

# **Administrative Rules**

## **Local Transportation Infrastructure Charge**

May 2016

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# Acknowledgments

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# 1 Introduction

The Local Transportation Infrastructure Charge (LTIC) was approved by Ordinance No. 187681 by the Portland City Council on April 13, 2016, effective May 13, 2016. It is described in section 17.88.090 of the City Code. This document serves as the Administrative Rules that govern the LTIC.

## 1.1 Purpose

The purpose of these Administrative Rules is to regulate the application of the LTIC program, which collects funds from new, single-family, residential development on unimproved streets to finance the construction of street improvements necessitated by such development.

## 1.2 Definitions

Terms used, but not defined, in these Administrative Rules are defined in section 17.88.010 of the Portland City Code (PCC) or are intended to have their commonly understood meanings.

## 1.3 Overview

The LTIC is a charge paid by an applicant for a new, single-family, residential, building permit for a project of one or two units or for approval to create a final partition plat to create three or fewer lots. The LTIC is only charged on property that has frontage on an unimproved street. The amount of the LTIC is based on the total number of linear feet of unimproved street frontage.

The payment of the LTIC by a property owner will exempt the property from the requirements of PCC 17.88.020 B and future applications of the LTIC. That Code section requires an owner to make frontage improvements as a condition of obtaining a building permit, conditional use, zone change, or land partition or adjustment if the property is adjacent to a street that does not have standard full-width improvements.

All other requirements of PCC Title 17, including those pertaining to dedications and waivers of remonstrance to the formation of local improvement districts, remain unchanged.

An applicant may elect to build frontage improvements to the City's adopted standard. Doing so would satisfy the assessment of the LTIC. However, an applicant who chooses to build frontage improvements would not have the ability to appeal the imposition of requirements related to those improvements.

## **1.4 Authority**

The Director of the Bureau of Transportation has the authority under PCC 17.88.090 D to collect and administer the LTIC and to establish all related rules and procedures.

# **2 Determination of the LTIC**

## **2.1 Applicability of the LTIC**

There are four factors that determine if a property is subject to the LTIC:

- Zoning
- Adjacent streets
- Permit type
- Previous payments

### **2.1.1 Zones where the LTIC applies**

PCC 17.88.090 A states that the LTIC applies “within a single-family residential zone,” which is defined by PCC 17.88.010 as “any of the Single-Dwelling Zones identified in Title 33 of the City Code.” At the time of implementation of these Administrative Rules, those zones are listed in PCC 33.110.020. The LTIC does not apply to property located in other zones.

### **2.1.2 Streets where the LTIC applies**

Under PCC 17.88.090 B, the LTIC will only apply to properties with frontage on unimproved local streets.

#### **LOCAL STREETS**

PCC 17.88.010 defines a local street as “any street classified as a Local Service Street in the City’s adopted Transportation System Plan.” Chapter 2 of the 2007 Transportation System Plan (TSP) identifies a street classification system for six modes of transportation (motor vehicle, transit, bicycle, pedestrian, truck, emergency vehicle). The determination of a local street for purposes of the LTIC is based on the motor vehicle street classification, referred to as Traffic Classification Descriptions in the TSP.

Local Service Traffic Streets, as defined in Chapter 2 of the TSP, is the only classification of streets where the LTIC is applied. Chapter 2 of the Transportation System Plan also includes a series of maps that collectively show the entirety of the City’s transportation network, identifying all streets as one of these six traffic classifications. These maps will be used by City staff to determine if a property in a single-family residential zone has frontage on a local street.

## UNIMPROVED STREETS

PCC 17.88.010 defines an unimproved street as “any local street without a curb other than a local street that has been formally accepted by the Bureau of Transportation as having been fully built to an adopted Residential Shared or Residential Separated City street standard that does not require a curb.”

For purposes of the LTIC, then, an unimproved street is generally defined by the absence of curbs. Streets accepted by PBOT as having been built to an alternative street standard, however, are an exception to this rule.

