

**CITY OF NEWPORT**

**ORDINANCE NO. 2135**

**AN ORDINANCE AMENDING CHAPTER 12.15 OF THE  
NEWPORT MUNICIPAL CODE RELATING TO  
TRANSFERABILITY OF SYSTEM DEVELOPMENT CHARGE CREDITS**

**WHEREAS**, the City of Newport imposes System Development Charges (SDCs) on new development and redevelopment to help pay for the cost of future improvements to its water, wastewater, storm drainage, transportation, and parks capital facilities; and

**WHEREAS**, the amount of those charges is based upon a duly adopted methodology that considers the impact of new development and redevelopment on the City's capital facilities, the latest version of which was approved with Resolution No. 3786, on August 7, 2017; and

**WHEREAS**, developers that elect to construct capital facilities to meet their immediate needs and those of future development projects may be entitled to credits against the SDC charges, pursuant to NMC Chapter 12.15 and state law; and

**WHEREAS**, credits for such "qualified public improvements" must be used within 10-years of the date they were granted and state law does not allow an extension of that deadline; and

**WHEREAS**, in a community the size of Newport, where the pace of development is relatively modest, it is difficult for a developer to fully utilize the credits within a 10-year timeframe; and

**WHEREAS**, allowing developers to transfer credits within the 10 year period, via donation or sale to a third-party, may make it attractive for them to oversize capital facilities to meet the needs of future projects, increasing the chances that infrastructure will be in place for needed housing and economic development opportunities; and

**WHEREAS**, City benefits when developers elect to oversize capital facilities because it has limited capacity to construct the improvements with its own resources; and

**WHEREAS**, the impact on SDC collections, associated with allowing the credit transfers, is reasonably mitigated by limiting such transfers to an amount less than or equal to 50% of the total SDC assessment, and the requirement that they be restricted to residential projects may incentivize the construction of needed housing within the community; and

**WHEREAS**, the proposed amendments to the City's regulations for SDC credits contained in NMC Chapter 12.15 were presented to the Planning Commission at a work session on May 14, 2018; and

**WHEREAS**, the Newport City Council directed its staff to prepare an ordinance amending NMC 12.15 at its May 21, 2018 regular meeting, and discussed the proposed revisions at a June 4, 2018 work session and June 18, 2018 regular session before conducting a public hearing on July 16, 2018. After considering public testimony, minutes from the Planning Commission work session, and information contained in the record, the Council voted to adopt the amendments.

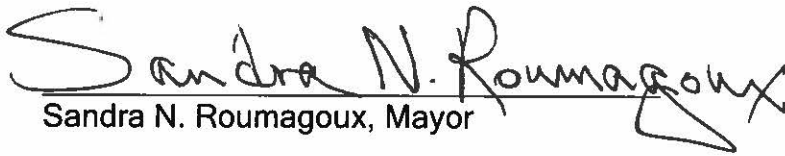
**THE CITY OF NEWPORT ORDAINS AS FOLLOWS:**

**Section 1.** Newport Municipal Code Chapter 12.15, System Development Charges, is amended as illustrated in Exhibit "A".

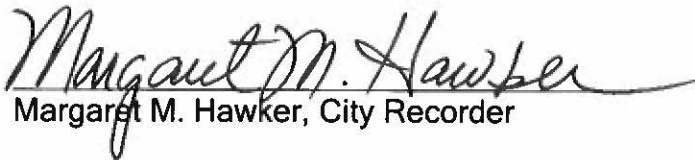
**Section 2.** This ordinance shall take effect 30 days after passage.

Date adopted and read by title only: July 16, 2018

Signed by the Mayor on July 17, 2018.

  
Sandra N. Roumagoux, Mayor

Attest:

  
Margaret M. Hawker, City Recorder

Approved as to form:

  
Steven E. Rich, City Attorney

## CHAPTER 12.15 SYSTEM DEVELOPMENT CHARGES

(Formatting Note: New language is shown with a double underline. Deleted language is in ~~strikeout~~. Staff comments, shown in *italics*, are preceded by the word "Staff" and are not a part of the amendments)

## 12.15.005 Purpose

This chapter is intended to authorize system development charges ("SDCs") to impose a portion of the cost of capital improvements for water, wastewater, storm drainage, transportation, and parks on developments and redevelopments that create the need for or increase the demands on capital improvements, consistent with state law. The provisions of this chapter are to be interpreted consistent with state law.

