



Parks and Recreation System Development Charges

Administrative Procedures Guide

August 10, 2022

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SECTION 1. PURPOSE OF ADMINISTRATIVE PROCEDURES GUIDE.

- A. Future growth within the Tualatin Hills Park & Recreation District (THPRD or the district) should contribute to its fair share of the cost of improvements and additions to parks and recreation facilities needed to accommodate such growth.
- B. Parks and recreation system development charges (SDCs) will provide a source of revenue to finance the construction or improvements of THPRD's parks and recreation facilities necessitated by growth.
- C. ORS 223.297-223.314 authorize local governments, including special districts, to impose system development charges for parks and recreation.
- D. The district Board of Directors adopted a 2020 SDC Methodology Report by Resolution 2020-25 on November 12, 2020.
- E. This Administrative Procedures Guide (APG) will provide procedures for implementation and administration of SDCs for new development within the district.

SECTION 2. DEFINITIONS.

“Accessory dwelling unit” is a second dwelling unit that occupies the same lot with a dwelling unit and that is subordinate to the primary dwelling. For the purposes of charging park SDCs, an accessory dwelling unit (“ADU”) shall be defined consistent with the permitting jurisdiction.

“Affordable Housing” shall be housing that meets the criteria in Resolution 2020-24 in that it is restricted to those earning 30% or less than the Median Family Income (MFI) or 60% MFI or less, as calculated by the United States Department of Housing and Urban Development, and includes a deed restriction in favor of the permitting jurisdiction requiring such income restrictions for a period of at least 60 years.

“Administrator” shall be the general manager or the general manager's designee and shall be responsible with the management and implementation of the SDC program and the APG.

“Alternative SDC” shall mean an SDC established pursuant to Section 6.

“Applicant” means the owner or other person, including any business or corporation, who applies a building permit in the City of Beaverton or areas of Washington County within the district service boundary.

“Assisted living facility” means a facility providing skilled care for residents requiring a range of supportive personal and health services.

“Building” means any structure built and maintained for the support, shelter or enclosure of persons or property of any kind. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a building permit.

“Building Official” means that person, or designee, certified by the State of Oregon and designated as such to administer the State Building Codes for the City or County.

“Building permit” means an official permit or certificate issued by a Building Official of the permitting jurisdiction authorizing the construction or siting of any building or structure.

“Capital improvements” means public facilities or assets used for parks and recreation.

“Citizen or other interested party” means any person whose legal residence is within the boundaries of the district, as evidenced by registration as a voter within the district or by other proof of residency; or a person who owns, occupies or otherwise has an interest in real property that is located within district boundaries or is otherwise subject to the imposition of park SDCs, as outlined in Section 5.

“City” means the City of Beaverton, Oregon.

“Condition of development approval” is any requirement imposed on an applicant by a City or County land use or limited land use decision, or site plan approval.

“County” means Washington County, Oregon.

“Continuing care retirement community” is a building or group of buildings providing a continuity of residential occupancy and health care for elderly persons. This facility includes dwelling units for independent living, assisted living facilities, congregate care, plus a skilled nursing care facility of a suitable size to provide treatment or care of the residents; it may include ancillary facilities for the further enjoyment, service or care of the residents. The facility is restricted to persons over a certain age or couples (either married or domestic) where one of the spouses or partners is over a certain age.

“Credit” means the amount by which an applicant may be able to reduce the SDC fee, as provided in Section 7 of this APG.

“Development” means a building or other land construction, or making physical change in the use of a structure or land, in a manner that increases the usage of parks and recreation capital improvements or that may contribute to the need for additional or enlarged parks and recreation capital facilities.

“District” means the Tualatin Hills Park & Recreation District, an Oregon special district.

“District board” means the duly elected Board of Directors of the district.

“Dwelling unit” means a building or portion of a building consisting of one or more rooms including sleeping, cooking and plumbing facilities arranged and designed as permanent living quarters for one or more persons.

“Dwelling unit, attached” or **“attached dwelling unit”** means a dwelling unit that is attached to one or more dwelling units by one or more common walls. This definition also includes, but is not limited to, “duplex,” “townhouse,” and “row house.”

