

CITY OF PHOENIX, OREGON

ORDINANCE NO. 1038

**AN ORDINANCE OF THE CITY OF PHOENIX REPEALING
ORDINANCE 1003 AND ESTABLISHING A PARKS UTILITY FEE
FUNDING OF PARKS MAINTENANCE AND DECLARING AN
EFFECTIVE DATE**

WHEREAS, the City of Phoenix is in need of additional funding to help maintain an adequate, sustained funding base for its parks. Funding is required to help provide sufficient and effective programs, staffing, maintenance, administration, operation, equipment, supplies, fixed facilities and other costs associated with parks maintenance;

WHEREAS, the City Council finds that a fee is necessary and appropriate to provide additional funding for parks maintenance within the city, and that the methodology and distribution of the fee described in this ordinance is a reasonable and rational way to help provide the operations and maintenance of parks and facilities within the City of Phoenix;

NOW, THEREFORE, the City of Phoenix Ordains as follows:

SECTION 1. Chapter 3.26, Parks Utility Fee, is adopted herein to be incorporated into the Phoenix Municipal Code.

Chapter 3.26
PARKS UTILITY FEE

Sections:

- 3.26.010 Short Title
- 3.26.020 Purpose
- 3.26.030 Definitions
- 3.26.040 Establishment and Revision of Parks Utility Fee
- 3.26.050 Imposition of Parks Utility Fee
- 3.26.060 Dedication and Use of Funds
- 3.26.070 Billing and Collection of Parks Utility Fee
- 3.26.080 Exemptions
- 3.26.090 Appeal Process
- 3.26.100 Enforcement

3.26.010 Short Title

The provision of this Chapter shall be known and may be cited as the “City of Phoenix Parks Utility Fee Ordinance”.

3.26.020 Purpose

A. The principal purpose of this chapter is to safeguard, facilitate and encourage the health, safety, and welfare of the citizens and businesses of the City of Phoenix by helping to ensure the proper care and upkeep of Phoenix city parks. The council finds that a continuous and consistent parks maintenance and operations program provides important economic and social benefits to the public, including, but not limited to:

1. Provision of adequate resources for social and recreational opportunities.
2. Provision of adequate resources for the health, safety, and welfare of children.
3. Prevention of crime through the provision of healthy activities for Phoenix citizens.
4. Enhancement of the green spaces of the Phoenix community.
5. Promotion of community spirit and responsibly planned growth.

B. It is the intent of this chapter to provide a funding mechanism to help pay for the benefits conferred on city residents and businesses by the provision of an adequate program of parks maintenance and operations, and further to help bring the Phoenix parks program up to an acceptable service level.

C. It shall not be necessary that the maintenance and operations expenditures from this chapter specifically relate to any particular property from which the fees for said purposes were collected.

D. The structure of this chapter is intended to define a methodology for establishing fees for service within the city limits.

3.26.030 Definitions

As used within this ordinance, the words and phrases below have the following definitions and meanings:

Developed Property: A parcel or portion of real property on which an improvement exists. Improvements on developed property include, but are not limited to, buildings, parking lots, utilities infrastructure, and outside storage.

Dwelling unit: A building, or portion of a building, that has independent living facilities including provisions for sleeping, cooking and sanitation, and that is designed for

residential occupancy by a group of people. For the purpose of this code, the following types of dwelling units are defined:

Accessory dwelling: An interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling. A lot or parcel developed with a single-family dwelling and an accessory dwelling is excluded from the definition of ‘duplex dwelling.’

Duplex: A building with two attached dwelling units on one lot or parcel.

Fourplex: A building with four attached dwelling units on one lot or parcel.

Group living structure: A structure that contains sleeping areas and at least one set of cooking and sanitary facilities, used as a residence for Group Living uses. See definitions for Residential facility and residential home.

Manufactured Dwelling: A residential trailer, mobile home or manufactured home.

Manufactured home: A structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

Mobile home: A structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

Multi-family housing: Housing that allows five or more dwelling units on an individual site.

Single-family attached housing: A dwelling constructed in a row of two or more attached units where each dwelling unit is located on an individual lot or parcel and shares at least one common wall with an adjacent unit.

Single-family detached housing: One dwelling unit on one lot or parcel with no common walls attached to another dwelling unit.

Triplex: A building with three attached dwelling units on one lot or parcel.

Hotel/motel: A part of a structure that is occupied or designed for occupancy by transients for lodging or sleeping, including a hotel, inn, tourist home or house, a bed and breakfast, motel studio hotel, bachelor hotel, lodging house, rooming house, dormitory, public or private club (that provides lodging), trailer or recreational vehicles

providing transient housing.

