



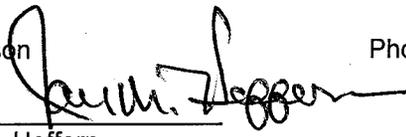
**Request for City Council Committee Action
From the City Attorney's Office**

Date: July 10, 2007
To: Community Development Committee
Referral to: Ways & Means/Budget Committee
Subject: Park Dedication Ordinance

Recommendation: That the City Council receive and file the attached Memorandum.

Previous Directives: N/A

Prepared by: Erik Nilsson Phone: 673-2192

Approved by: 
Jay M. Heffern
City Attorney

Presenter in Committee: Erik Nilsson

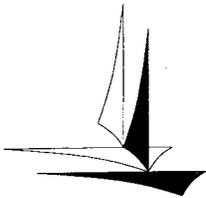
Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
 Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
 Action provides increased revenue for appropriation increase.
 Action requires use of contingency or reserves.
 Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
 Other financial impact (Explain): Fund/Org.
 Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact

City Goal(s):

Background/Supporting Information: The Ways & Means/Budget Committee and Community Development Committee issued a joint staff direction asking this Office to review several legal issues associated with a proposed park dedication ordinance. The joint staff direction specifically requested information relating to: 1) the definition of "nexus" as required by state law; 2) the ability to use park dedication fees for park development, rehabilitation and maintenance of existing park facilities, streetscape improvements, storm water retention, and other types of open space; 3) the eligible entities that may use park dedication fees; 4) the requirement of City land use approvals if the fees are used by other governmental entities; and 5) a summary of park dedication fee requirements from other cities of comparable size and built form.



Minneapolis
City of Lakes

Office of the City Attorney

Jay M. Heffern
City Attorney

333 South 7th Street – Suite 300
Minneapolis MN 55402-2453

Office 612 673-2010
Civil Division Fax 612 673-3362
Criminal Division Fax 612 673-2189
CPED Fax 612 673-5112
TTY 612 673-2157

TO: Members of the Community Development Committee and Ways & Means/Budget Committee of the Minneapolis City Council

FROM: Erik Nilsson
Assistant City Attorney

DATE: July 10, 2007

RE: Park Dedication Ordinance

MEMORANDUM

BACKGROUND

The Ways & Means/Budget Committee and Community Development Committee issued a joint staff direction asking this Office to review several legal issues associated with a proposed park dedication ordinance. The joint staff direction specifically requested information relating to: 1) the definition of “nexus” as required by state law; 2) the ability to use park dedication fees for park development, rehabilitation and maintenance of existing park facilities, streetscape improvements, storm water retention, and other types of open space; 3) the eligible entities that may use park dedication fees; 4) the requirement of City land use approvals if the fees are used by other governmental entities; and 5) a summary of park dedication fee requirements from other cities of comparable size and built form.

DISCUSSION

As a creation of the state legislature, a municipal corporation has no inherent powers and possesses only those powers expressly granted by its charter, general state laws, or the state constitution. The origination and scope of municipal zoning authority is derived from state law, namely the Municipal Planning Act as codified in Minn. Stat. §§ 462.351-462.365. The enabling authority contained in the Municipal Planning Act includes the power to regulate the subdivision of land. See Minn. Stat. § 462.358. A municipality may require a subdivision developer to dedicate land to public use. In particular, Minn. Stat. § 462.358, subd. 2b and 2c, authorize and govern municipal subdivision dedication requirements, including park dedication and the payment of “in-lieu” park dedication fees. These provisions are premised on the assumption that new development, and not existing taxpayers, ought to pay for the additional park and recreation facilities needed to accommodate the demands created by the new development. The relevant statutory authority for land dedication regulations in Minn. Stat. § 462.358 is as follows:



Subd. 2b. **Dedication.** (a) The regulations may require that a reasonable portion of the buildable land, as defined by municipal ordinance, of any proposed subdivision be dedicated to the public or

preserved for public use as . . . storm water drainage and holding areas or ponds and similar utilities and improvements, parks, recreational facilities as defined in section 471.191, playgrounds, trails, wetlands, or open space. The requirement must be imposed by ordinance . . .

(b) If a municipality adopts the ordinance . . . , the municipality must adopt a capital improvement budget and have a parks and open space plan or have a parks, trails, and open space component in its comprehensive plan subject to the terms and conditions in this paragraph and paragraphs (c) to (i).

(c) The municipality may choose to accept a cash fee as set by ordinance from the applicant for some or all of the new lots created in the subdivision, based on fair market value of the land, no later than at the time of final approval.

(d) In establishing the portion to be dedicated or preserved or the cash fee, the regulations shall give due consideration to the open space, recreational, or common areas and facilities open to the public that the applicant proposes to reserve for the subdivision.

(e) The municipality must reasonably determine that it will need to acquire that portion of land for the purposes stated in this subdivision as a result of approval of the subdivision.

(f) Cash payments received must be placed by the municipality in a special fund to be used only for the purposes for which the money was obtained.

(g) Cash payments received must be used only for the acquisition and development or improvement of parks, recreational facilities, playgrounds, trails, wetlands, or open space based on the approved park systems plan. Cash payments must not be used for ongoing operation or maintenance of parks, recreational facilities, playgrounds, trails, wetlands, or open space.

