BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of adopting a resolution)
establishing parks and recreation charges)
within the unincorporated areas of Marion County)

RESOLUTION NO. 98-40R

This matter came before the Marion County Board of Commissioners at a public meeting on November 25, 1998, to consider establishing parks and recreation system development charges within the unincorporated areas of Marion County; and

WHEREAS, ORS Chapter 223 authorizes governmental units to establish parks system development charges; and

WHEREAS, the Board of County Commissioners has determined that it is in the public interest to provide for parks facilities through the use of system development charges; and

WHEREAS, system development charges are charges incurred upon the decision to develop property at a specific use, density and/or intensity, and the incurred charge equals, or is less than the actual cost of providing public facilities commensurate with the needs of the chosen use, density, and/or intensity; and

WHEREAS, decisions regarding uses, densities, and/or intensities cause direct and proportional changes in the amount of the incurred charge; and

WHEREAS, system development charges are separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment, or other fee provided by law or imposed as a condition of development; and

WHEREAS, system development charges are fees for services because they are based upon a development's receipt of services considering the specific nature of the development; and

WHEREAS, system development charges are imposed on the activity of development, not on the land, owner, or property, and, therefore, are not taxes on property or on a property owner as a direct consequence of ownership of property within the meaning of Section 11b, Article XI of the Oregon Constitution or the legislation implementing that section; and

WHEREAS, revenues from the system development charges are to be used for development and expansion of parks and recreation facilities to serve the growth-related needs in Marion County; now, therefore,

BE IT RESOLVED as follows:

SECTION ONE: Purpose. This resolution adopts the report entitled "Parks and Recreation Systems Development Charges Methodology Report" by Don Ganer & Associates dated October 23, 1998, and authorizes the collection of parks and recreation system development charges in the unincorporated areas of the County.

SECTION TWO: Definitions.

(A) "Applicant" shall mean the owner or other person who applies for a building or development permit within the boundaries of the unincorporated area of Marion County.

(B) "Building" shall mean any structure, either temporary or permanent, built for the support, shelter or enclosure of persons, chattels or property of any kind. This term shall include tents, trailers, manufactured housing units or any vehicles serving in any way the function of a building. This term shall not include temporary construction sheds or

trailers erected to assist in construction and maintained during the term of a building permit.

(C) “Building Permit” shall mean an official document or certificate authorizing the construction or siting of any building.

(D) “Capital Improvements” shall mean public facilities or assets used for Marion County Parks.

(E) “Citizen or Other Interested Person” shall mean any person whose legal residence is within the boundaries of the unincorporated area of Marion County, as evidenced by registration as a voter, or by other proof of residency; or a person who owns, occupies, or otherwise has an interest in real property which is located within the unincorporated area of Marion County, or is otherwise subject to the imposition of the parks system development charges, as outlined in this resolution.

(F) “Construction Cost Index” shall mean the Engineering News Record (Seattle) Construction Cost Index.

(G) “County” shall mean Marion County, Oregon.

(H) “Parks Director” shall mean the appointed Parks Director of Marion County, Oregon.

(I) “Development” shall mean a building or other land construction, or making a physical change in the use of a structure or land, in a manner which increases the usage of any capital improvements or which may contribute to the need for additional or enlarged capital improvements.

(J) “Development Permit” shall mean an official document or certificate, other than a building permit, authorizing development.

(K) “Duplex Unit” shall mean two attached single family dwelling units on a single lot.

(L) “Dwelling Unit” shall mean a building or a portion of a building constructed either on-site or off-site consisting of one or more rooms which include sleeping, cooking and plumbing facilities; and intended for human occupation by one house hold.

(M) “Encumbered” shall mean monies committed by contract or purchase order in a manner that obligates the County to expend the encumbered amount upon delivery of goods, the rendering of services, or the conveyance of real property provided by a vendor, supplier, contractor or Owner.

(N) “Improvement Fee” shall mean a fee for costs associated with capital improvements to be constructed after the effective date of the resolution. Notwithstanding anything in this resolution to the contrary, it is an incurred charge or cost based upon the use of or the availability for use of the systems and capital improvements required to provide services and facilities necessary to meet the routine obligations of the use and ownership of property, and to provide for the public health and safety upon development.

(O) “Manufactured Housing” shall mean a dwelling unit constructed primarily off-site and transported to another site for use. A unit located in a designated mobile home park shall be considered a manufactured housing dwelling unit; otherwise a manufactured housing unit shall be considered a single-family dwelling unit.

(P) “Multi-family housing” shall mean attached residential dwelling units.

