

ORDINANCE NO. 1466

**AN ORDINANCE AMENDING THE CANBY MUNICIPAL CODE (CMC) BY ADDING
A NEW CHAPTER 3.35, "PARK MAINTENANCE PROGRAM", AND REQUIRING
PAYMENT OF A PARK MAINTENANCE FEE.**

WHEREAS, the revenues from existing sources are not adequate to maintain the City of Canby's park system; and

WHEREAS, the City has deferred maintenance activities in existing parks and delayed the opening of new parks; and

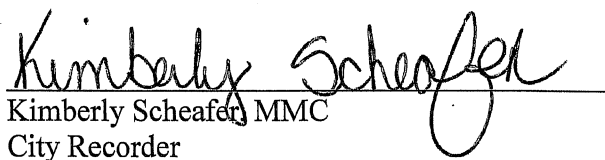
WHEREAS, additional funding is required in order to fund increased maintenance of the City of Canby's park system.

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

Section 1: The City of Canby's Municipal Code is amended by adding a new Chapter 3.35. "Park Maintenance Program" attached hereto as Exhibit "A".

Section 2. This ordinance shall take effect 30 days after passage. The fee imposed by Section 1 shall commence on January 1, 2018.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, August 16, 2017, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, September 6, 2017, commencing at the hour of 7:30 p.m. in the Council Meeting Chambers located at 222 NW 2nd Avenue, 1st Floor, Canby, Oregon.



Kimberly Scheafer MMC
City Recorder

PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on September 6, 2017 by the following vote:

YEAS 4 NAYS 3



Brian Hodson
Mayor

ATTEST:



Kimberly Scheafel, MMC
City Recorder

Exhibit "A"

CHAPTER 3.35: PARK MAINTENANCE PROGRAM

Section	
3.35.010	Creation of Park Maintenance Fee, Purpose.
3.35.020	Definitions.
3.35.030	Administrative Officers.
3.35.040	Dedication of Revenues.
3.35.050	City Maintenance and Effort Contribution.
3.35.060	Annual Park Maintenance Program Report.
3.35.070	Park Maintenance Fee.
3.35.080	Low Income Assistance.
3.35.090	Determination of Park Maintenance Fee.
3.35.100	Administration of Park Maintenance Fee.
3.35.110	Waiver of Park Maintenance Fee in Case of Vacancy.
3.35.120	Park Maintenance Fee Appeal Procedure.
3.35.130	Exceptions to Park Maintenance Fee.
3.35.140	Severability.

3.35.010 Creation of Park Maintenance Fee, Purpose.

There is hereby created a Park Maintenance Fee for the purpose of providing for the operation and maintenance of parks and facilities within the City of Canby. Fees collected shall be deposited into the City of Canby's General Fund Park Maintenance Fee Account to be used only for purposes identified within this chapter.

The City Council hereby finds, determines and declares the necessity of providing operation and maintenance of the City's parks and facilities as a comprehensive Park Maintenance Fee, with such operation and maintenance to include such activities as are necessary in order that the parks and facilities may be properly operated and maintained and that the health, safety and welfare of the City and its inhabitants may be safeguarded.

§ 3.30.020 Definitions.

As used in this chapter, unless the context requires otherwise:

Public Works Director. The City of Canby Public Works Director or the Director's designee.

Developed Property. A parcel or portion of real property on which an improvement exists or has been constructed. Improvement on developed property includes, but is not limited to buildings, parking lots, landscaping and outside storage.

Dwelling Unit. One or more rooms designed for occupancy by 1 family and not having more than 1 cooking facility.

Multi-unit Residential Property. Residential property consisting of 2 or more dwelling units. For the purposes of this chapter, condominiums, attached single-family residences, and individual mobile home units are also classified as multi-unit residential properties.



Non-Residential Property. Any property that is not residential property.

Residential Property. A property that is primarily for personal, domestic accommodation, including single single-family, multi-unit residential property and group homes, but not including hotels and motels.