## 12.15.010 Scope and Interpretation

The SDCs authorized by this ordinance are separate from and in addition to any applicable tax, assessment, charge, or fee. SDCs are not taxes on property or on a property owner as a direct consequence of ownership of property within the meaning of Article XI Section 11B, of the Oregon Constitution or the legislation implementing that section and are not subject to the limitations imposed by that section.

## 12.15.015 Definitions

The following definitions apply in this chapter.

- A. **Applicant** means the person who applies for a residential, commercial, industrial, or other connection to the city's water supply system or sanitary sewer system and/or who develops property within the city or within the city's Urban Growth Boundary.
- B. **Building** means any structure, either temporary or permanent, built for the support, shelter, or enclosure of persons or property of any kind and for any public, commercial, industrial, or other use. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintenance during the term of a building permit.

- C. **Capital Improvements** means public facilities or assets used for:
1. Wastewater collection, transmission, treatment and disposal, or any combination.
  2. Water supply, treatment, distribution, storage, metering, fire protection, or any combination.
  3. Drainage and flood control.
  4. Transportation facilities including vehicle and pedestrian.
  5. Parks and recreation.
- D. **Development** means any construction of improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and water and sewer fixtures. Development includes redevelopment of property requiring a building permit. Development includes improved open areas such as plazas and walkways.
- E. **Equivalent Dwelling Unit** or **EDU** means the base element of the formula by which systems development charge rates are determined for various buildings or developments.
- F. **Owner** means the owner or owners of record title or the purchaser(s) under a recorded land sales agreement, and other persons having an interest of record in the described real property.
- G. **Permittee** means the person to whom a building permit, development permit, a permit or plan approval to connect to the sewer system, or right-of-way access permit is issued.
- H. **Qualified Public Improvement** means a capital improvement that is:
1. Required as a condition of development approval;
  2. Included in an adopted SDC project list and:
    - a. Not located on or contiguous to a parcel of land this is the subject of the development approval; or

## Revisions to NMC Chapter 12.15, System Development Charges

- b. 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.

For the purposes of this definition, “contiguous” includes improvements within a right of way that abuts the parcel.

### 12.15.020 System Development Charged Imposed; Method for Establishment

- A. The amount of system development charges may be set and revised by resolution of the City Council. Any resolutions setting or amending the amount of any SDC shall state the amount of the charge and the methodology used to set the amount of the charge.
- B. Unless otherwise exempted, SDCs for water, wastewater, storm water, transportation and parks are imposed on all development within the city, on all development outside the city that connects to the water and/or sewer facilities of the city, and on all other development which increases the usage of the water and/or sewer system or that contributes to the need for additional or enlarged capital improvements. This shall include new construction and the alteration, expansion or replacement of a building or development if such alteration, expansion or replacement results in a change in any of the components of the formula for determining the amount of SDCs to be paid. For redevelopment, the amount of the SDC to be paid shall be the difference between the rate for the proposed redevelopment and the rate that would be applicable to the existing development.

### 12.15.025 Methodology

- A. The methodology used to establish or modify a reimbursement fee shall be based on the cost of then-existing facilities including without limitation, design, financing and construction costs; prior contributions by then-existing users; gifts or grants; the value of unused capacity available to future system users, rate-making principles employed to finance publicly owned capital improvements; and other relevant factors identified by the City Council. The methodology shall promote the objective

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that future systems users shall contribute an equitable share of the cost of then-existing facilities.

- B. The methodology used to establish or modify 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 and other relevant factors identified by the Council. The methodology shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.
- C. The methodology used to establish or modify improvement fees or reimbursement fees, or both, shall be adopted and may be amended by Council resolution.

### 12.15.030 Authorized Expenditures

- A. Reimbursement fees shall be applied only to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of debt for such improvements.
- B. Improvement fees shall be spent only on capacity increasing capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or providing new facilities. The portion of the capital improvements funded by improvement fees must be related to demands created by current or projected development.
- C. SDC proceeds may be expended only on projects identified in the SDC capital improvement project list or on the direct costs of complying with the provisions of this chapter, including the costs of developing SDC methodologies, system planning, providing an annual accounting of SDC expenditures and other costs directly related to or required for the administration and operation of this SDC program.

### 12.15.035 Expenditure Restrictions

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- A. SDCs 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. SDCs shall not be expended for costs of the operation or routine maintenance of capital improvements.

