



March 16, 2021

John Lively, Chair
House Committee on Economic Recovery & Prosperity
Oregon State Legislature
900 Court Street NE
Salem, OR 97301

Re: HB 3040-1

Dear Chair Lively, Vice-Chairs Cate and Kropf, and members of the committee,

Tualatin Hills Park & Recreation District (THPRD) is a special park and recreation service district funded primarily by property taxes and program fees. Its service area spans the City of Beaverton and many unincorporated areas of eastern Washington County, including Aloha and North Bethany. The district has won numerous awards for the quality of its programs, facilities, and financial management.

Please accept the following testimony on HB 3040-1 on behalf of THPRD. For the reasons outlined below, THPRD opposes the – 1 amendment as written. Also provided below are proposed alternative courses of action.

Section 1 – SDC Study: THPRD was a member of the system development charge (SDC) workgroup, which met six times between November 2020 and February 2021. The six meetings were informative to learn about various challenges from the public and private sectors, but did not allow sufficient time to engage in meaningful conversation to clearly identify issues with the current SDC law, let alone debate appropriate tools to address any such issues. For this reason, THPRD supports the study proposed in Section 1 of the amendment. However, we urge the legislature to allow more time for the study than the current proposed deadline of December 2021 would provide.

Section 3 – Deferral Options: As written, this section would require an option for deferral of all SDC payments, not just SDCs for affordable housing. While this is a preferred option for developers, such blanket deferrals come at a substantial cost¹ and risk to local government, especially with the proposal to defer payment of single-family dwelling SDCs until closing:

- Local governments are not part of the closing process, thus risking that such fees would be missed. If there was a failure to collect at closing, local government would have no recourse but to pursue a cause of action against the homeowner. This is not only a costly endeavor, but not a desirable remedy for local government.

¹ More information is needed from local governments on administrative costs, including updates to software for collecting and tracking SDCs, as well as staff time. With regard to staff time, the City of Portland shared its loan/deferral program with the workgroup. Portland employs two full time SDC administrators – one for parks and one for transportation. In contrast, THPRD's staff in charge of administering its SDC program is also responsible for grants, intergovernmental relations, and planning.

- Homebuyers negotiate the cost of their homes with the developer. Buyers may not be aware of the deferred costs, which may exceed their ability to pay (either through an increased mortgage or the need for additional cash at closing).
- There is no assurance (and, indeed, it is doubtful) that the interest savings for developer based on the deferred SDC payment would be passed on to the homebuyer, renter or occupant, resulting in the public subsidizing carrying costs for all SDCs, including market rate housing, with the added risk of no payment (see first bullet).

This provision is also overreaching:

- Many local jurisdictions, including THPRD, have implementing procedures that allow for the deferral of SDCs (1) upon finding of the governing board/council that a development meets a category of special need and special financial treatment is necessary to advance a specific *public benefit* or (2) upon a showing by the developer of financial hardship or extreme circumstances. These provisions have only been used to defer THPRD's SDCs by affordable housing providers on two occasions – once to allow THPRD time to adopt an affordable housing waiver policy and another time to allow negotiations for SDC credits for a public amenity constructed by the developer.
- It is not targeted at affordable housing (again, resulting in the public subsidizing for-profit development).
- Deferring collection of SDCs until the issuance of certificate of occupancy or closing results in increased administrative and tracking fees, which would be passed through to rate payers, resulting in increased SDCs.

Finally, it is unclear if the deferred fee would be charged at the rate in effect at the time of issuance of building permit or collection (annual adjustments can result in either an increase or decrease in fees).

Section 5 – Manufactured housing. Some jurisdictions, including THPRD, charge manufactured housing in manufactured home parks at the accessory dwelling unit rate. For THPRD, the proposed language would result in an increase from the ADU rate of \$4,794 to the multi-family rate of \$8,840. Additionally, as written, the provision would apply to manufactured housing built on single-family lots. Discussion at the SDC work group was that any such provision would be limited to manufactured housing in manufactured housing parks.