(h) The municipality must not deny the approval of a subdivision based solely on an inadequate supply of parks, open spaces, trails, or recreational facilities within the municipality.

(i) Previously subdivided property from which a park dedication has been received, being resubdivided with the same number of lots, is exempt from park dedication requirements. If, as a result of resubdividing the property, the number of lots is increased, then the park dedication or per-lot cash fee must apply only to the net increase of lots.

Subd. 2c. **Nexus.** (a) There must be an essential nexus between the fees or dedication imposed under subdivision 2b and the municipal purpose sought to be achieved by the fee or dedication. The fee or dedication must bear a rough proportionality to the need created by the proposed subdivision or development.

It should be noted that the 2006 Legislature amended the statute to specify that park dedication regulations be calculated based on "buildable land, as defined by municipal ordinance." This new language imposes an obligation on cities to review existing land subdivision regulations to ensure that there is a reasonable definition of "buildable land" if regulating pursuant to the grant of authority in Minn. Stat. § 462.358, subd. 2b(a). There does not appear to be a definition of "buildable land" per se in the City's subdivision regulations. See Minneapolis Code of Ordinances (MCO) Chapter 598.

These statutory requirements can be summarized as follows:

1. The parkland dedication requirement and the methodology used to arrive at the requirement must be established by ordinance.
2. The city must adopt a capital improvement budget and have a parks and open space plan or have a parks, trails, and open space component in its comprehensive plan.
3. The city may accept either land or an equivalent amount in cash, based on the fair market value of the land.
4. Any cash payments received must be separately accounted for and used only for the purposes for which they were obtained.
5. Any cash payments may not be used for ongoing "operation or maintenance."
6. The city must "reasonably determine" that the land or cash payment is needed to meet the increased demands of the new development.
7. There must be an "essential nexus" between the fees or dedication and purpose sought to be achieved by the fee or dedication, and the fee or dedication must bear a "rough proportionality" to the need created by the proposed subdivision or development.

"Subdivision" is defined as the "separation of an area, parcel, or tract of land under single ownership into two or more parcels, tracts, lots, or long-term leasehold interests where the creation of the leasehold interest necessitates the creation of streets, roads, or alleys." Minn. Stat. § 462.352, subd. 12; MCO § 598.60.

The City has not adopted a park dedication requirement in its Land Subdivision Regulations in MCO Chapter 598, although it has the requisite statutory authority to do so as noted above. The likely reason the City has not adopted a park dedication ordinance to date is because, as a built city, it rarely has the occasion to review a new, large-scale subdivision that would necessitate a land dedication. The bulk of current review focuses on the replatting of existing lots. In addition, most of the residential condominium development occurring in the City does not implicate the definition of "subdivision" as cited above and to which the statute is applicable.

In light of the contextual inapplicability of the statutory authority cited above, the Minneapolis Park and Recreation Board (MPRB) and Minneapolis City Council were granted the joint authority to impose a park dedication requirement or “in-lieu” fee payment on “new housing units” during the 2006 state legislative session. Laws of Minnesota 2006, Chapter 269, Section 2. This provision states as follows:

The Minneapolis Park and Recreation Board and the Minneapolis City Council may jointly exercise the powers conferred under Minnesota Statutes, section 462.358, with respect to requiring that a reasonable portion of land be dedicated to the public or imposing a dedication fee on new housing units in the city, wherever located, for public parks, playgrounds, recreational facilities, wetlands, or open space. The dedication of land or dedication fee must be imposed by an ordinance jointly enacted by the park board and the city council. the ordinance may exclude senior housing and affordable housing from paying the fee or the dedication of land. The provisions of Minnesota Statutes, section 462.358, subdivisions 2b, paragraph (b), and 2c, apply to the imposition, application, and use of the dedication of land or the dedication fee.

Note that Minn. Stat. § 462.358, subd. 2b(b), incorporates by reference paragraphs (c) to (i) of the same statute.

A. “Nexus” and “Rough Proportionality” Requirements

Over the past several years, municipal park dedication regulations have come under increased scrutiny by developers and the state legislature. Developers are demanding that the basis and use of park dedication exactions be justified and bear a reasonable relationship, or nexus, to the burden placed on a municipality by a proposed development project. Recent legislative amendments added the requirements in Minn. Stat. § 462.358, subd. 2c, that there be an “essential nexus between the fees or dedication imposed” and the municipal purpose sought to be achieved by the same and that the fee or dedication “bear a rough proportionality to the need created by the proposed subdivision or development.” There is little guidance in Minnesota case law on the specific application of these statutory provisions with regard to park dedication fees. However, based on past litigation in other jurisdictions regarding impact fees, exactions, in-lieu fees, and compulsory dedications in general, Minn. Stat. § 463.358, subd. 2c, clearly requires a showing by the municipality that there is a “nexus” or reasonable connection between the need for additional public facilities and the impact from new development. The nexus requirement ensures that the land dedication or fee required by a municipality is related to some identifiable infrastructure need generated by the new development. Without such a defined nexus, land dedication requirements or “in-lieu” (of land dedication) fee payments are generally unconstitutional takings of property without compensation. See Nollan v. California Coastal Commission, 483 U.S. 825 (1987) (requirement of public easement across private property as a condition of building permit is a taking; lack of necessary connection between permit and need for easement).