Responsible Party. The person or persons who by occupancy or contractual arrangement are responsible to pay for utility and other services provided to an occupied unit. Unless another party has agreed in writing to pay and a copy of the writing is filed with the City, the person(s) paying the sewer bill for an occupied unit shall be deemed the responsible party as to that occupied unit. For any occupied unit not otherwise required to pay a sewer bill, "responsible party" shall mean the person or persons legally entitled to occupancy of the occupied unit, unless another responsible party has agreed in writing to pay and a copy of the writing is filed with the City. Any person who has agreed in writing to pay is considered the responsible person if a copy of the writing is filed with the City.

Single Family Residential. Residential property that has only detached dwelling units.

Park Lands. A public Park that is under the jurisdiction or control of the City. For purposes of this chapter, landscaped City property maintained by the Parks Department during the 2016-17 fiscal year shall be considered Park Lands.

Park Maintenance Program. Program established by this chapter to maintain, repair and reconstruct City Parks. Activities include the administration and collection of the Park Maintenance Fee; preventive maintenance, rehabilitation and reconstruction projects; design and inspection of such projects; Park condition monitoring and assessment, including inspection of Park repairs; and staff training and consultant services in support of the above activities.

Maintenance of Effort (MOE). The share of cost of the Park Maintenance Program borne by the general fund of the City of Canby.

Consumer Price Index (CPI). Consumer Price Index for Portland Metropolitan Statistical Area.

§ 3.35.030 Administrative Officers.

A. Except as provided below, the Public Works Director shall be responsible for the administration of this chapter.

B. The Public Works Director shall annually develop a Park Maintenance Program schedule.

C. The Public Works Director shall provide an annual report on the Park Maintenance Program to the City Council and Budget Committee.

D. The Finance Director shall be responsible for the administration and collection of fees under this chapter.

§ 3.35.040 Dedication of Revenues.

All funds and all proceeds from funds collected pursuant to this chapter shall be used for the Park Maintenance Program.

§ 3.35.050 City Maintenance of Effort Contribution.

A. The General Fund of the City of Canby shall contribute funds towards the operation of City parks in an amount equal to the actual operating expenditures for the City's Park budget for the fiscal year 2016-17, excluding Capital Outlay.

B. The City contribution shall be adjusted annually in an amount equal to the percentage change in the consumer price index for the Portland Metropolitan Statistical Area.

§ 3.35.060 Annual Park Maintenance Program Report.

A. Each year the Public Works Director shall prepare and present to the Budget Committee and City Council the "Annual Park Maintenance Program Report." This document is a public record.

B. The report shall include a narrative description of the overall condition of the Parks, the findings of any new condition assessments, a detailed project schedule for the upcoming year, and a report on the previous year projects, workload impacts, and overall program progress. The report shall include revenues received relative to revenue projections, and any other new developments that impact the adequacy of the program funds to meet program goals.

§ 3.35.070 Park Maintenance Fee.

A. A Park Maintenance Fee is imposed and levied upon the responsible party for all developed property within the City. The fee shall be based on the direct and indirect use of or benefit derived from the use of public Parks generated by the developed property, to be calculated as described in § 3.35.090.

B. The Park Maintenance Fee is also imposed and levied on the property owner of the developed property in the event of non-payment by the responsible party.

§ 3.35.080 Low Income Assistance

A. Monthly Park Maintenance Fees for parks maintenance to the principal residence of low income citizens, as defined under the City's low income assistance program for sewer bills, shall be charged at one-half the regular rate. Any citizen currently receiving the reduced sewer service charge for low-income citizens shall automatically receive the reduced parks maintenance fee.

§ 3.35.090 Determination of Park Maintenance Fee.

A. Residential Unit. There is hereby imposed upon developed residential units in the City an initial Park Maintenance Fee of \$5.00 (five dollars) for each dwelling unit existing on that parcel.

B. Multiple-Family Unit. There is hereby imposed upon the responsible party for a multiple-family unit an initial Park Maintenance Fee equal to \$5.00 (five dollars) for each separate dwelling unit within the multiple-family unit existing on that parcel. By way of

example, an apartment complex containing thirty units would be subject to a monthly Park Maintenance Fee of \$150.00 (one hundred fifty dollars).

C. Nonresidential Unit. There is hereby imposed upon the responsible party for a nonresidential unit an initial Park Maintenance Fee of \$5.00 (five dollars) for each common meter to serve the nonresidential unit existing on that parcel.

