

**BEND METRO PARK AND RECREATION DISTRICT**  
**Ordinance No. 8 - System Development Charges**

THE BEND METRO PARK AND RECREATION DISTRICT ORDAINS AS FOLLOWS:

**SECTION 1. PURPOSE AND SCOPE**

- A. Future growth within the Bend Metro Park and Recreation District (District) should contribute its fair share to the cost of improvements and additions to parks and recreation facilities needed to accommodate such growth.
- B. Park system development charges will provide a source of revenue to finance the construction or improvement of the District's parks and recreation facilities necessitated by growth.
- C. ORS 223.297 - 223.314 authorize local governments, including special districts, to impose system development charges for parks and recreation.
- D. This Ordinance is intended to be a financing mechanism for parks and recreation facilities necessitated by new development and for reimbursement for unused capacity in existing facilities that is available for use by future residents.

**SECTION 2. DEFINITIONS**

- A. "Accessory dwelling unit" shall mean a second dwelling unit created on a lot with a single-family dwelling unit, whether created at the same time as or subsequent to construction of the single family dwelling. The second unit is created auxiliary to and is always smaller than the primary single family dwelling unit.
- B. "Applicant" shall mean the owner or other person, including any business or corporation, who applies for a residential building or placement permit from the City of Bend or Deschutes County for development within the boundaries of the District.
- C. "Building" shall mean any structure built and maintained for the support, shelter or enclosure of persons or property of any kind. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a building permit.
- D. "Building Permit" shall mean an official permit or certificate issued by the City of Bend or Deschutes County authorizing the construction or siting of any building.

- E. "Capital Improvements" shall mean public facilities or assets used for parks and recreation.
- F. "Citizen or Other Interested Person" shall mean any person whose legal residence is within the boundaries of the District, as evidenced by registration as a voter within the District or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within District boundaries or is otherwise subject to the imposition of park system development charges, as outlined in Section 3 of this Ordinance.
- G. "District" shall mean the Bend Metro Park and Recreation District, an Oregon special district.
- H. "District Board" shall mean the duly elected Board of Directors of the District.
- I. "Duplex" shall mean a building designed or used for residence purposes by not more than two families and containing two single family dwelling units.
- J. "Executive Director" shall mean the chief executive officer of the District.
- K. "Hotel or motel" shall mean a building, group of buildings, or portion thereof designed or used for occupancy of individuals who are lodged with or without meals. The definition shall include but not be limited to buildings or groups of buildings designed, intended, or used primarily for the accommodation of transient automobile travelers; including groups designated as auto cabins, motor courts, motor hotels or similar designations. Condominiums and townhomes are excluded from this definition.
- L. "Improvement Fee" shall mean a fee for costs associated with capital improvements to be constructed after the effective date of this Ordinance.
- M. "Manufactured Home" shall mean a single-family dwelling unit that is constructed primarily at one location and is then transported to another location for either permanent or temporary siting.
- N. "Methodology" shall mean the system development charge methodology required by ORS 223.304(1) and (2). Methodology is defined further in Section 4.
- O. "Multi-family dwelling" shall mean a building or portion thereof designed or used as a residence by three or more families and containing three or more dwelling units on a single parcel of land.
- P. "Owner" shall mean the owner or owners of record of real property as shown on the tax rolls of Deschutes County, or a person purchasing a piece of property under contract. For the purposes of this Ordinance in terms of violations and binding agreements between the District and the owner, the "owner" shall also

mean the leaseholder, tenant or other person in possession or control of the premises or property at the time of the agreement or violation of agreement or the provisions of this Ordinance.

- Q. "Parcel of Land" shall mean a lot, parcel, block or other tract of land that, in accordance with city or county regulations, is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.
- R. "Qualified Public Improvement" shall be defined as a capital improvement that is:
- a) Required as a condition of development approval;
  - b) Identified in the plan adopted pursuant to Section 5 of this Ordinance; and either is:
    - 1) Not located on or contiguous to a parcel of land that is the subject of the development approval; or
    - 2) Located in whole or in part on or contiguous to a parcel of land that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.
  - c) For purposes of this definition, contiguous means in a public way which abuts the parcel.
  - d) Approved/accepted by the District.
- S. "Reimbursement Fee" shall be defined as a fee associated with available capacity in the system to benefit future residents, but that has already been paid for by existing residents. The reimbursement fee will be repaid to the District to compensate existing residents for excess capacity.
- T. "Residential development" subject to SDCs shall mean all improvements on a site, including buildings and other structures which have the effect of increasing the usage of any capital improvements or which may contribute to the need for additional or enlarged capital improvements specific to this Ordinance or SDCs being enacted.
- U. "Single-family dwelling" shall mean a building designed or used for residential purposes by not more than one family and containing one dwelling unit only, including manufactured homes and townhomes, but excluding such temporary structures as tents, teepees, travel trailers, and other similar uses.