(Q) “Owner” shall mean the person holding legal title to the real property upon which development is to occur.

(R) “Person” shall mean an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(S) “Qualified Public Improvement” shall mean land or a parks and recreation capital facility that is:

(1) Required as a condition of development approval; and

(2) Identified in the capital improvement plan adopted pursuant to this resolution; and either:

(a) Not located on or contiguous to property that is the subject of development approval; or

(b) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

(Q) “Reimbursement Fee” shall mean a fee for costs associated with capital improvements already constructed or under construction on the date of this resolution. Notwithstanding anything in this resolution to the contrary, it is an incurred charge or cost based upon the use of or the availability for use of the systems and capital improvements required to provide services and facilities necessary to meet the routine obligations of the use and ownership of property, and to provide for the public health and safety upon development.

(R) “Single-family housing” shall mean a detached residential dwelling unit located on an individual lot.

(S) “System Development Charge” shall mean a reimbursement fee, an improvement fee, or a combination thereof assessed or collected at the time of increased usage of a capital improvement or issuance of a development or building permit. System development charges are separate from and in addition to any applicable tax, assessment, fee in lieu of assessment, or other fee or charge provided by law or imposed as a condition of development.

(T) “System Development Charges Methodology” shall mean the methodology report adopted pursuant to this resolution.

SECTION THREE: <u>Rules of Construction</u>

(A) In case of any difference of meaning or implication between the text of this resolution and any caption, illustration, summary table, or illustrative table, the text shall control.

(B) The word “shall” is always mandatory and not discretionary: the word “may” is permissive.

(C) Words used in the present tense shall include the future; words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; and use of the masculine gender shall include the feminine gender.

(D) The phrase “used for” includes “arranged for”, “designed for”, “maintained for”, or “occupied for”.

(E) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction “and”, “or” or “either...or”, the conjunction shall be interpreted as follows:

(1) “And” indicates that all the connected terms, conditions, provisions or events shall apply.

(2) “Or” indicates that the connected items, conditions, or provisions or events may apply singly or in any combination.

(3) “Either...or” indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(F) The word “includes” shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

SECTION FOUR: <u>Applicability and Collection</u>

(A) A Parks System Development Charge is hereby imposed upon all new development for which a building permit is required within unincorporated area of Marion County. This shall include both new construction and alteration expansion or replacement of a building or dwelling unit if such alteration, expansion or replacement results in an increase in the number of dwelling units. For alterations, expansions and replacements, the amount of the system development charge to be paid shall be the difference between the rate for the proposed development and the rate that would be imposed for the development prior to the alteration, expansion or replacement.

(B) The amount of the Parks System Development Charges (SDC’s) shall be determined as identified in the methodology report adopted pursuant to this resolution. The SDC

rates shall be adjusted each year on January 1st, beginning January 1, 2000, to account for increases or decreases in costs according to the Seattle Area Engineering News Record Cost Index (ENR), unless otherwise adjusted based on an evaluation of the cost of constructing and/or acquisition of facilities, or the adoption of an updated methodology.

(C) The Parks SDC's shall be collected and paid in full upon application for a building permit.

(D) Applicants may submit alternative rates for system development charges, subject to the following conditions:

(1) In the event an applicant believes that the impact on County capital improvements resulting from the development is less than the fee established in Section Four (B) of this resolution, such applicant may submit a calculation of an alternative system development charge to the Parks Director.

(2) The alternative system development charges rate calculations shall be based on data, information and assumptions contained in this resolution and the adopted methodology or an independent source, provided that the independent source is:

(a) A local study supported by a data base adequate for the conclusions contained in such study, and

(b) The study is performed using a generally accepted methodology and is based upon generally accepted standard sources of information relating to facilities planning, cost analysis and demographics.

(3) If the Parks Director determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges

rates comply with the requirements of this Section by using a generally accepted methodology, the alternative system development charges rates shall be paid in lieu of the rates set forth in Section Four (B) of this resolution.

(4) If the Parks Director determines that the data, information and assumptions utilized by the applicant to calculate the alternative system development charges rates do not comply with the requirements of this Section or were not calculated by a generally accepted methodology, then the Parks Director shall provide to the Applicant (by Certified mail, return receipt requested) written notification of the rejection of the alternative system development charges rates and the reason therefor. The decision of the Parks Director shall be in writing and issued within ten (10) working days from the date all data is received for review.