D. This fee is deemed reasonable and is necessary to pay for the operation and maintenance of parks and facilities within the City. The effective starting date of this fee will be January 1, 2018, and will appear on sewer bills delivered in December, 2017.

E. Annual Adjustment. An annual rate adjustment shall be made based on the Consumer Price Index (CPI-U) for the Portland, Oregon MSA and index period 1982-1984 = 100. The adjustment shall be the percent change in the CPI for the calendar year ending December 31st of each year. The first adjustment shall be made in May 2019 upon resolution duly adopted and approved by the City Council. All adjustment to the Park Maintenance Fee shall be set by resolution.

F. Expiration. Unless extended by a majority vote of the City Council, this fee shall expire and Chapter 3.35: Park Maintenance Program shall automatically be repealed on December 31, 2022.

§ 3.35.100 Administration of Park Maintenance Fee.

A. The Park Maintenance Fee shall be billed and collected with and as part of the monthly sewer bill for those lots or parcels utilizing City sewer and billed and collected separately for those developed properties not utilizing City sewer. In the event of non-payment, the City may bill the property owner or take other action as authorized by law to collect from the responsible party.

B. In the event funds received from City utility billings are inadequate to satisfy in full all of the sanitary sewer and Park Maintenance Fees, credit shall be given first to the Park Maintenance Fee and second to the sanitary sewer service charges.

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

§ 3.35.110 Waiver of Park Maintenance Fee in Case of Vacancy.

A. When any property within the City becomes vacant and utility services are discontinued (if applicable), a waiver of the Park Maintenance Fee may be granted by the Finance Director upon written application of the person responsible, including a signed statement, affirming under penalty of perjury that the property is vacant, and upon payment of all outstanding sanitary sewer and Park maintenance charges.

B. For purposes of this section, "vacant" shall mean that an entire building or utility billing unit has become vacant or continuously unoccupied for at least 30 days. "Vacant" shall not mean that only a portion of a property without a separate water meter has become vacant or unoccupied.

C. Fees shall be waived in accordance with this section only while the property remains vacant. The person responsible shall notify the City within 5 days of the premises being occupied, partially occupied or used, regardless of whether utility service is restored.

§ 3.35.120 Park Maintenance Fee Appeal Procedure.

A. Any owner who disputes any fee assessment may request a review and appeal such fee, but only in accordance with this section. The dispute must first be presented to the Public Works Director for review and thereafter may be appealed to the City Council in accordance with this section. Failure to appeal within the time and in the manner provided shall be sufficient cause to deny the relief requested. Except in cases of hardship as determined by the Council, disputes which result in changes in the Park Maintenance Fee charged under this chapter shall become effective with the next billing cycle.

B. A customer who wishes to dispute an interpretation made by the Public Works Director shall submit a written appeal to the City Administrator within 10 days from the date of notice of the Public Works Director's determination under division B., together with a filing fee in the amount of \$300. Appeals shall be limited to the issue of whether the property in question has been occupied during the period in dispute.

C. The City Administrator shall schedule the matter for City Council review and notify the appellant not less than 10 days prior to the date of such Council review. The City Council shall conduct a hearing during a public meeting and determine whether there is substantial evidence in the record to support the interpretation given by the Public Works Director. The Council may continue the hearing for purposes of gathering additional information bearing on the issue. The Council shall make a tentative oral decision and shall adopt a final written decision together with appropriate findings in support. The decision of the Council shall be final.

§ 3.35.130 Exceptions to Park Maintenance Fee.

City Parks shall not be subject to the Park Maintenance Fee.

§ 3.35.140 Severability.

In the event any section, subsection, paragraph, sentence or phrase of this chapter is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of the chapter shall continue to be effective. If a court of competent jurisdiction determines that this chapter imposes a tax or charge, which is therefore unlawful as to certain but not all affected properties, then as to those certain properties, an exception or exceptions from the imposition of the Park Maintenance Fee shall be created and the remainder of the ordinance and the fees imposed thereunder shall continue to apply to the remaining properties without interruption. Nothing contained herein shall be construed as limiting the City's authority to levy special assessments in connection with public improvements pursuant to applicable law.