

ORDINANCE NO. 1157

AN ORDINANCE AMENDING TITLE 16 OF CANBY MUNICIPAL CODE ADOPTING PARK DEDICATION STANDARDS AND PROCEDURES FOR ALL NEW RESIDENTIAL, INDUSTRIAL, AND COMMERCIAL CONSTRUCTION.

WHEREAS, the availability of park, open space, and recreation land is an important element in determining the character of the city of Canby, and

WHEREAS, a park land dedication process is necessary to implement the city of Canby's Park and Recreation Master Plan and Acquisition Plan Addendum; and

WHEREAS, the Canby Planning Commission, after providing appropriate public notice, conducted a public hearing on said amendments, during which the citizens of Canby were given the opportunity to come forward to present testimony on these proposed changes; and

WHEREAS, the Planning Commission found that the standards and criteria of Section 16.88.10 of the Land Development and Planning Ordinance, concerning Text were met, and recommended approval to the City Council on a 5-1 vote after making certain modifications; and

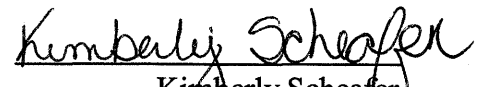
WHEREAS, the City Council, after reviewing the record of the Canby Planning Commission regarding the subject amendments, concluded that the Planning Commission's findings of fact and the amendment itself are appropriate.

NOW, THEREFORE, THE CANBY CITY COUNCIL ORDAINS AS FOLLOWS:


- (1) TA 04-01 is hereby approved, and Title 16 of Canby Municipal Code is hereby amended as detailed in Attachment A.

SUBMITTED to the Council and read the first time at a regular meeting thereof on October 20, 2004, ordered posted in three (3) public and conspicuous places in the City for a period of five (5) days, as authorized by the Canby City Charter; and to come up for final reading and action by the Canby City Council at a regular meeting thereof on November 3, 2004, commencing after the hour of 7:30 p.m., at the Council's regular meeting chambers at the Canby City Hall in Canby, Oregon.

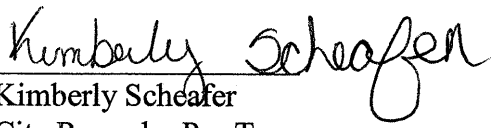
PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on November 3, 2004 by the following vote:


Kimberly Scheafer
City Recorder Pro Tem

YEAS 5 NAYS 0


Melody Thompson, Mayor

ATTEST:



Kimberly Scheafer
City Recorder Pro Tem

**DIVISION XI
PARK, OPEN SPACE AND RECREATION LAND**

Chapter 16.120

16.120.010 Purpose

The availability of park, open space, and recreation land is an important element in determining the character of a developing neighboring city to the metropolitan area, such as City of Canby. Land which substitutes trees, grass, and vegetation for structures, paving, and other urban features provides not only an aesthetically pleasing landscape with striking views of Mt. Hood, but also buffers incompatible uses, and preserves sensitive environmental features and important resources. Parks, open space, natural parks and trail recreation lands, together with support facilities, also help to meet the active and passive recreational needs of the population of Canby; therefore, concurrent development of support facilities is equally important. This chapter implements policies of Goal 8 of the Comprehensive Plan, the Park and Recreation Master Plan, and Park and Open Space Acquisition Plan by outlining provisions for parks, open space and recreational facilities in the City of Canby.

16.120.020 Minimum standards for park, open space and recreation land

- A. Parkland Dedication: All new residential, commercial and industrial developments shall be required to provide park, open space and recreation sites to serve existing and future residents and employees of those developments. Multi-family developments which provide some “congregate” services and/or facilities, such as group transportation, dining halls, emergency monitoring systems, etc., but which have individual dwelling units rather than sleeping quarters only, are considered to be multi-family developments for the purpose of parkland dedication. Licensed adult congregate living facilities, nursing homes, and all other similar facilities which provide their clients with individual beds and sleeping quarters, but in which all other care and services are communal and provided by facility employees, are specifically exempt from park land dedication and system development fee requirements.
1. The required parkland shall be dedicated as a condition of approval for:
 - a. Approval of a tentative plat of a subdivision or partition
 - b. Approval of site and design review for all development but single-family and duplex development
 - c. The replat or amendment of any site plan for multi-family development or manufactured home park where dedication has not previously been made or where the density of the development involved will be increased.
 2. The City shall require land dedication or payment of the system development charge (SDC) in lieu of land dedication (Section 4.20.170). In addition, the City may credit private on-site park, open space and recreation area(s) and facilities (Section 16.120.060). The City may approve any combination of these elements.

