issued by the County or City Building Official pursuant to the most recently published versions of the State of Oregon Structural Specialty Code Section 105, and the Oregon Residential Specialty Code Section R-105. In addition, Building Permit shall mean the Manufactured Home Installation Permit issued by the County or City Building Official, relating to the placement of manufactured homes ~~in the County.~~

H) BUS TRANSIT CORRIDOR includes current fixed-route public bus service (excludes dial-a-ride shuttles and taxi service).

~~F)I)~~ CAPACITY means the maximum rate of flow at which persons or vehicles can be reasonably expected to traverse a point or uniform segment of a lane or roadway during a specified time period under prevailing roadway, traffic, and control conditions, usually expressed as vehicles per hour or persons per hour. ~~(Capacity (i.e., capacity is frequently increased by methods such as the addition of travel lanes, right turn or left turn refuges, improved width, hazard elimination, alignment or other geometric characteristics of the roadway, signalization or signalization improvements such as synchronization.)~~

~~G)J)~~ CAPITAL IMPROVEMENT PLAN means a plan and list of capital projects adopted by the Board of County Commissioners and/or City Council identifying the estimated cost and timing for projects needed in a twenty year timeframe.

K) CITY means the City of Happy Valley, Oregon.

L) CITY COUNCIL means the elected City Council of the City of Happy Valley, Oregon.

~~H)M)~~ COLLECTOR means that term as defined and used in the Transportation Element of the County Comprehensive Plan.

~~H)N)~~ COMPREHENSIVE PLAN means the ~~County's~~ County and/or City generalized, coordinated land use map and policy statement that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation facilities, and recreational and natural resources and air and water quality management programs.

~~H)O)~~ CONSTRUCTION COST INDEX means that index published by the Engineering News Record (ENR) Northwest (Seattle, Washington) titled "Construction Cost Index."

P) COUNTY means Clackamas County, Oregon.

Q) DEVELOPMENT AGREEMENT means the tool the CITY or COUNTY will use to secure the developer's compliance with the commitment to build-out a phased master-plan project, qualifying the initial phases for a reduction under the station area and/or mixed-use reduction provisions.

- K)R) DEVELOPMENT PERMIT means a grading, excavation, engineering, building, land use or similar permit issued by the County or City that approves NEW DEVELOPMENT as defined by this ordinance.
- L)S) DEPARTMENT means the Clackamas County Department of Transportation and Development or the City of Happy Valley Economic and Community Development Department.
- T) DEPARTMENT DIRECTOR means the Director of the Clackamas County Department of Transportation and Development or the City Manager of Happy Valley.
- M)U) FINANCE DIRECTOR is that person assigned by the Board of County Commissioners the responsibility of managing the Finance Department for Clackamas County, or his or her designee.
- V) FLOOR AREA RATIO means the ratio of the total amount of enclosed gross floor area within a structure to the amount of buildable acreage. For purposes of calculation, both floor area and net site area shall be converted to square feet. (For example, a single-story building constructed on one-quarter of the net developable site would have a floor area ratio of 0.25. If a second story were added, the floor area ratio would increase to 0.50, etc.) Gross floor area for the purposes of this ordinance will mirror the definition in the most recent ITE manual.
- W) GUEST HOME means a unit complying with Clackamas County ZDO 833. GUEST HOMES will not be charged a Transportation System Development Charge Assessment because these units share a kitchen and laundry facility with the primary dwelling on the parcel, and as such are not used for boarding, lodging, or rental.
- N)X) IMPROVEMENT FEE means a fee for costs associated with capital improvements to be constructed.
- O)Y) INCREASED CAPACITY FACILITIES include capital improvements to an arterial, collector, or boulevard shown in the project lists in the Reports adopted by Section 11.03.010.G or the County Transportation Capital Improvement Plan(G) which increase the level of performance or service provided by existing facilities, or provide new facilities. Such improvements include, but are not limited to, signalization, channelization, widening, drainage facilities, pedestrian improvements, street extensions, railroad crossing protective devices, bridges and bikeways adjacent to the roadway.
- Z) INTERNAL CAPTURE RATE is defined as a percent reduction of trip generation for component land uses to account for trips made internally on site. A reduction of trip generation rates can potentially decrease traffic impact and help reduce external congestion. The INTERNAL CAPTURE RATE is the percent reduction of trip generation estimates for land uses to account for trips made internally on a MIXED-USE DEVELOPMENT site.
- P)AA) ITE TRIP GENERATION MANUAL means the most recently published edition of the manual entitled Trip Generation, published by the Institute of Transportation Engineers. A copy of the ITE Trip Generation Manual shall be kept on file with the County Department of Transportation and

Development. All land uses referenced in this ordinance are those defined in the most recently published edition of the ITE Manual.