Non-Residential Unit: A use of property such as a business or commercial enterprise that is primarily not for personal, domestic accommodations. A non-residential structure that provides facilities for one (1) or more businesses shall have each distinct business occupation considered as a separate non-residential unit. The conducting of a business or businesses at two or more locations shall, for the purposes of this chapter, be deemed to be separate businesses and each thereof shall be subject to the fee provided for in this chapter. If two or more differently classified but otherwise related businesses are carried on in the same premises by the same owners, then the business shall be considered one non-residential unit; provided however, any business activity leased under concession to or owned, wholly or in part, by a different person or persons on the same premises shall be considered a separate non-residential unit. In determining whether different activities on the same premises are related to the primary use within the meaning of this section, normal and ordinary customs and usages of businesses of like nature shall be considered.

In addition to a single unit charge per business, an additional fee shall be required based on the number of employees as reported in their Business License registration. Each increment of ten (10) employees shall constitute one (1) additional unit for the assessment of the fee, with no limit on the number of units. A part-time employee shall be considered a full-time employee for purposes of the calculation of the number of employees hereunder. Business License registration shall be reviewed annually in July to determine if there have been any changes to the number of employees. Adjustments shall be made as required to comply with this ordinance.

Person: A natural person; unincorporated association; tenancy in common; partnership; corporation; limited liability company; cooperative; trust; any governmental agency, including the State of Oregon but excluding the City of Phoenix; and any other entity in law or in fact.

Residential Unit: A residential structure that provides complete living facilities for one or more persons including, but not limited to, permanent provisions for living, sleeping, and sanitation. A home occupation business in a residential zone will be regarded only as a residential unit, not as a non-residential unit. An accessory dwelling unit on a single-family parcel shall be considered a separate residential unit. Multi-family residential property consisting of two or more dwelling units, condominium units or individual mobile home units shall have each unit considered as a separate residential unit.

Responsible Party: The person owing the Parks Utility Fee is considered to be the "Responsible Party." Two (2) or more persons may be jointly and severally liable for payment of this fee.

Transient Lodging: See Hotel/Motel definition.

3.26.040 Establishment and Revision of Parks Utility Fee

(1) The City Council hereby establishes a Parks Utility Fee to be paid by the Responsible Party for each developed property within the corporate limits of the City. Such fee shall not be imposed in amounts greater than that which is necessary, in the judgment of the City Council, to provide sufficient funds for parks maintenance. Collection of the fee for each property shall be made by a charge on the monthly utility bill.

(2) Unless a yearly fee schedule adjustment has already been established by resolution of the City Council, fees shall be adjusted by the inflationary cost impacts measured and calculated each March 1st by the City Manager or his/her designee and approved by the City Council. Such calculations will be based upon Pacific Northwest construction cost changes in the Engineering News-Record Construction Cost Index (ENR Index). All calculations shall be carried out to the hundredths place. A final product ending in \$0.49 or less shall be rounded down to the nearest dollar, \$0.50 or more up to the next dollar. Changes to the fee based on inflationary cost impacts shall be adopted by resolution of the City Council.

3.26.050 Imposition of Parks Utility Fee

(1) There is hereby created a Parks Utility Fee to accomplish the purposes described in this ordinance.

(2) There is hereby imposed upon the responsible party for each developed property in the City limits a public fee set by resolution of the City Council for each residential unit and non-residential unit existing on that property. This actual fee established shall help to maintain existing levels of service provided by the Phoenix Parks Department. Billing shall be as a line item on the City's utility bill unless otherwise specified below.

(3) Except as the fees may be reduced or eliminated under Sections 3.26.080 and 3.26.090 below, the obligation to pay a Parks Utility Fee arises when a responsible party uses or otherwise benefits from the parks department located in Phoenix.

(4) Although this ordinance refers to "units" as a basis for calculating a Parks Utility Fee, the fees are not imposed *on* a property or on any portion thereof. The units are merely the measurement for determining the fee. The fee does not in any way create an *in-rem* obligation in respect of property. The obligation to pay the fee is a personal obligation of the responsible party.

3.26.060 Dedication and Use of Funds

All fee revenues collected pursuant to this chapter shall be distinctly and clearly noted in the revenue and section of the General Fund budget and shall be used only for the maintenance, operation and administration of Phoenix city parks and costs incidental thereto as well as recreation programming in order to help provide for a safe, well-

functioning parks maintenance and operations program. The City Council may adopt more restrictive uses of fee funds by resolution or by ordinance.

3.26.070 Billing and Collection of Parks Utility Fee

(1) Parks Utility Fees shall be collected monthly. Statements for the fee shall be included as an additional item on the City monthly water utility billing wherever feasible, unless otherwise specified below.

(2) Unless another person responsible has properly agreed in writing to pay, and a copy of that writing is properly filed with the City, the person(s) normally responsible for paying the City's water utility charges are responsible for paying the Parks Utility Fee.