(5) Any applicant who has submitted a proposed alternative system development charges rate pursuant to this Section and desires the immediate issuance of a building permit, development permit, or connection shall pay the applicable system development charges rates pursuant to Section Four (B). Said payment shall be deemed paid under “protest” and shall not be construed as a waiver of any right of review. Any difference between the amount paid and the amount due, as determined by the Parks Director, shall be refunded to the applicant. In no event shall any refund under this sub-section exceed the amount originally paid by the applicant.

SECTION FIVE: <u>Credits for Developer Contributions of Qualified Public Improvements</u>.

(A) The County may grant a credit against the improvement fee component of system development charges imposed pursuant to Section Four for the donation of land for, or for the construction of, any qualified public improvements. A qualified public improvement is land or a capital facility which is:

(1) Required as a condition of development approval; and

(2) Identified in the capital improvement plan adopted pursuant to this resolution; and either

(3) (a) Not located on or contiguous to property that is the subject of development approval, or

(b) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the
particular development project to which the improvement fee is related.

(B) Prior to issuance of a building permit, the applicant shall submit to the County a proposed plan and estimate of cost for contributions of qualified public improvements. The proposed plan and estimate shall include:

(1) A designation of the development for which the proposed plan is being submitted;

(2) A legal description of any land proposed to be donated and a written appraisal prepared in conformity with Section Five (C)(1);

(3) A list of the contemplated capital improvements contained within the plan;

(4) An estimate of proposed construction costs certified by a professional architect or engineer; and

(5) A proposed time schedule for completion of the proposed plan.

(C) The credit provided for construction of a qualified public improvement shall be only for the cost of that portion of such improvement that exceeds the minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit. The amount of credit shall be determined according to the following standards of valuation:

(1) The value of donated lands shall be based upon a written appraisal of fair market value by a qualified and professional appraiser based upon comparable sales of similar property between unrelated parties in a bargaining transaction; and

(2) The cost of anticipated construction of qualified public improvements shall be based upon cost estimates certified by a professional architect or engineer.

(D) If a donation or construction of a qualified public improvement gives rise to a credit amount greater than the amount of the parks SDC that would otherwise be levied against the project receiving development approval, the excess credit may be applied against parks SDC's that accrue in subsequent phases of the original development project. Any excess credit must be used not later than ten years from the date the credit is given.

(E) The decision of the County as to whether to accept the proposed plan of contribution and the value of such contribution shall be in writing and issued within fifteen (15)

working days of the date all data is received for review. Notification shall be provided to the applicant via regular mail.

(F) Any applicant who submits a proposed plan pursuant to this Section and desires the immediate issuance of a building permit shall pay the applicable system development charges. Said payment shall be deemed paid under "protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due, as determined by the Parks Director, shall be refunded to the applicant. In no event shall any refund under this sub-section exceed the amount originally paid by the applicant.

SECTION SIX: Receipt and Expenditure of System Development Charges

(A) **Trust Accounts.** The County hereby establishes a separate trust account to be designated as the "Parks and Recreation SDC Account", which shall be maintained separate and apart from all other accounts of the County. All system development charge payments shall be deposited into the appropriate trust account immediately upon receipt.

(B) **Use of System Development Charges.** The monies deposited into the account designated as the "Parks and Recreation SDC Account" shall be used solely for the purpose of providing parks capital improvements which are identified in an adopted capital improvement plan and which provide for the increased capacity necessitated by development. Such expenditures may include, but are not limited to:

(1) Design and construction plan preparation;

(2) Permitting and fees;

(3) Land and materials acquisition, including any costs of acquisition or condemnation;

(4) Construction of capital improvements;

(5) Design and construction of new drainage facilities required by the construction of capital improvements and structures;

(6) Relocating utilities required by the construction of improvements and structures;

(7) Landscaping;

(8) Construction management and inspection;

(9) Surveying, soils and material testing;

(10) Acquisition of capital equipment;

(11) Repayment of monies transferred or borrowed from any budgetary fund of the County which were used to fund any of the capital improvements as herein provided;

(12) Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the County to fund capital improvements;

(13) Direct costs of complying with the provisions of ORS 223.297 to 223.314, including the consulting, legal, and administrative costs required for developing and updating the system development charges methodology report,

resolution/resolution, and capital improvements master plan; and the costs of collecting and accounting for system development charges expenditures.

(C) **Investment of Trust Account Revenues.** Any funds on deposit in system development charges trust accounts which are not immediately necessary for expenditure shall be invested by the County. All income derived from such investments shall be deposited in the system development charges trust accounts and used as provided herein.