B) LIGHT RAIL TRANSIT STATION AREA is defined as the passenger station platform along a fixed-route light rail alignment.

CC) LOCAL STREET means that term as defined and used in the Transportation Element of the County Comprehensive Plan.

DD) LONG TERM FINANCING Bonds issued by the County to finance a capital improvement in accordance with ORS 223.205 – 223.295.

EE) MIXED-USE DEVELOPMENT means a development that includes a combination of retail/commercial and/or service uses with residential or office use in the same building or on the same site. MIXED-USE DEVELOPMENT is generally planned as a single real-estate land development project with a structure, or structures, containing two or more different and interacting land uses. These areas are characteristically higher density, compact walkable areas. Mixing of uses typically includes residential (townhomes, apartments, or detached homes on small lots), retail (mostly specialty and convenience), restaurants, hotels, office buildings, movie theatres, and any other compatible and complimentary uses.

FF) NEW DEVELOPMENT means site improvements that increase overall trip generation.

GG) QUALIFIED PUBLIC IMPROVEMENT means an increased capacity facility larger than a LOCAL a capital improvement that is required as a condition of development approval, identified in a project list included in a Methodology Report adopted by Section 11.03.010(G) and 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.

HH) REIMBURSEMENT FEE means a fee for costs associated with capital improvements already constructed or under construction when the fee is established, for which the local government determines that capacity exists.

II) RIGHT-OF-WAY means that portion of land that is dedicated for public use. Public uses may include but are not limited to pedestrian facilities (e.g., sidewalks, plazas), utility placement, signage, etc.

J) STATION AREA includes parcels with some portion of the development site located within a 0.25- (one quarter) mile radius (straight line distance measurement) of a LIGHT RAIL STATION PLATFORM or a BUS TRANSIT CORRIDOR, both of which facilitate travel to multiple geographic routes, typically resulting in reduced impact to the transportation system by encouraging multi-modal transportation and reducing the impact on the surrounding transportation system. Reference Table 1 – Station Area Development TSDC Reduction Requirements, in Section 11.03.030(F), for further definition of project requirements to qualify for a station area reduction.

~~X)KK)~~ TRANSPORTATION SYSTEM DEVELOPMENT CHARGE (TSDC) means the fee to be paid pursuant to Section 11.03.030 of this Chapter. [Codified by Ord. 05-2000, 7/13/00; Amended by Section 2 of Ord. 01-2002, 1/10/02]

11.03.030 APPLICATION

- A) A Transportation System Development Charge is imposed upon all new development within unincorporated Clackamas County and the Happy Valley/Clackamas County Joint Area for which a development or building permit is required. Where an intergovernmental agreement imposes a city's System Development Charge for transportation facilities on new development within unincorporated Clackamas County, the County shall not impose its own Transportation System Development Charge.
- B) The applicant for a development or building permit shall, at the time of application, provide the Department with all of the necessary and applicable information, such as the description of use, number of dwelling units or square footage of structures, information about occupancy and size of any existing use on the site, necessary to calculate the Transportation System Development Charge. The Department shall notify the applicant of the right to appeal the decision on the calculation of the charge pursuant to 11.03.080.
- C) The amount of the Transportation System Development Charge shall be determined as identified in the Methodology Reports adopted pursuant to Section 11.03.010-(G~~;~~), and amended pursuant to Section 11.03.030-(G~~;~~), and Section 11.03.090 or adjusted pursuant to Section 11.03.030-(D) or 11.03.030(E~~;~~).
- D) If the County or City has not assigned a Transportation System Development Charge rate for the identified land use listed in the ITE Manual, or if data is "Not Available" in the ITE Manual, the Department shall at its option either:
- 1) Identify the land use that has a trip generation rate most similar to the use in question and apply that rate.
 - 2) Consider trip generation data, gathered in a credible manner, preferably by a registered traffic engineer, for the same or similar use. Such a study shall be prepared at the applicant's expense and must be submitted at least two weeks prior to expected issuance of a development or building permit. The Department Director or the Director's designee has the right to accept, accept in part, modify, or reject the calculations offered under this option.
 - 3) The following guidelines apply to data collection under option 2 for land uses not in the ITE Manual.
 - (a) The applicant shall submit a list of similar uses with similar characteristics in Oregon, Washington, California, or preferably in the Portland region. Uses must have been open for business for at least a year.

