

ORDINANCE NO. 5084

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE TITLE 15 BY ADDING A NEW CHAPTER ENTITLED "PARKS SDC" AND DECLARING AN EMERGENCY.

WHEREAS, the City of Albany is complying with the provisions of ORS 223.207 through 223.208 and 223.297 through 223.314;

WHEREAS, the Council of the City of Albany has duly advertised and caused notice to be given as required by law and has had public hearings concerning the establishment of the Parks System Development Charge;

WHEREAS, the said hearings on the eighth of September 1993 and thirteenth of October 1993 have been duly held and parties were given an opportunity to be heard and the Council being fully informed.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Title 15 of the Albany Municipal Code is hereby amended by adding Chapter 15.20 entitled "Parks System Development Charge (Parks SDC)," as follows:

Chapter 15.20
Parks System Development Charge

Sections:

- 15.20.010 Findings
- 15.20.020 Definitions
- 15.20.030 Purpose
- 15.20.040 Scope
- 15.20.050 Parks System Development Charge Established
- 15.20.060 Compliance with State Law
- 15.20.070 Collection of Charge
- 15.20.080 Exemptions
- 15.20.090 Credits
- 15.20.100 Appeal Procedures
- 15.20.200 Construction
- 15.20.300 Prohibited Construction
- 15.20.400 Severability

15.20.010 Findings.

(1) The Parks SDC established herein is intended to be a charge upon the act of residential development by whomever seeks the residential development. It is a fee for service because it is the residential development which requires essential municipal services based upon the nature of the residential development. The timing and the extent of the residential development is within the control and discretion of the developer.

(2) The Parks SDC imposed in this Chapter is not intended to be a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Sec IIb, Art. XI of the Oregon Constitution or the legislation implementing that section.

(3) Even if the Parks SDC herein imposed is viewed under Sec. IIb, Art. XI of the Oregon Constitution as a tax against property or against a property owner as a direct consequence of ownership of that property, it is an incurred charge within the meaning of that Section and the statutes implementing it because:

- (a) It allows the owner to control the quantity of the service by determining the extent of residential development to occur upon the property.
- (b) It allows the owner to determine when the service is to be initiated or increased by controlling when the residential development occurs.
- (c) State law and the ordinances of the City of Albany require the owner to provide certain basic utility services to the property when it is developed for human occupancy. The provision of these basic services are a routine obligation of the owner of the affected property and essential to the health and safety of the community.

(4) Among the basic services required of every property with a structure designed for human occupancy, except ancillary buildings, are parks, open space, recreation centers and trails.

(5) The Parks SDC imposed in this Chapter is based upon the actual costs of providing existing or planned parks capital improvements and does not impose charges on persons not receiving a service and imposing a burden upon the City's existing parks capital improvements.

15.20.020 Definitions.

As used in this Chapter, except where the context otherwise requires, the words and phrases have the following meaning:

(1) Parks Capital Improvement(s). All existing city parks, trails, open space, and recreation centers which are used or designed for recreational purposes. "Parks Capital Improvements" also include real property acquired for ownership, access, or use in connection with the residential development, upgrading, or expansion of parks, trails, open space, or recreation centers.

(2) Residential development. A development, as that term is defined in the Albany Municipal Code Section 22.010 for residential purposes which is expected to increase the usage of any parks capital improvement or which creates the need for additional parks capital improvements.

(3) Improvement fee. A fee for costs associated with parks capital improvements to be acquired or constructed after the date the Ordinance adopting this Chapter becomes effective.

(4) Qualified public improvements. A capital improvement that is:

- (a) Required as a condition of residential development approval;
- (b) Identified in the Master Plan adopted pursuant to Subsection 15.20.060 (2).

(5) Parks System Development Charge (Parks SDC). An improvement fee assessed or collected at any of the times specified in Section 15.20.070 hereof. "Parks SDC" does not include:

- (a) any fees assessed or collected as part of a local improvement district;
- (b) a charge in lieu of a local improvement district assessment; or
- (c) the cost of complying with requirements or conditions imposed upon a land use decision or limited land use decision.

(6) Bedroom. As defined in the Albany Municipal Code Section 22.010, a bedroom is a private room planned and intended for sleeping, separated from other rooms by a door, and accessible to a bathroom without crossing another bedroom.

15.20.030 Purpose. The purpose of the Parks SDC is to impose a portion of the public cost of parks capital improvements upon those residential developments that create the need for, or increase the demands on parks capital improvements.

