

(Published in the Topeka Metro News October 26, 2009)

ORDINANCE NO. 19323

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending Topeka City Code §§ 134-143 and 134-169, subdivision regulations, relating to parkland acquisition and development as well as streets, repealing said original sections.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That section 134-143, Dedication, reservation and acquisition of public sites and open spaces, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Dedication, reservation and acquisition of public sites and open spaces.

(a) *Definitions.* For the purposes of this chapter, certain terms and words are hereby defined.

(1) *Parkland.* Any dedicated public open space specifically designed for active recreational uses, including linkages to the regional trail system, intended to serve the immediate surrounding one or more neighborhood(s) or the entire community (i.e. a regional park or trail).

(2) *Parkland acquisition cost.* Average sale price for one (1) acre of vacant, ~~developable~~ land within the City of Topeka and the city's three (3) mile extraterritorial jurisdiction. For purposes of this chapter, said fee shall be set at ~~seven~~fifteen thousand ~~five hundred~~ dollars (\$~~7,500.00~~15,000.00) per acre.

(3) *Parkland improvement cost.* Average cost to improve a neighborhood level park with typical amenities for recreational

uses. For purposes of this chapter, said fee shall be set at twenty-
~~twofive~~ thousand ~~seven hundred fifty~~ dollars (~~\$22,750.00~~\$25,000.00)
per acre.

(4) *Parkland development fee.* The combination of parkland
acquisition cost and the parkland improvement cost per dwelling
unit to support five (5) acres of parkland per one thousand (1,000)
people. For the purposes of this chapter, the parkland development
fee shall consist of ~~a ratio of twenty-five (25) percent parkland~~
~~acquisition fee, and seventy-five (75) percent parkland~~
~~improvement fees~~sixty (60) percent of the actual cost per dwelling
unit.

(5) *Dwelling unit.* Any single-family, two (2) family, or multi-family
dwelling intended for habitation, including group living facilities.

(6) *Planning Area.* Geographic areas for community-level parks as
identified as parkland fee districts in the Park and Open Space
element of the Comprehensive Plan. New development outside a
designated planning area shall be included in the adjacent or
nearest planning area which would best serve that development.

(7) *New Development.* Construction of one (1) or more dwelling units
on a lot upon which no dwelling unit previously existed.

(8) *Redevelopment.* Construction of one (1) or more dwelling units on
a lot upon which a dwelling unit previously existed and which has
the effect of creating a greater number of dwelling units than
previously existed.

53 (9) Reconstruction. Rebuilding or replacement of a dwelling unit or
54 units on a lot that previously maintained the same number, type
55 and use of dwelling units which has the effect of creating the same
56 or fewer number of dwelling units than previously existed.

57 (b) *Purpose.* The purpose of this section is to serve the communities'
58 population growth with neighborhood and regional parkland based on the
59 Comprehensive Plan and national recreation and parks association standard of five (5)
60 acres per one thousand (1,000) persons for a neighborhood park and fifteen (15) acres
61 per thousand (1,000) persons for a regional park.

62 (c) *Parkland development fee.*

63 (1) In all instances where property owners or developers seek approval
64 of new development or redevelopment or a final plat or re-plat of land that
65 creates additional residential lots, a parkland development fee shall be required.
66 All fees shall be collected by the development services division of the city public
67 works department concurrent with the application for a building permit, or for
68 subdivisions outside of the city's corporate limits, the fee may shall be paid to the
69 ~~Clerk of the City of Topeka upon recording of the final plat~~ planning department
70 prior to the plat being released to the developer. For plats containing more than
71 thirty (30) units, the developer may enter into an agreement with the city which
72 allows for the parkland development fee to be paid in three (3) equal
73 installments. Said agreement shall be a covenant running with the land and shall
74 be recorded with the Shawnee County Register of Deeds. The first installment
75 shall be paid and a copy of the agreement shall be filed of record with the
76 Register of Deeds prior to the plat being released to the developer. The two

remaining installments shall be payable upon the first and second anniversary of the city council approval of the plat.

(2) The parkland development fee shall be assessed based upon the planning area's health classification contained in the Comprehensive Plan in which the dwelling unit(s) will be located according to the following schedule:

~~Single-family and two (2) family dwelling units, per unit\$225.00~~
~~Three (3) to eight (8) family dwelling unit development, per unit.....200.00~~
~~Nine (9) family dwelling unit development and above, per unit.....175.00~~

<u>Planning Area Rating</u>	<u>FEE SCHEDULE (per unit)</u> <u>Single and Two (2) Family Dwelling Unit Development</u>		
	<u>New Development or Redevelopment</u>	<u>New Development or Redevelopment w/ Public Dedication</u>	<u>New Development or Redevelopment w/ Private Dedication</u>
<u>one tree (intensive care)</u>	\$ 300	\$ 188	\$ 225
<u>two trees (at risk)</u>	\$ 225	\$ 141	\$ 169
<u>three trees (out patient)</u>	\$ 150	\$ 94	\$ 113
<u>four trees (healthy)</u>	\$ 75	\$ 47	\$ 56