In order to avoid takings liability, the nexus requirement specifies that an “in-lieu” fee payment is valid only when collected for public facilities for which the specific land development causes a

need. Courts in other states have found the lack of such a required connection with land development conditions (and associated fees) required by municipalities that attempt to remedy existing infrastructure deficiencies or are used for operation and maintenance of facilities. Minn. Stat. § 462.358, subd. 2b and 2c, takes these court holdings and makes them express requirements in any situation where a municipality imposes a park dedication requirement. In particular, this is evident by the express prohibition on the use of a park dedication fee for ongoing "operation or maintenance" of existing park facilities. The use of a park dedication fee in this manner lacks the requisite nexus because the originating need for these preexisting facilities was not created by new development. It would conceivably be justifiable, however, to use park dedication fees for the improvement or expansion of existing facilities. The requisite nexus would be present because the need for improvement or expansion of the existing park facility is tied to the new development and its residents.

Once a "nexus" is shown, the municipality must also demonstrate that the exaction demands no more than is necessary to alleviate the infrastructure need generated by the development. In this regard, Minn. Stat. § 462.358, subd. 2c requires that the fee or dedication bear a "rough proportionality" to the need created by the proposed development. The Supreme Court created the "rough proportionality" test in Dolan v. City of Tigard, 512 U.S. 374 (1994) in stating that it requires a municipality to "make some sort of individualized determination that the [exaction] is related in both nature and extent to the impact of the proposed development." It demands a relatively tight fit between the infrastructure demands generated by new development and the fee amount and is tempered only by the Court's understanding of the difficulties inherent in estimating the value of the harm attributable to one landowner in a municipality of thousands. Courts have emphasized that proportionality does not have to be shown with mathematical precision. Rather, the intrinsic values of the need generated by the development and the fee amount must be demonstrated as roughly equivalent to one another.

Based on these stringent requirements, the League of Minnesota Cities has advised member cities to adhere to an organized methodology as follows:

- Conduct a comprehensive par study to determine the city's current and future park and recreation needs, including parks, recreational trails, and open space.
- Calculate, in terms of acreage, the current amount of parks, recreational facilities, trails and open space, plus any current, but unmet park needs.
- Evaluate the use of city park and recreation facilities in order to get some approximation of what percentage is used by residential users ("new housing units") and what percentage is used by employees of commercial establishments.
- From the previous calculations, derive a number that equates to acres of parkland per resident and per employee.
- Establish the park dedication requirements by ordinance taking into consideration the amount of new park facilities necessary to serve the new residents or employees resulting from new development.
- Calculate any cash in lieu of land amount based on the per acre value of the undeveloped land.

This type of analysis is recommended to ensure compliance with the statutory requirements, including the establishment of an "essential nexus" and "rough proportionality." It also

recognizes that a municipality must first adopt a capital improvement budget and have a parks and open space plan or a parks, trails, and open space component in its comprehensive plan before imposing a park dedication requirement. See Minn. Stat. § 462.358, subd. 2b(b).

B. Ability to Use Park Dedication Fees for Certain Uses

The City Council staff direction also asked if park dedication fees could be used for park development, rehabilitation and maintenance of existing park facilities, streetscape improvements, storm water retention, and other types of open space. The general enabling authority in Minn. Stat. § 462.358, subd. 2b(a), clearly allows a municipality to adopt a dedication requirement with regard to some of these uses. It states that “regulations may require that a reasonable portion of the buildable land . . . of any proposed subdivision be dedicated to the public or preserved for public use as . . . storm water drainage and holding areas or ponds . . . , parks, recreational facilities . . . , playgrounds, trails, wetlands, or open space.” This general dedication authority must be imposed by ordinance in each instance and only applies to proposed subdivisions. As noted above, the City rarely has occasion to review a new subdivision that would warrant adoption of a dedication requirement pursuant to this general authority.

The City and MPRB have special joint authority, however, to impose a park dedication fee on “new housing units in the city, wherever located, for public parks, playgrounds, recreational facilities, wetlands, or open space” based on an approved park systems plan. See Laws of Minnesota 2006, Ch. 269, § 2; Minn. Stat. § 462.358, subd. 2b(b). This enumerated list of uses implies that a park dedication fee collected pursuant to this special law authority cannot be used for streetscape improvements or storm water retention. In addition, park dedication fees cannot be used to fund the ongoing operation or maintenance of existing parks, playgrounds, recreational facilities, wetlands, or open space. They can be used for the “acquisition and development or improvement” of the same. Id.

C. Eligible Entities and City Approvals Requirement

Based on the specific legislative authority as cited above, only the City and the MPRB, operating jointly with the City, may impose and use park dedication fees pursuant to an adopted park systems plan. New development or improvement or expansion of parks, playgrounds, recreational facilities, wetlands, or open space must comply with all relevant City Code requirements, including the Zoning Code and associated City approvals. The City can make this an express requirement by simply writing it into the proposed ordinance.

