

# ORDINANCE 1591

## **AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, RELATING TO PARK IMPACT FEES; REPEALING ORDINANCE NO. 1328 AND REPEALING AND READOPTING CHAPTER 17.36 OF THE NORTH BEND MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, RCW 82.02.050 through 82.02.100 authorize the City to impose various fees for the purpose of mitigating the impact of development activity, including park impact fees; and

**WHEREAS**, to ensure that adequate park facilities are available to accommodate expected growth, the City Council recognized that the cost of constructing and maintaining park facilities must be shared by the public and private sectors, and that a proportionate share of the costs for adequate park facilities necessitated by the impacts of new development should be borne by applicants through the imposition of park impact fees; and

**WHEREAS**, on September 16, 2008, the City adopted Ordinance 1328 establishing park impact fees for the construction of new residential units and adopting a new North Bend Municipal Code (“NBMC”) Chapter 17.36; and

**WHEREAS**, on December 8, 2009, the City adopted Ordinance 1373, amending Ordinance 1328 and updating the timing for collection of park impact fees; and

**WHEREAS**, the City has not updated the park impact fees since 2008, and the City Council finds that it is necessary to recalculate the park impact fees to account for inflation, and to provide for annual adjustment to continue to address inflation; and

**WHEREAS**, overnight visitors to the City also enjoy the use of park facilities, and the addition of hotels and motels within the City will increase impacts on park facilities; and

**WHEREAS**, the City Council finds that the proportionate cost of constructing and maintaining park facilities are reasonably related to the impacts of commercial development of hotels and motels, and that park facilities provide a reasonable benefit to owners, operators and guests of hotels within the City; and

**WHEREAS**, the City engaged FCS Group to determine an equitable impact fee that it can impose on new hotels and motels to reflect the incremental burden of overnight guests on the park system and to provide an appropriate adjustment factor to reflect the cost escalation of Park Impact Fees from 2008 to present; and

**WHEREAS**, in a rate study dated April 19, 2016 (“Rate Study”), FCS Group determined that the equitable park impact fee for hotels and motels, based on the City’s 2008 unit charge of \$1,559 per capita, would be \$1,559 per guestroom, prior to adjusting for inflation; and

**WHEREAS**, the Rate Study concluded that the appropriate cost escalator for park impact fees based on land costs and construction costs results in a blended increase in park impact fee rates of 14 percent from the 2008 rates; and

**WHEREAS**, the City finds it appropriate to amend its impact fee provisions to include hotels and motels within the categories of development subject to park impact fees and to provide for annual adjustment of park impact fees to account for inflation (the “Park Impact Fee Amendments”); and

**WHEREAS**, in 2011 the state legislature amended RCW 82.02.080 to extend the time permitted to spend collect impact fees from six years to ten years, and the City desires to amend its impact fee provisions accordingly; and

**WHEREAS**, Chapter 17.36 NBMC authorizes the City to adopt park impact fees by ordinance, and Ordinance 1328, as amended by Ordinance 1373, currently operates as a stand-alone ordinance and is not incorporated into the City Code; and

**WHEREAS**, state law permits the City to codify its ordinances and amend the codification with the adoption of new material (RCW 35.21.560); and

**WHEREAS**, the City desires to codify the provisions of Ordinance 1328, as amended by Ordinance 1373, with the updated rates and provisions established by this Ordinance; and

**WHEREAS**, on May 17, 2016, the proposed Park Impact Fee Amendments were considered by the Community and Economic Development Committee, which recommended approval; and

**WHEREAS**, on June 21, 2016, during its regularly scheduled meeting, the City Council held a public hearing on the proposed Park Impact Fee Amendments;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1. Ordinance 1328 Repealed and NBMC 17.36 (Park Impact Fees) Repealed and Re-Adopted:** City of North Bend Ordinance No. 1328 and Chapter 17.36 of the North Bend Municipal Code are hereby repealed in their entirety, and a new Chapter 17.36 NBMC, entitled Park Impact Fees, is hereby adopted to read as follows:

**Chapter 17.36  
PARK IMPACT FEES**

Sections:

- 17.36.010 Park impact fees authorized – Cross references.
- 17.36.020 Findings and Purpose.
- 17.36.030 Definitions.
- 17.36.040 Fee imposed – Applicability.
- 17.36.050 Exemptions.
- 17.36.060 Park impact fee program elements.
- 17.36.070 Fee calculation methods.
- 17.36.080 Fee collection.
- 17.36.090 Park impact fee accounts and refunds.
- 17.36.100 Processing.
- 17.36.110 Other authority.
- 17.36.120 Appeals.