<u>Planning Area Rating</u>	<u>FEE SCHEDULE (per unit)</u> <u>Three (3) to Eight (8) Family Dwelling Unit Development</u>		
	<u>New Development or Redevelopment</u>	<u>New Development or Redevelopment w/ Public Dedication</u>	<u>New Development or Redevelopment w/ Private Dedication</u>
<u>one tree (intensive care)</u>	\$ 267	\$ 167	\$ 200
<u>two trees (at risk)</u>	\$ 200	\$ 125	\$ 150
<u>three trees (out patient)</u>	\$ 134	\$ 83	\$ 100
<u>four trees (healthy)</u>	\$ 67	\$ 42	\$ 50

<u>Planning Area Rating</u>	<u>FEE SCHEDULE (per unit)</u> <u>Nine (9) Family Dwelling Unit Development and above</u>		
	<u>New Development or Redevelopment</u>	<u>New Development or Redevelopment w/ Public Dedication</u>	<u>New Development or Redevelopment w/ Private Dedication</u>
<u>one tree (intensive care)</u>	\$ 234	\$ 146	\$ 175
<u>two trees (at risk)</u>	\$ 175	\$ 110	\$ 131
<u>three trees (out patient)</u>	\$ 117	\$ 73	\$ 88
<u>four trees (healthy)</u>	\$ 58	\$ 37	\$ 44

(3) All fees shall be deposited in the city's parkland acquisition and development fund by planning area. Fees collected shall be used for the acquisition and improvement of new or undeveloped parkland within the ~~developing areas of the city, planned growth areas, or other areas consistent with the comprehensive plans~~same planning area as which the fee is collected.

(4) (a) Except as described in subsection (c)(4)(b) below, upon application of the property owner, the city shall refund that portion of any parkland development fee which has been on deposit over seven (7) years and which is unexpended and uncommitted. The refund shall be made to the then current owner or owners of lots or units of the development project or projects.

(b) If fees in any parkland development fee account are unexpended or uncommitted for more than five (5) calendar years after deposit, the city council shall make findings by resolution on or before December 31 of the fifth (5th) calendar year after receipt of the fee and annually thereafter until the funds are expended or committed. For so long as the city retains the fees, the resolution shall identify the purpose to which such fees shall be put and to show a roughly proportional and reasonable relationship between the fee and the purpose for which it was collected. If the city council makes such findings, the fees are exempt from the refund requirement.

(d) *Credit for parkland dedications.* Developers may dedicate a portion of their land for public parkland. In such instances where parkland is accepted for dedication, a credit equal to ~~seven~~fifteen thousand ~~five~~

110 ~~hundred~~ dollars (~~\$7,500.00~~15,000.00) per acre, or fraction thereof, of
111 dedicated parkland shall be applied against the balance of parkland
112 acquisition costs required under this section for the subdivision. Provided
113 however, \$~~such~~ dedication shall not reduce the payment for parkland
114 improvement costs as reflected in the minimum fee schedule listed
115 ~~below:~~above.

116	Single-family and two (2) family dwelling units, per unit.....	\$169.00
117	Three (3) to eight (8) family dwelling unit development, per unit.....	150.00
118	Nine (9) dwelling unit development and above, per unit.....	131.00

119 (e) Credit for parkland improvements in a benefit district. In
120 addition to dedicating a portion of their land, developers may also petition
121 the city to include the cost of public parkland improvements within a
122 benefit district for the service area. Where such dedication occurs and
123 public parkland is approved for inclusion in a benefit district, a credit equal
124 to one hundred (100) percent of the required parkland improvement cost
125 defined under this section shall be applied to the subdivision within the
126 benefit district.

127 (ef) Dedication criteria. Land proposed for parkland dedication
128 shall be approved by the ~~parks and recreation director~~ planning
129 commission ~~prior to~~upon approval of the ~~preliminary~~final plat. The parks
130 and recreation director and planning director shall determine the suitability
131 of the land for parkland, and determine any improvements required to
132 bring the land into useable condition. Factors to be considered in

evaluating potential parkland sites shall include, but shall not be limited to,
the following:

(1) All land proposed for dedication as a park or other recreational site shall contain a minimum of five (5) acres.

(2) Not more than ten (10) percent of the park or open space shall contain storm-water detention/retention facilities, floodplain, or wetland, unless such area is part of a linear trail system, or is accepted by the parks and recreation director.

(3) The park or open space shall not have an average slope greater than ten (10) percent.

(4) Undisturbed natural open space may be accepted for a portion of the dedication requirements at the ratio of four (4) acres of undisturbed natural open space, for each one (1) acre of active parkland dedication.

