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

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

(c) Parkland development fee.

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

(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

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(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 plan of the 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 sevenfifteen thousand five
hundred dollars ($7,500.00) 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 below:

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

(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 one hundred (100) percent of the required parkland improvement cost defined under this section shall be applied to the subdivision within the benefit district.

(ef) Dedication criteria. Land proposed for parkland dedication shall be approved by the parks and recreation director planning commission prior to approval of the preliminary final plat. The parks and recreation director and planning director shall determine the suitability of the land for parkland, and determine any improvements required to 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.

(fg) 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 sitze 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.
(2) Prior to the dedication of parkland, the owner or developer shall provide the city with evidence of title in a form acceptable to the city attorney or a title insurance policy insuring the city'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 mortgages, liens, encumbrances, or assessments, except easements or minor imperfections of the title acceptable to the city.

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

(ij) Credit for private open space. Property owners or developers may choose to reserve a portion of a subdivision for use as private open space for the benefit of subdivision residents. In such instances, a credit of twenty-five (25) percent shall be applied against the parkland development fee as required by this chapter. All land proposed for reservation as private open space must be deemed usable and accessible by all residents within the proposed subdivision, as determined by the planning director, and approved by the planning commission.
Section 2. That section 134-169, Streets, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Streets.

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

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

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

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

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

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