D. Sample Summary of Park Dedication Ordinances

- **MPRB draft ordinance (attached)** – Based on the 2006 legislative grant of authority to impose a park dedication requirement on new housing units, the land dedication formula is a minimum of one one hundredth (.01) acre of land per additional housing unit within the proposed development to a maximum of twelve percent (12%) of the total acreage of the land being developed. The in-lieu fee amount is \$3,000 for each new non-affordable housing unit. Affordable housing units are subject to a park dedication fee of \$1,500 for each new housing unit constructed. Funds must be used within the neighborhood in which the development occurs or within six blocks of where the new housing units are

created. If not feasible, the funds may be used in a neighborhood adjacent to the new housing units if the dedication fee-funded project provides a measurable benefit to the development from which the fees were collected. If not feasible, the funds may be used in a regional park as defined by state law that is proximate to the new housing units and provides a benefit to the new residents.

- **St. Paul, MN (attached)** – Based on the general statutory authority in Minn. Stat. § 462.358, it applies to new residential, commercial, or industrial subdivision development. The land dedication formula is based on the number of additional accessory off-street parking spaces, and conversion of existing commercial/industrial accessory parking to residential spaces, for the new development. For residential development, the amount of land shall be one hundred (100) square feet per surface parking space and fifty (50) square feet per parking space within a structure, to a maximum of seven percent (7%) of the total land area of the property. For commercial and industrial development, the amount of land shall be thirty (30) square feet per surface parking space and fifteen (15) square feet per parking space within a structure, to a maximum of two percent (2%) of the property. The amount of the in-lieu fee is based upon the County Assessor's estimated market value of the parcel of land per square foot, multiplied by one-third of the square feet of land that would otherwise be dedicated. Funds shall be expended in the "planning district" of the subdivision or development for which the funds were collected, or in an adjacent planning district within ½ mile of the subdivision or development.

Because the state law enabling authority varies from state to state, it is difficult to draw precise comparisons to park dedication fees in other cities. However, some representative summaries are described below:

- **Sacramento, CA** – Applies to all development and requires the municipal governing body make findings in each instance regarding the purpose of the fees, the use to which the fees will be put, a demonstration that there is a reasonable relationship between the need for the park facilities and the type of development project on which the fee is imposed, a demonstration of how there is a reasonable relationship between the amount of the fees and the cost of the park facilities attributable to the development project. Fees shall be expended on park facilities within the "planning area" in which the development project paying the fee is located. If not feasible, they may be expended in an adjacent planning area if the park facility is neighborhood park within two miles of the development project or a community park within five miles of the development project.
- **Fort Lauderdale, FL** – Applies to new residential dwelling units and new hotel/motel rooms and is based on a square footage calculation. For example, a dwelling unit with 1,001 to 1,500 square feet is subject to a fee of \$2,175, while a unit with 2,501 to 3,000 square feet is subject to a fee of \$2,625
- **Atlanta, GA** – Applies to all development and is based on a formula derived from an impact fee study as follows: functional population per unit x 0.00575 acres per functional population x capital cost per acre x discount factor = development impact fee. The fees may only be expended within the "service area" within which the development is located. "Service area" is defined as a geographically defined area of the city as designated in the comprehensive development plan.

SUMMARY

The City has the requisite authority to adopt a park dedication ordinance. Before adopting an ordinance and assuming it has not been done to date, however, it is advisable to conduct a methodical analysis of park use and needs to establish a justifiable basis for imposition of a park dedication fee and the fee amount itself. This type of analysis will ensure compliance with all statutory requirements, including the nexus and rough proportionality dictates of Minn. Stat. § 462.358, subd. 2c.

Please contact me at (612) 673-2192 if you have any questions.

DRAFT 4-26-07

AN ORDINANCE

(By Park Commissioner _____)

AMENDING THE MINNEAPOLIS PARK AND RECREATION BOARD CODE OF ORDINANCES BY CREATING A NEW CHAPTER 14 REQUIRING THE DEDICATION OF LAND, OR PAYMENT OF CASH IN LIEU OF A LAND DEDICATION, WHEN DEVELOPING OR REDEVELOPING PARCELS OF LAND FOR RESIDENTIAL HOUSING WHICH WILL INCREASE THE NUMBER OF HOUSING UNITS ON THAT PARCEL OF LAND, AND ESTABLISHING THE POLICY AND PROCEDURES FOR THESE NEW REQUIREMENTS.

The Minneapolis Park and Recreation Board of the City of Minneapolis does hereby ordain:

Section 1. That the Minneapolis Park and Recreation Board Code of Ordinances is hereby amended by adding the following new Chapter 14 to read as follows:

CHAPTER 14

PARK DEDICATION.

PB14-1. Findings and Purpose. The Park Board finds that the preservation, accessibility and enjoyment of parks, recreational facilities, playgrounds, trails, natural areas, and open space within the City are a vital and integral part of the quality of life of its citizens and that the creation of multiple new housing units creates a demand on the current park resources beyond its limits, thereby requiring that the Park Board plan for the increased demand on park resources caused by increased density in housing in particular parts of the city.

The Park Board finds that the need for such parks, recreational facilities, playgrounds, trails, natural areas, and open spaces is directly related to the density and intensity of population and development permitted and allowed within the City. New urban development results in increased population, increased intensity of use of and greater demands for such public areas and facilities in particular parts of the city where new development occurs. The Park Board finds that new housing developments with increased density and use will result in a demand for new park facilities and land and, in some cases, additional housing units in certain other areas of the city will increase use, thus resulting in the deterioration of existing parks land and facilities and will diminish the quality of the parks and the environment for future generations.

