



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

OREGON CHAPTER

April 15, 2015

The Hon. Charlie Hales
Portland City Council
1221 SW 4th Avenue, Room 340
Portland, OR 97204

Re: Park System Development Charge Methodology Update Report

Dear Mayor Hales and Commissioners:

NAIOP, the Commercial Real Estate Development Association, is one of the leading organizations for developers, investors, owners & operators, brokers, and related professionals in office, industrial and mixed-use real estate throughout the United States, Canada, and Mexico. The Oregon Chapter's members represent a broad and diverse range of companies involved with commercial real estate activities in the Portland metropolitan area, including developers, owners, brokers, and managers, along with other professionals providing legal, finance, title, engineering, architectural, construction, and other services.

After reviewing the Park SDC Methodology Update Report before you today, we have found it seriously flawed and urge you to direct the Bureau of Parks & Recreation and the Park SDC Task Force to conduct additional work to correct the problems identified in the Daniel Heffernan Company (DHC) memorandum of April 10, 2015.

Parks Commissioner Amanda Fritz was recently quoted in *The Oregonian* (4/7/15) as saying, "New development needs to pay its way. No more, no less." We completely agree with Commissioner Fritz, but believe strongly that implementation of the proposed Methodology Update Report would result in development—especially commercial development—paying far more than its way with park SDC rates doubling within the Central City and nearly quadrupling within the Non-Central City area.

As someone who was deeply involved in the 1998 and 2004 park SDC methodology updates, and to a lesser extent in the 2008 update, I can't express strongly enough what a huge departure the current update represents in approach, assumptions, and level of detail for future improvements to the City's park system.

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Significant differences between this update and previous efforts include:

- Level of service methodology – We actually agree with one of the main departure points in this update—the move from a strict acreage based level of service approach. Such a change is long overdue in a very constrained land supply environment, and recognizes the reality that Portland and most other cities within the regional urban growth boundary will find it impossible to continue historical trends of park land acquisition while also meeting targets for development densities projected by Metro. While we do support this move, the new “investment per person” presents a number of serious problems that are discussed in great detail by the DHC memorandum.
- SDC Capital Improvements Plan – Directing the Council’s attention to page 22 of the Methodology Update Report (attached), the obvious question is how can anyone consider these twelve lines of text and numbers to be a valid 20-year capital improvement plan for a parks system that strives to be one of the nation’s best. This falls far, far short of not only statutory requirements in ORS 223.309(1)*, but also the much more detailed capital improvement plans in previous methodology updates (2004 and 2008 attached).
- Current Park Deficiencies – The proposed Methodology Update Report takes the position that the current parks system is at 100% capacity, “there is no unused reserve capacity value that can be used to serve future population growth.” As the DHC memorandum notes, this definition of LOS is not supported by the City’s own long-range park system plans and internal reviews. More importantly, the proposed Methodology Update, unlike past updates, makes no mention of current deficiencies within the park system and the capital improvements plan doesn’t include any expenditures to correct such deficiencies. The 2008 methodology update, for example, included \$75.6 million in the capital improvement plan for non-SDC expenditures to correct existing deficiencies in Non-Central City local access park improvements (this amount doesn’t include an additional \$23 million for land acquisition to correct deficiencies). The 2004 methodology update included \$54.2 million in the capital improvement plan for non-SDC expenditures to correct existing deficiencies.

Does the absence of any mention of existing park deficiencies in the current capital improvement plan mean that the City is no longer planning to upgrade park facilities in areas where they are lacking?

Additional concerns that we have with the proposed methodology update are:

- Effective Date – According to the draft ordinance before you, the drastic fee increases being proposed would become effective in less than three months, on July 1st. We believe strongly that any increase should have a longer lead time and be phased in so that

* Prior to the establishment of a system development charge by ordinance or resolution, a local government shall prepare a capital improvement plan, public facilities plan, master plan or comparable plan that includes a list of the capital improvements that the local government intends to fund, in whole or in part, with revenues from an improvement fee and the estimated cost, timing and percentage of costs eligible to be funded with revenues from the improvement fee for each improvement. (emphasis added)

development projects currently in process to begin the permitting process won't be unnecessarily burdened by additional costs that could not have been foreseen when pro forma analyses and financing were finalized.

- Impact on Commercial Redevelopment of Non-Central Areas – There has been extensive discussion of redevelopment goals for areas along 82nd Avenue, farther east, and elsewhere. A quadrupling of park SDCs for these areas will certainly make them less competitive for siting of new commercial development.

