

**Impact Fees in Oregon  
National Impact Fee Roundtable  
October 12, 2007**

**I. Oregon Statutes – ORS 223.297 – 223.314**

A. “Uniform framework” for systems development charges

B. Reimbursement and improvement fees allowed

C. Methodology required

D. ORS 223.304 (1) and (2) govern reimbursement and improvement fees:

(1)(a) **Reimbursement fees** must be established or modified by ordinance or resolution setting forth a methodology that is, when applicable, based on:

- (A) Ratemaking principles employed to finance publicly owned capital improvements;
- (B) Prior contributions by existing users;
- (C) Gifts or grants from federal or state government or private persons;
- (D) The value of unused capacity available to future system users or the cost of the existing facilities; and
- (E) Other relevant factors identified by the local government imposing the fee.

(b) The methodology for establishing or modifying a reimbursement fee must:

- (A) Promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities.
- (B) Be available for public inspection.

(2) **Improvement fees** must:

(a) Be established or modified by ordinance or resolution setting forth a methodology that is available for public inspection and demonstrates consideration of:

- (A) The projected cost of the capital improvements identified in the plan and list adopted pursuant to ORS 223.309 that are needed to increase the capacity of the systems to which the fee is related; and
- (B) The need for increased capacity in the system to which the fee is related that will be required to serve the demands placed on the system by future users.

(b) Be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.

C. Detailed notice requirements, but only 60 days to challenge methodology after it's adopted.

D. Inflationary adjustments don't require full process

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E. Prior to adopting SDC, local government must adopt CIP that includes projects, timing and portion to be funded by improvement fees. ORS 223.309.

F. The CIP may be amended at any time, with less process than required to adopt or amend the methodology.

G. Land use procedures do not apply: “The establishment, modification or implementation of a systems development charge, or a plan or list adopted pursuant to ORS 223.309, or any modification of a plan or list, is not a land use decision pursuant to ORS chapters 195 and 197.” ORS 223.314.

## **II. Oregon cases**

A. *Rogers Machinery v. Washington County*, 181 Or App 369 (2002). Despite the county’s assertion that a traffic impact fee (TIF) was a tax, it fit the statutory definition of a systems development charge and therefore was governed by the SDC statutes. The TIF did not “take” property in violation of the state or federal constitution.

B. *Homebuilders Association v. Tualatin Hills Park and Rec Dist.*, 185 Or App 729 (2003). Adoption of SDC was legislative in nature, and its constitutionality could be resolved (and upheld) without reference to a factual record.

C. *Homebuilders Association v. City of West Linn*, 204 Or App 655 (2006). Discusses level of service analysis for parks SDC. Nothing in statutes requires methodology to use any particular formula to calculate SDCs. “As long as the city measures the existing LOS in the same way when it determines its current or future needs, its methodology does not violate ORS 223.304(2).”

## **III. Case Study – *Homebuilders Association of Lane County v. City of Springfield and Metropolitan Wastewater Management Commission* (MWMC)**

A. Major upgrade needed for MWMC treatment facilities

B. The “framework” methodology

C. Homebuilders’ objections; attempts to resolve

D. Adoption process; concurrent land use planning

E. Homebuilders’ (unsuccessful) arguments in circuit court:

1. Methodology must yield the SDC, without reference to outside documents
2. MWMC could not rely on a CIP that had not been adopted as a land use decision.
3. In numerous ways, MWMC misconstrued the statutory factors governing improvement fees and incorrectly applied those standards to the evidence in the record.

F. Court of Appeals decision reported at 211 Or App 658 (2007)

1. Nothing in SDC statutes requires methodology to contain data and information necessary to arrive at a per-unit charge or to refer to specific projects.
2. Nothing in statutes requires the methodology to incorporate or apply data from a comprehensive land use plan (e.g., the public facilities portion and the population growth projections), or to use any particular method to calculate peak capacity, average per capita flow, etc.
3. Facilities plan (CIP) adopted in part to support SDC under ORS 223.309 was not a land use decision. *See Homebuilders Association v. City of Springfield et al*, 204 Or App 270 (2006) (affirming Land Use Board of Appeals' dismissal of appeal for lack of jurisdiction.)
4. Because statutes do not mandate a particular approach to the methodology, the court reviews factual premises of the methodology for substantial evidence. Homebuilders offered only their preference for how to weigh the evidence.

**IV. Lessons?**

- A. Don't draft impact fee statutes or amendments in the hallways of the legislature.
- B. As you develop the methodology, build a record to support it.
- C. As you build the record, be attentive to which aspects are factual and which are policy.
- D. Coordinate with land use planning to the extent possible.
- E. Some folks just don't want to pay. Once the methodology goes to court, only some of the arguments will be based on principle.