- V. "System Development Charge" or "SDC" shall mean a reimbursement fee and/or an improvement fee assessed or collected at the time of the issuance of a placement or building permit.

### **SECTION 3. SYSTEM DEVELOPMENT CHARGE FRAMEWORK**

- A. The District's Park System Development Charge is hereby imposed upon all new residential dwelling units within the District, including single-family dwellings, multi-family dwellings, manufactured homes, duplexes, and hotels and motels, for which a building permit or placement permit is required. This shall include new construction and alteration of dwelling units, and expansion or replacement of a dwelling unit if such alteration expansion or replacement results in an increase in the number of dwelling units compared to the existing number of dwelling units in the development. For alterations, expansions and replacements, the amount of the system development charge to be paid shall be the difference between the rate for the proposed development and the rate that would be imposed for the development prior to the alteration, expansion or replacement.
- B. System Development Charge fees, related capital improvement projects, administrative review procedures and other implementing measures related to this Ordinance shall be established, and may be revised from time to time, by separate resolution(s) of the District. A change in implementing procedures, fees, qualified projects and the like shall not require an amendment to this Ordinance or the SDC methodology.
- C. The system development charges imposed by this Ordinance are separate from and in addition to any applicable tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development.

### **SECTION 4. METHODOLOGY**

- A. The methodology used to establish or modify the reimbursement fee shall consider the cost of then-existing facilities including without limitation design, financing and construction costs, prior contributions by then-existing property owners, gifts or grants from federal, state, municipal or quasi-municipal government or private persons, the value of unused capacity available to future system users, rate-making principles employed to finance publicly-owned capital improvements, and other relevant factors identified by the District Board. The methodology shall promote the objective that future system users shall contribute no more than an equitable share of the cost of then-existing facilities.
- B. The methodology used to establish or modify the improvement fee also shall consider the estimated cost of projected capital improvements needed to increase the capacity of the system to which the fee is related. The methodology shall be

calculated to obtain the cost of capital improvements for the projected need for future system users.

- C. The methodology used to establish or modify the improvement fee or the reimbursement fee, or both, shall be contained in a resolution adopted by the District Board. The methodology described in the accompanying resolution, "A Methodology for Calculating Park System Development Charges," and its assumptions, conclusions and findings, are herein adopted by reference to this Ordinance.

## SECTION 5. EXPENDITURES

- A. The District shall establish separate accounts for each type of system development charge, i.e., reimbursement and improvement fees, which shall be maintained apart from all other accounts of the District. All system development charge payments shall be deposited in the appropriate account immediately upon receipt.
- B. Reimbursement fees shall be applied only to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness.
- C. Improvement fees shall be applied only to capacity-increasing capital improvement, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the capital improvements funded by improvement fees shall be related to demands created by development. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the Capital Improvement Plan adopted by the District.
- D. Notwithstanding subsections B and C of this section, system development charge revenues may also be expended on the direct costs of complying with the provisions of this Ordinance and related statutes, including, but not limited to, the costs of developing system development charge methodologies and providing an annual accounting system for system development charge expenditures.
- E. The monies deposited in the above accounts shall be used solely for qualified public improvements as allowed by ORS Chapter 223 including, but not limited to:
  - 1. design and construction plan preparation;
  - 2. permitting and fees;

3. land and materials acquisition, including any costs of acquisition or condemnation;
  4. construction of capital improvements;
  5. site preparation and grading and the design and construction of new drainage facilities required by the construction of capital improvements and structures;
  6. relocating utilities required by the construction of improvements;
  7. landscaping;
  8. construction management and inspection;
  9. surveying, soils and material testing;
  10. acquisition of capital equipment;
  11. repayment of monies transferred or borrowed from any budgetary fund of the District which were used to fund any of the capital improvements as herein provided;
  12. payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the District to fund adopted capital improvements;
  13. direct costs of complying with the provisions of ORS Chapter 223 including the consulting, legal, and administrative costs required for developing and updating the park system development charges methodology report, resolutions, ordinance, and capital improvement plan; and the costs of collecting and accounting for park system development charges expenditures.
- F. Funds on deposit in park system development charge accounts shall not be used for:
1. any expenditure that would be classified as a maintenance or repair expense; or
  2. costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- G. Any capital improvement being funded wholly or in part with park system development charges revenue shall be included in the District's capital improvement plan. The capital improvement plan may be modified at any time and shall:

1. list the specific capital improvement projects that may be funded with park system development charges revenue;
  2. provide the estimated cost of each capital improvement project,
  3. provide the estimated timing of each capital improvement project; and
  4. be updated at least once every three years.
- H. Any funds on deposit in park system development charge accounts that are not immediately necessary for expenditure shall be invested or deposited in an interest-bearing account by the District. All income or interest derived from such investments shall be deposited in the Park System Development Charge fund accounts and used as provided herein.
- I. The District shall prepare an annual accounting report for park system development charges, including the total amount of system development charge revenue collected in the accounts, and capital improvement projects that were funded.
- J. Any citizen or other interested person may challenge an expenditure of park system development charges revenues.
1. Such challenge shall be submitted, in writing, to the Executive Director for review within two years following the subject expenditure, and shall include the following information:
    - a. The name and address of the citizen or other interested person challenging the expenditures;
    - b. The amount of the expenditure, the project, payee or purpose, and the approximate date on which it was made; and
    - c. The reason why the expenditure is being challenged.
  2. If the Executive Director determines that the expenditure was not made in accordance with the provisions of this Ordinance and other relevant laws, a reimbursement of park system development charge revenues from other revenue sources shall be made within one year following the determination that the expenditures were not appropriate.
  3. The Executive Director shall make written notification of the results of the expenditure review to the citizen or other interested person who requested the review within ten (10) days of completion of the review.

## **SECTION 6. COLLECTIONS**

- A. The District's Park System Development Charge shall be due and payable at the time of issuance of a building permit or placement permit for any residential development as defined in this Ordinance, including single-family dwellings, multi-family dwellings, manufactured homes, duplexes, and hotels and motels. The District's Board shall have the authority to implement, by resolution, a new or alternative time of collection for SDCs. SDC fee(s) will be based on the rates in effect on the date that the building permit application is submitted. The SDC methodology referenced in this Ordinance establishes fees for each type of development. Responsibility for collecting charges may be delegated to the City of Bend and/or Deschutes County by intergovernmental agreement.
- B. If Park System Development Charges are due and payable at the time of issuance of a building permit or placement permit, and if development is commenced without an appropriate permit, the System Development Charge is immediately payable upon the earliest date that a permit was required.

## **SECTION 7. EXEMPTIONS**

Notwithstanding Section 3A, the following development shall be exempt from payment of the Park System Development Charges as defined in this Ordinance and supporting or implementing documents:

1. Non-residential development with the exception of hotels and motels as defined in this Ordinance.
2. Alteration, expansion or replacement of an existing residential dwelling unit where no additional residential dwelling unit is created.
3. The construction of accessory buildings or structures which will not create additional residential dwelling units and which do not create additional demands on the District's capital facilities.
4. The issuance of a placement permit for a manufactured home unit on a lot or parcel on which applicable park system development charges have previously been paid.

## **SECTION 8. CREDITS**

- A. The District may grant a credit against the park system development charges imposed pursuant to Section 3 for the donation of land for, or for the construction of any qualified public improvements.

- B. Prior to issuance of a building permit or placement permit, the applicant shall submit to the Executive Director a proposed plan and estimate of cost for 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 donated and a written appraisal prepared in conformity with Section 9.E.1.;
  3. a list of the contemplated capital improvements contained within the plan;
  4. an estimate of proposed construction costs certified by a professional architect or engineer; and
  5. a proposed time schedule for completion of the proposed plan.
- C. The applicant shall have the burden of demonstrating that a particular improvement qualifies for a credit. The amount of the credit to be applied shall be determined according to the following conditions:
1. When a development occurs that is subject to a park system development charge, the system development charge for the existing use, if applicable, shall be calculated and if it is less than the system development charge for the use that will result from the development, the difference between the system development charge for the existing use and the system development charge for the proposed use shall be the system development charge. If the change in the use results in the system development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required. No refund or credit shall be given unless provided for by another subsection of this Section.
  2. If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the District's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the District.
  3. Notwithstanding subsections 1 and 2 above, when establishing a methodology for a park system development charge, the District may

provide for a credit against the improvement fee, the reimbursement fee, or both, for capital improvements constructed as part of the development that reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the District Board finds reasonable.