- (b) The Department will determine the number of sites and locations for which the applicant will be required to submit traffic counts.
- (c) The applicant shall supply the Department with the following information for each site:
 - (1) Monthly adjustment factors to adjust trip generation to the fourth highest business (earnings) month.
 - (2) Standard days and hours of operations.
 - (3) Counts from sites on a weekday (mid-week – two day minimum) from 7:00 to 9:00 a.m. and from 4:00 to 6:00 p.m. Actual counting time and days may vary depending on uses and standard days of operation and shall be approved by the Department. Data collection shall be compliant with the ITE Trip Generation Manual.
 - (4) Quantification of pass by, pedestrian, bicycle and transit trips when applicable.
 - (5) A vicinity map for each site.
- (d) The applicant shall adjust this data as follows:
 - (1) Adjust a.m. and p.m. trips to average weekday trips based on the proportion of similar uses in the current edition of the ITE Manual.
 - (2) Adjust daily number to average weekday trips if weekend data are collected.
 - (3) Adjust average weekday trips to the fourth highest month based on monthly adjustment factors supplied by the applicant.
 - (4) Adjust pass by, pedestrian, bicycle, and transit trips for potential trip reduction.
- (e) The Department shall review the applicant's data collection and adjustments, and the Department Director or the Director's designee shall issue a final ruling to the applicant regarding which data and adjustments will be used for Transportation System Development Charges.
 - (1) A fee will be charged for the review of formal alternate trip generation data. The fee will be set by Resolution.

E) Any developer requiring the execution of a formal Development Agreement to clarify Transportation System Development Charge assessments, reductions for Station Area Development (Table 1), or reductions for Mixed-Use Development (Table 2) will be required to pay a deposit (as set by Resolution) prior to staff drafting the agreement.

F) Station area developments reduce vehicle trips on the adjacent roadway. Projects meeting the development density requirements that fall within a station area are eligible to receive a reduction that correlates to the reduced impact of the eligible development. An approved Station Area Development is eligible for a reduction on TSDC assessments as outlined in Table 1 (below) when some portion of the development site is located within a 0.25-(one quarter) mile radius (straight line

distance measurement) of a light rail station platform or a bus transit corridor route alignment. This reduction may be combined with any applicable Mixed-Use Development reduction (Table 2).

Table 1 – STATION AREA DEVELOPMENT TSDC REDUCTION REQUIREMENTS

REDUCTION LEVEL	TSDC REDUCTION (% TRANSPORTATION IMPACT REDUCTION)	TRANSIT ACCESS REQUIREMENT (WITHIN 0.25 MILE RADIUS OF¹⁾)	DEVELOPMENT DENSITY REQUIREMENT(S)
Level 1	5% Vehicle Trip Reduction	Bus Transit Corridor ²	Minimum residential density of 24 units per acre
			Minimum FAR of 2.0 per acre for non-residential development
Level 2	10% Vehicle Trip Reduction	Bus Transit Corridor ²	Minimum res. density of 24 dwellings per acre AND minimum FAR of 2.0 per acre for non-res. development
Level 3	5% Vehicle Trip Reduction	Light Rail Transit Station ³	Minimum residential density of 12 dwellings per acre ⁴
			Minimum FAR of 1.0 per acre for non-res. development
Level 4	10% Vehicle Trip Reduction	Light Rail Transit Station ³	Minimum Res. Density of 24 dwellings per gross acre
Level 5	15% Vehicle Trip Reduction	Light Rail Transit Station ³	Minimum Res. Density of 24 dwellings per acre AND at least 15% of the total gross res. & non-res. floor area devoted to commercial/retail uses
			Minimum FAR of 2.0 per acre for non-res. development
Level 6	20% Vehicle Trip Reduction	Light Rail Transit Station ³	Minimum res. density of 24 dwellings per acre AND minimum FAR of 2.0 per acre for non-res. development

Notes:

¹ Some portion of the development site must be located within a 0.25-(one quarter) mile radius (straight line distance measurement) of a light rail station platform or a bus transit corridor route alignment to qualify for TSDC reduction.

² Bus transit corridors include current fixed-route public bus service (excludes dial-a-ride shuttles and taxi service).

³ Light rail transit station area is defined as the passenger station platform along a fixed route alignment.

⁴ The stated residential density for this TSDC reduction level has been interpolated based on ITE Trip Generation Handbook results.

