



CITY COUNCIL MEETING STAFF REPORT

Meeting Date: December 7, 2015		Subject: Resolution No. 2560 A Resolution Approving The Systems Development Charges Deferral Agreement Between The City Of Wilsonville And BL & DJ, LLC For The Subaru Development Staff Member: Nancy Kraushaar, PE, Community Development Director Department: Community Development	
Action Required		Advisory Board/Commission Recommendation	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable Comments: n/a	
Staff Recommendation: Staff recommends Council adopt Resolution No. 2560.			
Recommended Language for Motion: I move to adopt Resolution No. 2560.			
Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>			
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL:

This resolution approves the Systems Development Charges Deferral Agreement between the City of Wilsonville and BL & DJ, LLC for the Subaru development.

EXECUTIVE SUMMARY:

The applicant for the Subaru development in Wilsonville, Oregon has requested that the SDCs be deferred until occupancy at which time additional funding will be available for their payment.

EXPECTED RESULTS:

The SDCs for the Subaru development will be deferred to the time of occupancy or June 30, whichever comes first.

TIMELINE:

n/a

CURRENT YEAR BUDGET IMPACTS:

The associated SDC revenues will be deferred approximately 6 months.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: _____ Date: _____

LEGAL REVIEW / COMMENT:

Reviewed by: _____ Date: _____

COMMUNITY INVOLVEMENT PROCESS:

n/a

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups):

n/a

ALTERNATIVES:

The City Council could choose to not defer the SDCs for the development in which case the applicant would pay them when the final building permit is issued.

CITY MANAGER COMMENT:

ATTACHMENTS:

Resolution No. 2560

RESOLUTION NO. 2560

A RESOLUTION APPROVING THE SYSTEMS DEVELOPMENT CHARGES DEFERRAL AGREEMENT BETWEEN THE CITY OF WILSONVILLE AND BL & DJ, LLC FOR THE SUBARU DEVELOPMENT

WHEREAS, pursuant to City requirements, a series of various Systems Development Charges (SDCs) are due to be paid to the City prior to the issuance of a building permit for the planned Subaru dealership (development), to be located in Wilsonville, Oregon, and

WHEREAS, the applicant for the development has asked that the SDCs payment be deferred until an occupancy permit is issued, when additional bank funding will be available, and

WHEREAS, the applicant has represented the development will be completed and ready for occupancy by no later than June 15, 2016, and

WHEREAS, the City has the discretion to defer payment of SDCs, and

WHEREAS, the City is agreeable to deferring SDCs for the development for no longer than until occupancy is applied for or June 30, 2016, whichever comes first, and

WHEREAS, the City has prepared an agreement to defer the SDCs for the development, attached hereto and incorporated herein as Exhibit A.

NOW, THEREFORE, THE CITY OF WILSONVILLE CITY COUNCIL RESOLVES AS FOLLOWS:

1. The City of Wilsonville approves the attached the Systems Development Charges Deferral Agreement between the City of Wilsonville and BL & DJ, LLC for the Subaru development.is agreeable to deferring certain SDCs for the development but for no longer than when occupancy is applied for or June 30, 2016, whichever occurs first.

ADOPTED by the City of Wilsonville City Council at their regular meeting on December 7, 2015, and filed with the Wilsonville City Recorder this date.

TIM KNAPP, Mayor

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Councilor Starr	Yes
Councilor Fitzgerald	Excused
Councilor Stevens	Yes
Councilor Lehan	Excused

Attachments:

Exhibit A

SYSTEMS DEVELOPMENT CHARGES DEFERRAL AGREEMENT

This Agreement is made and entered into this ____ day of December, 2015, by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (the “City”), and **BL & DJ, LLC**, an Oregon limited liability company (“Applicant”).

RECITALS

A. Pursuant to City requirements, a series of various Systems Development Charges (“SDCs”) are due to be paid to the City prior to the issuance of a building permit for Applicant’s planned Subaru dealership (“Development”), to be located in Wilsonville, Oregon.

B. Applicant has asked that the payment of certain of the SDCs be deferred until an occupancy permit is issued, when additional bank funding will be available to it.

