

CITY OF MADISON, WISCONSIN

A SUBSTITUTE ORDINANCE _____

PRESENTED June 20, 2006

REFERRED BOE, Plan Commission, Park
Commission

RULES SUSPENSION _____

PUBLIC HEARING July 18, 2006

Amending Secs. 4.09(13), 16.23(8)(f), 16.23(9)(e), 20.04(18)(a), 20.06, and 20.09 relating to the imposition and collection of subdivision service costs and impact fees, creating Sec. 20.08(6) to establish Parkland Impact Fees and 20.16(5) relating to Park Development Impact Fee credits and amending Secs. 16.23(5)(h)1. and 28.12(11)(h)6. of the Madison General Ordinances to update cross-references.

Drafted by: James Voss

Date: June 27, 2006

SPONSORS: Mayor David J. Cieslewicz

DRAFTER'S ANALYSIS: This ordinance amends various sections of the Madison General Ordinances relating to the imposition and collection of fees in lieu of parkland dedication, subdivision service costs and impact fees and creates a new Parkland Impact Fee to respond to the prospective prohibition of the imposition of park fees in lieu of land dedication as a condition of development approval, resulting from the recent adoption of 2005 Wisconsin Act 477.

The Common Council of the City of Madison do hereby ordain as follows:

1. Subsection (13) of Section 4.09 entitled "Special Assessments For The Construction Or Reconstruction Of Sanitary Sewers, Storm Sewers, And Street Improvements And Special Charges For Current Services" of the Madison General Ordinances is amended to read as follows:

"(13) Special charges for current services rendered may be imposed through the allocation of all or part of the cost to the property served. Such current services may include without limitation because of enumeration, subdivision service costs under Sec. 16.23(9)(e), unpaid public facilities impact fees imposed under Chapter 20, Madison General Ordinances, mall-concourse special maintenance, street sprinkling, oiling and tarring, sealcoating and dust control, garbage and refuse disposal, street lighting and/or traffic signal operation and maintenance, financing of lead service replacement for those property owners which meet the criteria of Section 4.082, Madison General Ordinances, and tree care. The amount to be charged may include direct and indirect costs, including the resulting damages, if any, interest on City funds used in anticipation of the collection of the special charges, a reasonable charge for administrative staff services, any architectural, engineering and legal services costs, and any other item of direct or indirect cost reasonably attributed to the work or services rendered. The amount to be charged against all property for the work or services rendered may be apportioned among the individual parcels served. For street sprinkling, oiling and tarring, sealcoating and dust control, unless notice and hearing is waived in writing as provided above, a notice shall be published in the official

Approved as to form:

newspaper that the Common Council will hold a public hearing regarding the establishment of special charges for current services. Such notice shall be published as a Class I notice under Chapter 985 of the Wisconsin Statutes, and a copy of the notice shall be mailed to every interested person whose post office box address is known or can be ascertained with reasonable diligence. The hearing shall commence not less than ten (10) and not more than forty (40) days after such publication and mailing. Such notice shall specify that on a certain date a hearing will be held by the Common Council as to whether the service in question shall be performed at the cost of the property owner, at which hearing anyone interested will be heard. For all other types of special charges, no public hearing is required and notice shall be as provided on the billing of the special charge. Such special charges shall not be payable in installments. If not paid within the period prescribed on the billing, such delinquent special charges shall become a lien as provided in Section 66.0627(4) Wisconsin Statutes as of the date of such delinquency and shall automatically be extended upon the current or next tax roll as a delinquent tax against that property and all proceedings in relation to the collection, return and sale of the property for delinquent real estate taxes shall apply to such special charges.”

2. Subdivision (f) entitled “Public Sites and Open Spaces” of Subsection (8) entitled “Design Standards” of Section 16.23 entitled “Land Subdivision Regulations” of the Madison General Ordinances is amended to read as follows:

“(f) Public Sites And Open Spaces. The following provisions are established to preserve and provide properly located public sites and open spaces as the community develops, and to insure that such public sites and open spaces are provided and developed to serve the need for ~~neighborhood and area parks~~ generated by the additional persons brought into the areas by such development, in accordance with standards ~~for such neighborhood and area parks~~ as adopted in Madison’s Parks and Open Space Plan. These provisions are intended to apply to all lands proposed to be developed for residential purposes, including single-family, duplex, and multi-family plats, land divisions, and planned developments.