E) A development site may include more than one of the ITE land uses identified in the Reports. In such event, the Department, for purposes of establishing the Transportation System Development Charge for a Mixed-Use Development, shall apportion the uses as a percentage square footage of each use in the development. Based on the County policy to reduce impacts on the transportation system through encouragement of mixed-use development, the final Transportation System Development Charge for mixed-use development shall be reduced by 10% of the calculated cost.

G) Mixed-use developments generate internal trip capture, thus reducing external trip generation rates on surrounding roads. In such event, the Department, for purposes of establishing the Transportation System Development Charge for a Mixed-Use Development, shall apply a Mixed-Use Development TSDC reduction to the eligible structure, or structures, which correlates to the internal trip capture of the proposed development as detailed in Table 2 (below). This reduction may be combined with any applicable Station Area Development reduction (Table 1).

REDUCTION LEVEL	TSDC REDUCTION (TRANSPORTATION IMPACTS REDUCTION)	DEVELOPMENT DENSITY REQUIREMENTS
Level 1	7% Vehicle Trip Reduction	Mixed-use development with at least two different land use types (e.g., retail and office) within the same tax lot or master-planned area
Level 2	10% Vehicle Trip Reduction	Mixed-use development with a minimum residential density of 12 dwellings per gross acre AND minimum of 0.3 FAR per gross acre for non-residential development
Level 3	14% Vehicle Trip Reduction	Mixed-use development with a minimum res. density of 24 dwellings per gross acre AND minimum of 0.3 FAR per gross acre for non-residential development
Level 4	16% Vehicle Trip Reduction	Mixed-use development with a minimum residential density of 32 dwellings per gross acre AND minimum of 0.3 FAR per gross acre for non-residential development

Level 5	18% Vehicle Trip Reduction	Mixed-use development with a minimum residential density of 40 dwellings per gross acre <u>AND</u> minimum of 0.5 FAR per gross acre for non-residential development
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Source: derived using EPA Mixed-Use Trip Generation Model v4.0.

1) If the proposed development includes more than one parcel of land and/or more than one structure, the Mixed-Use Development reduction shall be authorized as part of a development approval outlining the final build-out of the master plan development area. The applicable reduction shall be memorialized in a DEVELOPMENT AGREEMENT (the tool the CITY or COUNTY will use to secure the developer's compliance with the commitment to build-out a phased master-plan project, qualifying the initial phases for a reduction under the station area and/or mixed-use reduction provisions) and recorded as a right-to-lien against each parcel included within the approved development area, allowing for renewal on active development projects.

a. If a development avails itself of the Mixed-Use Development reduction and does not construct the development within the term of the development agreement, the County and/or City will capture any unwarranted reduction provided by the Department at the time of permitting any built structures based on the original conceptual plan that the final built development does not warrant, by:

- i. The Developer will have an opportunity to pay the TSDC reductions that were attributed to a built structure within the Mixed-Use Development; or
- ii. The County and/or City can collect the TSDC reductions that were attributed to a built structure within the Mixed-Use Development by filing a lien against the benefitting parcels.

H) Notwithstanding any other provision, the rates adopted pursuant to ~~Subsection 11.03.030(C) of this Section~~ shall, annually, be adjusted to account for changes in the costs of acquiring and constructing transportation facilities. The adjustment factor shall be based on (1) the change in average market value of undeveloped land, except resource properties, in Clackamas County according to the records of the County Tax Assessor; and; (2) the change in construction costs according to the Engineering News Record (ENR) Northwest (Seattle, Washington) Construction Cost Index; and (3) the ~~Oregon Department of Transportation (Washington State Department of Transportation (WSDOT) ODOT) Construction Cost Trends Index~~; and shall be determined as follows:

(1) Change in Average Market Value	x	0.30	30%
(3) Change in ODOT WSDOT Construction Cost Trends Index	_____		x
0.35	35%		

+	(2) Change in ENR Construction Cost Index	x	0.35	35%
=	____ Transportation System Development Charge Adjustment Factor		<u>1.00</u>	100%

The Transportation System Development Charge Adjustment Factor shall be used to adjust the Transportation System Development Charge rates each calendar year, unless it is otherwise adjusted by the Board of County Commissioners and City Council based on adoption of an updated methodology or capital improvement plan, or through an Annual Review as described in 11.03.090. However, if (1) the Transportation System Development Charge Adjustment Factor results in a negative value, no adjustment to the rates will be made that calendar year; or (2) the adjustment factor results in a factor less than 1.0% (0.99%-0), no adjustment to the rates will be made that calendar year. [Codified by Ord. 05-2000, 7/13/00; Amended by Section 6 of Ord. 01-2002, 1/10/02; Amended by Ord. 02-2002, 2/28/02]