(5) The parks and recreation director shall have the authority to waive or modify any or all of the above listed criteria.

(6) The park or open space shall be consistent with design policies/standards of the Comprehensive Plan.

~~(f)~~ *Trail dedication.* Where the Topeka-Shawnee County Trails and Greenways Plan identifies a trail planned for an area within a proposed subdivision, the property owner or developer shall be required to dedicate that portion of land for a public trail easement or trail right-of-way. Any such dedication shall receive a credit as specified in subsection (d), credit for parkland dedications, herein.

(gh) *Other considerations prior to deeding.* The parks and recreation director may require that any dedicated parkland be improved prior to dedication. Factors that may be considered shall include, but shall not be limited to, the following:

(1) To the greatest extent possible, the developer may be required to preserve existing trees or other species of vegetation, or other natural features on the land to be dedicated for a park, trail, or recreational space. Significant trees lost during the construction process may be required to be replaced with suitable species and of suitable size as determined by the parks and recreation director.

(2) Grass, or other quick establishing vegetative ground cover may be required to prevent soil erosion, according to the specifications determined by the parks and recreation director.

(3) The developer may be required to bring utilities to the boundary of the proposed park or open space and shall cap them off at no cost to the city. Utilities may include, but shall not be limited, to gas, storm sewer, sanitary sewer, and electricity. The location where such utilities are to be brought shall be determined by the city engineer and the parks and recreation director.

(hi) *Dedication process.*

(1) Land to be accepted as a park or trail under this section shall be designated as public park area or trail on the final plat.

180 (2) Prior to the dedication of parkland, the owner or
181 developer shall provide the city with evidence of title in a form
182 acceptable to the city attorney or a title insurance policy insuring
183 the city's interest in the property. In any dedication of required land,
184 the developer must have good and marketable title to the land, free
185 and clear of any mortgages, liens, encumbrances, or assessments,
186 except easements or minor imperfections of the title acceptable to
187 the city.

188 (3) The parkland or trail shall be dedicated at the time of
189 approval of the final plat. However, the city shall not accept the
190 parkland or trail until the completion of required improvements and
191 the approval of the parks and recreation director. All parkland
192 reflected on a preliminary plat shall be dedicated to the city no later
193 than the time of approval of a final plat which results in one-half (½)
194 or more of the total area indicated in the preliminary plat.

195 (ii) *Credit for private open space.* Property owners or
196 developers may choose to reserve a portion of a subdivision for use as
197 private open space for the benefit of subdivision residents. In such
198 instances, a credit of twenty-five (25) percent shall be applied against the
199 parkland development fee as required by this chapter. All land proposed
200 for reservation as private open space must be deemed useable and
201 accessible by all residents within the proposed subdivision, as determined
202 by the planning director, and approved by the planning commission.

203 Section 2. That section 134-169, Streets, of the Code of the City of Topeka,
204 Kansas, is hereby amended to read as follows:

205 **Streets.**

206 (a) Streets shall be graded and improved by construction of curb, gutter and
207 pavement in units of one block or more for streets entirely within the subdivision but
208 may include fractional blocks ending at the subdivision boundaries.

209 (b) Streets whose centerline is the boundary line of the subdivision and
210 streets whose centerline is the city boundary may be improved to the centerline or city
211 boundary and shall be paid for and provided by the owner of the subdivision in
212 accordance with provisions as set forth above. Such improvements shall conform to the
213 usual requirements for residential street paving.

214 (c) Major traffic thoroughfare improvements will be furnished by the city when
215 necessary and in the judgment of the council such improvements are vital to the welfare
216 of the city under the following conditions:

217 (1) If the street is unimproved, a portion comparable in cost to a street
218 improvement in a regulation residential street shall be borne by the
219 owner of the subdivision as set forth above.

220 (2) If the major traffic thoroughfare is already improved with pavement
221 comparable to the usual residential requirements, the distribution of cost shall be
222 determined by the city as provided by statute.

223 (d) Streets separating a park from residential or other property shall be
224 improved as provided in subsection (a) and shall be paid for ~~as follows:~~

(1) ~~The half of such street adjacent to private property shall be paid for~~
~~by the subdivider or property owner in accordance with section 134-~~
~~166.~~

(2) ~~The half of such street which adjoins public park property within the~~
~~city shall be paid for by the city at large, provided however, the~~
~~amount to be paid by the city under this subsection shall be~~
~~determined by three appraisers appointed by the council, and the~~
~~amount which they find to be the city's one half shall be conclusive~~
~~upon the city and the owner of the subdivision.~~

Section 3. Original City of Topeka Code § 134-143 and § 134-169 are hereby
specifically repealed.

Section 4. This ordinance shall take effect and be in force from and after its
passage, approval and publication in the official City newspaper.

PASSED AND APPROVED by the Governing Body on October 20, 2009.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk