

TITLE XV: LAND USAGE

Chapter

150.GENERAL PROVISIONS

151.BUILDING REGULATIONS; CONSTRUCTION

152.FINANCING PUBLIC IMPROVEMENTS

153.REAL PROPERTY

CHAPTER 150: GENERAL PROVISIONS

Section

Development Plans and Regulations

- 150.01 Comprehensive Plan adopted
- 150.02 Development Ordinance adopted
- 150.03 Planning Commission

DEVELOPMENT PLANS AND REGULATIONS

§ 150.01 COMPREHENSIVE PLAN ADOPTED.

(A) The city does hereby adopt the City Comprehensive Plan, July 1978, as the long range land use plan, and which shall be a part of this code as if set forth in full herein.

(B) The Comprehensive Plan shall be kept on file in the office of the City Recorder and available for public review.

(Ord. 1-78-79, passed 7-19-1978; Am. Ord. 50, passed 2-3-1988; Am. Ord. 133-05, passed 9-13-2005; Am. Ord. 138-08, passed 4-8-2008; Am. Ord. 139-09, passed 6-9-2009; Am. Ord. 171-2018, passed 7-12-2018)

§ 150.02 DEVELOPMENT ORDINANCE ADOPTED.

The City Council does hereby adopt the City Development Ordinance, which has been codified in full as a second volume to this code.

§ 150.03 PLANNING COMMISSION.

(A) *Composition.* There is a City Planning Commission for the City of Donald. The Commission consists of seven members appointed and serving at the pleasure of the Donald City Council. The

chairperson and vice-chair shall be elected by the members of the Planning Commission at the first meeting of the calendar year. Their term shall start upon election and shall continue for a one-year term and until such time as their successors are elected. If the office of the chairperson becomes vacant, the vice-chair shall succeed as chairperson for the remainder of the year, the membership shall elect a successor vice-chairperson to serve the unexpired term of the vice-chair.

(B) *Qualification of members.* No fewer than five members of the Planning Commission shall be residents of the City of Donald. In order to serve on the Planning Commission, non-residents must own property within the urban growth boundary or operate a business within the city limits. Commissioners shall be of legal voting age. No more than one Commissioner may engage principally in the buying, selling, or developing of real estate for profit as individuals, or be members of any partnership, or be officers or employees of any corporation, that engages principally in the buying, selling, or developing of real estate for profit as individuals, or be members of any partnership, or be officers or employees of any corporation, that engages principally in the buying, selling, or developing of real estate for profit. No more than two members shall be engaged in the same kind of occupation, business, trade or profession.

(C) *Term of members.* Members of the Planning Commission shall hold office for a term of three years. Those members in office on the effective date of this section shall remain in office for the remainder of their terms. After each three-year term members of the Planning Commission may reapply to serve one or more additional terms on the Planning Commission. Vacancies occurring during a member term shall be filled by the City Council for the unexpired portion of that term. When a vacancy occurs, the city shall give public notice of the vacancy inviting letter of interest from qualified candidates.

(D) *Quorum.* Four members of the Planning Commission shall constitute a quorum. No action shall be taken in the absence of the quorum except to adjourn the meeting and continue public hearings which are suspended by reason of the absence of a quorum. For the purpose of forming a quorum, Commissioners who have recused themselves or who are disqualified from participation in any matter, shall be counted as present despite their inability to vote. A majority vote of the Commission members present shall be sufficient for taking any action authorized by the Planning Commission.

(E) *Rules of procedure.* The Planning Commission shall meet at the request of the city and in conformity with state and local laws as required to render land use decisions, and additionally may meet from time to time to decide Commission business. Except for the provisions of division (D) above, the Planning Commission is authorized to adopt rules of procedure for the conduct of its meetings and hearings, provided such rules do not conflict with state law, city charter and ordinances and the Comprehensive Plan. A copy of such rules shall be filed with the City Recorder and be made available for inspection to those appearing before the Planning Commission prior to a scheduled meeting.

(F) *Right of parties to present evidence at hearings.* At public hearings before the Planning Commission, all interested persons and organizations shall be allowed an opportunity to be heard and to present and rebut evidence consistent with the requirements of state and local law. The Planning Commission may set consistent, reasonable, time limits for oral presentations. Parties are encouraged to submit evidence in writing at or prior to Planning Commission hearings.
(Ord. 151-2013, passed 5-14-2013)

CHAPTER 151: BUILDING REGULATIONS; CONSTRUCTION

Section

Design and Construction Standards

- 151.01 The design and construction standards adopted
- 151.02 Copy published
- 151.03 Amendment
- 151.04 Interpretation and enforcement
- 151.05 Preemption

Adoption of Codes

- 151.15 Adoption of uniform codes
- 151.16 Definitions

Cross-reference:

Dangerous and Unsanitary Buildings, see §§ 91.30 et seq.

DESIGN AND CONSTRUCTION STANDARDS

§ 151.01 THE DESIGN AND CONSTRUCTION STANDARDS ADOPTED.

The Design and Construction Standards for Public Works Construction in the city, as titled and attached to Ord. 176-2019, is hereby adopted in full and incorporated by reference herein.
(Ord. 115-00, passed 5-9-2000; Am. Ord. 176-2019, passed 7-9-2019)

§ 151.02 COPY PUBLISHED.