1. In the design of the plat due consideration shall be given to the reservation of suitable sites of adequate area for future schools, parks, playgrounds, drainageways and other public purposes. In the location of such sites consideration shall be given to the preservation of scenic and historical landmarks and sites; watercourses, streams, lakes, ponds, marshes and their accompanying watersheds; and significant woodland, prairie and wetland plant and animal communities. Consideration shall also be given to solar access where the location of open space lands provide greater achievement of solar access objectives and requirements of the entire subdivision.
2. Outside the corporate limits but within the extraterritorial plat limits, where it is recommended by the Park and Plan Commissions and determined by the Common Council that a portion of the plat or planned development is required for such public sites or open spaces, the developer may be required to dedicate such area to the municipality having jurisdiction, or otherwise provide for said public land as agreed to by the City, the affected township and the Dane County Agriculture, Zoning, Planning and Water Resources Committee. Where such dedication or other provision is not required, the developer may be required to reserve such area for a period not to exceed five (5) years after which the City, County or township in which the land is located shall either acquire the property or release the reservation.
3. Within the corporate limits of the City, where feasible and compatible with the comprehensive plan for development of the community, the developer shall provide and dedicate to the public adequate land to provide for the park and recreation needs of the plat and land division.
4. The required land dedication to meet community park and open space needs shall be eleven hundred (1,100) square feet of land for every proposed single-family and duplex dwelling unit and seven hundred (700) square feet for every proposed multi-family

dwelling unit other than duplex units. Where a definite commitment has been made by the developer and City on the number of dwelling units to be provided on a multi-family lot, the dedication shall be based on that number. Where no such commitment exists, the dedication shall be based on the maximum number of dwelling units the lot will support, exclusive of open space and other public lands. For rooming houses, and where a multi-family development in whole or part will be limited to occupancy by persons fifty-five (55) years of age or older by appropriate recorded restriction for a period of not less than thirty (30) years, the required land dedication shall be three hundred fifty (350) square feet for every such restricted proposed multi-family unit.

5. The Plan Commission, after recommendation of the Park Commission shall determine that any land to be dedicated as a requirement of this section shall be reasonably adaptable to meet desirable on-site facilities as outlined in Madison's Parks and Open Space Plan, and shall so recommend to the Common Council. Factors used in evaluating the adequacy of proposed park and recreation areas shall include size and shape, topography, geology, tree and other plant cover, access, and location.
6. In the event that dedication would result in sites too small to be usable, or if the ~~Master Comprehensive~~ Plan calls for such public sites or open spaces to be located elsewhere, or if such sites would not otherwise be suitable as determined by the Plan Commission, after recommendation of the Park Commission, a payment of a fee in lieu of land dedication shall be required. The amount of such fee shall be based on the fair market value of unimproved lands that would have been required dedication as determined in paragraph 4 above. These fees in lieu of dedication shall be limited to a maximum land value of one dollar fifty cents (\$1.50) per square foot in 2002, and adjusted higher by five percent (5%) on January 1 of each year. This paragraph and paragraph 7., below apply to all subdivisions, land divisions, rezonings and conditional uses located within the corporate limits of the City and submitted for approval prior to June 14, 2006, and also applies to all subsequent final plats of a development where a preliminary plat was submitted for approval prior to June 14, 2006. For all other subdivisions, land divisions, rezonings and conditional uses located within the corporate limits of the City and submitted for approval on or after June 14, 2006, Section 20.08(6), Madison General Ordinances, shall apply.
7. Payment shall be in a lump sum prior to the recording of a final plat or certified survey map. As an alternative, when the park fee in lieu of dedication exceeds twenty thousand dollars (\$20,000), the subdivider may pay fifty percent (50%) of the total amount prior to said recording and either file with the City Clerk an agreement and performance bond or a letter of credit in a form approved by the City Attorney to guarantee payment of the unpaid balance of the park fee to the City within three (3) years of the date of said recording. If the unpaid balance is paid within two (2) years, there shall be no interest due the City; however, interest, at a rate determined by the City Comptroller based upon the greater of either an average or the most recent cost of borrowing during the second year, shall be paid on the unpaid balance during the third and final year in addition to payment of said unpaid balance. As a second alternative, when the park fee in lieu of dedication exceeds fifty thousand dollars (\$50,000), the subdivider may pay such fees in installments prior to execution of the subdivision improvement contract for each phase, with each such installment payment for the full amount of the respective phase at the adjusted park fee in lieu of dedication rate then in effect for the year each such phase installment payment is paid. Such fees shall be deposited in a nonlapsing fund to be used exclusively for park and recreation development, including site acquisition and/or facility improvements.
8. Where privately owned open space for park and recreational purposes which will not be closed to the public is provided in a proposed plat or land division and such space is to be privately owned and maintained by the future residents of the subdivision, such areas shall be credited against the requirement of dedication for park and recreation purposes,

