

RESOLUTION NO. 2015-06

A RESOLUTION STANDARDIZING SDC INSTALLMENT PAYMENT APPLICATION AND AGREEMENT TERMS FOR THE CITY OF GARIBALDI

WHEREAS, Garibaldi Municipal Code (GMC) 13.251.080.C provides for the payment of SDC fees and installments, pursuant to limits proscribed by Council resolution; and

WHEREAS, the Garibaldi City Council (Council) wishes to establish a standard format for SDC installment payment applications and agreements to address this Code authority and ensure consistency for SDC payors; and

WHEREAS, the Council finds that an installment agreement entered into under the statutory authority of ORS 223.210 and 223.215 provides sufficient security to the City as a first priority lien, under ORS 223.230(3); and

WHEREAS, the Council chooses only to require additional security as allowed under GMC 13.25.080.D in the event that the City chooses to subordinate its SDC installment payment interests pursuant to ORS 223.208(2).

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF GARIBALDI RESOLVES AS FOLLOWS:

Section 1. The above recitals are hereby adopted and incorporated herein as the basis for this Resolution and associated standardized forms.

Section 2. The Application for Installment Payments for System Development Charges and Installment Payment Agreement for Assessed System Development Charges, attached as **Exhibits A and B**, respectively, and incorporated by this reference, are adopted as the City's standardized forms for allowing installment payments pursuant to ORS 223.215 and GMC 13.25.080.C and D.

Section 3. Interest for such SDC installment payment agreements shall be set at two percent (2%) over the prime rate for installment payment agreements with a term of between ten (10) and thirty (30) years, one point five percent (1.5%) for installment agreements with a term of between five (5) and ten (10) years, and one percent (1%) for installment agreements with a term of less than five (5) years.

PASSED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR, this 20th day of April, 2015.


Council President Terry Kandle, Mayor Pro Tem

ATTEST:



John O'Leary, City Manager

Attached: **Exhibit A** -- Application for Installment Payments for System Development Charges
Exhibit B -- Installment Payment Agreement for Assessed System Development Charges

[A RESOLUTION STANDARDIZING SDC INSTALLMENT PAYMENT APPLICATION AND AGREEMENT TERMS FOR THE CITY OF GARIBALDI -- EXHIBIT A]

CITY OF GARIBALDI

**APPLICATION FOR INSTALLMENT PAYMENTS FOR
SYSTEM DEVELOPMENT CHARGES**

BACKGROUND

In accordance with the provisions of Garibaldi Municipal Code (GMC) 13.25.080, current Owner(s) of record must pay a System Development Charge (SDC) when new development, expansion, or an intensification of use on Owner's property occurs that is served by City infrastructure (e.g. connection of existing dwellings, construction of a new building, or expansion or change of use of an existing developed site).

CONDITIONS

- A. Under ORS 223.210 and GMC 13.25.080, Owner(s) of property subject to an SDC may apply to pay the SDC in installments, to include interest at the legal rate of ____ percent (___%) on the unpaid balance.
- B. If the installment payment option is chosen, the Owner(s) must enter into an agreement with the City to pay the SDCs and accrued interest in equal annual installments, plus all accrued late fees. A late fee of five dollars (\$5) or five percent (5%) of the annual installment amount, whichever is greater, will be charged on any annual payment received after the due date. To set up an installment account, the Owner(s) must agree to pay the first annual installment of SDC principal and interest of at least _____ Dollars (\$_____).
- C. Payment may be made over a period of less than ten (10) years, only if so elected by the property owner. Otherwise, SDC charges paid on an installment basis must be paid in full by the end of ____ (__) years. The ____ (__) year period will begin on the date that the Owner(s) sign the installment agreement.
- D. As provided in GMC 13.25.080 and under state law, the City will have a lien on the property for the unpaid balance of any SDC, associated interest, and any late fees¹.
- E. This application incorporates by reference all terms and conditions of the City of Garibaldi Installment Payment Agreement for assessed system development charges, attached as Exhibit 1.

INSTRUCTIONS

To apply to the City to make installment payments on an SDC related to your property, complete the attached *two-page* application. The completed application and executed agreement must be received by the City prior to connecting Owner's property to City infrastructure or intensification of Owner's use of property. Keep this page (page 1 of 3) for your records. Submit pages two (2) and three (3) at City of Garibaldi, 107 Sixth Street, P.O. Box 708, Garibaldi, OR 97118.