11.03.040 COLLECTION

- A) The Transportation System Development Charge is due and payable at the time of issuance of the Development Permit. The Development Permit shall not be issued, except as provided in Subsection C-(3) or D of this Section, until payment is made. The Transportation System Development Charge (TSDC) rate in effect at the time that a complete development permit submittal is received by the County or City will be applied to that permit. That TSDC rate is effective for 180--days from the date the land use approval is given or the development permit approval is given is submitted to the Building Department, whichever comes last. At the expiration of the 180-day period, if the permit is not yet issued, any TSDC annual rate adjustments applied under Section 11.03.030(H) can be applied to the permit.
- B) Notwithstanding Section 11.03.030-(A-), the following are exempt from the Transportation System Development Charge:
- 1) ~~Remodeling or r~~Replacement of any existing single-family structure ~~(which include manufactured homes not in a manufactured home park, townhomes and condominiums including mobile homes)~~ for residential purposes only, ~~unless the use was discontinued for a period of more than three (3) years,~~ except to the extent such remodeling or replacement creates additional dwelling units.
 - 2) ~~Remodeling or r~~Replacement of any existing multi-family ~~(which include duplexes, triplexes and multi-tenant apartments)~~ structure ~~unless the use was discontinued for a period of more than two (2) years,~~ -except to the extent such remodeling or replacement creates additional dwelling units.
 - 3) ~~Remodeling or r~~Replacement of existing office, business and commercial, industrial or institutional structures ~~(which include manufactured home parks)~~ ~~unless the use was discontinued for a period of more than two (2) years,~~ except to the extent that a change of

use, building addition, or other modification ~~it~~ generates additional, average weekday trips as determined in the manner set forth in a Methodology Report adopted by Section 11.03.010G, 010(G), or as provided in Section 11.03.030, paragraphs (D) or 11.03.030(E), whichever is applicable. [Amended by Section 7 of Ord. 01-2002, enacted 1-10-02] [Amended by Section 3 of Ord. 02-2002, enacted 2-28-02]].

4) Relocation of any structure originally located on property that the County or the City acquire in-fee as a part of a capital transportation project that results in a building encroachment over public right-of-way or easements, when the remaining remnant will not be redevelopable, such that the structure is relocated to another parcel within the same system development charge district. Except to the extent such relocation creates additional dwelling units and/or additional average weekday trips as determined in the manner set forth in a Methodology Report adopted by Section 11.03.010(G), or as provided in Section 11.03.030(D) or 11.03.030(E), whichever is applicable.

5) Remodeling or rReplacement of any structure located on excess property that the County or the City acquire in-fee as a part of a capital transportation project that can be marketed, or available for occupancy, except to the extent such remodeling or replacement creates additional dwelling units and/or additional average weekday trips as determined in the manner set forth in a Methodology Report adopted by Section 11.03.010(G), or as provided in Section 11.03.030(D) or 11.03.030(E), whichever is applicable:

(1) The agency has been provided a reasonable period of time to meet public notification requirements for sale or other disposition (i.e., public auction); and

(2) Upon completion of the project, after access has been restored and/or recorded whichever is the later, such that the property has legal ingress/egress for development or occupancy purposes.

~~C) When re-establishing a legal, discontinued use and a development or building permit is required, the following standards are applied:~~

~~1) Built after May 1993: If the original development took place after May, 1993, and the appropriate Transportation System Development Charge was paid, no further Transportation System Development Charge will be charged unless that use is one that would increase the average daily trips generated beyond the original use. In such cases, the Transportation System Development Charge will be assessed based on the difference.~~

~~2) Built prior to May 1993: If the original development took place prior to May 1993, no Transportation System Development Charge would have been paid on the development in question. If the development now requires a development or building permit to reestablish a legal use, a Transportation System Development Charge will be assessed if:~~

- ~~For commercial structures (which include manufactured home parks, duplexes, triplexes and multi-tenant apartments) they have been one hundred percent (100%) vacant for longer than two (2) years.~~
- ~~For residential structures (which include manufactured homes not in a manufactured home park, townhomes and condominiums) they have been one hundred percent (100%) vacant for longer than three (3) years.~~

~~The applicant will be responsible for submitting data confirming the date that the use was discontinued and verifying the previous use of the structure. [Amended by Section 8 of Ord. 01-2002, enacted 1-10-02]~~

C3) Payment of the Transportation System Development Charge by a person who is also eligible for a credit voucher for construction of an increased capacity facility may be delayed until a date certain to be set by the Department at the time of development or building permit issuance, but not later than 10 days after the issuance of the credit voucher against the improvement pursuant to Section 11.03.050. A permittee eligible for delay of payment of the Transportation System Development Charge pursuant to this section shall make application to delay payment on a form provided by the Department, prior to issuance of the development or building permit. Payment of the Transportation System Development Charge.