or the payment of fees in lieu thereof, provided the Common Council finds that the following standards are met:

- a. That yards, court areas, setbacks, land required for storm water management and other open areas required to be maintained by the Zoning and Building Regulations shall not be included in the computation of such private open space; and
- b. That the private ownership and maintenance of the open space is adequately provided for by recorded, written agreement and open space easement; and
- c. That the use of the private open space is restricted for park and recreational purposes not closed to the public by recorded covenants which run with the land in favor of the future owners of property within the tract and which cannot be defeated or eliminated without the consent of the Common Council; and
- d. That the Common Council after recommendation from the Park and Plan Commissions determines that the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location of the private open space land; and
- e. That facilities proposed for the open space are in substantial accordance with the provisions of the ~~Master~~ Comprehensive Plan, and are approved by the Common Council.

9. This subdivision of the ordinance, as revised in 2002, applies to all subdivisions, land divisions, rezonings and conditional uses approved after October 1, 2002, except, as provided therein, paragraphs 6 and 7 do not apply to certain developments approved on or after June 14, 2006."

3. Subdivision (e) of Subsection (9) entitled "Developer to Reimburse the City for Costs Sustained" of Section 16.23 entitled "Land Subdivision Regulations" of the Madison General Ordinances is amended to read as follows:

"(e) ~~Developer to Reimbursement to the City for Costs Sustained~~. The subdivider of subdivisions within the City of Madison shall reimburse the City for its actual cost of design, inspection, testing, construction, traffic signing and marking, and associated legal and real estate expenses for the required public improvements for the subdivision. The City's expenses shall be determined as follows:

1. The cost of City employees' time engaged in the required public improvements based on the hourly rate paid to the employee multiplied by a factor determined by the respective Division/Department to represent the City's cost for statutory expense benefits, insurance, sick leave, holidays, vacation and similar benefits, overhead and supervision, said factor not to exceed 2.25.
2. The cost of City equipment employed.
3. The cost of mileage reimbursed to City employees which is attributed to the subdivision.
4. The actual costs of City materials incorporated into the work including transportation costs plus a restocking and/or handling fee not to exceed 20% of the cost of the materials.
5. All consultant fees associated with the subdivision at the invoiced amount plus 10% for administration.
6. All plan review charges or other service expenses attributed to the subdivision that are imposed upon the City by other regulatory entities or service providers at the invoiced amount.

The subdivider shall advance to the City Treasurer an amount equal to an estimate of the City's expenses, as prepared by the participating City Divisions/Departments at the time the subdivider files a contract for subdivision improvements. At the conclusion of the project, the respective agencies shall bill the actual cost to the subdivider. In the event that the actual cost is calculated to be less than the advanced amount, the difference shall be refunded to the developer. In the

event the advance is less than the actual amount, the subdivider shall be billed the difference and payment shall be a condition precedent to acceptance of any major components of construction.”

4 Subdivision (a) of Subsection (18) entitled “Public Facilities Or Public Facilities Project” of Section 20.04 entitled “Definitions” of the Madison General Ordinances is amended to read as follows:

“(a) Parks, and playgrounds and other recreational facilities;”

5. Section 20.06 entitled “Imposition of Impact Fee” of the Madison General Ordinances is amended to read as follows:

“20.06 IMPOSITION OF IMPACT FEE.