¹ Failure to make SDC installment payments when due may result in foreclosure of your property. Questions concerning the payment schedule should be directed to the City Manager.

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CITY OF GARIBALDI

**APPLICATION FOR INSTALLMENT PAYMENTS FOR
SYSTEM DEVELOPMENT CHARGES**

OWNERS WHO ARE INDIVIDUALS:

Owner's Printed Name: _____

Phone #s: Home () _____ Work () _____ Cellular () _____

Mailing Address: _____ State: _____ Zip: _____

Print Owner's Name: _____

Phone #s: Home () _____ Work () _____ Cellular () _____

Mailing Address: _____ State: _____ Zip: _____

OWNERS WHO ARE ENTITIES OTHER THAN INDIVIDUALS:

Name of Entity: _____

Indicate Status: _____ Corporation _____ L.L.C. _____ Ltd. Partnership _____ P.C.

_____ Other (Describe) _____

State of Incorporation or Primary
Registration: _____

Name of Oregon Registered Agent: _____

Phone Number: () _____

Mailing Address: _____ State: _____ Zip: _____

Name & Title of Authorized Signatory: _____

If space is needed to provide the required information on all the owners, please use a separate sheet of paper.

Property Address: _____

Map and Tax Lot #: _____

Total SDC Amount: _____ No. of Years for payoff: _____

Was property annexed to the City within the preceding three months? _____ Yes _____ No

Have you previously entered into an SDC installment payment agreement for this same property? _____ Yes _____ No

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Have you previously entered into an SDC installment payment agreement, with the City of Garibaldi for a different property? ____Yes ____No
If yes, please provide the property address and/or map and tax lot # below:

By my (our) signature(s) below we certify the following:

I (we) understand that the full amount of the SDC plus accrued interest and any late fees will be a lien on my (our) property and that submission of a completed Installment Agreement Application waives my (our) rights to contest the validity of the lien upon my (our) property, except for the correction of computational errors.

I (we) also understand that I (we), upon request, have the burden to demonstrate my (our) authority to assent to the imposition of a lien and that the property interest is adequate to secure payment of the lien.

I (we) agree to pay the recording fees and the first annual payment of principal when the installment agreement is finalized and to pay future payments on a timely basis or incur additional fees.

I (we) further understand that once the assessed SDC is paid in full, regardless of the source or timing thereof, the installment agreement related to the property identified above will be void and that I (we) will only be eligible for another installment agreement on this property if different or additional SDC fees are assessed to Property in accordance with City Code.

Signature of Owner: _____

Signature of Owner: _____

Signature of Owner: _____

Signature of Owner: _____

CITY STAFF USE ONLY

Date Completed Application Received: _____ Received By: _____

Building or Land Use Permit Number: _____

Date SDC became Payable: _____

In most cases, this will be the date that the building or land use permit was or was to be issued.

Is application completed and signed by all identified owners?

If so, submit application and a copy of the related land use or building permit to the City Manager, or designee.

If not, contact applicant. Note date and time of all attempts to contact and when contact was made.

[A RESOLUTION STANDARDIZING SDC INSTALLMENT PAYMENT APPLICATION AND AGREEMENT TERMS FOR THE CITY OF GARIBALDI -- EXHIBIT B]

After Recording, Return to:

City of Garibaldi
P.O. Box 708
Garibaldi, OR 97118

CITY OF GARIBALDI

**INSTALLMENT PAYMENT AGREEMENT
FOR ASSESSED SYSTEM DEVELOPMENT CHARGES**

This agreement is effective on the day of the owner's signature below and sets forth the City of Garibaldi's ("City") terms and conditions under which installment payments for system development charges ("SDC") will be allowed for _____ ("Owner") as owner of the property described below (the "Property").