**17.36.010 Park impact fees authorized – Cross references.**

A. The city council of the city of North Bend, Washington, is hereby authorized to adopt, pursuant to the authority of Chapter 82.02 RCW, an ordinance creating and setting park impact fees. Any such ordinance shall provide for the method of calculating said fees and shall contain reasonable rules and procedures.

B. The city clerk is authorized to reference any park impact fee so established by ordinance in any future taxes, rates and fees schedule ordinance of the city.

**17.36.020 Findings and Purpose.**

The City Council of the City of North Bend finds and determines that growth and development activity in the City will create additional demand and need for Park Facilities in the City, and the Council finds that growth and development activity should pay a Proportionate Share of the cost of such facilities needed to serve the growth and development activity. Therefore, pursuant to the Growth Management Act (Chapter 36.70A RCW), and RCW 82.02.050 through RCW 82.02.100, which authorize cities to impose and collect impact fees to partially fund public facilities to accommodate new growth, the Council adopts this chapter to impose Park Impact Fees for Park Facilities as set forth in NBMC 17.36.080. The provisions of this chapter shall be liberally construed in order to carry out the purposes of the Council in establishing Park Impact Fees.

**17.36.030 Definitions.** For the purposes of this chapter, the words set out in this chapter shall have the following meanings:

A. *Affordable Housing:* Housing is considered “affordable” to a family if it costs no more than thirty percent (30%) of the family’s income. The income groups that are the focus of Affordable Housing are Low and Moderate Income families, as follows:

1. *Low Income:* A family earning between zero percent (0%) and fifty percent (50%) of the King County Median Household Income.

2. *Moderate Income:* A family earning between fifty percent (50%) and eighty percent (80%) of the King County median household income. “Median income” means the median income for the Seattle metropolitan statistical area (King County), as most recently determined by the Secretary of Housing and Urban Development (HUD) under Section 8(f)(3) of the United States Housing Act of 1937, as amended, or if programs under said Section 8(f)(3) are terminated, median income determined under the method used by the Secretary prior to such termination.

B. *Capital Facilities Element:* The capital facilities plan adopted by the City Council as part of the City’s Comprehensive Plan, and its amendments.

C. *Comprehensive Plan:* The City of North Bend Comprehensive Plan adopted by Ordinance, including any adopted amendments.

D. *Conditions of Approval:* As they apply to Park Impact Fee evaluations, those conditions necessary to ensure that the proposed Development will not cause the Parks Level of Service to fall below the standards adopted in the Comprehensive Plan. The Conditions of Approval shall be binding upon the approval of any permit application for which this Ordinance is applicable as described in Section 3 of this Ordinance.

E. *Development:* Construction of any new residential building, structure, or unit, or any hotel or motel, that requires review and approval of a Development Permit.

F. *Development Permit*: Includes, but is not limited to any short plat, subdivision, Binding Site Plan, Site Plan, building permit or other land use permit with a residential component, or any written authorization from the City that authorizes the commencement of Development that includes new residential uses, excluding an Accessory Dwelling Unit.

G. *Director*: The Director of the Department of Community and Economic Development or his/her designee.

H. *Financial Commitment*: Any form of binding and enforceable financial obligation that is acceptable to the City, and provided to the City at the time of Development approval.

I. *Park Facilities*: Includes all publicly owned parks, open space and recreation areas within the City limits.

J. *Park Impact Fee*: The payment of money imposed upon Development as a condition of or concurrent with the approval of a Building Permit to pay for Park Facilities needed to serve new growth and Development, and that is reasonably related to the additional demand and need for facilities created by the new Development, that is a Proportionate Share of the costs of the facilities, and that is used for facilities that reasonably benefit the new Development. “Park Impact Fee” does not include any other applicable permit or application fee.