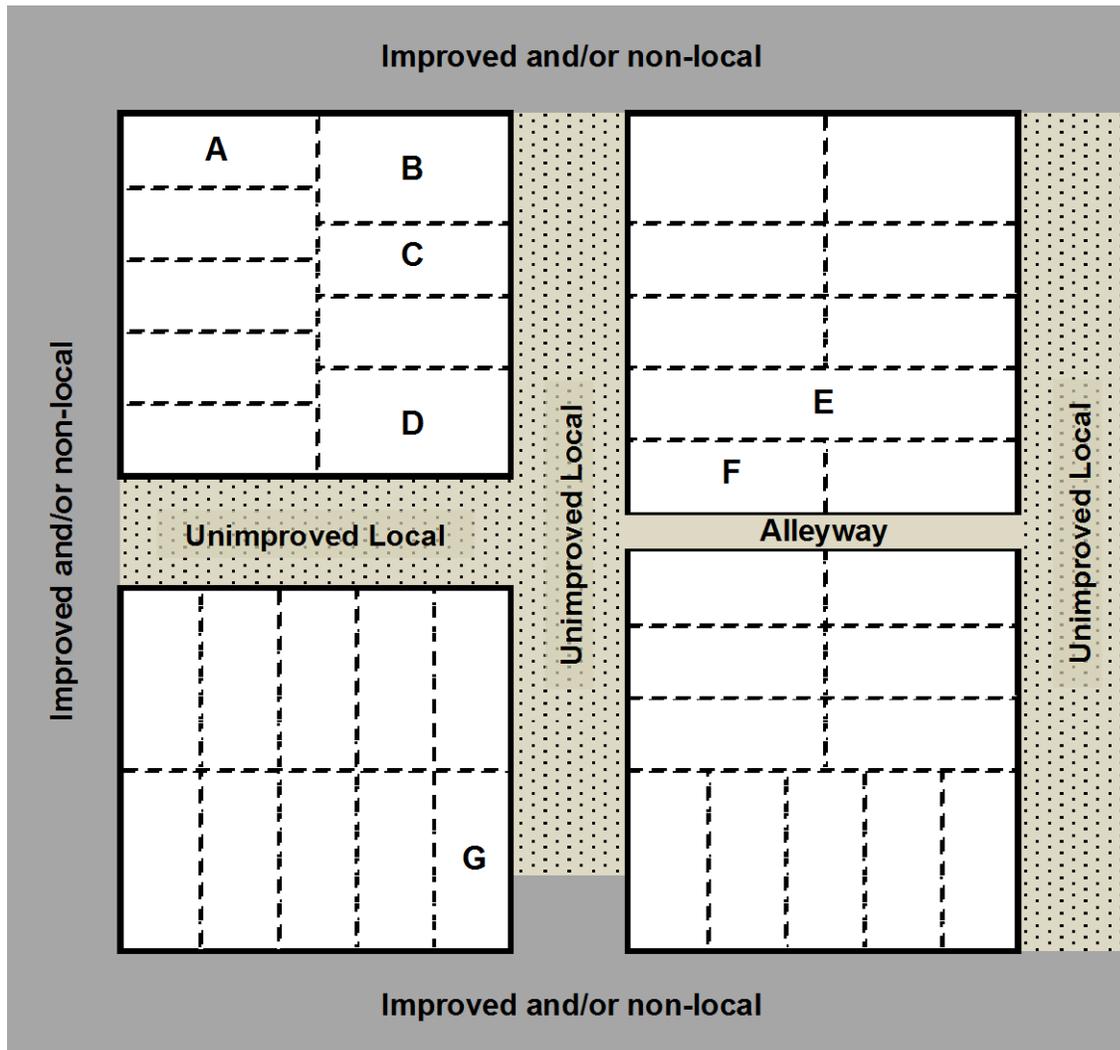
The City has adopted three Residential Street Standards: (1) Traditional, (2) Separated, and (3) Shared. The Separated and Shared street standards, which were adopted by Ordinance No. 185759, do not include curbs. Thus, if a street has been accepted by the City as having been fully built to one of those two alternative standards, then that street is no longer subject to the LTIC, despite the lack of curb. The City will maintain a map identifying all streets that have been accepted by the City as having been fully built to an alternative standard.

## CALCULATING FRONTAGE

The LTIC is calculated using only that portion of a property’s frontage that qualifies for the LTIC. If a portion of a property’s frontage is improved with a curb but does not meet the current design standards, that portion of the remaining frontage of the property would still be subject to the requirements of PCC 17.88.020, which requires frontage improvements for streets that do not have standard, full-width improvements.

Figure 1 illustrates examples of common frontage conditions and their implications for calculation of the LTIC. All properties in the illustration are in a single-family residential zone, and none of the streets has been accepted by the City as having been fully built to a Separated or Shared Street standard.

Figure 1. Illustration of potential LTIC frontage conditions



- **Example A.** This property is a corner lot with frontage on two streets. Both of these streets are either improved and/or non-local streets. Neither street is subject to the LTIC. Therefore, this property would have zero feet of frontage subject to the LTIC. Both frontages are subject to standard improvement requirements.
- **Example B.** This property is a corner lot with frontage on two streets. One of the streets is improved and/or non-local. Frontage on that street would not be subject to the LTIC. However, the other street is an unimproved local street. Frontage on that street would be subject to the LTIC. The improved and/or non-local frontage is subject to standard improvement standards.

- **Example C.** This is a midblock property with frontage on only one street. The street is an unimproved local street. Frontage on that street would be subject to the LTIC.