(D) **Refunds of Parks System Development Charges.** System development charges shall be refunded in accordance with the following requirements:

(1) An applicant or owner shall be eligible to apply for a refund if:

(a) The building permit has expired and the development authorized by such permit is not complete; or

(b) The system development charges have not been expended or encumbered prior to the end of the fiscal year immediately following the tenth anniversary of the date upon which such charges were paid. For the purposes of this Section, system development charges collected shall be deemed to be expended or encumbered on the basis of the first system development charges in shall be the first system development charges out.

(2) The application for refund shall be filed with the County and contain the following:

(a) The name and address of the applicant;

(b) The location of the property which was the subject of the system development charges;

(c) A notarized sworn statement that the petitioner is the then current owner of the property on behalf of which the system development charges were paid, including proof of ownership, such as a certified copy of the latest recorded deed;

(d) The date the system development charges were paid;

(e) A copy of the receipt of payment for the system development charges; and, if appropriate,

(f) The date the building permit was issued and the date of expiration.

(3) The application shall be filed within ninety (90) days of the expiration of the building permit, or within (90) days of the end of the fiscal year following the tenth anniversary of the date upon which the system development charges were paid. Failure to timely apply for a refund of the system development charges shall waive any right to a refund.

(4) Within thirty (30) days from the date of receipt of a petition for refund, the County will advise the petitioner of the status of the request for refund, and if such request is valid, the system development charges shall be returned to the petitioner.

(5) A building permit which is subsequently issued for a development on the same property which was the subject of a refund shall pay the systems development charges as required by this resolution.

(E) **Annual Accounting Reports.** The County shall prepare an annual report accounting for system development charges, including the total amount of system development charges revenue collected in the trust accounts, and the capital improvement projects that were funded.

(F) **Challenge of Expenditures.** Any citizen or other interested person may challenge an expenditure of system development charges revenues.

(1) Such challenge shall be submitted, in writing, to the County for review within two years following the subject expenditure, and shall include the following information:

(a) The name and address of the citizen or other interested person challenging the expenditure;

(b) The amount of the expenditure, the project, payee or purpose, and the approximate date on which it was made; and

(c) The reason why the expenditure is being challenged.

(2) If the County determines that the expenditure was not made in accordance with the provisions of this resolution and other relevant laws, a reimbursement of system development charges trust account revenues from other revenue sources shall be made within one year following the determination that the expenditures were not appropriate.

(3) The County shall make written notification of the results of the expenditure review to the citizen or other interested person who requested the review within ten (10) days of completion of the review.

SECTION SEVEN: <u>Appeals and Review Hearings</u>

(A) An applicant who is required to pay system development charges shall have the right to request a hearing to review the denial of any of the following:

(1) An alternative rate calculation pursuant to Section Four (D).

(2) A proposed credit for contribution of qualified public improvements pursuant to Section Five.

(B) Such hearing shall be requested by the applicant within thirty (30) days of the date of first receipt of the denial. Failure to request a hearing within the time provided shall be deemed a waiver of such right.

(C) The request for hearing shall be filed with the Marion County Parks Director and shall contain the following:

(1) The name and address of the applicant;

(2) The legal description of the property in question;

(3) If issued, the date the building permit or development permit was issued;

(4) A brief description of the nature of the development being undertaken pursuant to the building permit or development permit;

(5) If paid, the date the system development charges were paid; and

(6) A statement of the reasons why the applicant is requesting the hearing.

(D) Upon receipt of such request, the County shall schedule a hearing before the Board of Commissioners at a regularly scheduled meeting or a special meeting called for the

purpose of conducting the hearing and shall provide the applicant written notice of the time and place of the hearing. Such hearing shall be held within forty-five (45) days of the date the request for hearing was filed.

(E) Such hearing shall be before the Board of Commissioners and shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedures and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.

(F) Any applicant who requests a hearing pursuant to this Section and desires the immediate issuance of a building permit or development permit shall pay prior to or at the time the request for hearing is filed the applicable system development charges. Said payment shall be deemed paid under “protest” and shall not be construed as a waiver of any review rights.

(G) An applicant may request a hearing under this Section without paying the applicable system development charges, but no building permit or development permit shall be issued until such system development charges are paid in the amount initially calculated or the amount approved upon completion of the review provided in this Section.

SECTION EIGHT: <u>Severability</u> If any clause, section or provision of this resolution shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said resolution shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

SECTION NINE: Effective Date This resolution shall take effect on the 25th day of November, 1998.

DATED this 25th day of November, 1998.

MARION COUNTY BOARD
OF COMMISSIONERS

_____
Chairperson

_____
Commissioner

_____
Commissioner