A copy of the Design and Construction Standards for Public Works Construction in the city shall be maintained on the city's website and is available at the City Hall.
(Ord. 115-00, passed 5-9-2000; Am. Ord. 176-2019, passed 7-9-2019) Penalty, see § 10.99

§ 151.03 AMENDMENT.

Fees prescribed by this chapter may be amended by resolution of the City Council.
(Ord. 115-00, passed 5-9-2000; Am. Ord. 176-2019, passed 7-9-2019)

§ 151.04 INTERPRETATION AND ENFORCEMENT.

Interpretation and enforcement of the Design and Construction Standards for Public Works Construction in the city shall be by the City Public Works Director.
(Ord. 176-2019, passed 7-9-2019)

§ 151.05 PREEMPTION.

The Design and Construction Standards for Public Works Construction in the city shall be subject to any and all preemption requirements imposed by state and federal law.
(Ord. 176-2019, passed 7-9-2019)

ADOPTION OF CODES**§ 151.15 ADOPTION OF UNIFORM CODES.**

(A) *Adoption.* There are hereby adopted by the city for the purpose of prescribing regulations governing conditions hazardous to life and property those certain codes as follows save and except those portions as are hereinafter modified or amended, and the same are hereby adopted and incorporated as fully as if set out at length herein; and from the date on which this section shall take effect the provisions thereof shall be controlling within the corporate limits of the city.

(B) *Uniform Fire Code.* There is hereby adopted by the city for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion that certain code known as the Uniform Fire Code recommended by the Western Fire Chiefs Association and the International Conference of Building Officials with state amendments as if set out at length herein and the provisions thereof shall be controlling within the corporate limits of the city.

(C) *Abatement of dangerous buildings.* There is hereby adopted by the city for the purpose of prescribing regulations governing dangerous buildings that certain code known as the 1994 edition of the Uniform Code for the Abatement of Dangerous Buildings promulgated by the International Conference of Building Officials as now enacted or hereinafter amended.

(D) *Excavation and grading.* This city adopts by reference Chapter 33 of the Uniform Building Code adopted by the International Conference of Building Officials (1994 edition) and as amended.

(E) *Specialty codes.* The city adopts the following state specialty codes:

- (1) State One and Two Family Dwelling Specialty Code;
- (2) State Manufactured Home Installation Specialty Code;
- (3) State Manufactured Home Park Construction Specialty Code;
- (4) State Mechanical Specialty Code;
- (5) State Plumbing Specialty Code; and

(6) State Recreational Vehicle Park Construction Specialty Code.
(Ord. 116-00, passed 9-12-2000)

§ 151.16 DEFINITIONS.

For the purpose of § 151.15, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPEALS. Whenever the designated enforcement officer shall disapprove an application or refuse to grant a permit applied for or when it is claimed that the provisions of any of the codes described in § 151.15 above do not apply or that the true intent and meaning of those codes have been misconstrued or wrongly interpreted, the applicant may appeal from the decision to the City Council.

(1) The ***BOARD OF APPEALS*** referred to in the Uniform Fire Code shall be the Board of Appeals designated by the Aurora Fire District.

(2) The ***BOARD OF APPEALS*** referred to in the Uniform Code for the Abatement of Dangerous Buildings shall be those persons as have been designated by the Aurora Fire District.

CORPORATION COUNSEL. As used in any of the above codes prescribing regulations to govern conditions hazardous to life and property, it shall be held to mean the City Attorney for this city.

FIRE DEPARTMENTS. As used in any of the above codes prescribing regulations to govern conditions hazardous to life and property, it shall be held to mean the Aurora Fire District. The Structural Specialty Code and Mechanical Specialty Code shall each be enforced by those persons

designated by the city. The Uniform Code for the Abatement of Dangerous Buildings shall be enforceable by both the city and the Aurora Fire District.

JURISDICTION. As used in any of the above codes prescribing regulations to govern conditions hazardous to life and property, it should be held to mean this city.
(Ord. 116-00, passed 9-12-2000)

CHAPTER 152: FINANCING PUBLIC IMPROVEMENTS

Section

System Development Charges

- 152.01 Purpose
- 152.02 Scope
- 152.03 Definitions
- 152.04 System development charge established
- 152.05 Methodology
- 152.06 Authorized expenditures
- 152.07 Expenditure restrictions
- 152.08 Improvement plan
- 152.09 Collection of charge
- 152.10 Delinquent charges; hearings
- 152.11 Installment payment
- 152.12 Exemptions, reductions, and waivers
- 152.13 Credits
- 152.14 Disposition of revenue
- 152.15 Appeals procedure
- 152.16 Prohibited connection

Reimbursement Districts

- 152.30 Definitions
- 152.31 Application to establish reimbursement district
- 152.32 Public Works Director's report
- 152.33 Amount to be reimbursed
- 152.34 Public hearing
- 152.35 Council action; resolution; agreement content
- 152.36 Notice of adoption of resolution
- 152.37 Recording of resolution
- 152.38 Contesting district
- 152.39 Obligation to pay reimbursement fee
- 152.40 Public improvements owned by city
- 152.41 Multiple public improvements

152.42 Collection and payment; other fees and charges

152.43 Fees not a tax

152.99 Penalty

SYSTEM DEVELOPMENT CHARGES

§ 152.01 PURPOSE.

