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3 **ORDINANCE NO. 19715**

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5 AN ORDINANCE introduced by Daniel R. Stanley, Interim City manager, amending
6 City of Topeka Code § 3.25.050 and § 18.40.130, concerning
7 parkland acquisition and specifically repealing said original section.
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9 BE IT ORDAINED BY THE GOVERNING BODY THE CITY OF TOPEKA:

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11 Section 1. That section 3.25.050, Parkland acquisition and development fund,
12 of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

13 **Parkland acquisition and development fund.**

14 (a) There is hereby created a park land acquisition and development fund.
15 The purpose of the fund shall be to act as a depository for moneys to be used for the
16 purchase and development of land for park purposes pursuant to TMC 18.40.130.

17 (b) ~~The park land acquisition and development fund may receive budgeted~~
18 ~~transfers from the general improvement fund, the parks and recreation fund, or any~~
19 ~~other fund having available resources and the legal authority to be so transferred. All~~
20 ~~such transfers shall be subject to budget appropriations and shall be specifically~~
21 ~~authorized by resolution of the city council.~~ The county shall administer the acquisition of
22 parkland and parkland development fees pursuant to TMC 18.40.130.

23 (c) ~~Expenditures. All expenditures from the park land acquisition and~~
24 ~~development fund shall only be for the purpose stated in this section and shall only be~~
25 ~~made upon approval by the city manager.~~ Fees collected by the city shall be transmitted
26 to the county within thirty (30) days of receipt.

27 Section 2. That section 18.40.130, Dedication, reservation and acquisition of
28 public sites and open spaces, of The Code of the City of Topeka, Kansas, is hereby
29 amended to read as follows:

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

31 (a) Definitions. For the purposes of this division, certain terms and words are
32 hereby defined.

33 (1) "Parkland" means any dedicated public open space specifically
34 designed for active recreational uses, including linkages to the regional trail
35 system, intended to serve one or more neighborhood(s) or the entire community
36 (i.e., a regional park or trail).

37 (2) "Parkland acquisition cost" means the average sale price for one
38 acre of vacant land within the city of Topeka and the city's three-mile
39 extraterritorial jurisdiction. For purposes of this division, said fee shall be set at
40 \$15,000 per acre.

41 (3) "Parkland improvement cost" means the average cost to improve a
42 neighborhood level park with typical amenities for recreational uses. For
43 purposes of this division, said fee shall be set at \$25,000 per acre.

44 (4) "Parkland development fee" means the combination of parkland
45 acquisition cost and the parkland improvement cost per dwelling unit to support
46 five acres of parkland per 1,000 people. For the purposes of this division, the
47 parkland development fee shall consist of 60 percent of the actual cost per
48 dwelling unit.

49 (5) "Dwelling unit" means any single-family, two-family, or multifamily
50 dwelling intended for habitation, including group living facilities.

51 (6) "Planning areas" means geographic areas for community-level
52 parks as identified as parkland fee districts in the park and open space element
53 of the comprehensive plan. New development outside a designated planning
54 area shall be included in the adjacent or nearest planning area which would best
55 serve that development.

56 (7) "New development" means construction of one or more dwelling
57 units on a lot upon which no dwelling unit previously existed.

58 (8) "Redevelopment" means construction of one or more dwelling units
59 on a lot upon which a dwelling unit previously existed and which has the effect of
60 creating a greater number of dwelling units than previously existed.

61 (9) "Reconstruction" means rebuilding or replacement of a dwelling unit
62 or units on a lot that previously maintained the same number, type and use of
63 dwelling units which has the effect of creating the same or fewer number of
64 dwelling units than previously existed.

65 (10) "County commission" means the Board of County Commissioners
66 for Shawnee County, Kansas.

67 (11) "Parks and recreation director" means the Shawnee County Parks
68 and Recreation Director.

69 (12) Planning commission" means the City of Topeka planning
70 commission.

71 (13) "Planning director" means the director of the planning department
72 for the City.

73 (b) Purpose. The purpose of this section is to serve the communities'
74 population growth with neighborhood and regional parkland based on the
75 comprehensive plan and national recreation and parks association standard of five
76 acres per 1,000 persons for a neighborhood park and 15 acres per 1,000 persons for a
77 regional park.

78 (c) Parkland Development Fee.

79 (1) In all instances where property owners or developers seek approval
80 of new development or redevelopment or a final plat or re-plat of land that
81 creates additional residential lots or units, a parkland development fee shall be
82 required. For subdivisions within the City's corporate limits, All fees shall be
83 collected by the development services division of the city public works
84 department concurrent with the application for a building permit, ~~or, for, For~~
85 subdivisions ~~outside of the city's corporate limits~~ within the City's extraterritorial
86 jurisdiction, the fee shall be paid to the county planning department ~~prior to the~~
87 ~~plat being released to the developer~~ or other responsible county agency
88 concurrent with application for a building permit. ~~For plats containing more than~~
89 ~~30 units, the developer may enter into an agreement with the city which allows~~
90 ~~for the parkland development fee to be paid in three equal installments. Said~~
91 ~~agreement shall be a covenant running with the land and shall be recorded with~~
92 ~~the Shawnee County register of deeds. The first installment shall be paid and a~~
93 ~~copy of the agreement shall be filed of record with the 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. No building permits may be issued without collection of parkland development fees in accordance with this section.