Prior to parkland dedication, a Level I Environmental Assessment of the lands proposed for dedication shall be performed by the applicant as part of the site plan approval for the project.

The following factors shall be utilized in the City’s choice of whether to accept land or cash in lieu:

1. The topography, geology, public street access to, parcel size, shape, and location of land in the development available for dedication;
 2. Relationship of site to surrounding land uses and the surrounding transportation system;
 3. Potential adverse/beneficial effects on environmentally sensitive areas;
 4. Compatibility with the Park and Recreation Master Plan and Park and Open Space Acquisition Plan, Public Facilities element of the Comprehensive Plan, Transportation System Plan and the City of Canby Parks Capital Improvement Plan in effect at the time of dedication;
 5. Opportunity for preservation of natural and historical features, scenic viewpoints, watershed environments, and sections of land for wildlife habitat.
 6. Connections with, and continuity of, open space links, trails, and other major components of the open space system for parks.
 7. Availability of previously acquired property;
 8. Opportunity for shared use with other community facilities;
 9. Opportunity for future expansion of the site; and
 10. The feasibility of dedication.
3. Calculation of Land Required: The total requirement of park, open space and recreational land shall be 0.01 of an acre per person based on the City standard of 10 acres of land per 1,000 residents. This standard represents the land-to-population ratio the City of Canby requires for city parks, and may be adjusted periodically through amendments to the Parks and Recreation Master Plan.
- a. Population Formula: The following table of persons per unit shall be used in calculating the required dedication of acres of land:

**Table 1
Persons per Dwelling Unit**

Type of Unit	Total Persons Per Unit
Single family residential	2.7
Standard multi-family unit	2.0
Manufactured dwelling park	2.0
Congregate multi-family unit	1.5

Persons per unit, age distribution, and local conditions change with time. The specific formula for the dedication of land will, therefore, be subject to periodic review and amendment.

b. Determination of Resident Population: The projected resident population of the land to be subdivided or developed is determined by multiplying the maximum number of units allowed by the plat or the site plan by the appropriate number of standard of persons per unit set forth in Table 1 above. This figure is then to be multiplied by 0.01 to determine the total acreage that must be dedicated or deeded to the City for park, open space or recreation purposes. This formula is expressed as follows:

$$(\text{maximum units}) \times (\text{persons/unit}) \times 0.01 \text{ (acreage to dedicated)}$$

16.120.030 Dedication procedures

When the final plat or site plan is approved, the developer shall dedicate the land as previously determined by the City in conjunction with approval of the tentative plat or site plan. Dedication of land in conjunction with multi-family development shall be required prior to issuance of permits and commencement of construction.

Dedication of land or covenants approved as part of a preliminary plat or site plan approval may be given or provided when the final plat is presented for approval. The developer must clear, or fill and grade all parkland to be dedicated to the satisfaction of the City and shall cause a Level I Environmental Assessment, as referenced by *Section 16.120.020 Minimum standards for park, open space, and recreation land* of this Code, to be performed on all lands to be dedicated as part of the City's construction plan approval for the plat.

A. In addition to a formal dedication on the plat or site plan to be recorded, the subdivider shall convey the required lands to the City by general warranty deed. The developer of a multi-family development or manufactured home park shall deed the lands required to be dedicated by a general warranty deed. In any of the above situations, the land so dedicated and deeded shall not be subject to any reservations of record, encumbrances of any kind or easements which, in the opinion of the Planning Director, will interfere with the use of the land for park, open space or recreational purposes.

If any question exists as the presence of any reservations, encumbrances or easements, the subdivider or developer may be required to present to the City a title insurance policy on the subject property ensuring the marketable state of the title.

B. Where any reservations, encumbrances or easements exist, the City shall require payment in lieu of the dedication of lands (see *Section 16.120.040 Cash in lieu of dedication* below) unless the City chooses to accept the land subject to encumbrances.

C. If the developer does not own the property held subject to the land dedication the Planning Commission may, at its discretion, approve the grant of a long-term lease of land, which will satisfy the intent of the parkland dedication provisions set forth within this Code.