Thank you for the opportunity to comment on the park SDC methodology update report. We hope to have the opportunity for involvement in a continuing process to further refine this crucial component in plans to ensure that the Portland parks system has capacity to accommodate future growth within the city.

Sincerely,



Kelly Ross
Executive Director



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

OREGON CHAPTER

May 14, 2015

The Hon. Charlie Hales
Portland City Council
1221 SW 4th Avenue, Room 340
Portland, OR 97204

Re: Park System Development Charge Methodology Update Report

Dear Mayor Hales and Commissioners:

We submitted testimony at the April 15th public hearing on the proposed Park System Development Charge Methodology Update Report and would like to supplement those arguments with this letter, which presents additional information on flaws in the report.

The report misconstrues and misapplies applicable law by including passive open space and habitat restoration that do not qualify as “facilities or assets used for . . . parks and recreation” within the meaning of ORS 223.299(1)(a)(E).

The SDC statute provides that it is to be a “uniform framework” and sets forth a specific list of improvements that can be funded under that framework. Although it does not say in express terms that the list is exclusive, both the context and legislative history of the list resolve any ambiguity that may exist.

Key to the consensus that led to the establishment of a uniform statutory framework for SDCs was the understanding that the list of improvements that could be funded by SDCs was to be exclusive and pre-emptive. That understanding was formally memorialized in the following colloquy presented to the House Committee on Intergovernmental Affairs on April 6, 1989:

Chair Young: Refers to the HB 3224-2 Amendments (Exhibit G) which they want withdrawn. Where does this leave us in terms of what system development (SDCs) can be used for?

Jim Irvine: The list on lines 9 through 13, of House Bill 3224 is a finite list and the word “only” is not necessary.

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Chair Young: If someone wanted to use an SDC for capital construction for schools or for a library, would that have to be added to the statutes?

Jim Irvine: Correct.

B.J. Smith: The statutory authority is clear. If you are not on the list you neither have authority or restrictions granted by the legislature.

Charlie Hales, Metropolitan Homebuilders Association: This is not an including list but a limited to list. If an SDC was used for something not on the list it would be contrary to the act.

Consistent with the intent expressed in the original legislation, the legislature has been specific in what it has proposed, adopted, and rejected over the years. It has rejected attempts to lengthen the list. Measures introduced in the 2001 session alone would have added schools and classroom improvements (HB 2288 and HB 3074), community colleges (HB 3179), police, fire, and rescue facilities (HB 3074 and HB 3179), and libraries (HB 3179). All were rejected.

Pass or fail, all these measures were quite specific in what they proposed. Police, fire, and rescue, not “public safety.” Schools, classrooms, and community colleges, not “educational facilities.” Similarly, the statute provides for parks and recreation, not “public space.”

State land use, tax, and other laws and regulations treat “open space” and “wildlife habitat” differently than they do parks and recreational facilities. LCDC’s Goal 5 protects “open space” and “wildlife habitat,” while Goal 8 addresses Recreation [See OAR 660-015-000(5) and (8)]. The two differ in kind. One is for people, the other largely for wildlife. The legislature did not contemplate “open space” and “wildlife habitat” within the meaning of parks and recreation SDCs.

This issue was litigated in a 2002 legal challenge that the Home Builders Association of Metropolitan Portland brought against the City of West Linn regarding its increased park SDC. In his ruling in *HBAMP et al. v. City of West Linn*, Clackamas County Circuit Judge John Lowe agreed with plaintiff HBAMP that "open space" is broader than the terms "park and recreation facilities" and thus some types of open spaces are not parks or recreation facilities. Judge Lowe remanded the matter back to the City for additional findings to demonstrate that SDC fund purchases will be limited to open space that is also a park and recreation facility or asset. Subsequently, the City conceded that it had erroneously included in its inventory of park properties certain open space that didn't qualify for SDC funding, and the SDC was reduced.

The Park System Development Charge Methodology Update Report specifies \$477,939,830 in total value for habitat and natural area lands. Because such lands are outside the definition of “park and recreation facilities,” this amount cannot be used to calculate a per capita level of service for the park SDC.

The Report misconstrues and misapplies applicable law by authorizing charges for costs of passive open space and habitat restoration that are not “improvements to be constructed” within the meaning of ORS 223.299(2), which defines “improvement fee” as “a fee for costs associated with improvements to be constructed.”

Improvement fees may only be used for costs associated with “facilities to be constructed.” ORS 223.299(2) defines “Improvement fee” as: “A fee for costs associated with capital improvements to be constructed.” This may include site costs, but only where the cost of the site is “associated with” the proposed “construction” of capital improvements such as streets, buildings, sewer lines, and the like.

