

**THE CITY COUNCIL OF THE CITY OF NEWPORT,  
COUNTY OF LINCOLN, STATE OF OREGON**

In the Matter of:

AN APPEAL OF THE CITY MANAGER'S	)	
SYSTEM DEVELOPMENT CHARGE	)	
ASSESSMENT FOR A PROPOSED DECK	)	ORDER NO.
ENCLOSURE AT THE COFFEE HOUSE	)	2013-2
RESTAURANT	)	

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WHEREAS, on May 6, 2013 and May 20, 2013 the Council considered an appeal of the City Manager's determination that a proposal to construct a 200 square foot deck enclosure at The Coffee House (156 SW Bay Blvd) requires payment of System Development Charges pursuant to Chapter 12.15 of the Newport Municipal Code; and

WHEREAS, System Development Charges must be paid for development which increases the usage of the water and/or sewer system or that contributes to the need for additional or enlarged capital improvements; and

WHEREAS, this includes not only new construction, but also the alteration, expansion or replacement of a building or development if such work results in a change in any of the components of the City's adopted formula for determining the amount of SDCs to be paid, said formula being based upon square footage of restaurant space; and

WHEREAS, the Newport Municipal Code, as confirmed by the City Attorney, exempts the development from payment of System Development Charges if the City finds that the proposed deck enclosure will neither increase the restaurants square footage, nor increase the restaurant's use of the City's public improvement system at all; and

WHEREAS, property owner's attorney provided information about the proposed development to establish that these conditions will be met, such evidence being as follows:

- The deck was previously approved as part of the conditional use permit for the restaurant. The approval made the deck available for seating. Even if it was for seasonal seating, the proposed placement of glass does not change the seasonal nature of the use because of the additional findings below.
- The area which is glassed will not have utilities extended to it and the nature of the deck floor, which has spacing between the 2 x 4s which form the floor, will not change. This means that the area will not be heated and the temperature will be influenced by the outdoor temperature.
- No lights will be placed on the deck so the length of time the deck can be used each day will not be increased.

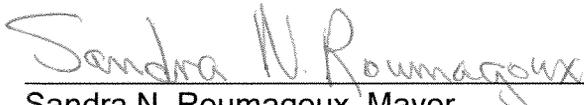
- Tables and chairs already exist on the deck and have for many years. The existence of tables and chairs is not a function of whether glass is placed on the deck.
- No additional sinks, toilets, water outlets or water lines or sewer lines will be added.
- No electrical outlets are being placed outside that would allow the use of electrical devices on the deck.
- There is no way a heat source from inside the building can heat the glassed area since the doorway to the interior of the restaurant is not connected to the glassed area.
- The restaurant seating capacity is not truly the issue because the city allows restaurants to increase seating capacity by adding outdoor tables and chairs in courtyards, on sidewalks, under porches, where coverings extend from buildings and in all those instances the City does not charge SDCs for this additional capacity.
- Additional space is only added when the area is enclosed as the interior of a building would be, and served by heat, light and other features of a building that is enclosed against all elements.
- The nature of the glassed area is more comparable to an outside eating area found in area restaurants than an inside eating area; and

WHEREAS, information provided by the property owner's attorney as it relates to the City not charging SDCs for restaurant uses that add outdoor seating is limited to circumstances where a building permit, development permit, or permit to connect to the City's water or sewer system is not required.

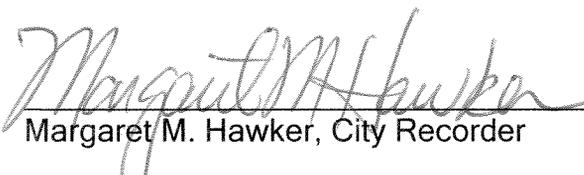
NOW, THEREFORE, IT IS HEREBY ORDERED:

1. All of the foregoing recitals and findings of fact are hereby confirmed and adopted as findings of fact in support of this order.
2. The City Council of the City of Newport hereby enters its final order granting the appeal and exempting the proposed development from System Development Charges with the caveat that said charges may be payable should the nature of the development deviate from what is described herein.

SO ORDERED this 17<sup>th</sup> day of June, 2013.

  
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Sandra N. Roumagoux, Mayor

ATTEST:

  
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Margaret M. Hawker, City Recorder