

TO: PLANNING COMMISSION

**THROUGH: LISA ANDERSON-OGILVIE, AICP
DEPUTY COMMUNITY DEVELOPMENT DIRECTOR AND PLANNING
ADMINISTRATOR**

**FROM: ROBERT CHANDLER, PHD, PE
PUBLIC WORKS DEPARTMENT ASSISTANT DIRECTOR**

**SUBJECT: SECONDARY SUPPLEMENTAL REPORT – PROPOSED AMENDMENTS
TO SALEM REVISED CODE CHAPTER 200 (URBAN GROWTH
MANAGEMENT)**

ISSUE

Should the Planning Commission recommend City Council approve proposed amendments to the Salem Revised Code (SRC) updating Chapter 77 (Permits and Street Improvements), Chapter 78 (Sidewalks), Chapter 200 (Urban Growth Management), and Chapter 803 (Streets and Right-of-Way Improvements) to address issues that have arisen based on experience with the code and based on feedback received from stakeholders involved in development projects?

RECOMMENDATION

Approve proposed amendments to the Salem Revised Code (SRC) updating Chapter 77 (Permits and Street Improvements), Chapter 78 (Sidewalks), Chapter 200 (Urban Growth Management), and Chapter 803 (Streets and Right-of-Way Improvements) to address issues that have arisen based on experience with the code and based on feedback received from stakeholders involved in development projects.

SUMMARY AND BACKGROUND

At the November 15, 2022, Planning Commission meeting, staff presented recommended amendments to Salem Revised Code (SRC) updating Chapter 77 (Permits and Street Improvements), Chapter 78 (Sidewalks), Chapter 200 (Urban Growth Management), and Chapter 803 (Streets and Right-of-Way Improvements).

The Planning Commission requested additional information regarding proposed amendments to SRC Chapter 200 relating to use of fee-in-lieu payments. A supplemental staff report with examples from neighboring communities was provided to the Commission on February 7, 2023. Subsequently, Commissioners submitted the below listed questions. This memo provides a staff response as well as additional background on the fee-in-lieu of construction program.

FACTS AND FINDINGS

1. Background

The fee-in-lieu program was established for projects that require the construction of only a part of a public improvement but that improvement is not immediately necessary to serve the development and additional parts are required to be constructed to have an operational, fully functioning public improvement. In most cases when this circumstance arises, the additional parts of the improvement will not be constructed until additional development occurs in the area, or until such time that the infrastructure project is scheduled for funding under the City's Capital Improvement Program (CIP). The program aims to allow these projects to move forward without disproportional costs or time delays. Ultimately, the developer may choose to construct the improvement. Payments of fee-in-lieu are an option for both the developer and the Director of Public Works, not a requirement.

Salem Revised Code (SRC) 200.405 authorizes a fee-in-lieu of making a public improvement, and requires it to be a condition of a development approval when the following conditions are met:

- (1) The development approval only requires the construction of a portion of the public improvement, and additional portions are required to be constructed in order to have an operational, fully functioning public improvement;*
- (2) Construction of the additional portions of the public improvement will not or cannot occur simultaneously with the construction of the portion required as the condition of development approval because funding for other portions is unavailable at the time the developer would construct the developer's portion of the public improvement; and*
- (3) Construction of only a portion of the public improvement would impede the construction of the additional portions or otherwise affect the physical integrity of the public improvement at a future date.*

First, the public improvement must be required as a condition of approval for a development and specified in a Land Use Decision. If staff find the above listed criteria are met, the developer and the City enter into a fee-in-lieu agreement. The fee-in-lieu agreement stipulates the fee-in-lieu amount, which is established by SRC 200.410:

- (a) The fee-in-lieu of construction shall be based on the estimated cost of construction of the public improvement; shall reflect the proportional share of the cost of the public improvement benefitting the development; and shall be an amount equal to the estimated construction cost of the developer's portion of the public improvement, calculated for the year when the developer commences construction of the project, minus any systems development charge credits for which the developer would be eligible if the public improvement had been constructed.*

The proposed amendments add section (b) to establish the developments proportional share:

(b) Fee-in-lieu amounts, except for mitigation measures associated with a traffic impact or transportation planning rule analysis, shall be limited by the following proportionality constraints:

- (1) For developments subject to Class 2 or Class 3 Site Plan Review pursuant to SRC 220.005, the fee-in-lieu amount for a required public improvement shall not exceed the amount of system development charges being assessed for the development for that same infrastructure type.
- (2) For partition, subdivision, phased subdivision, and planned unit development approvals, the fee-in-lieu amount for a required public improvement shall not exceed the amount of system development charges being assessed for the development for that same infrastructure type, based on a full build-out of the approved development.

In addition to the proposed code changes, staff will bring an Administrative Rule to City Council that establishes clear and consistent practices applicable to authorization, calculation, and expenditure of fees-in-lieu of construction collected under the provisions of SRC Chapter 200.

2. Staff Response to Commissioner Questions

Question one: How are fee-in-lieu payments calculated, specifically? Please provide a breakdown of how the city assesses the actual cost of a given public improvement and how proportionality is calculated for a given development. Do these rates adjust based on construction costs/inflation/etc.? I would like to see specific examples with hard numbers for how these costs are determined.

Staff Response: As described above, the current code requires fee-in-lieu amounts be based on an engineer's estimate to construct the public improvement, calculated for the year in which the developer commences construction of the development project. The engineer's estimate is prepared by the developer's project engineer and submitted to the Public Works Engineering Department for review.

Staff proposes adopting an accompanying Administrative Rule that recommends establishing an average construction cost per foot of improvement to be included in the annual fee resolution adopted by City Council. Establishing a cost per lineal foot will be beneficial to small projects that do not have a project engineer and will help to limit delays and expenses to small project developers. Providing an engineer's estimate would still be an option for projects that have an engineer and do not wish to use the established cost per lineal foot.

Current code does not define proportionality; the threshold of public improvements required by a development are established by *Salem Revised Code* and are generally limited to the development site and adjacent boundary streets. Proportional development impacts are considered in the current code exceptions that limit conditions to provide new public improvement for certain sized of developments.

The proposed amendments will address proportionality constraints by limiting the fee-in-lieu amount to be equal to the System Development Charges (SDCs) assessed for the

development for the same infrastructure type. For example, the fee-in-lieu amount for a required boundary street improvement related to a two-lot partition shall not exceed \$8,686, the transportation SDC amount required at full build out for two single family dwellings. This method is recommended because the SDC fees are adopted by Council and are based on the relative impacts each project will have on the infrastructure system. By limiting the fee-in-lieu amount to be equal to the assessed SDCs, proportionality is established. SDC amounts are established by Council.

Site specific examples:

- Subdivision Tentative Plan No. SUB15-04/PUD-SUB03-01A3MOD was a four-lot subdivision that required a full collector street improvement along Lone Oak Road SE. The subject property did not have frontage on Lone Oak Road SE, but redevelopment of the property triggered off-site improvements per past land use actions.

In lieu of constructing the off-site improvement, the Developer agreed to pay a fee-in-lieu of construction in an amount of \$9,212.00 per subdivision lot or \$36,848.00 total, which was based on the City-determined proportionate share of the funding required to complete the arterial street network serving the property based on estimated cost of the Lone Oak corridor improvements and the transportation impact of a 4-lot subdivision. A reimbursement district for the Lone Oak Corridor was later established, with a similar per-lot fee.

- Manufactured Home Park Permit MHP-ADJ-PBV20-01 allowed redevelopment of an existing Manufactured Home Park. Conditions of approval required curb and sidewalk construction along Lancaster Drive NE in an alignment that would accommodate a future major arterial street improvement. Based on the limited transportation impacts of the proposed development, a half-street was not warranted along the entire frontage of the proposed development area and an interim improvement could not be constructed to accommodate required curb and sidewalk. The applicant paid a fee-in-lieu of constructing the improvement equal to \$61,875, which was the engineers estimated cost for the improvement.
- Subdivision Tentative Plan SUB08-05MOD2 approved a modification to Mill Creek Corporate Center and established the ability to pay a fee-in-lieu of construction for boundary street improvements along Kuebler Boulevard. The staff report provided the following calculation:
 - *The City Engineer had estimated that the Kuebler Boulevard SE improvements will cost \$5,269,514. The remaining quantity of developable land is 287.6 acres. Therefore, the fee-in-lieu amount shall be \$5,269,514 divided by 287.6 acres, or \$18,323 per acre of development. This amount shall be adjusted annually based on the December to December ENR Averaged Rates for Los Angeles, Seattle, and San Francisco.*