Acquisition for viewsheds, watersheds, riparian zones, wildlife corridors, or passive open space that is not needed to construct capital improvements is not “associated with capital improvements to be constructed.” Corridors for trails, bike paths, pipelines, and the like may be considered to be “associated with capital improvements to be constructed” only if there is substantial evidence in the whole record sufficiently defining the corridors or other boundaries and establishing the necessary “association,” or nexus with capital construction for parks or recreation.

The 20-year capital plan would allocate \$34,966,257 for natural area acquisition and restoration. Because such expenditures would not be consistent with ORS 223.299(2), it must be subtracted from the capital improvement plan.

The report fails to provide findings to demonstrate compliance with ORS 223.304(2)(a)(B) and 223.307(2) regarding open space and habitat restoration charges and expenditures.

ORS 223.304(2) requires that improvement fees must:

- (a) Be established or modified by ordinance or resolution setting forth a methodology that is available for public inspection and demonstrates consideration of:
 - (A) The projected cost of the capital improvements identified in the plan and list adopted pursuant to ORS 223.309 **that are needed to increase the capacity of the systems to which the fee is related**; and
 - (B) The need for increased capacity in the system to which the fee is related **that will be required to serve the demands placed on the system by future users**.
- (b) Be calculated to obtain the cost of capital improvements **for the projected need for available system capacity for future users**. [Emphasis Added]

According to the Park System SDC Methodology Update Report, “Park SDCs must consider the proportionate benefit parks provide for occupants of residential property and non-residential property.”¹ The report goes on to explain, “In order to equitably apportion benefits between

¹ Park System Development Charge Methodology Update Report, page 6.

occupants of residential and nonresidential properties, each type of property will have a demand percentage calculated based on the relative amount time that the occupants have the ability to use Portland's parks.²

However, the tables showing "Estimates of Average Daily Availability of Parks and Recreation Facilities" appear to be only for active parks—there is no mention of natural areas and whether they are actually available for use by existing and new users, or any analysis of how future users will place additional demands to justify restoration of habitat areas (presumably, the need for restoration would exist whether or not there are any additional users in the future).

The report provides no justification for a conclusion that there are no existing deficiencies in the park system.

As was pointed out in our letter of April 15th, the proposed Methodology Update Report includes the following three sentences:

The capacity of the existing park system has been acquired for the use and benefit of the current population. ***There is no existing unused capacity, nor is there any existing deficiency.*** The SDC will recover the true cost of providing additional parks facilities to serve the increased demands on the system created by new development.³

Such a conclusion is completely contrary not only to the City's own numerous long-range park system plans and internal reviews, but also to all previously adopted park SDC methodologies. The 2008 methodology update, for example, included \$75.6 million in the capital improvement plan for non-SDC expenditures to correct existing deficiencies in Non-Central City local access park improvements (this amount doesn't include an additional \$23 million for land acquisition to correct deficiencies). The 2004 methodology update included \$54.2 million in the capital improvement plan for non-SDC expenditures to correct existing deficiencies.

The 2020 Vision document that was released in 2001 depicts these deficiencies in very stark terms:

Virtually every sector of the city has at least one parkland deficiency. In Northeast Portland, residents have little habitat parkland or access to natural resource areas. In Outer East and Southwest Portland, where there are few developed neighborhood and community parks, residents get little benefit from the social and recreational programs that parks provide. Since little land appropriate for neighborhood and community parks is available in the city, remedying park deficiencies presents a formidable challenge.

Although community centers provide the recreational programs and community gathering places that give appeal to urban living, those benefits are unavailable to some residents. Certain areas of the city have no community centers, and others have centers that are housed in old, ill-adapted buildings that lack fundamental elements. Sellwood Community Center (SCC), for example, was built in 1909 as a rooming house. It does not have adequate security surveillance, ADA accessibility, or storage, and many rooms lack basic equipment for classes and programs.

² Ibid.

³ Ibid, page 9.

Yet, the neighborhood depends on SCC to fulfill its recreation needs. Since recreation programs and facilities are inextricably intertwined, the shortage of quality community centers limits the availability, breadth, and quality of recreation programs.

Besides parkland and community centers, Portland's park system lacks sufficient aquatic facilities and sports fields. Both are heavily used, highly programmed, and in short supply. Of the 25 community garden sites, only two have room for new gardeners — more than 400 people are waiting for garden plots. As more people crowd into existing parks and facilities, user conflicts are increasing and the quality of park resources is declining.⁴

A “Progress Report” issued eight years later by the Park Board reported that little or no progress had been made in the following six areas:

Challenge 1 - We have not made progress toward the 2020 Vision goal of bringing parks within easy reach of all residents.