K. *Level of Service (LOS)*: The relationship between Park Facilities and service provision within the City, as specified in the City’s Comprehensive Plan.

L. *Proportionate Share*: That portion of the cost of public facility improvements and facilities that is reasonably related to the service demands and needs of new Development. For any particular Development, the proportionate share will depend on the type of the Development within the City.

M. *Service Area*: For the purposes of this Ordinance, the Service Area shall be the entire area within the City limits of North Bend.

**17.36.040 Fee Imposed – Applicability.** There is imposed, at the time of issuance of each and every Building

Permit for construction of each and every new residential unit or hotel/motel, created subsequent to September 16, 2008, a Park Impact Fee in an amount as set forth in the then-current North Bend Taxes, Rates and Fees Schedule.

**17.36.050 Exemptions.** The following Development is exempt from the requirements of this chapter:

A. *Affordable Housing.* A Development Permit for Affordable Housing, which includes Low and Moderate Income, as defined in NBMC 17.36.030, shall not be assessed a park impact fee as follows:

1. As a condition of receiving an exemption under this section, the owner shall execute and record in King County's real property title records a City-approved lien, covenant, or other contractual provision against the property that provides that the proposed housing unit or Development will continue to be used for Low or Moderate Income housing and remain affordable to those households for a period of not less than thirty years. The lien, covenant, or other contractual provision shall run with the land and apply to subsequent owners and assigns.

2. Any claim or request for an exemption under this section shall be made no later than the time of application for a building permit. If a building permit is not required for the Development, then the claim shall be made when the first Development Permit is applied for. Any claim not made when required by this section shall be deemed waived.

B. *Accessory Dwelling Units.* A Development Permit for an accessory dwelling unit, as defined in NBMC 18.06.030, shall not be assessed a Park Impact Fee.

C. *Change of Use.* A Development Permit for a change of use that has less impact, as determined by the Director, than the existing use shall not be assessed a Park Impact Fee.

D. *City Projects.* A Development Permit for a City project shall not be assessed a Park Impact Fee.

E. *Pending Development Permit.* An application for a Development Permit shall not be assessed a Park Impact Fee if one or both of the following has occurred: 1) the City and applicant have negotiated park mitigation for the

subject of the Development Permit prior to September 29, 2008; or 2) the applicant has provided park mitigation for the subject of the Development Permit prior to September 29, 2008.

**17.36.060 Park impact fee program elements.**

A. The City shall impose and collect Park Impact Fees on every Development Permit within the City limits, except as provided in NBMC 17.36.050.

B. Any Park Impact Fee imposed shall be reasonably related to the impact caused by the new Development and shall not exceed a Proportionate Share of the cost of Park Facilities that are reasonably related to the new Development.

C. The Park Impact Fee imposed may include costs for Park Facility improvements previously incurred by the City to the extent that new Development will be served by the previously constructed improvements, provided that such fee shall not be imposed to correct any system improvement deficiencies.

D. The Park Impact Fee imposed for any Development shall be calculated and determined by the procedures established by this chapter.

E. Park Impact Fees shall be used for Park Facilities that will reasonably benefit the new development, and only for those Park Facilities addressed by the City's Capital Facilities Element of the Comprehensive Plan.

**17.36.070 Fee calculation methods.**

A. Each Development application shall mitigate its impacts on the City's Park Facilities by payment of the Park Impact Fee.

B. All data and other information necessary to determine Park Impact Fee amounts will be made available to the public. Forms and procedures will be established administratively.

**17.36.080 Fee Collection.**

A. At the time of application for a Development Permit, the Park Impact Fee shall be:

Single Family Residential	\$4,634
Cottage Housing; Multi-Family Residential; Condominium; Mobile/Manufactured Home (per housing unit)	\$3,922
Hotel/Motel (per guestroom)	\$1,782

The Impact Fees are based upon a rate study. No Development Permit shall be issued until the Park Impact Fee has been paid in full by the applicant; provided, that payment of fees may be proportionately phased if the Development Permit for the Development is also phased. The Park Impact Fee shall be collected by the City, and maintained in a separate account, as required NBMC 17.36.090.