- (1) Impact fees scheduled in § 20.08 of this ordinance are hereby imposed on all developments and land divisions within the City of Madison or any development impact fee zone thereof.
- (2) For all unplatted lands, no final plat or certified survey map shall be certified as approved for recording unless the impact fees set forth in § 20.08 are calculated and ~~collected~~ noticed on the face of the instrument to be recorded for collection pursuant to this ordinance. Impact fees shall be payable at the time of final plat or certified survey map approval in full unless otherwise specified in this ordinance. A notation shall be placed upon the face of the plat, map or other document to be recorded advising of the impact fees imposed on all buildable lots.
- ~~(3)~~ For all developments ~~not subject to subparagraph (2) and land divisions,~~ no rezoning permit, conditional use permit or building permit shall be issued for a development unless the impact fees set forth in § 20.08 are calculated and ~~collected~~ noticed for collection pursuant to this ordinance. ~~The Impact Fee shall be payable in full at the earliest time that zoning, conditional use, or building permits are issued.”~~

6. Subsection (6) entitled “Parkland Impact Fee” of Section 20.08 entitled “Schedule and Calculation of Impact Fees” of the Madison General Ordinances is created to read as follows:

“(6) Parkland Impact Fee.

- (a) In response to new and future development and population generating demands for new City parks, the Common Council hereby establishes a Parkland Impact Fee city-wide as the complementary mechanism to equitably require all new developments to dedicate land for necessary parks and open spaces under Section 16.23(8)(f), Madison General Ordinances, pay a Parkland Impact Fee in lieu of dedication for public acquisition of parkland, or a combination of both. Except for certain developments submitted to the City for approval prior to June 14, 2006, each new development within the corporate limits of the City shall be required to comply with both the parkland dedication requirements of Sec. 16.23(8)(f), Madison General Ordinances and this subsection. For purposes of the Parkland Impact Fee imposed under this subsection, a Park Needs Assessment has been prepared on a city-wide basis.
- (b) Calculation of the Impact Fee.
 1. The amount of the Parkland Impact Fee to be imposed by land dedication, fees in lieu of dedication or a combination of both shall be calculated based on the type and number of dwelling units estimated to be generated by the property at the time of development. The required land dedication and authorized credits to meet community park and open space needs shall be as provided in Section 16.23(8)(f), Madison General Ordinances.
 2. In the event that dedication thereunder would result in sites too small to be usable, or if the Comprehensive Plan calls for such public sites or open spaces to

be located elsewhere, or if such sites would not otherwise be suitable as determined by the Plan Commission, after recommendation of the Park Commission, a payment of a Parkland Impact Fee in lieu of land dedication shall be required for each parcel proposed for development. The amount of such fee in lieu of dedication shall be based on the fair market value of unimproved lands that would have been required for dedication, less any authorized credits, as determined in paragraph 1 above. The Parkland Impact Fee in lieu of dedication shall be limited to a maximum land value of one dollar ~~forty~~ seventy-four cents (\$~~1.40~~1.74) per square foot in 2006, and adjusted higher by five percent (5%) on January 1 of each year until collected.”

7. Section 20.09 entitled “Administration of Impact Fee” of the Madison General Ordinances is amended to read as follows:

“20.09 ADMINISTRATION OF IMPACT FEE.

(1) Collection Of Impact Fee.

- (a) For all unplatted lands, no final plat or certified survey map shall be certified as approved for recording unless the developer or land owner pays all impact fees in full, unless otherwise specified in this ordinance.
- (b) Prior to June 14, 2006, Ffor all developments not subject to subparagraph (a), (c) above or (d) herein, impact fees shall be payable prior to the earliest issuance of any zoning, conditional use, or building permit under Chapter 10, 28 or 29 of the Madison General Ordinances.
- (c) Prior to June 14, 2006, Ppayment of Park Development Impact Fees shall be in one lump sum prior to recording. As an alternative, when the Park Development Impact Fee exceeds twenty thousand dollars (\$20,000), the subdivider may pay fifty percent (50%) of the total amount prior to said recording and either file with the City Clerk an agreement and performance bond or a letter of credit in a form approved by the City Attorney to guarantee payment of the unpaid balance of the fee to the City within three (3) years of the date of said recording. If the unpaid balance is paid within two (2) years, there shall be no interest due the City; however, interest, at a rate determined by the City Comptroller based upon the greater of either an average or the most recent cost of borrowing during the second year, shall be paid on the unpaid balance during the third and final year in addition to payment of said unpaid balance. As a second alternative, when the park fee exceeds fifty thousand dollars (\$50,000), the subdivider may pay such fee in installments prior to execution of the subdivision improvement contract for each phase, with each such installment payment for the full amount of the respective phase.
- (d) Prior to June 14, 2006, Ppayment of any Sewer and Drainage Improvement or Stormwater Impact Fee shall be in one lump sum prior to recording. As an alternative, when the said Impact Fee exceeds twenty thousand dollars (\$20,000.00), the subdivider may pay such fee in installments prior to execution of the City’s subdivision improvement contract for each phase, with each such installment payment for the full amount of the respective phase adjusted for inflation as provided in sub. 20.08(3)(b) above.
- (e) Failure to pay the impact fees as provided herein subjects the developer or land owner to the penalties set out in § 16.23(12), Madison General Ordinances and voids any final plat or certified survey map approvals given under Subdivision (a) or building permits, zoning permits or conditional use permits issued under Subdivision (b).
- (f) On and after June 14, 2006, all impact fees imposed under this chapter that are not otherwise required to be paid by the developer or land owner as provided