The Park Board finds that it is necessary and in the public interest to provide new or reconstructed parks, trails and other public spaces for the citizens of the City. The necessity for additional public park facilities is caused by increased development occurring within the City. The Park Board finds that it is appropriate that new residents share the cost of rebuilding or providing new parks to accommodate them. The Park Board finds that as of the end of November 2006, there were 178,258 housing units in the City and there are a total of 5,147 acres of parkland in the city limits and 1,782 of those acres are devoted solely to neighborhood parks. The Park Board further finds that the financial burden of creating additional parks, recreational facilities, playgrounds, trails, wetlands and open spaces should not be placed entirely upon the general property tax levy. Rather, new housing development should contribute financially to and assist in

paying the cost associated with creating additional public parks or recreation facilities in the proportion that the existing number of housing units bears to the amount of land currently devoted to neighborhood parks.

The Park Board also finds that parks, recreation facilities, playgrounds, trails, wetlands, and open space contribute many benefits that are in the public interest.

The Park Board hereby finds that the requirements of this ordinance are necessary, proportionate, fair and reasonable with respect to the need created by new residential development and is adopted pursuant to and consistent with the authority granted by Laws of Minnesota 2006, Chapter 269, Section 2 and Minnesota Statutes Section 462.358.

PB14-2. Definitions.

Unless otherwise indicated by the context, for the purposes of this Chapter, the following terms have the meanings given.

Affordable Housing Units means housing units whose annual rental cost or mortgage payments are less than or equal to one third (33.3%) of the gross income of households earning less than one-half (50%) of the Minneapolis/St. Paul Metropolitan median income (“MMI”).

City means the City of Minneapolis.

Communities means those certain eleven (11) distinct officially recognized areas of the City of Minneapolis that have historically been designated to have neighborhoods in common.

Comprehensive Plan means the system wide plan adopted by the Minneapolis Park and Recreation Board for the acquisition, development or redevelopment of parks, recreational facilities, playgrounds, trails, wetlands or open spaces and includes any specific plan that has been adopted by the Park Board.

Developer means any natural person, corporation or legal entity that owns land who seeks to improve property in a manner that would add housing units to the property and includes any owner and subdivider.

Districts means the three geographical districts as organized by the Park Board to serve distinct neighborhoods and communities.

Historic area means an area which has significant historic meaning or value to the city or state.

Land means real property upon which an owner, developer or subdivider plans to add additional housing units.

Natural areas means land which has not been subject to development or are areas designated as having significant or unique ecological or wildlife habitat qualities or features.

Neighborhood means those certain eighty-one (81) officially recognized distinct areas of the City of Minneapolis that have historically been designated to have a common geographic location.

Open space means land, bodies of water, rivers or streams that are owned in fee or through easements whose acreage does not primarily consist of structures or facilities and can include natural areas.

Park Board means the Park and Recreation Board of the City of Minneapolis.

Parks means any land owned or proposed to be owned by the Park Board within or outside the corporation limits of the City of Minneapolis used for recreational purposes, playgrounds, trails, wetlands, or open space.

Recreational Facility means lands, buildings or structures that are designed primarily to facilitate recreational activities.

PB14-3. Parkland dedication requirements, residential developments (MPRB).

(a) Generally. Pursuant to Laws of Minnesota 2006, Chapter 269, Section 2 and Minn. Stat. Sec. 462.358, as amended, and as otherwise provided below, the owners, subdividers, or developers of any land within the City who develop land for residential housing that will result in an increase in the number of housing units on the land shall convey or dedicate to the public use a reasonable portion of the land for public use for parks, recreation facilities, playgrounds, trails, wetlands, open space, or conservation purposes. This requirement shall not apply to development or redevelopment of land that does not increase the overall number of dwelling units on a particular parcel of land. The Park Board and City shall agree on the location and configuration of any land dedicated, taking into consideration the suitability and adaptability of the land for its intended purpose, future needs of the proposed development and following criteria:

- (1) conformance with the Park Board's and city's adopted comprehensive plans and development or project and small area plans for neighborhoods or portions thereof of the city;
- (2) areas identified for park, parkway, recreation, open space and/or conservation purposes that are included in the City or Park Board comprehensive plan;
- (3) areas that connect existing components of the parks and open space network;
- (4) areas adjacent to existing public parks, trails, or open space;
- (5) areas representing significant landforms, native plant communities, sensitive habitat, or historical events;

- (6) areas containing vegetation identified as endangered or threatened, or that provide habitat for animals identified as endangered, threatened, or of special concern under 15 U.S.C. §1531 et. seq. or Minn. Stat. §84.0895, and rules adopted under these respective laws;
- (7) Areas that are under-served by parks due to distance to existing parks, population density, inadequate facilities or inadequate size of existing nearby parks;
- (8) land to be dedicated shall be large enough for its intended purpose;
- (9) land dedicated solely for non-Park Board owned roadways, stormwater retention, or utility purposes, or otherwise unsuitable for the purposes listed above, shall not be accepted under this chapter;
- (10) dedicated land shall be accessible to the public served unless the Park Board determines that the dedicated land is an environmentally or ecologically sensitive area for which public access would be detrimental; and,
- (11) parks reconstructed with park dedication funds.

PB14-4. Park dedication formula.