Payment may only be delayed for the same development which is associated with the construction of the capital improvement for which credit is given. If a permittee applies for delay of payment of the Transportation System Development Charge pursuant to this section, and the permittee shall provide the Department with security to secure payment of the Charge. The security shall be in an amount determined by the Department, and must be in a form outlined in Subsection (1) or (2) below, or an alternative method approved by the County Council. [Amended by Section 8 of Ord. 01-2002, enacted 1-10-02]

A permittee eligible for delay of payment of the Transportation System Development Charge pursuant to this section shall secure payment of the assessment, prior to issuance of the development or building permit, by either:

- 1) Placing cash in the amount of the assessment in an escrow account accessible by the County or City, respectively. Permittee shall reconcile any remaining balance after applying the credit voucher to the outstanding balance, or revenue in the escrow account shall be withdrawn to cover the balance. Once the balance is reconciled any remaining revenue in the escrow account shall be released, but not later than 180-days after the issuance of the credit voucher against the improvement pursuant to Section 11.03.050.
- 2) The permittee can apply for delay of payment of the Transportation System Development Charge pursuant to ordinance Section 11.03.040(D). Once the credit voucher is issued, the permittee can apply all (or a portion of) the credit voucher toward the principal and interest balance on the account, or continue making installment payments in accordance with the payment plan throughout the duration of the loan.

D) When a Transportation System Development Charge is due and payable, the permittee may apply to the County for payment in twenty (20) semiannual installments, secured by a lien on the property upon which the development is to occur, to include interest on the unpaid balance, if that payment option is required to be made available to the permittee by ORS 223.207.

1) The Department County shall provide application forms for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors. The application fee for this option shall be \$500. [Amended by Section 9 of Ord. 01-2002, enacted 1-10-02]

2) The applicable interest rate shall be determined as follows: ~~fixed at the current prime lending rate plus three percentage points.~~

<u>Principal</u>	<u>Interest Rate</u>
<u>\$0-24,999</u>	<u>Current prime lending rate plus 3.0 percentage points</u>
<u>\$25,000-999,999</u>	<u>Current prime lending rate plus 1.5 percentage points</u>
<u>\$1,000,000+</u>	<u>Current prime lending rate plus 2.25 percentage points</u>

3) An applicant requesting installment payments shall have the burden of demonstrating the authority to assent to the imposition of a lien on the property and that the interest of the permittee is adequate to secure payment of the lien. The Finance Department Director, or Director's Designee, may order the imposition of the lien as recommended by the Department. [Amended by Section 10 of Ord. 02-2002, enacted 1-10-02]

4) Upon the Finance Department Director, or Director's Designee's, order the Department shall cause the lien to be recorded on the lien docket kept by the County Clerk. From that time the County shall have a lien upon the described parcel for the amount of the Transportation System Development Charge, together with interest on the unpaid balance at the rate established by the Finance Department Director, or Director's Designee's. The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall be superior to all other liens pursuant to ORS 223.230. Upon satisfaction of the obligation the Finance Department Director, or Director's Designee shall request the County Clerk to release the lien. [Amended by Section 11 of Ord. 01-2002, enacted 1-10-02]

E) With the passage of Article XI, Section 11 B of the Oregon Constitution, progressive payment shall be taken for all unpaid debt. The Finance Department Director, or Director's Designee, will be notified immediately by the Department of any account thirty (30) days or more past due. The Finance Department Director, or Director's Designee, shall then send a letter to the defaulting party demanding payment no later than thirty (30) days following the date of the demand letter. The

demand letter shall require payment of all amounts to bring the account current including any applicable interest or other penalty and shall demand full compliance with a "time is of the essence" clause according to the type of obligation at issue. The time for payment to bring the account current shall be left to the best professional judgment of the ~~Finance-Department Director, or Director's~~ Designee, depending upon the type of debt and amount owed but in no event shall time for payment exceed the next payment due date or any other requirements imposed by debt instruments executed by the County in favor of any third party or other agreements that may have been executed by the County.