15.20.040 Scope. The Parks SDC imposed by this Chapter is separate from and in addition to any applicable tax, assessment, charge, fee, in lieu of assessment, or fee otherwise provided by law or imposed as a condition of residential development. A Parks SDC is to be considered in the nature of a charge for service to be rendered.

15.20.050 Parks System Development Charge Established.

(1) Unless otherwise exempted by the provisions of this Chapter or other local or state law, effective January 1, 1994 a Parks SDC is hereby imposed upon all new residential development within the corporate limits of the city of Albany.

(2) Immediately upon execution or modification of an intergovernmental agreement between the City of Albany and Linn County, which provides for the collection and distribution of this Parks SDC, said charge will also be imposed upon all new residential development within the unincorporated urban growth boundary of the City of Albany.

(3) The fee to be imposed by the Parks SDC shall be established and amended from time to time by City Council resolution.

15.20.060 Compliance with State Law.

(1) The revenues received from the Parks SDC shall be deposited in the newly created Parks Improvement Fee Activity. This activity shall be budgeted and expended as provided by state law. The accounting of such revenues and expenditures required by state law shall be included in the City's annual financial audit required by ORS Chapter 294.

(2) The capital improvement plan required by state law as the basis for expending revenues from the improvement fees portion of the Parks SDC shall be the Albany Parks and Recreation Master Plan (1993).

15.20.070 Collection of Charge.

(1) The Parks SDC is due and payable upon issuance of a building permit for new on-site residential construction.

(2) The Parks SDC is due and payable upon issuance of the first manufactured home placement permit granted upon an individual building lot. A Parks SDC will not be charged on any replacement dwelling unit on the same lot unless called for by other sections of this Chapter.

(3) In the case of a manufactured home park, fifty percent (50%) of the Parks SDC shall be due and payable for all spaces in the manufactured home park at the time land use approval is granted. In computing the fifty percent (50%) Parks SDC paid at the time of land use approval, each space within the manufactured home park shall be conclusively deemed occupied by a three bedroom, 1500 square foot home. The remaining balance of the Parks SDC shall be due and payable at the time the first placement permit is granted for each space based upon the actual number of bedrooms and square footage contained in each manufactured home. When the actual size of the manufactured home is known, at the time of placement, the correct Parks SDC shall be determined and, after applying a proportionate credit for that portion of the charge which was paid at the time of land use approval, the remaining balance shall be due and payable.

(4) The owner(s) of vacant lots or spaces within an existing manufactured home park that has received all necessary land use approvals prior to January 1, 1994, shall pay a Parks SDC which is limited to fifty percent (50%) of the applicable Parks SDC for each space at the time the first placement permit is granted for that space.

(5) If a residential development is commenced without an appropriate permit, the Parks SDC is immediately payable upon the earliest date that a permit was required.

(6) The City Building Official or his/her designee shall collect the Parks SDC from the building/placement permit applicant, the person required to apply for the building/placement permit, the owner of the real property upon which the residential development occurs or any person receiving benefit from the residential development. The Building Official or his/her designee shall not issue any permit or allow construction described in Section 15.20.070(1) until the charge has been paid in full.

(7) A Parks SDC paid hereunder shall apply to the particular lot or tract for which it is issued. Any changes which result in the addition of one or more bedrooms shall cause a Parks SDC to be paid for said improvement. The owner of the property shall be given credit only for those Parks SDCs therefore paid involving the same parcel of property. Where a structure which is benefitted by parks capital improvements is destroyed by fire, flood, wind, or act of God, no Parks SDC shall be imposed for the replacement of the structure, provided the number of bedrooms is not increased.

(8) The City may collect any delinquent system development charge which becomes due under the terms of this Chapter by appropriate civil action commenced against the person(s) responsible for payment of said charge pursuant to subsection (3) above. In addition, failure to pay the prescribed charge after written notice to do so constitutes a misdemeanor punishable under the general penalty prescribed at AMC 1.04.010.

(9) The Park SDC's to be paid under the provisions of this Chapter may be subject to the payment in installments under the provisions of the Bancroft Bonding Act of the State of Oregon.