### 12.15.040 SDC Projects Plan

- A. The Council shall adopt and may amend by resolution an SDC Projects Plan for each type of SDC that lists:
  - 1. The capital improvements that the city intends to fund in whole or in part with the improvement fee revenues; and
  - 2. The estimated cost of each improvement and the percentage of that cost eligible to be funded with improvement fee revenues.
- B. In adopting the SDC Projects Plan, the city may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section.
- C. If the amount of SDC charges will be increased by a proposed modification to the SDC Projects Plan, the city shall:
  - 1. Provide at least 30 days' notice prior to adopting the modification to those who have requested notice; and
  - 2. Hold a public hearing if a written request for a hearing is received at least seven days prior to the date scheduled for adoption of the proposed modification.

### 12.15.045 Adoption or Amendment of Methodology

- A. The Council shall hold a public hearing prior to adopting or amending the methodology on which any SDC is based.
- B. The Council shall provide written notice to persons who have requested notice of any adoption or modification of SDC methodology at least 90 days before the hearing. If no one has requested notice, the city shall publish notice

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in a newspaper of general circulation in the city at least 90 days before the hearing.

- C. The revised methodology shall be available to the public at least 60 days before the first public hearing of the adoption or amendment of the methodology. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the city. If the city fails to provide sufficient notice, it can cure the defect by issuing a new notice and holding a new hearing. The city may consider comments submitted at improperly noticed hearings.
- D. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the SDC methodology if the change is based on a change in project costs, including cost of materials, labor and real property, or on a provision for a periodic adjustment included in the methodology or adopted by separate ordinance or resolution, consistent with state law.
- E. A change in the amount of an improvement fee is not a modification of the SDC methodology if the change is the result of a change in the SDC Projects List adopted in accord with this chapter.

### 12.15.050 Collection of Charge

- A. The SDC is payable on:
  - 1. Issuance of a building permit or any construction activity for which a building permit is required but not obtained.
  - 2. Issuance of a development permit or approval for development not requiring the issuance of a building permit. A permit or approval to connect to the water and/or sewer system;
  - 3. Issuance of a permit to connect to the water system or actual connection to the water system if a permit is not obtained.
  - 4. Issuance of a permit to connect to the sewer system or actual connection to the sewer system if a permit is not obtained.



## Revisions to NMC Chapter 12.15, System Development Charges

- B. SDCs are payable only for those types of improvements affected by the development, permit or connection. For example, a permit to connect an existing structure to the sewer system does not necessarily trigger an obligation to pay Parks, Transportation, Water or Stormwater SDCs.
- C. The amount of SDC payable shall be established by resolution relying on an approved methodology and SDC project plan. The SDC project plan, methodology and amount of charge may be adopted in a single resolution, and more than one type of SDC (water, sewer, storm, transportation and park) can be included in a single resolution.
- D. No permit listed in Subsection A. may be issued unless applicable SDCs have been paid or an agreement entered to pay over time as allowed by this chapter.

### 12.15.055 Installment Payments

- A. The owner of the parcel of land subject to a systems development charge may apply for payment in twenty 20 semi-annual installments, to include interest on the unpaid balance, in accordance with state law. A shorter payment plan is acceptable if approved by the city. The parcel of land shall be subject to a lien for the unpaid balance.
- 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 property interest of the applicant is adequate to secure payment of the lien.
- D. The city manager shall docket the lien in the city's lien docket. From that time the city shall have a lien upon the described parcel for the unpaid balance, together with interest on the unpaid balance. The lien shall be enforceable in any manner authorized or permitted by state law.

### 12.15.060 Exemptions

## Revisions to NMC Chapter 12.15, System Development Charges

- A. The following actions are exempt from payment of SDCs:
  - 1. Additions to multi-family and other dwelling units that are assessed SDCs on an Equivalent Dwelling Unit basis, provided the addition does not result in a new dwelling unit.
  - 2. An alteration, addition, replacement, change in use or permit or connection that does not increase the parcel's or structure's use of a public improvement system is exempt from payment for the SDC payment applicable to that type of improvement. Some redevelopment may be subject to some types of SDCs and not to others.
  - 3. Temporary and seasonal uses, including special events, vending carts, and patio or deck seating associated with eating or drinking establishments.
- B. If all SDCs were paid at the time of the first action that triggered the obligation to pay, no additional payment is required at the time of other actions that would trigger the obligation to pay, even if the amount payable has increased, unless there has been a change in the design or use that would affect the amount payable.

### 12.15.065 Credits

- A. When a development occurs that is subject to SDCs, the SDC for the existing use(s), if applicable, shall be calculated and if it is less than the SDC for the use that will result from the development, the difference between the SDC for the existing use and the SDC for the proposed use shall be the SDC that is assessed. If the change in the use results in the SDC for the proposed use being less than the SDC for the existing use, no SDC shall be required; however, no refund or credit shall be given.
  - 1. For the purpose of this section, "existing use" is any use or structure on a property within the last 10 years. If more than one use or structure was on a property within this timeframe than the existing use shall be that which placed the greatest demand on the capital system during this period of time.