The purpose of the system development charge is to impose a portion of the cost of capital improvements for water, wastewater, drainage, streets, flood control, and parks and recreation upon those developments that create the need for or increase the demands on capital improvements. (Ord. 108-97, passed 8-14-1997)

§ 152.02 SCOPE.

The system development charge imposed by this subchapter is separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development. (Ord. 108-97, passed 8-14-1997)

§ 152.03 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CAPITAL IMPROVEMENTS. Facilities or assets used for:

- (1) Water supply, treatment, and distribution;
- (2) Wastewater collection, transmission, treatment, and disposal;
- (3) Drainage and flood control;
- (4) Transportation; or
- (5) Parks and recreation.

DEVELOPMENT. A building or mining operation making a physical change in the use or appearance of a structure or land, dividing land into 2 or more parcels (including partitions and subdivision), and creating or termination of a right of access.

IMPROVEMENT FEE. A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to this subchapter.

LAND AREA. The area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way, or easement subject to a servitude for a public street or scenic or preservation purpose.

OWNER. The owner or owners of record title or the purchaser or purchasers under a recorded sales agreement, and other persons having an interest of record in the described real property.

PARCEL OF LAND. A lot, parcel, block, or other tract of land that is occupied or may be occupied by a structure, or structures, or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinance.

QUALIFIED PUBLIC IMPROVEMENT. A capital improvement that is required as a condition of development approval, identified in the city's capital improvement plan and list adopted pursuant to O.R.S. 223.309 and either:

- (1) Is not located on or contiguous to property that is the subject of development approval; or
- (2) Is 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. A fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to § 152.04 of this code.

SYSTEM DEVELOPMENT CHARGE. A reimbursement fee, an improvement fee, or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. **SYSTEM DEVELOPMENT CHARGE** includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the city for its average cost of inspecting and installing connections with water and sewer facilities. **SYSTEM DEVELOPMENT CHARGE** does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision. (Ord. 108-97, passed 8-14-1997; Am. Ord. 166-2016, passed 3-8-2016)

§ 152.04 SYSTEM DEVELOPMENT CHARGE ESTABLISHED.

(A) System development charges shall be established and may be revised by resolution of the Council.

(B) Unless otherwise exempted by the provisions of the subchapter, or other local or state law, a system development charge is imposed upon all persons who develop parcels of land that connect to or which will otherwise use or create a need for the sewer facilities, storm sewers, water facilities, streets, or parks and open spaces of the city.

(Ord. 108-97, passed 8-14-1997) Penalty, see § 152.99

§ 152.05 METHODOLOGY.

(A) The methodology used to establish the reimbursement fee shall consider the cost of then existing facilities, prior contributions by then existing users, the value of unused capacity, rate making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the Council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then existing facilities.

(B) The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related.

(C) The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be contained in a resolution adopted by the Council.

(Ord. 108-97, passed 8-14-1997)

§ 152.06 AUTHORIZED EXPENDITURES.

(A) *Reimbursement fees.* Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

(B) *Improvement fees.*

(1) Improvement fees shall be spent only on improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

(2) A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the improvement plan adopted by the city pursuant to this subchapter.

(C) *Costs of compliance.* Notwithstanding divisions (A) and (B) of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this subchapter, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.
(Ord. 108-97, passed 8-14-1997)

§ 152.07 EXPENDITURE RESTRICTIONS.

(A) System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

(B) System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.
(Ord. 108-97, passed 8-14-1997)

§ 152.08 IMPROVEMENT PLAN.

The Council shall adopt a plan by resolution that:

(A) Lists the capital improvements that may be funded with improvement fee revenues;

(B) Lists the estimated cost and time of construction of each improvement; and

(C) Describes the process for modifying the plan.
(Ord. 108-97, passed 8-14-1997)

§ 152.09 COLLECTION OF CHARGE.

(A) The system development charge is payable upon:

(1) Issuance of a building permit;

(2) Connection to the water system or, the enlargement of an existing connection to the water system, which increases the use or demand upon the water system;

(3) Connection to the sewer system or, the enlargement of an existing connection to the sewer system, which increases the use or demand upon the sewer system.

(B) If development is commenced or connection is made to the water or sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required. If no building, development, or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.

(C) The City Manager, or his or her designee, shall collect the applicable system development charge when a permit that allows the building or development of a parcel is issued, or when a connection to the water or sewer system of the city is made.

(D) The City Manager, or his or her designee, shall not issue the permit or allow the connection until the charge has been paid in full, or until provision for installment payments has been made pursuant to § 152.11, or unless an exemption is granted pursuant to § 152.12.

(Ord. 108-97, passed 8-14-1997; Am. Ord. 166-2016, passed 3-8-2016) Penalty, see § 152.99

§ 152.10 DELINQUENT CHARGES; HEARINGS.

(A) When, for any reason, the system development charge has not been paid, the City Manager shall report to the Council the amount of the uncollected charge, the description of the real property to which the charge is attributable, the date upon which the charge was due, and the name of the person responsible for the payment of the fee.

(B) The City Council shall schedule a public hearing on the matter and direct that notice of the hearing be given to each owner or person responsible for payment of the fee, with a copy of the City Manager's report concerning the unpaid charge. Notice of the hearing shall be given either personally, or by certified mail, return receipt requested, or by both personal and mailed notice, and by posting notice on the parcel at least 10 days before the date set for the hearing.