D. Trails that are to be dedicated that are within the floodway of a 100-year floodplain shall be credited no more than 25% of land dedication requirements. Trails that are to be dedicated that are not within the floodway, but are within the 100-year floodplain, or which are part of

irrigation ditches or stormwater detention areas shall be credited no more than 50% of land dedication requirement. No other land dedicated in a floodplain shall receive any credit.

16.120.040 Cash in lieu of dedication of land

In no case shall land dedication requirements be in excess of 15 percent of the gross land area of the development without the agreement of the developer. The decision of whether land is acceptable for use by the public for park and recreation purposes is to be made by the City Planning Commission based on the findings and planning set forth in the Canby Park and Recreation Master Plan and Acquisition Plan. Formal acceptance of parks and recreation lands required to be dedicated shall be by the City Council following any land use hearing and recommendation by the City Planning Commission. In all cases, except for PUD's, actual dedication of land shall occur prior to final plat sign-off. Dedication of land in the case of a PUD shall occur, by separate instrument, prior to commencement of construction of the project.

If land proposed for dedication to the public does not meet the criteria set forth in the Canby Park and Open Space Acquisition Plan, then at the option of the city, a park system development charge shall be required. Once calculated, the dedication of land shall remain the same, and not change, unless the original plans are altered.

A. Procedures for Land Dedication. Development applications shall include a scaled plan which identifies the sites proposed to be dedicated as park land. Parkland and recreational sites shall be clearly and accurately depicted on the final plat map and documented in the tax lot files. All phased residential subdivisions and planned unit developments shall show any proposed parkland for dedication on the overall master plan plat for the proposed development in addition to other anticipated public facilities. Such master plan as finally approved and accepted by the Planning Commission is considered binding on all future phases. Any requests by the developer to change parkland dedication for future phases must be brought back to the Commission for approval. In the case of phased development where separate plats are recorded, land dedication shall occur prior to final platting of forty percent of the gross land area.

Tentative approval of parkland boundaries shall be made by the hearing body at the time of the public hearing on the development proposal. All sites shall be dedicated in a condition ready for full service including electrical, water, sewer and streets as is applicable to the location of the site or as is acceptable to the city. Improvements to any specific site may be delayed until completion of necessary infrastructure and/or improvements to adjacent sites can be made at the discretion of the city. In case of phased development, sites may be improved as each phase is developed rather than at the time of original dedication. An environmental audit sufficient to meet DEQ requirements shall be required on all parkland proposed to be dedicated to the city prior to acceptance. The cost of such an audit shall be split equally between the city and the developer.

All lands dedicated to the city for parkland and recreational space shall be conveyed to the city either by warranty deed or be depicted on the final recorded plat as so dedicated. The conveyer shall be responsible for payment of all title searches, real estate taxes, and recording fees at the time of conveyance.

B. Options for Meeting System Development Charge Requirements. Any land proposed or required for parkland dedication, including improvements thereon, shall be appraised at its fair

market value at the time it is dedicated to the city. The cost of the appraisal shall be divided equally between the developer and the city. This value of the property shall be credited toward the system development charge calculated for the development with the difference being the cash owed the System Development Improvement Fund. In no case may the city require more land of the developer than would be required if the entire amount of the system development charge was paid in cash. Similarly, no developer may dedicate parkland above the valuation required by the system development charge so that the city would be required to refund money to the developer unless mutually agreed upon by the city and developer.

If no parkland dedication is required or requested by the city, the full amount of the park system development charge will be assessed and is due and payable at the time the first building permit(s) is/are issued.

- a. Cash charged in lieu of land dedication shall be based on the City's System Development Charge for parkland, as provided by the Systems Development Charge ordinance.
- b. Cash in lieu of parkland dedication may be paid in installments on a per building basis for multi-family development or a per lot basis for platted single family or duplex subdivisions. Payment must be made in full for each building or lot in conjunction with construction permits.

16.120.050 Review procedure

Decisions made for Section 16.120.020 *Minimum standards for park, open space and recreation land* and Section 16.120.030 *Dedication procedures* shall be made by the Planning Director for Type I and Type II decisions and by the Planning Commission for Type III decisions. The applicant shall have full rights of appeal to the Planning Commission or City Council according to procedures set forth in *Division VIII General Standards and Procedures*.