B. An inflationary adjustment shall be made in the fee rates at the beginning of each calendar year. This annual inflationary adjustment shall be the same percentage amount as the change in the Engineering News Record Construction Cost Index for the Seattle area from the date of the previous year's adjustment.

**17.36.090 Park impact fee accounts and refunds.**

A. Park Impact Fee receipts shall be earmarked specifically and retained in a special interest bearing account established by the City solely for Park Impact Fees. All interest shall be retained in the account and expended for the purpose or purposes for which said fees were imposed. Annually, the City shall prepare a report on the source and amount of all Park Impact Fees collected, interest earned, and the Park Facilities that were financed in whole or in part by said fees.

B. Park Impact Fees shall be expended by the City only in conformance with the Capital Facilities Element of the Comprehensive Plan.

C. Park Impact Fees shall be expended or encumbered by the City for a permissible use within ten years of receipt by the City, unless there exists an extraordinary or compelling reason for said fees to be held longer than ten years. Such extraordinary or compelling reasons shall be identified in written findings by the City.

D. The City shall refund to the payer Park Impact Fees if the City fails to expend or encumber the Fees on Park

Facilities within the Service Area within ten years, or any extended period pursuant to subsection (C) of this section, of receipt of the Fees by the City. In determining whether Park Impact Fees have been encumbered, such fees shall be considered encumbered on a first in, first out basis.

E. An owner's or other payer's request for a refund must be submitted to the City in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever date is later. Any Park Impact Fees that are not expended or encumbered by the City in conformance with the Capital Facilities Element within these time limitations, and for which no application for a refund has been made within this one year period, shall be retained and expended consistent with the provisions of this Section. Refunds of Park Impact Fees shall include the interest actually earned by the City on such fees.

F. Should the City repeal any or all Park Impact Fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded pursuant to this Section. Upon the repeal of any or all Park Impact Fee requirements, the City shall place notice of such repeal and the availability of refunds in a newspaper of general circulation at least two times and shall notify all payers by first-class mail to the last known address of such payers. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the City, and must be expended by the City consistent with the provisions of this chapter. The notice requirements set forth above shall not apply if there are no unexpended or unencumbered balances within the account being terminated.

G. An applicant may request and shall receive a refund, including interest actually earned by the City on the Park Impact Fees, when:

1. The applicant does not proceed to finalize the Development; and
2. No impact on the City has resulted. "Impact" shall be deemed to include cases where the City has expended or encumbered the Park Impact Fees in good faith prior to the application for refund. In the event that the City has expended or encumbered the Park Impact Fees in good

faith, no refund shall be made; provided, however, within a period of three years, if the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner or other payer shall be eligible for a credit. The owner or other payer must petition the City and provide receipts of Park Impact Fees paid by the owner for a development of the same or substantially similar nature on the same property or some portion thereof. The City shall determine whether to grant a credit, and such determinations may be appealed by following the procedures set forth in NBMC 17.36.120.

H. Interest due upon the refund of Park Impact Fees required by this chapter shall be calculated according to the average rate received by the City on invested funds throughout the period during which the Park Impact Fees were retained.

**17.36.100 Processing.** The City shall determine any applicable Park Impact Fees as a normal part of processing a Development Permit.

**17.36.110 Other authority.** Nothing in this chapter is intended to limit the City's authority under the State Environmental Policy Act or any other source.

**17.36.120 Appeals.** A Park Impact Fee may be appealed under the appeal process for the underlying Development Permit set forth in the North Bend Municipal Code. Where no other administrative appeal process is available, an appeal may be taken to the hearing examiner using the appeal procedures for variances.

**Section 2. Update to Taxes, Rates and Fees Schedule:** The City Clerk is hereby directed to update the North Bend Taxes, Rates and Fees Schedule consistent with the provisions of this Ordinance.

**Section 3. Severability:** Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 4. Effective Date:** This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 21<sup>ST</sup> DAY OF JUNE, 2016.**

**CITY OF NORTH BEND:**

**APPROVED AS TO FORM:**

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**Kenneth G. Hearing, Mayor**

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**Michael R. Kenyon, City Attorney**

**ATTEST/AUTHENTICATED:**

Published: June 29, 2016

Effective: July 4, 2016

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**Susie Oppedal, City Clerk**