

ORDINANCE NO. _____, SERIES 2019

AN ORDINANCE AMENDING PORTIONS OF LOUISVILLE METRO CODE OF ORDINANCES (“LMCO”) CHAPTER 164 REGARDING THE SYSTEM DEVELOPMENT CHARGE TO INCREASE CONTRIBUTIONS AND ELIMINATE THE SUNSET PROVISION. (AMENDMENT BY SUBSTITUTION.)

SPONSORED BY: COUNCIL MEMBER ANTHONY PIAGENTINI

WHEREAS, the System Development Charge was adopted by the Metro Council in 2006 (Ordinance No. 66, Series 2006) with a sunset provision established in LMCO § 164.50;

WHEREAS, Louisville Metro Government wishes to extend the System Development Charge beyond retirement of the existing bond obligations;

WHEREAS, Louisville Metro Government seeks to restructure the required contributions in the System Development Charge to better ensure that adequate roadway infrastructure is provided in developing areas of Metro Louisville;

WHEREAS, additional fees are needed to pay for new road infrastructure for new development, but the current fees are dedicated to pay off bonds for past infrastructure needs;

WHEREAS, the creation of additional fees will be used exclusively to pay for new projects, will be spent within the applicable Transportation Benefit District subject to two exceptions, and will not apply to existing bonded indebtedness;

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: A new subsection in LMCO § 164.02 is added as follows: **(H)**
Louisville Metro Government established a supplemental charge and reenacted this chapter with a restructure of the required contributions in the System Development

Charge to better ensure that adequate roadway infrastructure is provided in developing areas of Metro Louisville.

SECTION II: The following definitions in LMCO § 164.15 are amended or added as follows:

CONTRIBUTION OF LAND, MONEY, OR SERVICES. Contributions, payments, construction or dedications to Louisville Metro that are part of a class of capital facilities normally necessary to accomplish roadway improvements, excluding site-related improvements, which may be used to offset the required sSystem dDevelopment eCharges.

PAYOR. The party responsible for paying the sSystem dDevelopment eCharges.

SYSTEM DEVELOPMENT CHARGES. ~~A m~~Monetary charges imposed by Louisville Metro upon development activity as a condition of issuance of a residential building permit, in order to pay for public roadway facilities needed to serve new growth and development, and to mitigate the impacts of the development activity on the transportation facilities of Louisville Metro, but not including any permit or application fee.

SYSTEM DEVELOPMENT CHARGE ADMINISTRATOR. The party or parties designated by Louisville Metro to be responsible for administering this chapter.

SYSTEM DEVELOPMENT CHARGE – BASE. The Charge Schedule in Section 164.30(A)(2) which was enacted in the original ordinance and is dedicated solely to retiring bonded indebtedness.

SYSTEM DEVELOPMENT CHARGE – SUPPLEMENTAL. Charges as set forth in Section 164.30(A)(3) which, upon the effective date of this amended ordinance, shall be applied to construction projects in the applicable Transportation Benefit District.

TRANSPORTATION BENEFIT DISTRICT. Geographic areas of Louisville Metro established to prioritize transportation needs and manage capital roadway improvement projects. System dDevelopment eCharges will be used to improve “designated” public roads within the Transportation Benefit District in which the charges are assessed.

SECTION III: LMCO § 164.16 is amended as follows:

§ 164.16 APPLICABILITY.

(A) *Requirement.* On and after the effective date of this chapter, any party who shall construct a new residential dwelling unit, including but not limited to single-family homes, apartments, patio homes, condominiums and mobile or manufactured homes, in one of the Transportation Benefit Districts, shall be obligated to pay a ~~s~~Systems dDevelopment

Charges for roadways. Parties who apply for building permits up to 60 days after the effective date of this chapter shall not be required to pay a ~~System Development~~ Charges.

(B) *Payment of charges.*

(1) A party applying for any building or construction permit for a development as set forth in subsection (A), above, shall pay ~~charges~~ to the Systems Development Charge Administrator for the amount of space the building permit allows to be constructed, prior to the issuance of such permit.

(2) No permit shall be issued, no connection shall be made, and no such other development shall be occupied or allowed to go into use until the charges required by this chapter ~~is~~are paid.

(3) The Base and Supplemental System Development Charges shall be remitted separately to Metro Government.

(C) *Determination of charges.*

(1) The ~~System Development~~ Charges shall be as set forth in § 164.30 of this chapter.