16.120.060 Partial credit for private park, open space and recreational facilities/areas:

Where a substantial private park and recreational area is provided in a proposed residential development and such space is to be privately owned and maintained by the future residents of the development, partial credit, not to exceed 50%, may be given against the dedication if the Planning Commission finds that it is in the public interest to do so and that all the following standards are met:

1. That yards, court areas, and setbacks required to be maintained by the zoning and building ordinances and regulations shall not be included in the computation of such private parkland.
2. That the private ownership and maintenance of the parkland is adequately provided for by recorded written agreement, conveyance or restrictions.
3. That the use of the private parkland is restricted for park and recreational purposes by recorded covenant, which runs with the land in favor of the future owners of property and which cannot be defeated or eliminated without the consent of the City or its successor.
4. That the proposed private parkland is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location.

5. That facilities proposed for the parkland are in substantial accordance with the provisions of the Canby Park and Recreation Master Plan and Canby Park and Open Space Acquisition Plan and,
6. That the parkland for which credit is given is a minimum of two acres and provides a minimum of three of the basic local park elements listed below, or a combination of such and other recreational improvements that will meet the specific recreation park needs of the future residents of the area:

<u>CRITERIA LIST</u>	<u>ACRES</u>
Children’s play apparatus area	.50 - .75
Landscaped park-like and quiet areas	.50 – 1.00
Family picnic area	.25 - .75
Game court area	.25 - .50
Turf play field	1.00 – 3.00
Recreation center building	.15 - .25
Swimming pool (42’x75’) with adjacent deck and lawn area	.25 - .50
Recreation and community gardening	.15 - .25

Before credit is given, the Planning Commission shall make written findings that the above standards are met.

16.120.070 Minimum standards for open space

- A. Purpose: Areas unsuitable or undesirable for development, including but not limited to, areas containing drainageways, floodplains, identified steep slopes, significant natural features or other environmentally sensitive land may be set aside as permanent open space. No more than 25% of the required parkland dedication shall be within an identified flood plain or on an identified steep slope. The following procedures shall apply:
 1. The types of open space which may be provided, together with maintenance required for each type, are as follows:
 - a. Natural Areas are areas of undisturbed vegetation, steep slopes, wetlands, wildlife habitat areas or areas replanted with native vegetation after construction. Maintenance is limited to removal of litter, dead tree and plant material and brush. Natural watercourses are to be maintained as free flowing and devoid of debris. Stream channels shall be maintained so as not to alter flood plain levels.
 - b. Agricultural Uses. No specific maintenance is required.
 - c. Garden plots are the division of open space into plots for cultivation as gardens by residents. Maintenance may be limited to weeding.
 - d. Greenways are linear green belts linking residential areas with other open space areas. These greenways may contain bicycle paths or footpaths. Connecting greenways between residences and recreational areas is encouraged. Maintenance is limited to a minimum removal of litter, dead brush and avoidance of hazards, nuisances or unhealthy conditions.
 - e. Lawns and landscaped areas consisting of grass with or without trees. Maintenance is limited to mowing, removal of litter, dead plant material, and necessary pruning.

2. An open space plan shall be submitted as part of the application for a tentative plat or site plan. This plan will designate the boundaries of all required open space areas as specified in the Canby Parks Acquisition Plan. The open space plan must:
 - a. Designate areas to be reserved as open space
 - b. Specify the manner in which the open space shall be perpetuated, maintained, and administered (see *Section 16.120.090 Preservation and maintenance* below).
3. Dedication of open space may occur concurrently with development of the project. At the discretion of the City, for development which will be phased, the open space may be set aside in totality and/or developed in conjunction with the first phase of the development or incrementally set aside and developed in proportion to the development occurring in each phase.
4. Open space must be residentially zoned and must be located adjacent to the primary site.

16.120.090 Preservation and maintenance

Open space areas shall be maintained so that the use and enjoyment thereof is not diminished or destroyed. Open space areas may be owned, preserved, and maintained by any of the following mechanisms or combinations thereof:

- A. Dedication to the City of Canby or an appropriate public agency approved by the City, if there is a public agency willing to accept the dedication.
- B. Common ownership by a homeowner's association which assumes full responsibility for its maintenance;
- C. Dedication of development rights to an appropriate public agency with ownership remaining with the developer or homeowner's association. Maintenance responsibility will remain with the property owner; and/or
- D. Deed-restricted private ownership preventing development and/or subsequent subdivision and providing for maintenance responsibilities.

In the event that any private owner of open space fails to maintain it according to the standards of this Code, the City of Canby, following reasonable notice, may demand that the deficiency of maintenance be corrected, and may enter the open space for maintenance purposes. All costs thereby incurred by the City shall be charged to those persons having the primary responsibility for maintenance of the open space.