- 1) If payment has not been made following the first notice, the ~~Finance-Department Director, or~~ Director's Designee, shall send a second notice, with a copy to the Finance Director, detailing the prior defaults and notices thereof indicating that further action, including legal action, will be taken.
- 2) If, following the second notice, time for payment has expired, then the Finance Director shall include the defaulting person or entity on a list entitled "Collection/Foreclosure" and consult with appropriate staff and legal counsel regarding the most efficient and cost effective method for collection of the debt.
- 3) The Finance Director shall determine if the matter will be referred to legal counsel, a debt collection agency or other method for collection. If referred to legal counsel, a demand letter to the debtor shall be sent declaring a default, accelerating the entire balance and requiring full payment within a reasonable period of time not to exceed thirty (30) days. If no satisfactory response is forthcoming, the Finance Director may extend the time limits for legal action in cases of extraordinary hardship; such determination shall be at the sole discretion of the Finance Director and not subject to review by the Board.
- 4) Upon referral and direction by the Finance Director, counsel may proceed with foreclosure of the assessment lien or take other legal action authorized by law which is deemed most appropriate under the circumstances.
- 5) If the Finance Director determines that it is most effective to use the services of a collection agency, the Finance Director may solicit proposals and make a recommendation to the Board regarding selection of a firm consistent with the Clackamas County Local Contract Review Board Rules and ORS Chapter 279. The Finance Director shall be authorized to negotiate a contract regarding the amount of compensation, length of term and methods of collection, subject to final review and approval by the Board. However, the contract shall specifically provide that the collection agency shall fully comply with the Fair Debt Collection Practices Act, 15 U.S.C. 1601, et seq., and shall provide for full indemnification and protection of the County from any and all claims for unfair or unlawful debt collection practices. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2002, 1/10/02; Amended by Ord. 02-2002, 2/28/02; Amended by Ord. 05-2003, 3/13/03]

11.03.050**CREDIT**

- A) The person responsible for providing a qualified public improvement shall be entitled to receive a credit voucher that may be used to satisfy a Transportation System Development Charge obligation within the same geographic collection area for which the credit is given. (i.e., Countywide Area or Happy Valley/Clackamas County Joint Area). An application for credit must be received no later than 90-days after the date the improvement has been accepted by the responsible government.
- B) The credit amount shall not exceed the portion of the actual cost of the project that is eligible for SDC funding as shown in the methodology reports adopted by 11.03.010.
- C) The "actual cost" of the project or improvement means the cost of materials, land and construction including design and engineering, permits, use of equipment, and labor directly related to capacity-increasing capital improvements above the local street level.
- ~~D) Any credit provided for by this section shall be applied only to the Transportation System Development Charge that applies to the geographic collection area in which the credit eligible improvement is located.~~
- ED) Credit will be given for the value of real property donated for right of way needed as a part of the increased capacity facility. The land value shall be calculated either at a per square foot value using the then current real market value for the real property shown in the records of the County Tax Assessor, or through a certified market appraisal, paid for by the applicant, that establishes the land value when the property was donated for the needed right of way.
- ~~FE) Any credit voucher provided for in this Chapter is transferable to any person. Credits shall apply against only the applicable Transportation System Development Charges. No credit issued after January 11, 2002, may be redeemed for cash. A credit issued prior to that date may be redeemed in the manner available when the credit was issued. The ~~Department~~ Department Director, or Director's Designee, shall implement a system to insure the authenticity of the credit documents submitted ~~to the Department to satisfy an assessment.~~~~
- F) A credit voucher may not only be redeemed more than transferred to another party within the first seven years after the date it was issued by the Department, except as outlined in Subsection 1 below, and the transfer must be executed within that same time period. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2002, 1/10/02; Amended by Ord. 02-2002, 2/28/02]H]
- 1) A credit voucher may be applied against an applicable Transportation System Development Charge, pursuant to the above sections, on a project owned by the final holder of the voucher from year seven (7) to year ten (10).
 - a. Between year seven (7) and year ten (10) credit voucher transfers are restricted to inclusion in land sale agreements.
 - b. No credit voucher may be redeemed more than ten (10) years after the date it was issued by the Department, at which point the voucher expires and any remaining balance is reduced to zero.

2) The first six (6) credit voucher transfers per credit voucher holder each fiscal year will be free of charge; subsequent transfers will be charged a fee, as set by Resolution. The fee may be paid in cash, or the owner of the credit voucher can opt to reduce the outstanding voucher to cover the cost of the transfer fee.

1) The Department Director can delegate signature authority for credit vouchers to a designee.