(2) When a proposed development includes two or more types of residential dwelling units in any combination, including two or more types of dwelling units within a building or structure, the total ~~System Development~~ Charges shall be based on the sum of the charges for each type of dwelling unit, unless otherwise provided for in this chapter.

(3) If a development required to pay a ~~System Development~~ Charges under this chapter is located on a road classified as a designated road, the site-related improvements as required by the Planning Commission must be made, and a ~~System Development~~ Charges as set forth in § 164.30 of this chapter must be paid. Any non-site-related improvements made as part of the development process may be used to offset the required ~~System Development~~ Charges, as set forth under § 164.17(A)(2) of this chapter.

(4) If a development required to pay a ~~System Development~~ Charges under this chapter is located on a road not classified as a designated road, the road must be improved to meet the requirements set forth in all applicable ordinances of the Louisville Metro Government. Credit will be given for the cost of non-site-related roadway improvements against the ~~System Development~~ Charges due, however, no credit will be given for the cost of improvements that exceed the total ~~System Development~~ Charges due for developments on non-designated roads, and no refund of costs or expenses will be made. The requirements of this subsection regarding the widening of a non-designated road may, for owners of lots of five acres or more, be waived by the System Development Charge Administrator; however, in no case may the System

Development Charge Administrator waive the requirement of payment of the sSystem dDevelopment eCharges.

EXAMPLE: A developer chooses to develop a subdivision consisting of 70 single-family homes on property located on Smith Road, five miles from James Road which is a collector level roadway. Both roads are located in a Transportation Benefit District. Smith Road is not classified as a designated road and is only 12 feet wide. Based on a traffic study, it was determined that James Road will be the primary route taken to access the subdivision. The developer will be required to improve Smith Road to meet the requirements of all applicable ordinances of the Louisville Metro Government for the five miles between the subdivision and James Road, as well as across the subdivision's frontage, and pay a sSystem dDevelopment eCharges of \$70,000. The cost of the non-site-related roadway improvements may be used to offset the sSystem dDevelopment eCharges due, but cannot result in an additional credit or a refund of the cost of improvements in excess of the amount used to offset the sSystem dDevelopment eCharges.

(5) (a) All new standard subdivision developments on designated roads that are not 18 feet in width and which are approved after the effective date of this chapter shall be allowed only one single-family residential home per five acres (or the equivalent thereof in subdivisions with large acreages) prior to when the road and associated structures are widened to meet the requirements of this chapter.

(b) With the prior written approval of the System Development Charge Administrator, to meet the standards listed above, a developer may choose to improve a designated road and associated structures to meet the minimum 18-foot width requirement, rather than waiting until the road and associated structures are improved by the Louisville Metro Government. After the designated road is widened to at least 18 feet, the developer shall be entitled to obtain permits and build to the extent approved for the standard subdivision. In such case, the developer will be eligible for a full refund of the cost of roadway improvements, in accordance with the provisions of § 164.35(B)(3), and the sSystem dDevelopment eCharges due for the development will be payable at the time building permits are requested.

(c) In the event a developer chooses to wait until the designated road and associated structures are widened by the Louisville Metro Government, a Notice of Unbuildable Lots shall be put to record in the Office of the Clerk of Jefferson County prior to the issuance of the first building permit to indicate that certain lots are not eligible for building permits until such time as the designated road and associated structures are widened to meet the requirements of this chapter.

SECTION IV: All uses of “system development charge,” “System development charge,” and “a system development charge” in LMCO § 164.17 are hereby amended to read: “System Development Charges.”

SECTION V: A new subsection in LMCO § 164.20 is added as follows:

(C) *Review Process*

(1) There shall be established a System Development Charge Oversight Committee, which shall be responsible for reviewing the classification of roads as designated or non-designated roads, and the calculation of charges on a bi-annual basis. The composition of the Oversight Committee shall be as follows:

- (a) System Development Charge Administrator;
- (b) Director, or designee, of ~~the Department of Planning and Design Services~~Develop Louisville;
- (c) Director, or designee, of the Department of Public Works;
- (d) A representative of the ~~Home Builders~~Building Industry Association of Louisville selected by that organization;
- (e) A representative of the Louisville Apartment Association selected by that organization;
- (f) An individual selected by Greater Louisville, Inc.;
- (g) A neighborhood representative selected by the Planning Committee of the Louisville Metro Planning Commission; and
- (h) A representative of the Kentucky Transportation Cabinet selected by that organization.
- (i) A member of the Louisville Metro Council from a district containing a Transportation Benefit District.