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

	Fee Schedule (per unit) Single- and Two-Family Dwelling Unit Development		
	New Development or Redevelopment	New Development or Redevelopment w/Public Dedication	New Development or Redevelopment w/Private Dedication
Planning Area Rating			
One tree (intensive care)	\$300.00	\$188.00	\$225.00
Two trees (at risk)	\$225.00	\$141.00	\$169.00
Three trees (out patient)	\$150.00	\$94.00	\$113.00
Four trees (healthy)	\$75.00	\$47.00	\$56.00
	Fee Schedule (per unit) Three- to Eight-Family Dwelling Unit Development		
	New Development or Redevelopment	New Development or Redevelopment w/Public Dedication	New Development or Redevelopment w/Private Dedication
Planning Area Rating			
One tree (intensive care)	\$267.00	\$167.00	\$200.00
Two trees (at risk)	\$200.00	\$125.00	\$150.00
Three trees (out patient)	\$134.00	\$83.00	\$100.00
Four trees (healthy)	\$67.00	\$42.00	\$50.00
	Fee Schedule (per unit) Nine-Family Dwelling Unit Development and Above		
	New Development or	New Development	New Development
Planning Area Rating			

	Redevelopment	or Redevelopment w/Public Dedication	or Redevelopment w/Private Dedication
One tree (intensive care)	\$234.00	\$146.00	\$175.00
Two trees (at risk)	\$175.00	\$110.00	\$131.00
Three trees (out patient)	\$117.00	\$73.00	\$88.00
Four trees (healthy)	\$58.00	\$37.00	\$44.00

(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 same planning area as which the fee is collected, including the improvement of undeveloped land within existing parkland.

(4)(i) Except as described in subsection (c)(4)(ii) of this section, upon application of the property owner, the ~~city~~County shall refund that portion of any parkland development fee which has been on deposit over seven 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.

(ii) If fees in any parkland development fee account are unexpended or uncommitted for more than ~~five~~six calendar years after deposit, the ~~city council~~County commission shall make findings by resolution on or before December 31st of the ~~fifth~~sixth calendar year after receipt of the fee and annually thereafter until the funds are expended or committed. For so long as the ~~city~~County 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~~County commission 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 \$15,000 per acre, or fraction thereof, of dedicated parkland shall be applied against the balance of parkland acquisition costs required under this section for the subdivision. Provided, however, such dedication shall not reduce the payment for parkland improvement costs as reflected in the minimum fee schedule listed in subsection (c)(2) of this section.

(e) Credit for Parkland Improvements in a Benefit District. In addition to dedicating a portion of their land, developers may also petition the city to include the cost of public parkland improvements within a benefit district for the service area. Where such dedication occurs and public parkland is approved for inclusion in a benefit district, a credit equal to 100 percent of the required parkland improvement cost defined under this section shall be applied to the subdivision within the benefit district.

(f) Dedication Criteria. ~~Land proposed for parkland dedication shall be approved by the planning commission upon approval of the final plat. The parks and recreation director and planning director, after consultation with the planning director,~~ shall determine the suitability of the land for parkland, and determine any improvements required to bring the land into usable condition. Factors to be considered in evaluating potential parkland sites shall include, but shall not be limited to, the following:

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

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

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

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

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

155 (6) The park or open space shall be consistent with design
156 policies/standards of the City's comprehensive plan.

157 (g) Trail Dedication. Where the Topeka-Shawnee County trails and
158 greenways plan identifies a trail planned for an area within a proposed subdivision, the
159 property owner or developer shall be required to dedicate that portion of land for a
160 public trail easement or trail right-of-way. Any such dedication shall receive a credit as
161 specified in subsection (d), ~~Credit for Parkland Dedication~~, of this section.

162 (h) Other Considerations Prior to Deeding. The parks and recreation director
163 may require that any dedicated parkland be improved prior to dedication. Factors that
164 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.

(i) 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.

(2) Prior to the dedication of parkland, the owner or developer shall provide the ~~city~~County with evidence of title in a form acceptable to the ~~city attorney~~Shawnee County counselor or a title insurance policy insuring the ~~city's~~County's interest in the property. In any dedication of required land, the developer must have good and marketable title to the land, free and clear of any

187 mortgages, liens, encumbrances, or assessments, except easements or minor
188 imperfections of the title acceptable to the ~~city~~County.

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

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

202 Section 3. That original § 3.25.050 and § 18.40.130 of The Code of the City of
203 Topeka, Kansas, are hereby specifically repealed.

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

206 Section 5. This ordinance shall supersede all ordinances, resolutions or rules,
207 or portions thereof, which are in conflict with the provisions of this ordinance.

Section 6. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the Governing Body March 20, 2012.

CITY OF TOPEKA, KANSAS

William W. Buntin, Mayor

ATTEST:

Brenda Younger, City Clerk