(C) At the hearing, the Council may accept, reject, or modify the determination of the City Manager as set forth in the report.

(D) The City Manager shall report to the Council the amount of the system development charge, the dates on which the payments are due, the name of the owner, and the description of the parcel.
(Ord. 108-97, passed 8-14-1997)

§ 152.11 INSTALLMENT PAYMENT.

(A) When a system development charge of \$25 or more is due and collectible, the owner of the parcel of land subject to the development charge may apply for payment in at least 10 semi-annual installments, to include interest on the unpaid balance, in accordance with O.R.S. 223.208.

(B) The City Manager 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.

(C) An applicant for installment payment shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that the interest of the applicant is adequate to secure payment of the lien.

(D) The City Manager shall report to the Council the amount of the system development charge, the dates on which the payments are due, the name of the owner, and the description of the parcel.

(E) The City Manager shall docket the lien in the lien docket. From that time, the city shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by resolution of the Council. The lien shall be enforceable in the manner provided in O.R.S. Chapter 223.

(Ord. 108-97, passed 8-14-1997)

§ 152.12 EXEMPTIONS, REDUCTIONS, AND WAIVERS.

(A) Structures and uses established and existing on or before July 1, 1991, are exempt from system development charges imposed by this subchapter, except water and sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this division shall pay the water or sewer charges pursuant to the terms of this subchapter upon the receipt of a permit to connect to the water or sewer system.

(B) Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the International Building Code, are exempt from all portions of the system development charge.

(C) An alteration, addition, replacement, or change in use that does not increase the parcel's or structure's use of the public improvement facility is exempt from all portions of the system development charge.

(Ord. 108-97, passed 8-14-1997; Am. Ord. 134-06, passed 3-14-2006; Am. Ord. 166-2016, passed 3-8-2016)

§ 152.13 CREDITS.

(A) A system development charge shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given for the computed system development charge equal to the pre-existing use of any pre-existing improvement at the time the current system development charge is adopted. The credit so computed shall not exceed the calculated system development charge. No refund shall be made on account of any credit.

(B) A credit shall be given for the cost of a qualified public improvement which:

(1) Is required as a condition of development approval; and

(2) Is identified in the city's capital improvement plan and list pursuant to O.R.S. 223.309; and

(3) Is not located on or contiguous to property that is the subject of development approval, or is 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.

(C) Credit shall not be transferable from 1 development to another, except in compliance with standards adopted by the City Council.

(D) Credit shall not be transferable from 1 type of capital improvement to another.
(Ord. 108-97, passed 8-14-1997; Am. Ord. 166-2016, passed 3-8-2016)

§ 152.14 DISPOSITION OF REVENUE.

(A) All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds of the city. The portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in § 152.06.

(B) The City Manager shall provide the City Council with an annual accounting, based on the city's fiscal year, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account.
(Ord. 108-97, passed 8-14-1997)

§ 152.15 APPEALS PROCEDURE.

(A) A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision of the expenditure to the City Council by filing a written request with the City Manager describing with particularity the decision and the expenditure from which the person appeals. An appeal of an expenditure must be filed within 2 years of the date of the alleged improper expenditure.

(B) Appeals of any other decision required or permitted to be made by the City Manager under this subchapter must be filed within 10 days of the date of the decision.

(C) After providing notice to the appellant, the Council shall determine whether the City Manager's decision or the expenditure is in accordance with this subchapter and the provisions of O.R.S. 223.297-233.314 and may affirm, modify, or overrule the decision. If the Council determines that there has been an improper expenditure of system development charge revenues, the Council shall direct that sum equal to the misspent amount shall be deposited within 1 year to the credit of the account or fund from which it was spent.
(Ord. 108-97, passed 8-14-1997)

§ 152.16 PROHIBITED CONNECTION.

(A) No person may connect to the water or sewer systems of the city, unless the appropriate system development charge has been paid, or the installment payment method has been applied for and approved.

(B) Any person found to be violating any provision of this subchapter shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction. The offender shall, within the period of time stated in the notice, permanently cease all violations. Any person violating any of the provisions of this subchapter shall become liable to the city for any expense, loss, or damage occasioned by the city by reason of that violation. (Ord. 108-97, passed 8-14-1997) Penalty, see § 152.99

REIMBURSEMENT DISTRICTS

§ 152.30 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DEVELOPER. A person who is required or chooses to finance some or all of the cost of a street, water, or sewer improvement which is available to provide service to property, other than property owned by the person, and who applies to the city for reimbursement for the expense of the improvement.

DEVELOPMENT PERMIT. Any final land use decision, limited land use decision, expedited land division decision, partition, subdivision, or driveway permit.

PUBLIC IMPROVEMENT. Any construction, reconstruction, or upgrading of water, storm water, sewer, or street improvements.

PUBLIC WORKS DIRECTOR. The Public Works Director of the city.

REIMBURSEMENT AGREEMENT. The agreement between the developer and the city which is authorized by the City Council and executed by the City Manager, providing for the installation of and payment for reimbursement district public improvements.

REIMBURSEMENT DISTRICT. The area which is determined by the City Council to derive a benefit from the construction of public improvements, financed in whole or in part by the developer.

REIMBURSEMENT FEE. The fee required to be paid by a resolution of the City Council and the reimbursement agreement. The City Council resolution and reimbursement agreement shall determine the boundaries of the reimbursement district and shall determine the methodology for imposing a fee which considers the cost of reimbursing the developer for financing the construction of the improvement within the reimbursement district.
(Ord. 121-01, passed 4-10-2001)

§ 152.31 APPLICATION TO ESTABLISH REIMBURSEMENT DISTRICT.

(A) A person who is required to or chooses to finance some or all of the cost of a public improvement which will be available to provide service to property other than property owned by the person may by written application filed with the Public Works Director request that the city establish a reimbursement district. The public improvement must be of a size greater than that which would otherwise ordinarily be required in connection with an application for a building permit or development permit or must be available to provide service to property other than property owned by the developer, so that the public will benefit by making the improvement.

(B) The application shall be accompanied by an application fee, in the amount of \$1,000, which the City Council has determined reasonable to cover the cost of the preparation of the Public Works Director's report and notice pursuant to this subchapter.

(C) The application shall include the following:

(1) A written description of the location, type, size, and cost of each public improvement which is to be eligible for reimbursement;

(2) A map showing the boundaries of the proposed reimbursement district, the tax account number of each property, and its size and boundaries;

(3) A map showing the properties to be included in the proposed reimbursement district; the zoning district for the properties; the front footage and square footage of the properties, or similar data necessary for calculating the apportionment of the cost; the property or properties owned by the developer; and the names and mailing addresses of owners of other properties to be included in the proposed reimbursement district; and

(4) The actual or estimated cost of the public improvements.

(D) The application may be submitted to the city prior to the installation of the public improvement but not later than 180 days after completion and acceptance of the public improvements by the city.

(Ord. 121-01, passed 4-10-2001) Penalty, see § 152.99

§ 152.32 PUBLIC WORKS DIRECTOR'S REPORT.

(A) The Public Works Director shall review the application for the establishment of a reimbursement district and evaluate whether a district should be established. The Public Works Director may require the submission of other relevant information from the developer in order to assist in the evaluation.

(B) The Public Works Director shall prepare a written report for the City Council that considers and makes a recommendation concerning each of the following factors:

- (1) Whether the developer will finance or has financed some or all of the cost of the public improvement, thereby making service available to the property, other than that owned by the developer;
 - (2) The boundary and size of the reimbursement district;
 - (3) The actual or estimated cost of the public improvement serving the area of the proposed reimbursement district and the portion of the cost for which the developer should be reimbursed for each public improvement;
 - (4) A methodology for spreading the cost among the properties within the reimbursement district and, where appropriate, defining a "unit" for applying the reimbursement fee to property which may, with city approval, be partitioned, subdivided, altered, or modified at some future date;
 - (5) The amount to be charged by the city for an administration fee for the reimbursement agreement. The administration fee shall be fixed by the City Council to reasonably reimburse the city for the cost of administering the reimbursement district and will be included in the resolution approving and forming the reimbursement district. The administration fee is due and payable to the city at the time the agreement is signed;
 - (6) Whether the public improvements will or have met city standards; and
 - (7) Whether it is fair and in the public interest to create a reimbursement district.
- (Ord. 121-01, passed 4-10-2001)

§ 152.33 AMOUNT TO BE REIMBURSED.

(A) A reimbursement fee shall be computed by the city for all properties within the reimbursement district, excluding property owned by or dedicated to the city or the state, which have the opportunity to use the public improvements, including the property of the developer, for formation of a reimbursement district. The fee shall be calculated separately for each public improvement. The developer for formation of the reimbursement district shall not be reimbursed for the portion of the reimbursement fee computed for its own property.

(B) The cost to be reimbursed to the developer shall be limited to the cost of construction engineering, construction, and off-site dedication of right-of-way. Construction engineering shall include surveying and inspection costs and shall not exceed 7.5% of eligible public improvement construction cost. Costs to be reimbursed for right-of-way shall be limited to the reasonable market value of land or easements purchased by the developer from a third party in order to complete off-site improvements.

(C) No reimbursement shall be allowed for the cost of design engineering, financing costs, permit or fees required for construction permits, land or easements dedicated by the developer, the portion of costs which are eligible for system development charge credits, or any costs which cannot be clearly documented.

(D) Reimbursement for legal expenses shall be allowed only to the extent that those expenses are reasonable and relate to the preparation and filing of an application for reimbursement.

(E) Reimbursement for the amount of the application fee required by § 152.31 of this code. (Ord. 121-01, passed 4-10-2001)

§ 152.34 PUBLIC HEARING.

(A) Within 45 days after the Public Works Director has completed the report required in § 152.32, the City Council shall hold an informational public hearing in which any person shall be given the opportunity to comment on the proposed reimbursement district. Because formation of the reimbursement district does not result in an assessment against property or lien against property, the public hearing is for informational purposes only and is not subject to mandatory termination because of remonstrances. The City Council has the sole discretion after the public hearing to decide whether a resolution approving and forming the reimbursement district shall be adopted.

(B) Not less than 10 days prior to any public hearing held pursuant to this subchapter, the developer and all owners of the property within the proposed district shall be notified of the public hearing and the purpose thereof. This notification shall be accomplished by either regular and certified mail or by personal service. Notice shall be deemed effective on the date that the letter of notification is mailed. Failure of the developer or any affected property owner to be so notified shall not invalidate or otherwise affect any reimbursement district resolution or the City Council's action to approve the same.

(C) If a reimbursement district is formed prior to construction of the improvement(s), a second public hearing, subject to the same notice requirements, shall be held after the improvement has been accepted by the city. At that time, the City Council at its discretion may modify the resolution to reflect the actual cost of the improvement(s).

(Ord. 121-01, passed 4-10-2001)

§ 152.35 COUNCIL ACTION; RESOLUTION; AGREEMENT CONTENT.

(A) After the public hearing held pursuant to § 152.34(A), the City Council shall approve, reject, or modify the recommendation contained in the Public Works Director's report. The City Council's decision shall be contained in a resolution. If a reimbursement district is established, the resolution shall include the Public Works Director's report as approved or modified, and specify that payment of the reimbursement fee, as designated for each parcel, is a precondition of receiving any city permits applicable to development of the parcel as provided for in § 152.39 of this code.

(B) The resolution shall establish an interest rate to be applied to the reimbursement fee as a return on the investment of the developer. The interest rate shall be fixed and computed against the reimbursement fee as simple interest and will not compound.

(C) The resolution shall instruct the City Administrator to enter into an agreement with the developer pertaining to the reimbursement district improvements. If the agreement is entered into prior to construction, the agreement shall be contingent upon the improvements being accepted by the city. The agreement shall contain at least the following provisions:

- (1) The public improvement(s) shall meet applicable city standards;
- (2) The total amount of potential reimbursement to the developer shall be specified;
- (3) The total amount of potential reimbursement shall not exceed the actual cost of the public improvement(s);
- (4) The developer shall guarantee the public improvement(s) for a period of 12 months after the date of installation;
- (5) A clause in a form acceptable to the City Attorney stating that the developer shall defend, indemnify, and hold harmless the city from any and all losses, claims, damages, judgments, or other costs or expenses arising as a result of or related to the city's establishment of the reimbursement district, including any city costs, expenses, and attorney fees related to collection of the reimbursement fee should the City Council decide to pursue collection of an unpaid reimbursement fee under § 152.39(H);
- (6) A clause in a form acceptable to the City Attorney stating that the developer agrees that the city cannot be held liable for any of the developer's alleged damages, including all costs and attorney fees, under the agreement or as a result of any aspect of the formation of the reimbursement district, or the reimbursement district process, and that the developer waives, and is stopped from bringing, any claim, of any kind, including a claim in inverse condemnation, because the developer has benefitted by the city's approval of its development and the required improvements; and
- (7) Other provisions the city determines necessary and proper to carry out the provisions of this subchapter.

(D) If a reimbursement district is established by the City Council, the date of the formation of the district shall be the date that the City Council adopts the resolution forming the district.
(Ord. 121-01, passed 4-10-2001)

§ 152.36 NOTICE OF ADOPTION OF RESOLUTION.

The city shall notify all property owners within the district and the developer of the adoption of a reimbursement district resolution. The notice shall include a copy of the resolution, the date it was adopted, and a short explanation specifying the amount of the reimbursement fee and that the property owner is legally obligated to pay the fee pursuant to this subchapter.
(Ord. 121-01, passed 4-10-2001)

§ 152.37 RECORDING OF RESOLUTION.

The City Recorder shall cause notice of the formation and nature of the reimbursement district to be filed in the office of the County Clerk so as to provide notice to potential purchasers of property within the district. This recording shall not create a lien. Failure to make the recording shall not affect the legality of the resolution or the obligation to pay the reimbursement fee.
(Ord. 121-01, passed 4-10-2001)

§ 152.38 CONTESTING DISTRICT.

No legal action intended to contest the formation of the district or the reimbursement fee, including the amount of the charge designated for each parcel, shall be filed after 60 days following the adoption of a resolution establishing a reimbursement district, and any such legal action shall be exclusively by writ of review pursuant to O.R.S. 34.010 - 34.102.
(Ord. 121-01, passed 4-10-2001)

§ 152.39 OBLIGATION TO PAY REIMBURSEMENT FEE.

(A) The applicant for a permit related to property within any reimbursement district shall pay the city, in addition to any other applicable fees and charges, the reimbursement fee established by the Council, if, within 10 years after the date of the passage of the resolution forming the reimbursement district, the person applies for and receives approval from the city for any of the following activities:

- (1) A building permit for a new building;
- (2) Building permits(s) for any addition(s), modification(s), repair(s), or alteration(s) of a building, which exceed 25% of the value of the building within any 12-month period. The value of the

building shall be the amount shown on the most current records of the County Department of Assessment and Taxation for the building's real market value. This division shall not apply to repairs made necessary due to damage or destruction by fire or other natural disaster;

(3) A development permit, as that term is defined by this subchapter; or

(4) A city permit issued for connection to a public improvement.

(B) The city's determination of who shall pay the reimbursement fee and when the reimbursement fee is due is final.