- D. If a donation or construction of a qualified public improvement gives rise to a credit amount greater than the amount of the park system development charge that would otherwise be levied against the project receiving development approval, the excess credit may be applied against park system development charges that accrue in subsequent phases of the original development project. Any excess credit must be used not later than ten years from the date it is given.
- E. Calculation of credits will be subject to the following standards:
  - 1. The value of donated lands shall be based upon a written appraisal of fair market value by a qualified and professional appraiser based upon comparable sales of similar property between unrelated parties in a bargaining transaction; and
  - 2. The cost of anticipated construction of qualified public improvements shall be based upon cost estimates certified by a professional architect or engineer.
- F. Upon approval of the District Board, the decision of the Executive Director, as to whether to accept the proposed plan of contribution and the value of such contribution shall be in writing and issued within thirty (30) working days of the date all data is received for review. Notification shall be provided to the applicant via regular mail.
- G. Any applicant who submits a proposed plan pursuant to this Section, and desires the immediate issuance of a building permit or placement permit, shall pay applicable system development charges. Said payment shall not be construed as a waiver of any credit. Any difference between the amount paid and the amount due, as determined by the Executive Director, shall be refunded to the applicant. In no event shall refund by the District under this subsection exceed the amount originally paid by the applicant.
- H. The District may, in its sole discretion, grant a credit for land donated for park and recreational use, which does not otherwise meet the requirements of this section.
- I. Credits shall not be transferable from one development to another.
- J. Credits shall be transferable within the same development if a development or portion of it is sold prior to completion but after development and dedication of qualified public improvements as defined in this Ordinance.

- K. Credits shall not be transferable from one type of system development charge to another.
- L. Credits shall be used within 10 years from the date the credit is given.

**SECTION 9. DEVELOPER RECOVERY PROCEDURES AND PAYMENTS**

- A. Upon approval of the District Board, the District may enter into agreements with developers who propose to expand the park system by dedicating and/or constructing park and recreation facilities. These agreements would allow the District to repay the developer for such improvements using a portion of the Park System Development Charges collected in a designated recovery area.
- B. Such facilities may serve the proposed development only (sole recovery area) or the proposed development and areas beyond it (shared recovery area).
- C. The District Board shall adopt by separate resolution such agreements. The resolution shall address:
  - 1. Applicable District, City, and County policies, standards, rules and regulations.
  - 2. Responsibilities for paying the cost of such improvements.
  - 3. Eligibility for SDC recovery payments.
  - 4. Procedures for determining the extent of the area served by proposed improvements.
  - 5. Procedures for remitting SDCs collected in the sole or shared recovery area to eligible developers.
  - 6. Payment schedules and conditions for SDC recovery fees.
  - 7. Procedures for calculating the amount of the recovery fees.
  - 8. Procedures for determining the value of qualified improvements.

**SECTIONS 10. REFUNDS, WAIVERS AND DEFERRALS**

- A. Refunds
  - 1. Refunds may be given by the Executive Director upon finding that there was a clerical error in the calculation of SDCs.

2. Refunds shall not be allowed for failure to timely claim credit or for failure to seek an alternative SDC rate calculation in a timely manner at the time of submission of an application for a building permit.
3. An applicant or owner shall be eligible to apply for a refund if:
  - a. The building permit or placement has expired and the development authorized by such permit was not commenced; or
  - b. The park system development charges have not been expended or encumbered prior to the end of the fiscal year immediately following the tenth anniversary of the date upon which such charges were paid. For the purposes of this Section, first funds received shall be deemed to be the first funds expended.
4. An application for refund shall be filed with the District and contain the following:
  - a. The name and address of the applicant;
  - b. The location of the property which was the subject of the park system development charges;
  - c. A notarized sworn statement that the petitioner is the then current owner of the property on behalf of which the park system development charges were paid; including proof of ownership, such as a certified copy of the latest recorded deed;
  - d. The date the system development charges were paid;
  - e. A copy of the receipt of payment for the system development charges; and, if appropriate,
  - f. The date the building permit or placement permit was issued and the date of expiration.
5. The application for a refund shall be filed within ninety (90) days of the expiration of the building permit, placement permit, or within ninety (90) days of the end of the fiscal year following the tenth anniversary of the date upon which the park system development charges were paid. Failure to timely apply for a refund of the system development charges shall waive any right to a refund.
6. Within thirty (30) days from the date of receipt of a petition for refund, the District will advise the petitioner of the status of the request for refund, and if such request is valid, the park system development charges shall be returned to the petitioner.

7. A building permit or placement permit which is subsequently issued for a development on the same property which was the subject of a refund shall pay the park system development charges required by Section 3.