Challenge 2 - Despite a significant increase in use of Parks' recreation services, the proportion of Portlanders using those services has not increased, overall, and appears to be falling among young people.

Challenge 3 - The Bureau has not made progress in improving residents' perception of the quality of recreation services.

Challenge 4 - Major gaps exist regarding how different neighborhoods rate Bureau services.

Challenge 5 - Trail construction, overall, is far behind the goal set out in the 2020 Vision.

Challenge 6 - Goals for the amount of non-tax revenue the Bureau should be striving for should be revisited.⁵

If the authors of the Park SDC Methodology Update Report are to be believed, all of the previously identified significant deficiencies have magically disappeared. This is completely disingenuous and should be grounds by itself for this City Council to direct major modifications to the report.

Another very relevant section from the 2020 Vision document is the following paragraph concerning the lawful use of SDC funds:

Unfortunately, SDC funds, which are likely to decline in an economic downturn, are restricted to land acquisition and capital improvements in areas of population growth and new development. SDC funds cannot be used to correct existing parkland deficiencies, nor can they be used to meet the equally vital operations or maintenance needs.⁶ [Emphasis added]

⁴ Portland Parks 2020 Vision, pp. 13-14.

⁵ Portland Parks 2020 Vision Progress Report 2009, page 7.

⁶ Portland Parks 2020 Vision, p. 19.

The report mischaracterizes Portland's 2014 park bond measure and fails to consider new growth's payments for bonds.

As explained in the Methodology Update Report:

In previous Park SDC methodology reports there were plans for future bonds to pay for some improvements that would add capacity to the park system. A portion of those future bond repayments would be paid by growth in the form of future property tax payments, so a tax credit was calculated to account for these payments in order to avoid charging growth twice: once through the SDC, and a second time through property taxes.⁷

The Report goes on to then conclude that no tax credit has been calculated for the proposed SDC increase with the following rationale:

The 2014 bond for parks is for renovation and repairs of the existing park system. No tax credit is calculated because the bond-funded projects to [sic] not add capacity to provide the investment per person level of service for new development. In addition, there are no plans for future park bonds to add capacity, therefore no tax credit has been calculated to account for possible future debt.⁸

Unfortunately, this is in sharp contrast to the City's own ballot explanation for the 2014 park bond measure, which included the following:

This Measure would allow the City of Portland to issue up to \$68 million in general obligation bonds and to use the money from the bonds for capital costs, including repairs **and improvements**, for facilities owned or operated by Portland Parks & Recreation. The projects to be funded by this measure are planned to include, but are not limited to: fixing or **improving play areas that are either currently closed, at risk of closure, or deficient**, in up to twenty (20) parks; repairing, replacing or **improving** trails and bridges in parks, including in Forest Park; repairs to community swimming pools at Matt Dishman Community Center, Peninsula Park and Grant Park; capital repairs to Sellwood Park buildings, Rieke Field, Argay tennis courts, the Multnomah Arts Center and St. Johns Community Center; fixing, **improving and building** restrooms at Bloomington, Couch, Colonel Summers, Ed Benedict, Glenwood, Lynchview, Mount Tabor, Parklane, Ventura and Wilkes Parks; fixing, **replacing and improving roofs, and other deficient parks, park structures and park equipment**; repairing leaks, cracks and failing structures at Pioneer Courthouse Square; **removing barriers to accessibility** for people with disabilities; and making **improvements**, repairs or renovations to Parks maintenance facilities to address worker safety and efficiency.⁹ [Emphasis added]

Obviously, if the Explanatory Statement is to be believed, there will be definite increases to park capacity as a result of the capital improvements. In fact, just the expenditure for "removing barriers

⁷ Park System Development Charge Methodology Update Report, page 15

⁸ Ibid.

⁹ Exhibit D, Park Replacement Bond Explanatory Statement, <http://www.portlandoregon.gov/parks/article/497276>

to accessibility” will significantly increase capacity all by itself. As a result, there must be a tax credit discount factored into the proposed methodology.

For all the reasons outlined above, along with those presented in our April 15th testimony and the testimony of our consultant Daniel Heffernan, the Methodology Update Report is significantly flawed and fails on multiple counts to comply with Oregon statutory requirements. We urge you to send it back to the Park System Development Charge Taskforce for further work.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kelly Ross", with a long horizontal flourish extending to the right.

Kelly Ross
Executive Director