1. As the current sole owner of the Property, Owner has chosen to pay all applicable SDC fees and administrative SDC program costs, totaling \$_____ in annual installments (____ payments) over a period of _____ years, subject to all of the terms and conditions set forth in this agreement. [Owner understands that Owner has a statutory right to spread its SDC installment payments over a period of at least ten (10) years and that, notwithstanding any provision of law, Owner consents and elects to make payment over a period of less than ten (10) years.]
2. Owner acknowledges that, as provided in City's Municipal Code and under state law, the amount owed under this installment agreement will be entered by City in City's lien docket and levied against the Property. Thereafter, City will have a lien on the Property for the unpaid balance of the SDC installment, associated interest, and any late fees. The lien on the Property is removable only by payment in full. Owner further understands that failure to make installment payments when due may result in foreclosure of the Property. Owner acknowledges that the SDC amounts owed, including interest, may be paid in full at any time without prepayment penalty.
3. Owner acknowledges that the right and obligation to pay SDC fees in installments shall run with the Property and shall be binding upon the heirs, executors, assigns, administrators, and successors of the parties hereto, and shall be construed as a benefit and burden upon the Property. This document shall, therefore, be recorded in the real property records of Tillamook County, Oregon, to serve as notice to any future owners or occupants of the Property of the terms and conditions of this Agreement.
4. This City lien may be assumed upon Property transfer, however, City shall not subordinate its interest in the Property. The Property owner shall only be eligible for a new installment agreement with City if different or additional SDC fees are assessed to the Property in accordance with City ordinance.
5. Owner agrees that the Property is described as Tillamook County Assessor's Map Number _____ and Tax Lots _____ and that the amount of the SDC, not including interest, is: _____ Dollars and _____ Cents

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(\$_____). The legal description of the Property is attached as Exhibit A. The annual installment payments include interest at _____ percent (___%), per annum, on the unpaid SDC, on the basis of the actual number of days in each year, payable in _____ (___) equal installments of _____ Dollars and _____ Cents (\$_____).

6. Owner understands and agrees that the first installment payment, plus recording fees in an amount of \$_____, is due [one year following/upon] issuance of City connection approval or a plumbing permit, on _____, 20____, and that future payments are due on or before the first day of _____, in each year thereafter until paid in full.
7. Owner further understands that if there is a subsequent failure to pay any installment, City shall have the right to enforce payment of the entire amount due in any manner provided by the laws of the State of Oregon and the City of Garibaldi Municipal Code.
8. Owner understands that a late fee of five dollars (\$5) or five percent (5%) of the annual installment amount, whichever is greater, will be charged for each installment that is not paid on or before its due date. Owner also understands that any late or insufficient payment will cause the accrual of additional interest ("Excess Interest") over the scheduled amount of interest upon which the installment amounts were calculated. Therefore, in the event that late fees accrue or in the event that Excess Interest accrues, Owner agrees that each subsequent payment will be applied first to eliminate unpaid late fees, secondly to eliminate all accrued interest, and lastly to reduce the principal balance of the SDC.
9. Owner acknowledges that in the event of any proceeding to enforce collection or to foreclose, the obligation to pay the SDC shall be automatically accelerated and the entire unpaid balance including all principal, accrued interest and accrued late fees on the foregoing shall be considered immediately delinquent and due.
10. Owner hereby waives all irregularities or defects, jurisdictional or otherwise, in the proceedings to develop and impose the SDC upon the Property.
11. Owner waives all rights to contest the validity of the lien, except for the correction of computational errors.
12. Owner agrees to make all checks payable to the **City of Garibaldi** and mail or deliver to:

**City of Garibaldi
107 Sixth Street
P.O. Box 708
Garibaldi, OR 97118**

NOTE: This agreement requires the original signature of all owners. Each signatory to this agreement thereby SWEARS, AFFIRMS AND WARRANTS to the City of Garibaldi, under penalty of perjury, that she (he) is either the owner of the Property or is empowered by a valid legal authorization to execute this agreement on behalf of the Owner. The Signatory agrees to reimburse City for any expenses incurred as the result of a false statement as to ownership or authority, and understands that IT IS A VIOLATION OF STATE LAW TO MAKE A FALSE STATEMENT.

OWNER

[A RESOLUTION STANDARDIZING SDC INSTALLMENT PAYMENT APPLICATION AND AGREEMENT TERMS FOR THE CITY OF GARIBALDI -- EXHIBIT B]

**Exhibit A
Legal Description**