For development or redevelopment of parcels of land for residential housing that will increase the number of dwelling units, the property owners, subdividers or developers of the parcel shall dedicate a minimum of one one hundredth (.01) acre of land per additional housing unit within the proposed development to a maximum of twelve (12%)

of the total acreage of the land being developed, on a one time basis, for the purposes listed in PB14-3 of this section.

PB14-5. Park dedication fee option.

(a) A property owner, developer or subdivider who chooses not to or cannot abide by the requirements of PB14-3 and PB14-4 shall contribute \$3,000.00 as a park dedication fee for each new non-affordable housing unit to be constructed to the Park Dedication Special Fund created under PB14-7. Affordable housing units shall be subject to a park dedication fee of \$1,500.00 for each new housing unit to be constructed. All park dedication fees shall be adjusted for inflation every five (5) years according to the Key Economic Indicators of the Bureau of Economic Analysis and the U.S. Census Bureau, provided to the Economics and Statistics Administration at the U.S. Department of Commerce.

(b) The park dedication fees paid under this section shall be used for the acquisition, construction, reconstruction or improvement of parks, recreational facilities, playgrounds, trails, wetlands, and open space as set forth in the Park Board comprehensive plan. Park dedication fees paid under this section in lieu of a land dedication under PB14-3 and PB14-4 shall not be used for, nor waived for, a development's plazas, terraces, gardens, yards, entries, walks, parking, recreation areas, common areas, and planted areas that are meant to enhance the development, are part of the development, and for use by only the development.

(c) Park dedication funds paid under this section in lieu of a land dedication under PB14-3 may be used for all functions related to new development, rehabilitation, and acquisition of parks, recreational facilities, playgrounds, trails, wetlands and open space in the neighborhood, community, or district where the new housing unit is located. Park dedication fees may also be expended for related expenses that are specifically related to a park project which has a nexus to the housing unit.

(d) There shall be an essential nexus between the fee imposed and the expenditures made from the Park Dedication Special Fund. The expenditure shall be specifically and uniquely attributable to the new housing units.

PB14-6. Parkland dedication; conveyance standards.

Where the provisions of PB14-3 and PB14-4 apply, prior to final approval of a project that would result in additional housing units, the owners, developer or subdivider of the property shall provide the Park and Recreation Board with an acceptable abstract of title or registered property abstract for all land dedicated for park purposes, evidencing good and marketable title without liens or encumbrances of any kind except those encumbrances which the Park and Recreation Board has approved or required in connection with the proposed development or development. The foregoing abstracts shall evidence good and marketable title free and clear of any mortgages, liens, encumbrances, assessments and taxes. For any required dedication of land that is not formally dedicated to the Park and Recreation Board, the landowner shall record all deeds for conveyance of the property to the Park and Recreation Board prior to or at the same time as the recording the final plat.

PB14-7. Park Dedication Special Fund created.

There is hereby established a Park Board park development special fund. All funds collected pursuant to the park dedication process by the City shall be immediately deposited in the "park development special fund" which shall be used solely for the acquisition, development, redevelopment or improvement of lands or facilities dedicated to public use as parks, recreational facilities, playgrounds, trails, wetlands or open space purposes. Such funds must be collected by the City prior to issuance of a building permit. The City shall notify the Park Board of the proposed development upon submittal by the developer of the first concept plan for the proposed project. Funds collected under this section must be accounted for separately, and must be used within the neighborhood in which the development occurs or within six blocks of where the new housing units are created. In the event that the funds collected under this section cannot be reasonably used within the neighborhood or within six blocks of where the new housing units are built, the funds may be used in a neighborhood adjacent to where the new housing units were built if the project for which the funds are expended provides a measurably benefit to the property from which the park dedication fee was collected. If the funds cannot reasonably be used in the neighborhood, the adjacent neighborhood, or within six blocks of where the new housing units were created, then the funds may be used to fund a project in a regional park as defined by Minn Stat section 473.121, subdivision 14 located within the Park Board's jurisdiction that is proximate to the new housing units and provides a benefit to the new housing units. Funds collected under this ordinance may not be used for ongoing operations or maintenance.

PB14-8. Approval of Expenditures; Conditions of Approval.

All expenditures from the park development special fund shall be approved by the Park Board and the City consistent with the Park Board's comprehensive plan and citizen advisory committee process. All park dedication fees shall be paid as a condition of final City approval of a housing project, except, when approved by the City, in the case of a development or redevelopment constructed in "phases," funds otherwise required for each construction phase of the development or redevelopment shall be collected prior to obtaining the first building permit for that phase. Payments made to satisfy the requirements of this section shall be made separately from any payments for building permits or any other payment. Funds shall accrue in Park Board park dedication accounts in order to more efficiently provide for acquisitions, development or rehabilitation.

PB14-9. Adherence to Policies.

All parks developed must closely adhere to the designations, definitions, and description in all Park Board official policies and ordinances, as may be revised from time to time by the Park Board and the Park Board's comprehensive planning process.

Section 2. That this ordinance shall take effect and be in force as of day after the last publication by the the city of Minneapolis and the Park Board and applies to all permits issued for housing units after that date.

Passed and adopted on this _____ day of _____, 2006.