SECTION VI: LMCO § 164.30 is amended as follows:

SYSTEM DEVELOPMENT CHARGES

§ 164.30 CHARGE SCHEDULE.

(A) *Calculation of the charges.*

(1) The Louisville Metro Government shall calculate the System Development Charges due by:

(a) Verifying the number and type of dwelling units that are proposed to be constructed, as shown on the building permit application;

(b) Determining the System Development Charges that shall be applied for each dwelling unit, in accordance with subsection (2), below; and

(c) Multiplying the number of dwelling units by the System Development Charges.

(2) The applicable Base System Development Charges by land use for each of the Transportation Benefit Districts is as follows:

(a) For single-family detached units, detached condominium units, and mobile homes, the Base System Development Charges shall be \$1,000 per unit.

(b) For attached condominium units, the Base System Development Charges shall be \$500 per unit.

(c) For multi-family apartment (for rent) units, the Base System Development Charges shall be \$250 per unit.

(3) The applicable Supplemental System Development Charges by land use for each of the Transportation Benefit Districts is as follows:

(a) For single-family detached units, detached condominium units, and mobile homes, the Supplemental System Development Charges shall be \$500 per unit.

(b) For attached condominium units, the Supplemental System Development Charges shall be \$250 per unit.

(c) For multi-family apartment (for rent) units, the Supplemental System Development Charges shall be \$125 per unit.

(d) In addition to (a)-(c) of this subsection, the Supplemental System Development Charge for all three categories shall increase beginning on July 1st, 2021 and annually on each July 1st thereafter, at either a rate of 2% or National December-vs-Prior December PPI for each year as chosen from year to year by the System Development Charge Oversight Committee.

(B) *Re-use and mixed-use development.*

(1) For expansion of an existing development under an approved development plan where additional dwelling units will be constructed, the System Development Charges shall be based on the portion of the development in excess of what was permitted under the approved development plan. No charges shall be required for construction under a development plan approved prior to the effective date of this chapter, if a valid building permit has been issued prior to that date. However, a System Development Charges will be due for portions of the development that have not yet been issued a valid building permit as of the effective date of this chapter.

EXAMPLE: A developer obtained approval of a development plan for a single-family subdivision on October 10, 2004, prior to the effective date of this chapter. The developer has valid building permits issued in November, 2004, for 10 homes to be constructed in the subdivision, but has not yet obtained building permits for an additional 60 single-family homes to be constructed under the development plan. No System Development Charges will be required for the 10 homes authorized to be constructed under the existing building permits, however the developer will be required to pay the System Development Charges (in this case, \$60,000) for the construction of the remainder of the homes to be located in the subdivision.

(2) For a proposed mixed use development, the number of proposed residential dwelling units shall be used to determine the appropriate System Development Charges for the development.

(3) For mixed commercial and residential developments where the residential component is incidental to the commercial component, the cost of roadway improvements made as a result of the commercial component of the development may be used to offset the System Development Charges due for the residential component.

EXAMPLE: A developer proposes a shopping center with 100 patio homes incorporated into the design. The roadway improvements necessitated by the commercial component of the development will cost \$250,000. The System Development Charges due for the residential component is \$50,000. The cost of the roadway improvements can be used to offset the charges due for the residential portion of the development. The developer will be required to pay for the total cost of the roadway improvements necessitated by the commercial development, but will not be required to pay the charge.

SECTION VII: LMCO § 164.35 is amended as follows:

§ 164.35 TRANSPORTATION BENEFIT DISTRICTS

(A) *Use of funds.*

(1) Any funds collected under this chapter are expressly designated for public street and road improvements within the Transportation Benefit Districts from which those funds

were collected, for payment of administrative fees, as well as for payment of consultant fees that are necessary to update the designated roads and Transportation Benefit Districts.

(a) No public road outside a Transportation Benefit District will be improved using funds collected under this chapter.

(b) Annually, an amount not to exceed the cost of administering this chapter may be transferred to the Louisville Metro General Fund for the purpose of paying the administrative fees associated with the System Development Charge Program, which shall be determined based on ~~an~~Louisville Metro's overall annual audit.

(c) Charges shall be deemed to be spent on the basis that the first charges collected shall be the first charges spent.