(C) In no instance shall the city, or any officer or employee of the city, be liable for payment of any reimbursement fee, or portion thereof, as a result of the city's determination as to who should pay the reimbursement fee. Only those payments which the city has received from or on behalf of those properties within a reimbursement district shall be payable to the developer. The city's general fund or other revenue sources shall not be liable for or subject to payment for outstanding and unpaid reimbursement fees imposed upon private property.

(D) Nothing in this subchapter is intended to modify or limit the authority of the city to provide or require access management.

(E) Nothing in this subchapter is intended to modify or limit the authority of the city to enforce development conditions which have already been imposed against specific properties.

(F) Nothing in this subchapter is intended to modify or limit the authority of the city, in the future, to impose development conditions against specific properties as they develop.

(G) No person shall be required to pay the reimbursement fee on an application or upon property for which the reimbursement fee has been previously paid, unless that payment was for a different type of improvement. No permit shall be issued for any of the activities listed in division (A) of this section unless the reimbursement fee, together with the amount of accrued interest, has been paid in full. Where approval is given as specified in division (A), but no permit is requested or issued, then the requirement to pay the reimbursement fee lapses if the underlying approval lapses.

(H) The date of reimbursement under this subchapter shall extend 10 years from the date of the formation of a reimbursement district formation by City Council resolution.

(I) The reimbursement fee is immediately due and payable to the city by property owners upon use of a public improvement as provided by this subchapter in division (A) of this section. If connection is made or construction commenced without required city permits, then the reimbursement fee is immediately due and payable upon the earliest date that any such permit was required.

(J) Whenever the full reimbursement fee has not been paid and collected for any reason after it is due, the City Administrator shall report to the City Council the amount of the uncollected reimbursement, the legal description of the property on which the reimbursement is due, the date upon which the reimbursement was due, and the property owner's name or names. The City Council shall then, by motion, set a public hearing date and direct the City Administrator to give notice of that hearing to each of the identified property owners, together with a copy of the City Administrator's report concerning the unpaid reimbursement fee. The notice may be either by certified mail or personal service. At the public hearing, the City Council may accept, reject, or modify the City Administrator's report. If the City Council determines that the reimbursement fee is due but has not been paid for whatever reason, the City Council may, at its sole discretion, act, by resolution, to take any action it deems appropriate, including all legal or equitable means necessary to collect the unpaid amount. After the City Council has made the determination that the reimbursement fee is due but has not been paid, the developer shall have a private cause of action against the person legally responsible for paying the reimbursement fee.

(Ord. 121-01, passed 4-10-2001) Penalty, see § 152.99

§ 152.40 PUBLIC IMPROVEMENTS OWNED BY CITY.

Public improvements installed pursuant to reimbursement district agreements shall become and remain the sole property of the city.

(Ord. 121-01, passed 4-10-2001)

§ 152.41 MULTIPLE PUBLIC IMPROVEMENTS.

More than 1 public improvement may be the subject of a reimbursement district.

(Ord. 121-01, passed 4-10-2001)

§ 152.42 COLLECTION AND PAYMENT; OTHER FEES AND CHARGES.

(A) The developer shall receive all reimbursements collected by the city for reimbursement district public improvements. The reimbursements shall be delivered to the developer for as long as the reimbursement district agreement is in effect. The payments shall be made by the city within 90 days of receipt of the reimbursements.

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

(Ord. 121-01, passed 4-10-2001)

§ 152.43 FEES NOT A TAX.

The City Council finds that the fees imposed by this subchapter are not taxes subject to the property tax limitations of Art. XI, § 11(b) of the State Constitution.
(Ord. 121-01, passed 4-10-2001)

§ 152.99 PENALTY.

(A) Any person who shall violate any provision of this chapter for which no other penalty is prescribed shall, upon conviction, be subject to penalties as set forth in § 10.99 of this code.

(B) Any person who shall continue any violation of §§ 152.01 *et seq.* of this code beyond the time limit provided for in § 152.16, upon conviction thereof before the Municipal Judge, shall be fined in an amount to exceeding \$200 for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.
(Ord. 108-97, passed 8-14-1997)

CHAPTER 153: REAL PROPERTY

Section

- 153.01 Purpose
- 153.02 Definitions
- 153.03 Claim filing procedures
- 153.04 City Manager investigation and recommendation
- 153.05 City Council public hearing
- 153.06 City Council action on claim
- 153.07 Processing fee
- 153.08 Private cause of action

§ 153.01 PURPOSE.

This chapter is intended to implement the provisions added to O.R.S. Chapter 197 by Ballot Measure 37 (November 2, 2004). These provisions establish a prompt, open, thorough, and consistent process that enables property owners an adequate and fair opportunity to present their claims to the city; preserves and protects limited public funds; and establishes a record of the city's decision capable of circuit court review.

(Ord. 132-05, passed 1-11-2005)

§ 153.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY. The City of Donald, Oregon.

CITY MANAGER. The City Manager of the City of Donald, or his or her designee.

CLAIM. A claim filed under Ballot Measure 37.

EXEMPT LAND USE REGULATION. A land use regulation that:

- (1) Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;

(2) Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(3) Is required in order to comply with federal law;

(4) Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or

(5) Was enacted or substantially identical to a regulation in effect prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

FAMILY MEMBER. Includes wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

LAND USE REGULATION. Includes:

(1) Any statute regulating the use of land or any interest therein;

(2) Administrative rules and goals of the Land Conservation and Development Commission;

(3) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

(4) Metropolitan service district regional framework plans, functional plans, and planning goals and objectives; and

(5) Statutes and administrative rules regulating farming and forest practices.