- **Example D.** This property is a corner lot with frontage on two streets. Both of the streets are unimproved local streets. Frontage on both streets would be subject to the LTIC.
- **Example E.** This is a long, midblock property that has frontage on streets on opposite sides of a block. Both of these streets are unimproved local streets. Frontage on both streets would be subject to the LTIC.
- **Example F.** This property is a corner lot with frontage on one unimproved local street and one alleyway. Frontage on the alleyway would not be subject to the LTIC. Frontage on the unimproved local street would be subject to the LTIC.
- **Example G.** This property is a corner lot with frontage on two streets. One street is improved and/or non-local. The other street is a partially improved and partially unimproved local street. Only the unimproved portion of the frontage on the local street would be subject to the LTIC. The improved and/or non-local frontage is subject to standard improvement requirements.

### **2.1.3 Frontage improvements to satisfy LTIC requirements**

An applicant may elect to satisfy the LTIC in the form of frontage improvements built to the City's adopted standard. Doing so would permanently avoid an assessment of a monetary LTIC for that property. However, the applicant would not have the ability to appeal the imposition of requirements related to those improvements.

### **2.1.4 Actions to which the LTIC applies**

PCC 17.88.090 A states that payment of the LTIC is triggered by an application "for a new, single-family, residential, building permit for a project of one or two units or for approval to create multiple lots other than as part of a subdivision . . . ." This applicability is explained further below.

#### **SITUATIONS TO WHICH THE LTIC APPLIES**

- **Construction.** PCC Title 24 requires building permits for any construction, even if replacing a previous building of the same use and number of units. All building permits for new construction of a house or duplex in a single-family residential zone on property with frontage on an unimproved local street are subject to the LTIC, unless otherwise stated in these Administrative Rules.
- **Land division partition.** A land division partition is a land use action, distinct from the building permit process. Oregon Revised Statutes (ORS) Chapter 92 governs Tentative and Final Approval of Plans; Plats. ORS 92.010 distinguishes between two types of land divisions: partitions and subdivisions. The LTIC does not apply to subdivisions, which is the act of

dividing land into four or more lots. The LTIC does apply to partitions, which is the act of dividing land into not more than three parcels. The LTIC will be charged at the time of an application for a final partition plat. During a land division partition process, the amount of the LTIC is based on the total applicable local street frontage of the original property being divided, after any required dedications, on unimproved local streets. (A tract of land created through a land division subdivision shall not count as a lot for the purposes of the LTIC.)

#### SITUATIONS TO WHICH THE LTIC DOES NOT APPLY

- **Accessory dwelling units.** An accessory dwelling unit (ADU) is a second, smaller dwelling unit created on a lot with an existing residential unit. Although many accessory dwelling units require new construction permits, applicants in these situations will not be charged the LTIC.
- **Disaster replacement.** Although demolition of an existing structure and replacement of that structure with new construction is subject to the LTIC, the charge does not apply if the demolition is the result of damage due to fire or another disaster and if the permit for the replacement structure is submitted within one year of the demolition. Applicants in these situations will not be charged the LTIC.
- **Alteration of existing structure.** Alteration of an existing structure, including a Major Residential Alteration or Addition (as defined in PCC 24.55.210), does not count as new construction for the purposes of the LTIC. Applicants in these situations will not be charged the LTIC.
- **Property line adjustment or lot confirmation.** A property line adjustment procedure is used to relocate a single existing common property line between two abutting lots. A lot confirmation verifies that a lot of record has legal status as a property that is eligible for development under the zoning code. In both situations, no additional lots or building sites are created. The action of a property line adjustment or lot confirmation will not, by itself, trigger application of the LTIC, although a subsequent building permit or land division partition may.
- **Properties for which the LTIC has already been paid for a previous land use or development action.** As provided by PCC 17.88.090 C, if the LTIC has been paid for a property for its frontage, that frontage will not be subject to the LTIC again in the future. For example, if the LTIC is paid for the entirety of a property's frontage for a land division and a building permit is subsequently requested for one of the lots created by the land division, the applicant for the building permit will not have to pay the LTIC.
- **Property Frontages which ~~that abut~~ are unbuildable "paper" right of way /not buildable. ~~When the property abuts a~~ Unbuildable "paper" right of way ~~that is~~ are unnot paved and is impassible. Frontages ~~if the property meeting s-certain~~ all the following criteria ~~it is~~ exempt are exempt from LTIC. These criteria are:**

- No vehicular improvements exist~~currently;~~ and,
  - No improvements for vehicular access will occur with the development or subsequent development; and,
  - Right of way grade is extremely steep and the majority exceeds~~Steep slope for access~~ < 21%; and,
  - It's majority lies within and e~~Environmental~~ overlay "c" or "p" zone.
- **Property Frontages**~~ies~~ **with a ~~current valid~~-valid City Administrative Review Committee (ARC) decision.** Frontages with an unexpired~~If a property has received an~~ ARC decision~~that has not expired, the property is~~ are LTIC exempt, and governed under the requirements of the ARC decision.