[insert signature blocks]

**ORDINANCE
CITY OF SAINT PAUL, MINNESOTA**

Presented by _____

1
2 An ordinance amending the Legislative Code by creating new legislation entitled "Parkland
3 dedication requirements," which permits the dedication of land or a cash payment in lieu of
4 a dedication of land for public use as parks and open space and establishing policies and
5 procedures for these new requirements; the new section shall be numbered § 69.511 thereby
6 necessitating the renumbering of former Leg. Code § 69.511, entitled "Public sites," to new
7 § 69.512, and of former § 69.512, entitled "Monuments," to new § 69.513.

8
9 **THE COUNCIL OF THE CITY OF SAINT PAUL DOES HEREBY ORDAIN**

10
11 **Section 1**

12 That Leg. Code 69.511 is hereby amended by striking the present language of the section pertaining to
13 "public sites" which shall hereinafter be renumbered as § 69.512 as provided in Section 2 below, and
14 substituting in its place the following new language authorizing parkland dedication for certain
15 subdivisions of land:

16 **Sec. 69.511. Parkland dedication requirements.**

17 (a) Generally. Pursuant to Minn. Stat. Sec. 462.358, Subd. 2, as amended and as otherwise provided
18 below, for subdivision and development of land, the owners, subdividers, or developers of the land
19 shall convey to the city or dedicate to the public use a reasonable portion of the land for public use
20 for parks, playgrounds, trails, open space, or conservation purposes. The city council shall determine
21 the location and configuration of any land dedicated, taking into consideration the suitability and
22 adaptability of the land for its intended purpose, future needs of the proposed development, and the
23 following criteria:

- 24 (1) conformance with the city's adopted comprehensive plan and development or project plans for
25 sub-areas of the city;
26 (2) areas identified for park or conservation purposes in an adopted city, regional, state, or national
27 plan;
28 (3) areas that connect existing components of the open space network;
29 (4) areas adjacent to existing public parks, trails, or open space;
30 (5) areas representing significant landforms, native plant communities, sensitive habitat, or
31 historical events;
32 (6) areas containing vegetation identified as endangered or threatened, or that provide habitat for
33 animals identified as endangered, threatened, or of special concern under 15 U.S.C. §1531 et.
34 seq. or Minn. Stat. § 84.0895, and rules adopted under these respective laws;
35 (7) availability and commitment of resources, public and/or private, to develop, operate, and
36 maintain the new park land;

- 37 (8) priority will be given to areas that are under-served by parks due to distance to existing parks,
38 population density, or inadequate size of existing nearby parks;
- 39 (9) land to be dedicated shall be large enough for its intended purpose;
- 40 (10) land dedicated solely for roadway, stormwater retention, or utility purposes, or otherwise
41 unsuitable for the purposes listed above, shall not be accepted;
- 42 (11) dedicated land shall be accessible to the public served unless the city council determines that
43 the dedicated land is an environmentally or ecologically sensitive area for which public access
44 would be detrimental.
- 45 (b) *Parkland dedication at the time of platting.* For platting of land for residential, commercial, or
46 industrial development, the property owners, subdividers or developers shall dedicate two (2) percent
47 of the total acreage of the plat, on a one time basis, prior to or at the same time as recording the final
48 plat, for the purposes listed in subdivision (a) of this section. Land so dedicated shall be within the
49 plat and/or, subject to agreement by the city council and the subdividers, in close proximity to the
50 plat.
- 51 (c) *Parkland dedication option; land and/or cash dedication.* At the discretion of the city council, the
52 owners, subdividers, or developers of property subject to this section shall contribute an amount of
53 cash, prior to obtaining the city clerk's signature on the final plat, in lieu of all or a portion of the land
54 required under subdivisions (a) and (b) of this section or an equivalent value of improvements as
55 approved by the city council. The amount of cash shall be based upon the county assessor's estimated
56 market value of the total acreage of the plat, at the time of city council approval of the plat,
57 multiplied by one-third of the percentage of the land that would otherwise be dedicated. In
58 determining whether land dedication or cash in lieu thereof will be required, the city council shall
59 consider without limitation the suitability and adaptability of land within the site for the purposes
60 listed in subdivision (a) of this section and criteria for land dedication in subdivision (a) of this
61 section.
- 62 (d) *Parkland dedication at the time of building permits.* For new residential units, commercial or
63 industrial development, the property owners, subdividers or developers shall dedicate land or cash in
64 lieu of land, on a one time basis, for the purposes listed in subdivision (a) of this section based on the
65 number of additional accessory off-street parking spaces, and conversion of existing
66 commercial/industrial accessory parking to residential spaces, for the development. For residential
67 development, the amount of land shall be one hundred (100) square feet per surface parking space
68 and fifty (50) square feet per parking space within a structure, to a maximum of seven (7) percent of
69 the total land area of the property. For commercial and industrial development, the amount of land
70 shall be thirty (30) square feet per surface parking space and fifteen (15) square feet per parking
71 space within a structure, to a maximum of two (2) percent of the property. Land so dedicated shall be
72 within or in close proximity to the development. The amount of cash in lieu of land shall be based
73 upon the county assessor's estimated market value of the parcel of land per square foot, multiplied by
74 one-third of the square feet of land that would otherwise be dedicated. For parking spaces for
75 dwelling units required to be affordable under Saint Paul Housing and Redevelopment Authority or
76 other similar financing agreements, or other contractual agreement with the city, the amount of cash
77 otherwise required shall be multiplied by the specified percentage of Twin Cities area median income
78 at which the unit is required to be affordable. The city council may require the land dedication option
79 under this subdivision (d) as a condition of plat approval, and in so doing may require that the land be
80 dedicated prior to or at the same time as recording the final plat. In all other cases, the dedication of

81 land or cash in lieu of land required under this subdivision (d) shall be done prior to obtaining
82 building permits for development to which the parking spaces are accessory, and the dedication of
83 land shall be subject to agreement by the city council and the owners, subdividers or developers;
84 without such agreement, cash shall be paid in lieu of land dedication.