OWNER. The present owner of the property or any interest therein.

VALID CLAIM. A claim submitted by the owner of real property that is subject to a land use regulation adopted or enforced by the city that restricts the use of the private real property in a manner that reduces the fair market value of the real property.

(Ord. 132-05, passed 1-11-2005)

§ 153.03 CLAIM FILING PROCEDURES.

(A) Claims may only be made in conjunction with a fully completed application for land use approval, meeting all the requirements of the city for the requested approval together with the information required by this section. Compensation or waiver shall only apply to land use regulations, or portions of regulations, for which waiver or compensation is required by Ballot Measure 37, and all other regulations and application requirements shall remain in full force and effect.

(B) Claims under this chapter must be authorized in writing by the current owner(s) of the property that is the subject of the claim at the time the claim is submitted. The claim shall be filed with the City Manager's office or another city office so designated by the City Manager.

(C) A claim shall include:

(1) The name(s), address(es), and telephone number(s) of all owners, and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each;

(2) The address, tax lot, and legal description of the real property that is the subject of the claim, together with a title report issued no more than 30 days prior to the submission of the claim that reflects the ownership of the property by the claimant, and the date the property was acquired;

(3) The current land use regulation(s) that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property;

(4) The amount of the claim, based on the alleged reduction in value of the real property certified by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon. The appraisal report shall separately set forth the fair market value of the property with the challenged regulations in place and the fair market value of the property without the challenged regulations; and

(5) Copies of any leases or Covenants, Conditions and Restrictions (CCR's) applicable to the real property, if any, which imposes restrictions on the use of the property. A complete list of all compensation claims, development, or permit applications previously filed with any regulatory body relating to the property, and any enforcement actions taken by any governmental body.

(D) The City Manager or the City Council may accept an application containing less than all of the information required by this section if, in his or her sole discretion, the application as submitted contains sufficient information to process the claim.

(E) Upon receipt and acceptance of a claim application, the city shall send notice to all interested parties described in division (C) above together with the public notice described in this section. (Ord. 132-05, passed 1-11-2005; Am. Ord. 135-06, passed 5-9-2006)

§ 153.04 CITY MANAGER INVESTIGATION AND RECOMMENDATION.

(A) The City Manager shall conduct a review within 15 days of application to determine the completeness of the application, and shall record the date that a completed application is received. If the City Manager determines that the application is not complete, the City Manager shall advise the owner in writing of any material necessary to complete the application. The owner shall submit the material needed for completeness within 30 days of the written notice that additional material is necessary in order for the city to evaluate the application. The 180-day period prescribed by Ballot Measure 37 to evaluate claims shall be deemed to commence on the date that the City Manager receives a complete application.

(B) Following an investigation of a claim, the City Manager shall forward a recommendation to the City Council that the claim be:

(1) Denied;

(2) Declared valid and waive or modify the land use regulation, or compensate the claimant upon completion of an appraisal; or

(3) Evaluated with the expectation of the city acquiring the property by condemnation.

(C) The City Council may deny the claim against the city after reviewing the City Manager's recommendation. If the City Council does not deny the claim against the city after reviewing the City Manager's recommendation, the City Council shall hold a public hearing on the claim against the city as described in § 153.05.

(Ord. 132-05, passed 1-11-2005)

§ 153.05 CITY COUNCIL PUBLIC HEARING.

For all claims not denied by Council, the City Council shall conduct a public hearing before taking final action on a recommendation from the City Manager. Notice of the public hearing shall be provided to the claimant, to owners and occupants of property within 300 feet of the perimeter of the subject property, and neighborhood groups or community organizations officially recognized by the City Council whose boundaries include the subject property.

(Ord. 132-05, passed 1-11-2005)

§ 153.06 CITY COUNCIL ACTION ON CLAIM.

(A) Upon conclusion of the public hearing, and prior to the expiration of 180 days from the date the claim was deemed filed, the City Council shall:

(1) Determine that the claim does not meet the requirements of Ballot Measure 37 and this chapter, and deny the claim; or

(2) Adopt a resolution with findings therein that supports a determination that the claim is valid and either direct that the claimant be compensated in an amount set forth in the resolution for the reduction in value of the property, or remove, modify, or direct that the challenged land use regulation not be applied to the property.

(B) The City Council's decision to waive or modify a land use regulation or to compensate the owner shall be based on whether the public interest would be better served by compensating the owner or by removing or modifying the challenged land use regulations with respect to the subject property. (Ord. 132-05, passed 1-11-2005)

§ 153.07 PROCESSING FEE.

Processing fees will be set by resolution of the Council. (Ord. 132-05, passed 1-11-2005)

§ 153.08 PRIVATE CAUSE OF ACTION.

If the city approves a claim under this chapter and elects to waive or modify a land use regulation, which waiver or modification results in a reduction in the fair market value of neighboring property, the neighbor(s) shall have a cause of action in state circuit court to recover from the claimant the amount of the reduction, and shall also be entitled to attorney's fees from the party requesting the waiver or modification of the land use regulation. (Ord. 132-05, passed 1-11-2005)