11.03.060 REFUNDS

Refunds may be given by the ~~Department~~County upon finding that there was a clerical error in the calculation of the Transportation System Development Charge. Refunds shall not be allowed for failure to claim credit, as provided for in Section 11.03.050, at the time of development or ~~Building Permit~~building permit issuance.- [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2002, 1/10/02]

- 1) The refund must be requested within six (6) months of the date the assessment was paid; failure to avail oneself of this grace period forfeits any future right or interest in the assessment paid and the credit will remain with the parcel for future development.
- 2) A fee (set by Resolution) will be charged on any refund of an assessment paid on development that did not commence. The fee may be paid in cash or the applicant can opt to reduce the amount of the refund to cover the cost of the fee.

11.03.070 DEDICATED FUNDS, PROJECT LISTS

- A) There are created two dedicated funds entitled the County Transportation System Development Charge fund and Happy Valley/Clackamas County Joint SDC Fund, herein "funds," one fund for each of the TSDC charges imposed by this chapter. All monies derived from the Transportation System Development Charges shall be placed in the ~~funds~~respective fund. Transportation System Development Charge revenue shall be used to fund those projects identified in the Methodology Reports adopted by Section 11.03.010-(G), increased capacity facilities, and costs related to the administration of the TSDC program as provided by ORS 223.307.
- B) The Project Lists adopted by Section 11.03.010-(G) shall be amended from time to time by County staff administrative action. The updated project list shall serve as an amendment to the TSDC Methodology Reports. This change will move completed projects from the list of credit eligible projects, and will not trigger a revision to the TSDC rates until a point in time when a new TSDC methodology is adopted.
- C) The Project Lists adopted by Section 11.03.010(G) may be amended from time to time by Board Resolution. [Codified by Ord. 05-2000, 7/13/00; Amended by Section 15 of Ord. 01-2002, enacted 1-10-02] [Amended by Section 5 of Ord. 02-2002, 2-28-02] If a system development charge will be

increased by a proposed modification of a project list to include capacity increasing capital improvement(s):

- 1) The County shall provide, at least 30 days prior to the adoption of the modification, notice of the proposed modification to the persons who have requested written notice under ORS 223.305-(6).
- 2) If the County receives a written request for a hearing on the proposed modification within seven days of the date the proposed modification is scheduled for adoption, the County shall hold a public hearing.
- 3) Notwithstanding ORS 294.160, a public hearing is not required if the County does not receive a written request for a hearing.
- 4) The decision of the County to increase the system development charge by modifying the list may be judicially reviewed only as provided in ORS 34.010 to 34.100.

11.03.080 APPEAL

- A) An applicant may appeal a decision of the Department to the County Hearings Officer by filing a written request and paying the appeals fee with the Department/County within fourteen (14) days of the Department's decision, or payment of the assessment, whichever comes first. The individual acting as the Hearings Officer will be appointed by the Board of County Commissioners.
- B) Appeals Fee – The fee for formally appealing a decision to the Hearings Officer will be ~~\$500.00~~ set by Resolution.
- C) The decision of the Hearings Officer shall be reviewable solely under ORS 34.010 through 34.100. The person who has appealed a decision shall be notified of this right to review of the decision. [Codified by Ord. 05-2000, 7/13/00; Amended by Section 16 of Ord. 01-2002, 1/10/02; Amended by Ord. 05-2003, 3/13/03]

11.03.090 ANNUAL REVIEW

- A) The County shall prepare an annual review to determine that sufficient funds will be available to help fund the needed increased capacity facilities, to ensure that the adopted Transportation System Development Charge rate keeps pace with inflation, and to ensure that such facilities will not be over-funded by the Transportation System Development Charge receipts.
- B) In the event, upon annual review, it is determined an adjustment to the Transportation System Development Charge is necessary in order to ensure sufficient funding for the construction of increased capacity facilities or to ensure such facilities are not over-funded by the Transportation System Development Charge, the Board and/or Council shall propose and adopt appropriately adjusted Transportation System Development Charge rates.

C) Prior to January 1 of each year the County shall provide an annual accounting for the activity occurring in the dedicated funds created by 11.03.070 for the previous fiscal year. The accounting shall show by fund the total amount of system development charges collected, the amount spent on each project that was funded in whole or in part in that fiscal year, and the amount attributed to the costs of complying with the provisions of ORS 223.297 to 223.314. [Codified by Ord. 05-2000, 7/13/00; Amended by Section 17 of Ord. 01-2002, 1-10-02]