85 (e) Parkland dedication option; private land maintained for public use. The city council may, at its
86 discretion, waive all or a portion of the land or cash dedication required under subdivisions (b), (c) or
87 (d) of this section and enter into an agreement for the private development and/or maintenance of
88 land for public use for parks, playgrounds, trails, open space, or conservation purposes within the
89 proposed plat, subject to the following conditions:

90 (1) The land area or value of the land and improvements privately developed and maintained for
91 public use for parks, playgrounds, trails, open space, or conservation purposes must at least
92 equal that required under this ordinance.

93 (2) Land, facilities, and improvements accepted under this provision shall be accessible to the
94 public in a manner similar to public land.

95 (3) The city council must find, after recommendation of the director of parks and recreation and the
96 parks commission, that such land and improvements will serve the purposes listed in
97 subdivision (a) of this section; and

98 (4) The city and the owners, subdividers, or developers of the land must have executed a parkland
99 development agreement insuring that specified land shall be developed and maintained by the
100 owners, subdividers, or developers, and any and all successors in interest thereof, of any type
101 whatsoever, which includes, but is not limited to heirs and assigns, for the purposes listed in
102 subdivision (a) of this section. The owners, subdividers, or developers must include a covenant
103 running with the specified land indicating that the land to be developed and maintained for the
104 purposes listed in subdivision (a) will revert to the city in the event of a failure to comply with
105 this requirement. When a recordable covenant concerning the ownership, maintenance or use
106 of private areas and facilities for parkland development is required, the covenant shall be
107 submitted to the city for approval. Such covenant shall be recorded prior to or at the same time
108 as the final plat when related to requirements under subdivision (b) of this section, and prior to
109 obtaining building permits when related to requirements under subdivision (d) of this section.

110 (f) Parkland dedication; conveyance standards. Prior to dedication and conveyance of the required
111 property to the city, the owners, subdividers or developers shall provide the City with an acceptable
112 abstract of title or registered property abstract for all land dedicated for park purposes, evidencing
113 good and marketable title without liens or encumbrances of any kind except those encumbrances
114 which the city council has approved or required in connection with the proposed plat. The foregoing
115 abstracts shall otherwise evidence good and marketable title free and clear of any mortgages, liens,
116 encumbrances, assessments and taxes. For any dedication of land required under subdivision (b) of
117 this section that is not formally dedicated to the city with the final plat, the landowner shall record all
118 deeds for conveyance of the property to the city prior to or at the same time as recording the final
119 plat. For any dedication of land required under subdivision (d) of this section, the landowner shall
120 record all deeds for conveyance of the property to the city prior to obtaining building permits for the
121 development.

122 (g) Parkland dedication; parkland development special fund created. There is hereby established a
123 parkland development special fund. All funds collected pursuant to the parkland dedication process

124 shall be deposited in the parkland development special fund and used solely for the acquisition and
 125 development or improvement of lands dedicated for public use for parks, playgrounds, trails, open
 126 space, or conservation purposes in the planning district of the subdivision or development for which
 127 the funds were collected, or in an adjacent planning district within one-half mile of the subdivision or
 128 development. Such funds may not be used for ongoing operations or maintenance. All fund
 129 expenditures shall be approved by the city council upon recommendation of the director of parks and
 130 recreation in consultation with the parks and recreation commission. Expenditures from the parkland
 131 development special fund shall be in conformance with the city's adopted comprehensive plan and
 132 development or project plans for sub-areas of the city, and shall be consistent with other applicable
 133 criteria in subdivision (a) of this section. Payments made to satisfy the requirements of this section
 134 shall be made separately from any payments for building permits or any other payment.

135

136

Section 2

137 That present Leg. Code § 69.511 shall be renumbered as Leg. Code § 69.512 and that present Leg. Code §
 138 69.512 shall be renumbered to new Leg. Code § 69.513. For the purposes of brevity, the text of the said
 139 renumbered section is intentionally omitted from this section, there being no amendment to the text of the
 140 said sections.

141

142

Section 3

143 This ordinance shall take effect and be in force thirty (30) days from and after its passage, approval and
 144 publication.

	Yeas	Nays	Absent
Benanav			x
Bostrom	x		
Harris	x		
Helgen	x		
Lantry	x		
Montgomery	x		
Thune	x		

Requested by Department of:

Parks and Recreation

By: _____

Form Approved by City Attorney

By: _____

Form Approved by Mayor for Submission to Council

By: _____

Adopted by Council: _____ Date March 28, 2007

Adoption Certified by Council Secretary

By: _____

Approved by Mayor: _____ Date _____

By: _____