## **2.2 Rate of the LTIC**

PCC 17.88.090 B states that, “The charge will be based on the average, location-specific, actual cost to the City to build local street improvements to City standards at the time of application.” The process for establishing the initial rate of the LTIC, the formula for annual inflationary adjustments, and other rate adjustments are explained below.

### **2.2.1 Geographic zones**

City Code describes the rate of the LTIC as being “location-specific.” This does not mean that the amount of the fee is determined by the cost of improvements specific to a property’s frontage. It means that the City can establish multiple geographic zones with different rates for the LTIC. Currently, the City has two zones for the LTIC:

- 1) Zone 1: Inside Municipal Separate Storm Sewer System (MS4) areas.
- 2) Zone 2: Outside MS4 Areas.

MS4 refers to geographic areas of the City that drain to the National Pollutant Discharge Elimination System (NPDES) MS4 stormwater management area. The MS4 area does not include areas where stormwater flows to sumps or to the combined sewer area. A map of LTIC Zones 1 and 2 is included as Attachment B to these Administrative Rules.

The reason for having two separate zones is to account for the likely differences in the cost of providing stormwater infrastructure, which is an integral part of local street improvements. Properties in MS4 areas (Zone 1) tend to be more challenging locations in which to build stormwater infrastructure, due to steep slopes, soil types, and other factors. Those differences may justify separate LTIC rates for Zone 1 and Zone 2 in future updates to these Administrative Rules. The initial rate of the LTIC is the same in both zones.

### **2.2.2 Establishing the initial rate**

The initial rate of the LTIC was established based on average historical construction costs for local street improvements in Portland.

### **2.2.3 Annual inflation adjustments**

Each year, the City will publish the LTIC rate and update it to account for inflation according to the Engineering News Record 20-City Average Construction Cost Index.

### **2.2.4 Other rate adjustments**

In addition to the annual inflationary adjustments, the LTIC will be updated periodically, but no more frequently than every five years, to ensure that, among other considerations, the rate is equal to the actual, inflation-adjusted construction costs of local street improvements built by the City.

## **2.3 Calculation of the LTIC**

Bureau of Transportation staff will calculate the amount of the LTIC required, based on information included in the permit application, by multiplying the length of a property's frontage, after any required dedications, on unimproved local streets by the rate of the LTIC. However, if the applicant constructs improvements that comport with the City's adopted standards and written requests, the property will be exempt from future applications of the LTIC.

# **3 Administration of the LTIC**

## **3.1 Paying the LTIC**

### **3.1.1 When payment is due**

For new construction, payment of the LTIC is due prior to the issuance of a building permit. For purposes of the LTIC, "building permit" means a permit issued by the City Building Official pursuant to the Oregon Structural Specialty Code Section 301.

For a land division, payment of the LTIC is due prior to approval of the final partition plat.

### **3.1.2 Form of payment**

The method of payment must be a check or other negotiable instrument.

## **3.2 Receiving and depositing payments**

### **3.2.1 Receipts**

Receipts will be issued when paid to the cashier in the Development Services Center.

### **3.2.2 Deposits**

LTIC payments will be deposited in the Local Transportation Infrastructure Charge Fund account.

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All LTIC payments collected by the City will be identified with the property, the amount paid, the length of frontage, and the date the LTIC was paid.

Money from LTIC payments in the Local Transportation Infrastructure Charge Fund pending expenditure shall be invested by the City Treasurer until needed for eligible projects. Interest earned is credited to the Local Transportation Infrastructure Charge Fund account at the end of each accounting period. Interest earned shall be used for the same purposes as the LTIC revenue in that account.

## **3.3 Appeals and refunds**

### **3.3.1 Appeals**

As stated in City Code Section 17.88.090 E, "An applicant may not appeal under Chapter 17.06 of this Code the City's calculation of a Local Transportation Infrastructure Charge." In other words, an LTIC of one amount or another will be applied and calculated for all applicable properties, and those decisions may not be appealed.

However, an applicant may request a review of the mathematical calculation employed by the City in applying the LTIC. To do so, the applicant must submit a written request for review to the PBOT Development Services Division Manager.

### **3.3.2 Refunds**

A refund may be granted prior to issuance of a building permit for new construction or prior to recording of the final partition plat for a land division to correct calculation errors or to account for modifications to previously-identified dedication requirements.

## **3.4 Reports**

The City will prepare an annual report of receipts and expenditures of the Local Transportation Infrastructure Charge Fund. The annual report will indicate the source and amount of all funds collected, earned, or received, and the projects that were financed in whole or in part by the LTIC.