B. Waivers

1. Waivers of BMPRD SDC fees, as may be further defined in separate resolution, may be granted by the Executive Director upon finding that the subject development places no demand upon the district park system.
2. Waivers may only be issued in extraordinary circumstances for development whose use is highly specialized and will only apply to that portion of a development found not to impose any system demand. Waivers expire upon conversion of the original use to another use. Example development for which waivers may be granted include but are not limited to the following:
  - a. Hospice care facility;
  - b. Alzheimer's care facility;
  - c. End of life residential care facility.

C. Deferrals

1. A deferral of SDC fees, as may be further defined by separate resolution, may be granted by the Executive Director upon a finding that the subject development meets a category of special need in the district for which BMPRD and other service providers have agreed to grant special financial treatment in order to advance a specific public benefit.
2. Deferrals do not constitute a waiver of SDC but rather a delay in the normal schedule for collection of the fee. Example development for which waivers may be granted include but are not limited to the following:
  - a. Assisted living project; and
  - b. Low income/affordable housing units.

**SECTION 11. REVIEW OF METHODOLOGY AND RATES**

- A. This Ordinance, the park system development charges methodology, and the capital improvement plan shall be reviewed by the District Board at least every five (5) years. The review shall consider new estimates of population and other socioeconomic data, changes in the cost of construction, any acquisition of land by the District for park development, and adjustments to the assumptions, conclusions or findings set forth in the methodology. The purpose of this review

is to evaluate and revise, if necessary, the rates of the park system development charges to assure that they do not exceed the actual or reasonably anticipated costs of the District's capital improvements.

- B. In the event the review of this Ordinance or the methodology alters or changes the assumptions, conclusions and findings of the methodology, or alters or changes the amount of park system development charges, the methodology may be amended and updated to reflect the assumptions, conclusions and findings of such reviews. If changes in the methodology are undertaken by the District, the District shall coordinate such changes with the City of Bend and Deschutes County prior to adoption pursuant to Intergovernmental Agreements between Deschutes County and the District and the City of Bend and the District.

## **SECTION 12. NOTICE**

- A. The District shall maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for a park system development charge. Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a park system development charge. The methodology supporting the system development charge shall be available at least 60 days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed shall not invalidate the action of the District. No legal action intended to contest the methodology shall be filed after 60 days following adoption or modification of the park system development charge ordinance or resolution.
- B. The District may periodically delete names from the list, but at least 30 days prior to removing a name from the list, the District must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

## **SECTION 13. APPEALS AND REVIEW HEARINGS**

- A. An applicant who is required to pay park system development charges shall have the right to request a hearing before the District board to review any of the following:
  - 1. The denial of a proposed credit for contribution of qualified public improvements pursuant to Section 8.
  - 2. The calculation of a Park System Development Charge, or the application of the SDC fee methodology and/or adjustments of the SDC rate, provided, however, the SDC fee methodology itself may not be appealed.

3. Executive Director's decisions regarding requests for an SDC refund, credit, waiver, or deferral.
- B. Such hearing shall be requested by the applicant within thirty (30) days of the date of first receipt of the denial. Failure to request a hearing within the time provided shall be deemed a waiver of such right.
  - C. The request for hearing shall be filed with the Executive Director and shall contain the following:
    1. The name and address of the applicant;
    2. The legal description of the property in question;
    3. If issued, the date the building permit or development permit was issued;
    4. A brief description of the nature of the development being undertaken pursuant to the building or development permit;
    5. If paid, the date the park system development charges were paid; and
    6. A statement of the reasons why the applicant is requesting review.
  - D. Upon receipt of such request, the District shall schedule a hearing before the District Board at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the applicant written notice of the time and place of the hearing. Such hearing shall be held within forty-five (45) days of the date the request for hearing was filed.
  - E. Such hearing shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedure and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.
  - F. Any applicant who requests a hearing pursuant to this Section, and desires the immediate issuance of a building permit or placement permit, shall pay prior to or at the time the request for hearing is filed the applicable park system development charges pursuant to Section 3B. Said payment shall not be construed as a waiver of any review rights.
  - G. An applicant may request review under this Section without paying the applicable park system development charges as long as no building permit or placement permit has been issued.

H. The District shall advise any person who makes written objection to the calculation of a park system development charge of the right to petition for review pursuant to ORS 34.010 to 34.100.

**SECTION 14. SEVERABILITY**

If any clause, section or provision of this Ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said Ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

**SECTION 15. EFFECTIVE DATE**

The Park System Development Charges authorized by this Ordinance shall be imposed on building or placement permit applications submitted on or after March 3, 2009 provided, however, that an application presented before that date, for which all necessary prior approvals have not been granted or other required predicates not met shall not be considered submitted for purposes of this section.