(3) In the event a developed property is not served by a domestic water meter, or if water service is discontinued, the persons having the right to occupy the property shall pay the Parks Utility fee.

(4) The connection of a water meter or issuance of a building permit for a change of use will automatically initiate appropriate billing to the responsible party for fees under the Parks Utility Fee. There shall otherwise be no charge for persons who have the right to occupy an undeveloped property until such time as a structure is built and a water meter is connected on that property.

(5) The imposition of fees shall be calculated on the basis of the number of residential or non-residential units supported, without regard to the number of water meters serving that property.

(6) At those times that a property is not occupied no fee shall be assessed.

(7) When a tenant or property owner moves out mid-month the Parks Utility Fee shall be prorated based on the days of occupancy.

(8) The obligation to pay the Parks Utility Fee is personal to the responsible party. The City of Phoenix will not assess a subsequent owner of a property for uncollected amounts due from a previous owner (or responsible party under a lease or rental agreement), and will not withhold utility services to a subsequent owner.

3.26.080 Exemptions

(1) The only exemption to collection of the fee under this Ordinance shall be schools and water accounts where there are no structures (i.e. irrigation uses only). All other uses not defined above shall be subject to the fee.

(2) The City Council may, by ordinance, exempt any additional class of users when it determines that the public interest deems it necessary or that the contribution to the parks department use by such class is insignificant.

3.26.090 Appeal Process

(1) A Parks Utility fee may be appealed for change or relief in accordance with the following criteria.

(a) Classification of Property. Any responsible party who disputes any interpretation given by the City as to property classification may appeal such interpretation. If the appeal is successful, appropriate relief will be granted. In such instances, reimbursement will be given for any overpayment, retroactive to the filing date of the appeal. Factors to be taken into consideration include, but are not limited to availability of more accurate information; equity relative to billing classifications assigned to other developments of a similar nature; changed circumstances; and situations uniquely affecting the party filing the appeal.

(b) Financial Hardship. Any responsible party may claim a financial hardship. The City will determine financial hardship based on established guidelines. Any relief will be secondary to all other financial resources available to the responsible party. To be presumptively eligible for relief, the responsible party's total family assets must not exceed fifteen thousand dollars (\$15,000.00), and the responsible party's gross family income must not be more than the Federal Poverty Level. The City may request verification of income, including, but not necessarily limited to W-2 employment wage forms, payroll stubs, and tax returns. The City may also request verification of assets, including, but not limited to bank statements, mortgage statements, and other information useful to the City to determine net assets.

(2) An application for appeal shall state the reason(s) for appeal, and must include supporting documentation to justify the requested change or relief. An application will not be deemed complete until all information requested by the City has been provided.

(3) The City Manager or his/her designee shall be responsible for evaluating appeals.

(4) The City Manager his/her designee will make all reasonable attempts to resolve appeals utilizing available existing information, including supporting documentation filed with the appeal, within thirty (30) days of the date the appeal was filed. If, however, more detailed site-specific information is necessary, the City Manager or his/her designee may request the applicant to provide additional information.

(5) In any event, the City Manager or his/her designee will render a decision within ninety (90) days of the date the appeal was filed explaining the disposition of the appeal, along with the rationale and supporting documentation for the decision reached.

(6) Decisions of the City Manager or his/her designee may be appealed to the City Council, and shall be heard at a public meeting. Upon such appeal, the City Council shall at its first regular meeting thereafter set a hearing date. The matter shall be heard solely upon the record. In no event shall a final decision be made later than ninety (90) days after

the matter was formally appealed to the City Council.

(7) Appeals filed within one hundred twenty (120) days of the effective date of this Ordinance shall not be subject to a filing fee. For new residents the payment of a filing fee for an appeal will begin 120 days after establishing a water service account. A fee for an appeal shall be fifty dollars (\$50.00). Should the appellant adequately justify and secure the requested change or relief no fee will be assessed. If a decision is not in favor of the appellant a fee for an appeal shall be assessed and may be added to the utility bill.

3.26.100 Enforcement

(1) In addition to other lawful enforcement procedures, the City may enforce the collection of charges required by this ordinance by withholding delivery of water to any premises where Parks Utility Fees are delinquent or unpaid.

(3) Notwithstanding any provision herein to the contrary, the City may institute any necessary legal proceedings to enforce the provisions of this ordinance, including, but not limited to injunctive relief and collection of charges owing. The City's enforcement rights shall be cumulative.

SECTION 2. Effective Date of Fee Collection. The effective date for responsibility to pay fees under this ordinance is May 15, 2024. The currently adopted fee shall remain in effect until a new resolution is adopted.

PASSED AND ADOPTED by the City Council and signed by me in authentication of thereof on this 15th Day of May, 2024.

Terry Baker, Mayor

ATTEST:

Bonnie Pickett, City Recorder

Approved as to form:

Douglas McGeary, City Attorney