above in this subsection shall be imposed upon each buildable lot in a development and shall be payable in full, at the annually adjusted rate then in effect, within fourteen (14) days of issuance of any zoning, conditional use or building permit under Chapter 10, 28 or 29 of the Madison General Ordinances. No certificate of occupancy may be issued for buildings on any parcel for which there are unpaid impact fees. Unpaid impact fees shall be special charges to the property owner at the time of permit issuance; and, if not so paid, shall become a lien as provided in Section 66.0627(4), Wisconsin Statutes, as of the date of such delinquency and shall be automatically extended upon the current or next tax roll as a delinquent tax against that real property parcel without further notice or hearing, and all proceedings in relation to the collection, return and sale of the property for delinquent real estate taxes shall apply to each such special charge. Alternatively, developers or land owners may, at their own option, elect to either pay any or all of the imposed impact fees at the time of recording, or pay any or all of the imposed impact fees or special charges at any other time prior to the issuance of the zoning, conditional use or building permit.”

8. Paragraph 1. entitled “Park and Open Space Dedication and Fees” of Subdivision (h) entitled “Fee and Dedication Schedule” of Subsection (5) entitled “Detailed Procedure For Dividing Land Within The City Limits” of Section 16.23 entitled “Land Subdivision Regulations” of the Madison General Ordinances is amended to read as follows:

“1. Park and Open Space Dedication and Fees. There shall be a dedication of land and/or payment of a fee for each single-family, duplex, and multiple family dwelling unit. The Park and Plan Commissions shall recommend and the Common Council shall determine the land dedication and fee payment as well as the location of any land dedication and the acceptance of fee in accordance with procedures in Section 16.23(8)(f) and Parkland Impact Fees in Sec. 20.08(6).”

9. Subsection (5) of Section 20.16 entitled “Credits” of the Madison General Ordinances is created to read as follows:

“(5) The City and a developer may mutually agree to allow credit against the Park Development Impact Fee for developer improvements to public parkland, based on the typical costs anticipated for such improvements by the City in its Needs Assessment for determining the fees. Where the developer proposes to improve a public park before the City would normally develop and maintain it, the developer shall agree to maintain the park for 3 years after completion. The developer may also receive credit against the Park Development Impact Fee for developer improvements to private parkland that qualifies for dedication credit under 16.23(8)(f)8. The credit shall be based on the costs anticipated for the typical standard for public improvements by the City in its Needs Assessment for determining the fees. The developer may choose to install additional improvements to the private park, beyond the typical city standard, at the developer’s expense without receiving credit.”

10. Paragraph 6. of Subdivision (h) entitled “Conditions and Guarantees” of Subsection (11) entitled “Conditional Uses” of Section 28.12 entitled “Administration and Enforcement” of the Madison General Ordinances is amended to read as follows:

“6. For residential development allowed as a conditional use, the Plan Commission shall require a dedication of land for park and recreation purposes or a fee in lieu of land dedication in accordance with the current standard for plats, land divisions and planned developments in Sec. 16.23(8)(f) and Parkland Impact Fees in Sec. 20.08(6). Credit shall be given for any prior dedication or fee paid thereunder.”