Section 6 – Disclosure statements. As with Section 3, this provision has the potential to create an untenable administrative burden on local government. As written, it appears that the proposed disclosure is required for each SDC fee charged (developers can pull multiple permits at one time). Much of the information listed (subsections (a), (b) and (c)) is already provided in implementing documents, such as administrative procedures guides. Other information requires a level of accounting that is not practicable.

For example, ORS 223.309(1) requires a capital improvement list to improvements that “*the local government intends to fund, in whole or in part, with revenues from an improvement fee and the estimated cost, timing and percentage of costs eligible to be funded with revenues from the*

improvement fee..." THPRD's project list is a 20-year list and covers neighborhood parks, community parks, trails, recreation/aquatic centers and natural areas – both acquisition of land for these amenities as well as construction of the amenities. From this, THPRD develops a 5-year capital improvement plan to target individual projects on the larger list. The five-year list is updated annually and includes an update of actual costs of delivery. These refined project costs are then included in annual budgets, appropriating funds for individual projects.

An SDC fee is not earmarked for any one project but, rather, represents the proposed development's proportional share (based on occupancy) of the 20-year project list. While the timing of projects is estimated at the time of adoption of the 20-year list, the actual timing of each of the projects is dependent on several factors. As with developers, THPRD is subject to the same fixed costs, including land prices, labor and materials. Unlike developers, we are restricted by statute (ORS 223.304(8)) as to how much we can raise our fees on an annual basis (that is, we do not have an end user to pass these costs onto upon completion of a project). Often, actual increases in land, materials and labor far outpace the allowed annual increase. Full updates of an SDC methodology are costly and can take 12-18 months to complete. The result is that SDCs will likely be insufficient to cover the project list, requiring additional funding from other sources.

Section 7 – applicability of amendments: It is unclear when Sections 3-6 will be triggered. Is it as of the establishment of a new SDC fee (thus exempting all existing fees)? Would an update of a methodology trigger these provisions?

In closing, SDCs are one of the few tools afforded to local governments to pay for necessary infrastructure to accommodate growth. For parks and recreation, the Covid-19 pandemic has illuminated the importance of access to free, public open space, with 2 in 3 park and recreation leaders reporting increased usage of their agency's parks compared to this time last year and more than 80% reporting increased usage of their trails.² The push for more affordable and "middle" housing will bring smaller homes with less yard space, placing an even greater emphasis on the importance of public open space. But parks and trails come at a cost.

If affordable housing is the target of SDC legislation, the study should focus on tools local jurisdictions are already employing to create equity in their communities. These tools include waiving all or a percentage of SDCs for affordable housing, deferring payment of SDCs for affordable housing and/or using a tiered structure for residential fees (with smaller homes paying a lower rate than larger homes). These policies have been adopted by local governments based on engagement of their communities and affordable housing providers, as well as financial assessments of how alternative funding may fill gaps created by such policies. The legislature should tread carefully in limiting or placing additional restrictions on this very important funding tool.

We urge the committee to move forward with the study, amended as outlined below, and defer any additional legislation until after such study is complete.

² <https://www.nrpa.org/contentassets/991084e170d241c29d4ca93ee3b04bbe/covid-19-report.pdf>

Additional considerations for study:

- Change timing of study to provide an interim report by December 2021, with the final report by June 2022.
- Expand the study to:
 - Examine carrying costs of interest on SDCs on a statewide basis and by size of development. Include in the study an examination of public benefits that would justify deferrals and transfer of those carrying costs to the public.
 - Examine the viability of a state fund to lend developers SDCs and be responsible for tracking and collecting deferred payments.
 - Add review of annual accounting of SDCs required under ORS 223.311 to see what may be missing to provide the desired transparency without creating unduly burdensome reporting requirements.

Expanding the parameters of the study and deferring any legislation until its completion will allow the issues the -1 amendments seek to address to be clarified, and more targeted solutions proposed.

Thank you for your time and consideration,



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