(d) The Louisville Metro ~~Finance Department~~Office of Management and Budget shall maintain and keep financial records for ~~s~~System d~~Development e~~Charges, which shall show the source and disbursement of all charges collected in, or expended from, each Transportation Benefit District Fund. The records of the funds into which ~~s~~System d~~Development e~~Charges are deposited shall be open for public inspection, in accordance with Louisville Metro open records policies, during ordinary business hours. An annual financial analysis of all funds collected and expended under this chapter shall be performed as part of Louisville Metro's overall annual audit, but may instead be performed by an independent auditor to be designated by the System Development Charge Oversight Committee if that Committee so chooses on a given year.

(2) System ~~d~~Development e~~Charges~~ shall be transferred ~~from the System Development Charge Administrator~~ to the Louisville Metro ~~Department of Finance~~Office of Management and Budget within a reasonable period of time after being received and either:

(a) Immediately used for the retirement of bonds issued to support the improvement of Designated Roads in each Transportation Benefit District, but that no Supplemental System Development Charges may be so expended; or

(b) Placed into a trust fund, as described in subsection (A)(3), specifically designated for the Transportation Benefit District from which the charges were collected, for later use in the payment of costs of improving Designated Roads in that Transportation Benefit District.

(3) *Creation of trust funds.*

(a) ~~A~~System Development Charge trust accounts for each of the four Transportation Benefit Districts shall be opened as a separate interest-bearing account that is segregated from the Louisville Metro General Fund.

(b) System ~~d~~Development ~~e~~Charges deposited into the trust accounts, and all interest accrued on those accounts, shall be used solely for the purpose of public road improvements in the Transportation Benefit District from which the charges were collected, the payment of administrative fees, and the payment of consultant fees to update the Designated Roads and Transportation Benefit Districts, except in the following circumstances:

(i) The System Development Charge Oversight Committee may choose to transfer funds from one or more Transportation Benefit District trust account(s) for use on a public road improvement project in another Transportation Benefit District(s). This action shall require a finding by that Committee that such project will likely benefit a substantial number of citizens living in the District(s) from which funds are transferred. The System Development Charges which would have gone to the trust account(s) for the District(s) in which the project occurred shall instead go to the trust account(s) for the District(s) from which funds were transferred until all of the transferred funds are repaid.

(ii) Should a trust account for a Transportation Benefit District contain funds despite the Transportation Benefit District containing no Designated Roads, those funds may be transferred to a trust account for a different Transportation Benefit District which does contain Designated Roads by the System Development Charge Oversight Committee.

(c) All income derived from the interest accrued on these accounts shall be retained in the trust account on which the interest was earned.

(d) Metro Government shall annually contribute a portion of new property tax revenue ~~from each Transportation Benefit District~~ to each trust fund. The contribution to each fund shall be in an amount at least equal to the ~~s~~System ~~d~~Development ~~e~~Charges collected in each district during the year.

(B) *Refunds*

(1) *Passage of time.* Any funds in any ~~s~~System ~~d~~Development ~~e~~Charge trust accounts that have not been spent or encumbered within ten years of the date on which such funds were paid shall, upon written request to the System Development Charge Administrator in accordance with subsection (B)(6), be returned to the ~~p~~Payor. ~~Within six months after the ten-year period from the date on which the unspent charges were paid, the System Development Charge Administrator shall notify the pPayor of eligibility for a refund. The pPayor is responsible for maintaining a current address with the System Development Charge Administrator.~~ Any funds for which no petition for refund has been received following 12 months of the date ~~the payor was notified~~ of eligibility for refund shall be retained by the Louisville Metro Government. These funds shall be expended on the type of public road improvements reflected in the title of the account without further limitations as to time of expenditure.

(2) *Expiration of permit.* If a party has paid a ~~s~~System ~~d~~Development ~~e~~Charges required by this chapter and has: (a) obtained a building permit or any other permit for a development or extensions thereto; (b) the permit or extension for which the charges was/were paid later expires without the possibility for future extension; and (c) the development activity for which the permit was issued did not occur and no impact has resulted; such party shall be eligible for a refund of the charges paid. In order to be eligible to receive such refund, the party shall be required to submit a written request to the System Development Charge Administrator in accordance with subsection (B)(6), within six months after the expiration of the permit, or extension for which the charges was/were paid. Interest accrued on the charges shall not be included in the refund.