2. Credits shall not be transferable from one development to another, except as provided in NMC 12.15.065(D)(6).
3. Credits shall not be transferable from one type of capital improvement to another.

**Examples:**

*SDCs had been paid for three dwelling units on a property and the property is redeveloped with five dwelling units. A credit for three dwelling units' worth of SDCs will be provided, so the amount payable would be the amount for two dwelling units.*

*SDCs had been paid for two dwelling units and the property is redeveloped with a large retail use, with both residential units eliminated. The SDCs would be the difference between the SDCs payable for the new commercial structure and use and the SDCs that would be charged for two dwelling units.*

*SDCs were paid based on restaurant use, but then the property was converted to another retail use with lower SDCs. The property is then reconverted back to restaurant use within 10 years of the date a restaurant was last operating, using exactly the same configuration as the original restaurant. At the time of the conversion to retail use, no SDCs are payable, because the amount payable is less than the credit. The credit for restaurant use remains with the property, so at the time of reconversion to restaurant use, no additional SDCs are payable, because the credit remained in effect and the credit for the original use is exactly the same as the amount that is owed, so no payment is required, even if the SDC rates have increased in the interim.*

- B. For credit certificates issued under prior SDC ordinances, such credits are to be used by the deadline specified in the ordinance in effect on the date they were issued. Certificates issued without a deadline shall automatically terminate if not used by December 31, 2020.
- C. Notwithstanding subsection (A), credit given against storm drainage SDC assessments for existing use(s) shall be limited to circumstances where SDCs were previously paid

or the impervious surfaces existed as of January 1, 2008. A credit may be provided for new development that incorporates improvements designed to reduce the impact of runoff on the storm drainage system (e.g. cisterns, detention facilities, pervious surface technology, etc.). In each case, the city will review the proposed mitigation measures and determine an appropriate storm drainage SDC credit for impervious surface reduction.

- D. A credit of the improvement fee portion of the SDC only shall be given to the permittee against the cost of the SDC charged, for the cost of a qualified public improvement incurred by the permittee, upon acceptance by the city of the public improvement. The credit shall not exceed the amount of the improvement fee even if the cost of the capital improvement exceeds the improvement fee.
1. If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the city's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request shall be filed in writing no later than 60 days after acceptance of the improvement by the city. The city may deny the credit provided for in this section if the city demonstrates that the application does not meet the requirements of this section or if the improvement for which credit is sought is not included in the SDC Project List.
  2. When construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project or otherwise imposed on the same property.

3. Credits for qualified public improvements ~~shall not be transferable from one property to another but may be used for future phases of development, redevelopment or a change in use of the property, or transferred to another property as provided in NMC 12.15.065(D)(6).~~
4. Credit for qualified public improvements shall not be transferable from one type of capital improvement to another.
5. Credits for qualified public improvements shall be used within 10 years from the date the credit was given.
6. Credits for qualified public improvements may be transferred from one property to another within the 10 year period the credits are valid if (a) the receiving property is being developed with a residential use and (b) the amount of credit transferred is less than or equal to 50% of the total SDC assessment that would otherwise be payable.
67. If the public improvement for which a credit is sought is not on the SDC Project List, the applicant may submit an application for both the credit and for the placement of the improvement on the SDC project list. If the city manager determines that the project is of a type and location that is appropriate for inclusion, the project shall be added to the SDC Project List and a credit may be given, but the additional of the project shall not change the SDC amount payable by others.
8. The City Council shall conduct a public hearing no later than August 21, 2023, to evaluate the impact of transferred SDC credits on the City's ability to fund qualified public improvements and determine if changes should be made to provisions of this section related to the the transfer of SDC credits.