Question two: How much 'fee-in-lieu' money is currently set aside for improvements from past development projects? If you can, please provide this breakdown for each improvement 'type'. Would these funds be immediately usable for current/future

capital improvement projects?

Staff Response: Fee-in-lieu payments are collected by the City and placed into a trust fund, which accrues a small amount of interest annually. The balance of the fund as of December 2022 was \$3,366,042.23.

Fee-in-lieu funds collected in small pots limited to specific locations are difficult to spend. For example, within the trust fund there are small amounts (less than \$10,000) that have not yet been spent and date back to 2006 for collector street improvement to a portion of Wiltsey Road SE. Currently, there are 45-projects line items in the fee-in-lieu trust fund, 15 of which (33%) are less than \$10,000. While these funds incur a small amount of interest each year, they do not keep up with inflation and current construction costs. By pooling the fee-in-lieu resources into one pot, they can be used more effectively and provide immediate benefit where needed most. If the proposed amendments are approved by Council, moving forward, fee-in-lieu payments will become an additional revenue source for City projects, which are established in the Council-adopted annual budget and Capital Improvement Program (CIP).

Staff has not yet determined the recommendation for past funds already collected. A recommendation will be presented to City Council.

Fee-in-lieu Trust Fund Balance as of December 2022	
Streets*	\$2,980,270.69
Sewer	\$54,686.54
Water (none in fund)	-
Stormwater**	\$331,085
Total Balance:	\$3,366,042.23
Table Notes:	
*Of the \$2,980,270.69 fee-in-lieu funds collected for street improvements, \$1,809,975 (61%) was collected for Kuebler Boulevard improvements.	
**The stormwater balance includes the fee-in-lieu collected for on-lot stormwater flow control and treatment as well as flow control and treatment for public street improvements.	

Question three: How will project priority be determined? This question came up at the last meeting, and I don't see it discussed in the staff report.

Staff Response: As previously discussed, staff recommends that fee-in-lieu payments be an additional revenue source for city projects established through the CIP and budget process. Annually, CIP projects are prioritized based on the assessment of need and the available funding. All CIP expenditures are approved by Council, who annually consider issues of social/geographic equity and other qualitative considerations when approving the CIP.

The proposed Administrative Rule, which will be provided to City Council alongside the amendments, will establish standard operating procedures for the fee-in-lieu program. In its draft form, it discusses how prioritization for fee-in-lieu expenditures:

(c) Projects eligible for funding from fee-in-lieu revenues shall be based on, but not limited to, the following criteria:

(1) Transportation – Corridor

- (i) Pedestrian safety improvements*
- (ii) Upgrades not eligible for SDC funding*
- (iii) Improvements where fee-in-lieu funds can be used as a match for other funding sources*
- (iv) Social/geographic equity*

(2) Transportation – Intersections

- (i) Deficiencies identified in traffic impact analyses pursuant to SRC 803.015*
- (ii) Upgrades not eligible for SDC funding*
- (iii) Improvements where fee-in-lieu funds can be used as a match for other funding sources*
- (iv) Social/geographic equity*

(3) Water/Wastewater

- (i) Areas lacking mains to serve existing development*
- (ii) Improvements not eligible for SDC funding*
- (iii) Improvements where fee-in-lieu funds can be used as a match for other funding sources*
- (iv) Social/geographic equity*

(4) Stormwater

- (i) As specified in SRC 71.025*

3. Public Testimony

No public testimony was received for the proposed amendments at time of writing this staff report.

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