15.20.080 Exemptions.

(1) Exemptions to the Parks SDC are as follows:

- (a) All building/placement permit applications for existing lots of record submitted prior to January 1, 1994, are exempt from the Parks SDC.
- (b) Existing lots or spaces within an existing manufactured home park upon which the City of Albany has issued a placement permit prior to January 1, 1994, are exempt from the Parks SDC.
- (c) All existing structures and uses for which a building/placement permits have been issued and which were established and existing prior to January 1, 1994 are exempt from the Parks SDC. Reoccupation after vacancy of any residential apartment unit when original use existed prior to January 1, 1994, shall be exempt from the Parks SDC.
- (d) Additions to single family residential dwellings that do not constitute the addition of one or more bedrooms, as defined by the Albany Municipal Chapter 20 Code Section 22.010, are exempt from the Parks SDC, unless the addition constitutes a conversion from another use to a bedroom.
- (e) Garages (attached or detached), and other detached nonhabitable accessory buildings are exempt from the Parks Systems Development Charge.
- (f) Housing for low income or elderly persons which is exempt from real property taxes under Oregon state law are exempt from the Parks Systems Development Charge.
- (g) Multiple unit nursing homes, congregate care or assisted care housing facilities containing three or more housing units and designed for the professionally assisted care of elderly or disabled persons are exempt from the Parks Systems Development Charge.

(2) Any residential development which is exempt from the Parks Systems Development Charge by reason of its intended use shall lose such exemption immediately upon a change in use to a type of residential development which is not exempt from the Parks SDC obligation. Upon such loss of exemption, the Parks SDC shall be due and payable upon the entire residential development which was previously exempt.

15.20.090 Credits.

(1) When residential development occurs that must pay a Parks SDC under Section 15.20.50 hereof, the Parks SDC for the existing use shall be calculated and if it is less than the Parks SDC for the proposed use, the difference between the Parks SDC for the existing use and the Parks SDC for the proposed use shall be the Parks SDC required under Section 15.20.050. If the change in use results in the Parks SDC for the proposed use being less than the Parks SDC for the existing use, no Parks SDC shall be required; however, no refund or credit shall be given.

(2) The City of Albany may grant a credit against the Parks SDC imposed pursuant to Section 15.20.050 for the contribution of land for, or the construction of, any qualified public improvements determined by the City to satisfy a specific element of the parks capital improvements required as part of the Albany Parks and Recreation Master Plan and this Parks SDC.

- (a) Such land contribution and/or construction shall be subject to the approval of the Albany Parks & Recreation Commission. The amount of credit to be applied to the Parks SDC shall be determined according to the following standards of valuation:
 - 1. The value of contributed lands shall be based upon a written appraisal of the fair market value conducted at the applicant's expense and mutual consent of the City by an independent and certified appraiser. The appraisal shall be based upon comparable sales of similar property between unrelated parties; and
 - 2. The cost of anticipated construction of qualified public improvements shall be based upon cost estimates which are approved by an independent and certified architect or engineer.
- (b) Prior to issuance of a building or development permit, the applicant shall submit to the Parks & Recreation Commission, a proposed plan and estimate of cost of contributions of qualified public improvements. The proposed plan and estimate shall include:
 - 1. A designation of the development for which the proposed plan is being submitted;
 - 2. A legal description of any land proposed to be contributed and a written appraisal prepared in conformity with subsection (a), 1 of this Section;
 - 3. A list of the proposed capital improvements contained within the plan;

4. An estimate of proposed construction costs approved by an independent and certified architect or engineer; and
 5. A proposed time schedule for completion of the proposed plan.
- (c) The principle factors the Parks and Recreation Commission will use to determine the eligibility of a proposed qualified public improvement as a credit against a Parks SDC shall include the following:
1. Size, location and cost of maintenance; and
 2. The extent to which the proposed capital improvement satisfies capital improvement requirements identified in the Parks and Recreation Master Plan pursuant to Section 15.20.060, (2); and
 3. Consideration shall be given only to those capital improvements which are in excess of those required as a condition of land use approval.
- (d) If the Parks & Recreation Commission accepts the proposed contribution, credit shall be allowed for the appraised and agreed value of the land or qualified capital improvements. If the proposed contribution is rejected, then the applicant shall be charged the full calculated value of the Parks SDC.
- (e) Any applicant who submits a proposed plan pursuant to this Section and desires the immediate issuance of a building permit or development permit shall pay the applicable Parks SDC charges. Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due as determined by the City shall be refunded to the applicant.
- (f) In the event the amount of the contribution determined to be acceptable by the City, pursuant to an approved plan of contribution, is less than the calculated Parks SDC charge due from the applicant, then the remaining balance shall be paid by the applicant. In the event the accepted contribution exceeds the total amount of the calculated Parks SDC charge due from the applicant, the excess credit may be applied against future Parks SDCs that accrue in subsequent phases of the original development project and/or other development projects. Unused credits may not be credited against other System Development Charges or otherwise applied. Credits shall be used not later than five years from the date the credit is given.
- (g) The decision of the Parks & Recreation Commission as to whether to accept the proposed plan of contribution and the value of such contribution shall be in writing and issued to the applicant.