C. Applicant has represented to the City that the Development will be finished and ready for occupancy by no later than June 15, 2016.

D. The City has discretion to defer payment of only certain of the SDCs and is agreeable to doing so, as provided herein, but for no longer than until occupancy is applied for or June 30, 2016, whichever occurs first.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and incorporating the above Recitals by reference herein, Applicant and the City agree as follows:

1. SDC Deferral. The City has agreed that Applicant may defer paying only those SDC charges listed on **Exhibit A** (Deferred SDCs), attached hereto and incorporated by reference herein, until June 30, 2016, or until an occupancy permit of any nature is requested, whichever shall occur first. The Deferred SDCs shall bear interest at the rate of one percent (1%) until paid in full. All of the Deferred SDCs, plus all interest due thereon, must be paid on or before the due date. Failure to pay by the Due Date shall be a default under this Agreement and, in such case, the Default Interest Rate shall be increased to twelve percent (12%) per annum and shall continue to accrue until the Deferred SDCs, plus all interest due thereon, including Default Interest, are paid in full. The amount of Deferred SDCs shall not exceed the sum of ONE MILLION SEVEN THOUSAND THREE HUNDRED SEVENTY-FOUR DOLLARS AND TWENTY-NINE CENTS (\$1,007,374.29), as more particularly described on **Exhibit A**.

2. Indemnification. Applicant agrees to defend, indemnify, and hold harmless the City, its officers, agents, and employees from any and all liability, causes of action, claims, losses, damages, judgments, or other costs or expenses in connection with any claim, demand, or cause of action made or brought by any party, including any claim in bankruptcy, which in any way jeopardizes the City’s right to timely collect the Deferred SDCs.

3. Issuance of Occupancy Permit. Applicant understands and agrees that the City will not issue any level of occupancy permit until all of the Deferred SDCs, plus all interest due and owing thereon, are paid in full.

4. Violation of this Agreement. In addition to not issuing any occupancy permit until any violation of this Agreement is fully cured, the City shall also have all remedies available to it for breach of contract, both at law and in equity, including but not limited to an action for damages, interest at the default rate, specific performance, and injunctive relief. Any judgment obtained as a result of any default will be filed as a lien against the Development.

5. Miscellaneous Provisions.

5.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements.

5.2. Adherence to Law. Applicant shall adhere to all applicable federal and state laws and the Wilsonville Code. Applicant agrees that the deferral of the Deferred SDCs does not in any way change its obligations to pay all other SDCs and other applicable fees within the normally required times.

5.3. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

5.4. No Assignment. This Agreement cannot be assigned. Any change in title to the Development shall be a default of this Agreement and shall immediately accelerate Applicant's obligation to pay the Deferred SDCs in full.

5.5. Governing Law/Jurisdiction. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon. Venue for any dispute will be in Clackamas County Circuit Court.

5.6. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

5.7. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights

hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

5.8. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

5.9. Modification. This Agreement may not be modified except by written instrument executed by Applicant and the City.

5.10. Interpretation. As a further condition of this Agreement, the City and Applicant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party.

5.11. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

5.12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

5.13. No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of rights by either party with respect to any appeal that Applicant may make of the SDC charges. Any such appeal must be timely filed in accordance with all legal requirements.

5.14. Authority. Each party signing on behalf of Applicant and the City hereby warrants actual authority to bind their respective party.

IN WITNESS WHEREOF the City and Applicant caused this Agreement to be executed by its duly authorized undersigned officer or agent on the date hereinabove first written.

BL & DJ, LLC

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

APPROVED AS TO FORM:

Barbara A. Jacobson, City Attorney

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EXHIBIT A

**DEFERRED SDCs
Subaru Development***

<u>Fee Description</u>	<u>Fee Amount</u>
Sewer SDC	\$ 34,854.08
Irrigation Water SDC	\$ 11,089.00
Domestic Water SDC	\$ 41,686.00
Parks SDC	\$ 9,264.66
Stormwater SDC	\$ 100,769.20
Street SDC	\$ 809,711.35
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TOTAL:	\$1,007,374.29

*There are other SDC charges that have not been deferred and must be paid in the normal course.