*Staff: The City has authority to allow SDC credits for qualified public improvements to be transferred to other properties (ORS 223.304(5)(c)). Local governments have a fair amount of leeway in how they structure a credit transfer program. At this time, the developer of Wilder is the only property owner with credits resulting from qualified public improvements. Such capital projects are expensive and often result in large credit balances. In a community the size of Newport, where the pace of development is relatively modest, it is difficult for a developer to fully utilize the credits within the 10 year*

*statutory time limit. This amendment may make it more attractive for developers to construct qualified public improvements if they know that they can transfer via donation or sale to a third party. When developers' oversize projects to not only meet their immediate needs, but to accommodate future growth, they take the burden off of the local government from having to construct the improvements, which can reasonably be viewed as a public benefit given the limited capacity most jurisdictions have to construct new infrastructure.*

*When credits attributed to a qualified public improvement are used within the same development, which is allowed by law, there is a minimal impact on City infrastructure because the deficiencies were addressed with the project that resulted in the credit. That will not necessarily be the case for properties receiving a transfer. Providing developers the opportunity to transfer credits associated with a qualified public improvement will result in reduced SDC collections, and those funds are needed to pay for growth related infrastructure improvements. To off-set some of that impact, language has been added to limit the credit transfer to an amount less than or equal to 50% of the total SDC assessment. Transfers are also limited to residential projects given the housing needs of the community.*

*Language has been added requiring City Council review within 5 years of the new SDC credit transfer provisions, based upon feedback from the Council at its June 4, 2018 work session and June 18, 2018 regular meeting.*

- D. The extent of the property to be considered in computing and allocating credits shall be stated by the applicant, and the applicant must have written authorization from the property owner(s). If properties under different ownership are developed together, the city may require the applicants to specify where any credits for the provision of capital improvements may be used and under which circumstances. Two or more contiguous properties may pool existing SDC credit rights as part of a common scheme for redevelopment of the contiguous properties.
- E. For all credits under any portion of this section, the property owner is responsible for providing the facts justifying a credit.

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### 12.15.070 Notice

- A. The city shall maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for any SDC. Written notice shall be mailed to persons as provided in this chapter. The failure of a person on the list to receive notice that was mailed does not invalidate the action of the city.
- B. The city may periodically delete names from the list, but at least 30 days prior to removing a name from the list, the city must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

### 12.15.075 Segregation and Use of Revenue

- A. All funds derived from an SDC are to be segregated by accounting practices from all other funds of the city. That portion of the SDC calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth allowed in this chapter.
- B. The city manager shall provide the City Council with an annual accounting, based on the city's fiscal year, for SDCs showing the total amount of SDC revenues collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amounts spent on each project funded in whole or in part with SDC revenues shall be included in the annual accounting.
- C. The moneys deposited into the SDC account shall be used solely as allowed by this chapter and state law, including, but not limited to:
  - 1. Design and construction plan preparation;
  - 2. Permitting and fees;
  - 3. Land and materials acquisition, including any cost of acquisition or condemnation, including financing, legal and other costs;
  - 4. Construction of capital improvements;

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5. Design and construction of new water facilities required by the construction of capital improvements and structures;
6. Relocating utilities required by the construction of improvements;
7. Landscaping;
8. Construction management and inspection;
9. Surveys, soils, and material testing;
10. Acquisition of capital equipment;
11. Repayment of moneys transferred or borrowed from any budgetary fund of the city which were used to fund any of the capital improvements as herein provided;
12. Payment of principal and interest, necessary reserves and cost of issuance under bonds or other indebtedness issued by the city to fund capital improvements.

### 12.15.080 Refunds

- A. Refunds may be given by the city upon finding that there was a clerical error in the calculation of the SDC.
- B. Refunds shall not be allowed if the applicant fails to timely claim a credit or fails to timely seek an alternative SDC rate calculation.
- C. Refunds may be given on application of a permittee if the development did not occur and the all permits for the development have been withdrawn.

### 12.15.085 Appeal Procedure

- A. A person challenging the propriety of an expenditure of SDC 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 the expenditure must be filed within two years of the date of the alleged improper expenditure.



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- B. Appeals of any other decision required or permitted to be made by the city manager under this ordinance must be filed in writing with the city manager within 10 days of the decision.
- C. After providing notice to the appellant, the City Council shall determine whether the city manager's decision or the expenditure is in accordance with this ordinance and state law. The Council may affirm, modify, or overrule the decision. If the Council determines that there has been an improper expenditure of SDC revenues, the Council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the Council shall be reviewed only by writ or review.
- D. A legal action challenging the methodology adopted by the City Council shall not be filed later than 60 days after adoption and shall use the writ of review process.

12.15.090 Prohibited Connection

No person may connect to the water or sewer system of the city or obtain a building permit unless the appropriate SDCs have been paid, or the installment payment method has been applied for and approved.

12.15.095 Severability

The provisions of this ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any clause, section, or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this ordinance shall be in full force and effect and be valid as is such invalid portion thereof had not been included. It is the City Council's intent that this chapter would have been adopted if the unconstitutional provision not been included.

12.15.100 Penalty

Violation of this chapter is a civil infraction.