(3) *Refund for voluntary improvements.* If a developer chooses to voluntarily undertake improvements to a designated road as set forth above for the purposes of developing a standard subdivision, the developer is eligible for a full refund of the cost of roadway improvements made, and the ~~s~~System ~~d~~Development ~~e~~Charges due for the development will be payable at the time building permits are requested. Within six months of the completion of the roadway improvements, the developer must make a written request for a refund directed to the System Development Charge Administrator. The request must contain the total spent for roadway improvements, as well as the number of approved dwelling units to be constructed in the subdivision for which the roadway improvements were made. Within six months of receiving the request for refund, the System Development Charge Administrator shall refund the reasonable costs of roadway improvements up to the amount authorized by the Administrator in the prior written approval referenced in § 164.16 from available funds in the Transportation Benefit District Fund for the area in which the subdivision is located. If a refund is not made within six months of the date the request is received by the Administrator, interest on the developer's cost for roadway improvements shall begin to accrue thereafter at the rate of prime plus 1%, and shall be paid to the developer with the refund due. Interest shall not count as a credit against the ~~s~~System ~~d~~Development ~~e~~Charges due for the development. In any case, the refund will be paid no later than 12 months after the receipt of the written request for the refund.

(4) *No refund for altered development.* After a ~~s~~System ~~d~~Development ~~e~~Charges ~~has/have~~ been paid pursuant to this chapter, no refund of all or part of the charges shall be made if the development for which the charges was/were paid is later demolished or destroyed, or is altered or reconfigured so as to reduce the size of the development, the number of units in the development, or the amount of traffic generated by the development.

(5) *Involuntary demolition or destruction.* In the event a development for which a ~~s~~System ~~d~~Development ~~e~~Charges was/were paid is involuntarily demolished or destroyed, ~~an~~ additional charges is/are not required where reconstruction follows the development plan under which the charges was/were originally required. If the reconstruction deviates from the original development plan, ~~an~~ additional charges will be required for any net increase in the development.

EXAMPLE: A tornado destroys a partially built condominium development for which a sSystem dDevelopment eCharge of \$5,000 was required. To reconstruct the development according to the original development plan for which the \$5,000 was paid, the developer would not be required to pay an additional sSystem dDevelopment eCharge. However, if the developer wanted to increase the number of units in the development, a charge equal to the difference between the original charge paid and the charge for the larger development (which reflects the net increase in the number of units to be constructed) would be required.

(6) *Request for refund.*

(a) In order to obtain a refund of payments made, the pPayor must submit a written request to the System Development Charge Administrator within the time period designated in subsections (B)(1) or (B)(2). The written request must contain the following information:

~~1.~~(i) A copy of the dated receipt issued for payment of the sSystem dDevelopment eCharges; and

~~2.~~(ii) Any other proof of entitlement to the refund of charges as may be required by the System Development Charge Administrator.

(b) Within 30 days after the date of receipt of the written request, the System Development Charge Administrator shall review the written request and determine if it is complete. If the Administrator determines that the written request is not complete, a written statement specifying the deficiencies shall be sent to the pPayor by certified mail. Unless the deficiencies are corrected within seven days, the System Development Charge Administrator shall take no further action on the written request.

(c) When the System Development Charge Administrator determines that the written request is complete, it shall be reviewed within one month. The Administrator shall approve the refund request if it is determined that the requirements of either subsection (B)(1) or (B)(2) have been met. The refund shall include the charges paid, but shall not include interest, unless otherwise provided for in this chapter.

SECTION VIII: LMCO § 164.40 is amended as follows:

§ 164.40 APPEALS.

(A) An aggrieved party may appeal the determination of any official of the Louisville Metro Government with regard to the administration of this chapter by submitting an appeal in writing, and requesting a hearing before the Louisville Metro Code Enforcement Board. The request shall include a written explanation of why the aggrieved party feels that a determination was in error.

(B) The Louisville Metro Code Enforcement Board (“Board”) shall hold a hearing in accordance with §§ 32.275 et seq.

(1) The Board shall be required to set forth specific and detailed written findings of fact with respect to each controverted issue on appeal, as a part of its final order.

(2) In an appeal of the imposition of ~~a s~~System ~~d~~Development ~~e~~Charges, the Board shall not waive the charges, although it shall be authorized to reduce the charges:

(a) In order to promote the public health, welfare or safety or to encourage the economic development of Louisville Metro;

(b) Upon a finding that the charges were improperly calculated; or

(c) Upon a finding that the unusual circumstances of the development demonstrate that application of the charges to the development would be unfair or unjust.

(C) The determination of the Louisville Metro Code Enforcement Board shall be final.

SECTION IX: LMCO § 164.50 is repealed in its entirety.

SECTION X: This Ordinance shall take effect upon passage and approval.

H. Stephen Ott
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O’Connell
Jefferson County Attorney

By: _____