(3) The Finance Director or his/her designee shall be responsible for all recording and accounting associated with the distribution of credits.

15.20.100 Appeal Procedures.

(1) Parties challenging the methodology for establishing the Parks SDC must appeal the methodology by filing a Notice of Appeal with the Finance Director within 60 days of passage of the Ordinance adopting this Chapter. Such appeals shall describe with particularity the portion of the methodology, calculations, or assumptions which are being asked for reconsideration. All appeal requests shall comply with subsection (5) of this section. The filing of such an appeal shall stay the adoption of the Methodology until the appeal is determined. Upon determination of the appeal, the Methodology shall be deemed adopted subject to legal action pursuant to ORS 223.304(5). Upon final determination of the Methodology following appeal and, or judicial review, all Parks SDC's due as result of residential developments occurring subsequent to the effective date of this ordinance, and not otherwise exempt, shall be immediately due and payable.

(2) Parties aggrieved by the imposition of a Parks SDC which has been calculated by the Building Official or the Building Official's designee under sections 15.20.050 through 15.20.090 or a party challenging the propriety of an expenditure of Parks SDC revenues may appeal the decision or the expenditure by filing a Notice of Appeal with the City Finance Director. Such appeal shall describe with particularity the decision or the expenditure from which the person appeals and shall comply with subsection (5) of this section.

(3) Decisions of the Parks & Recreation Commission concerning the grant or denial of Parks SDC credits may be appealed to the Albany City Council by filing a Notice of Appeal with the Finance Director or his/her designee within 10 days of the mailing of the decision by the City as called for in Section 15.20.090(g).

(4) An appeal of an expenditure must be filed within one year of the date of alleged improper expenditure. Appeals of any other decision must be filed within 14 days of the date of the decision.

(5) An appeal fee, established by Council resolution, shall accompany all Parks SDC appeal requests.

(6) The Notice of Appeal shall state:

- (a) The name and address of the applicant;
- (b) The address or tax lot of the subject property;
- (c) The nature of the determination being appealed.
- (d) If issued, the date the building/placement permit or development permit was issued.
- (e) If paid, the date the Parks SDC was paid and the amount of payment.
- (f) The reason(s) the determination is incorrect; and,
- (g) What the correct determination of the appeal should be.

An applicant who fails to file an appeal within the time permitted waives his/her objections, and his/her appeal shall be dismissed.

(7) Unless the appellant and the City agree to a longer period, an appeal shall be heard within 30 days of the receipt of the Notice of Appeal. At least 7 days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

(8) The City Council shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the City Council deems appropriate. At the hearing the appellant may present testimony and oral argument personally or by counsel. The rules of evidence as used by courts of law do not apply.

(9) The appellant shall carry the burden of proving that the determination being appealed is incorrect and what the correct determination should be.

(10) The City Council shall issue a written decision within 20 days after the hearing date and that decision shall be final.

15.20.200 Construction. The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this Chapter.

15.20.300 Prohibited Construction. No residential development or intensification of use may be made unless the applicable Parks SDC has been paid.

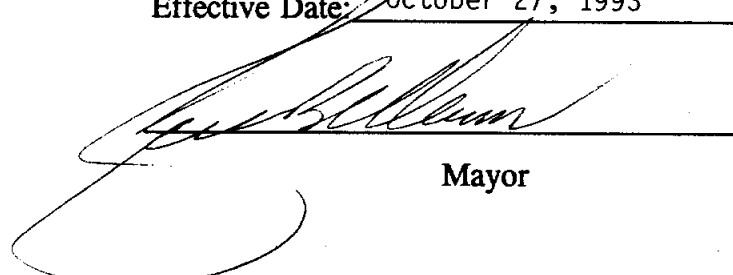
15.20.400 Severability. The invalidity of a section or subsection of this Chapter shall not affect the validity of the remaining sections or subsections.

Section 2: In as much as this ordinance is necessary for the immediate preservation of the peace, health and safety of the City of Albany, Oregon, an emergency is hereby declared to exist; and this ordinance shall be in full force and effect immediately upon passage by the Council and approval by the Mayor.

Passed by the Council: October 27, 1993

Approved by the Mayor: October 27, 1993

Effective Date: October 27, 1993



Mayor

ATTEST:



City Recorder