“Dwelling unit, detached single-family,” “detached single-family dwelling unit” or **“single-family dwelling unit”** means a dwelling unit that is not attached to any other dwelling unit or building.

“Dwelling unit, duplex” or **“duplex”** means one-half of a single building consisting of two dwelling units attached by a common wall.

“Dwelling unit, multi-family” or **“multi-family dwelling unit”** means a structure that contains two or more dwelling units that share common walls or floor/ceilings with one or more dwelling units. The land underneath the multi-dwelling structure may or may not be divided into separate lots. Multi-dwelling structures includes structures commonly called garden apartments, apartments, duplexes, tri- or quad-plexes, town or row houses and condominiums.

“Dwelling unit, single room occupancy” means a portion of a building consisting of one or more rooms including sleeping facilities with a shared or private bath, and shared cooking facilities and shared living/activity area. This definition also includes, but is not limited to “assisted living facility.”

“General Manager” means the chief executive officer of the district.

“Improvement fee” means a fee for costs associated with capital improvements to be constructed after the effective date of this APG. **“Manufactured dwelling”** or **“manufactured housing”** means a dwelling unit constructed off-site that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes, and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

“Manufactured dwelling park” means any place where two or more manufactured or mobile homes are located on a lot, tract, or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person.

“New development” means development for which a building permit is required.

“Non-residential development” means any development that does not include one or more dwelling units.

“Over-capacity” means that portion of an improvement that is built larger or with greater capacity than is necessary to serve the applicant’s new development or mitigate for parks and recreation system impacts attributable to the applicant’s new development.

“Owner” means the owner or owners of record of real property as shown on the tax rolls of Washington County, or a person purchasing a piece of property under contract. For the purposes of this APG in terms of violations and binding agreements between the district and the owner, the “owner” shall mean the leaseholder, tenant or other person in possession or control of the premises or property at the time of the agreement or violation of agreement or the provisions of this APG.

“Permit” means a building permit.

“Permitting Jurisdiction” means the jurisdiction – either the City of Beaverton or Washington County – issuing a building permit.

“Previous use” means the most intensive use conducted at a particular property within the past 24 months prior to the date of application for a building permit. Where the site was used simultaneously for several different uses (mixed use) then, for the purposes of this APG, all of the specific use categories shall be considered. Where the previous use is composed of a primary use with one or more ancillary uses that support the primary use and are owned and operated in common, that primary use shall be deemed to be the sole use of the property.

“Proposed use” means the use proposed by the applicant for the new development or for a change in use of a property or structure. Where the applicant proposes several different uses (mixed use), all of the specific use categories shall be considered. Where the proposed use is composed of a primary use with one or more ancillary uses that support the primary proposed use and are owned and operated in common, that primary use shall be deemed to be the sole proposed use of the property.

“Qualified public improvement” means any parks and recreation system capital facility or conveyance of an interest in real property that increases the capacity of the district’s parks and recreation system, and is:

1. Required as a condition of development approval; and
2. Identified in the district’s SDC Capital Improvement Projects List and either is:
 - 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, in the opinion of the administrator, is required to be built larger or with greater capacity (over-capacity) than is necessary for the applicant’s new development or to mitigate for parks and recreation system impacts attributable to the applicant’s new development.

“Remodel” or “remodeling” means to alter, expand or replace an existing structure.

“Senior Housing” means independent living restricted to persons over a certain age or couples (either married or domestic) where one of the spouses or partners is over a certain age. Senior housing may be part of a continuing care facility.

“SDC Capital Improvement Projects List (SDC-CIP)” means the district adopted by Resolution No 2020-27 that identifies all of the major parks and recreation improvements projected to be funded with SDC revenues through 2040, and includes the estimated cost, timing, and percentage of costs eligible for funding from SDC revenues for each project.

“SDC Credit Agreement” means the required agreement to receive credits pursuant to Section 7 in exchange for the donation of land and/or construction of qualified public improvements or approved projects on the SDC-CIP list.

“SDC Methodology Report” means the district report entitled Parks and Recreation System Development Charges Methodology Update, dated November 12, 2020 adopted by resolution No. 2020-25.

SECTION 3. RULES OF CONSTRUCTION.

For the purposes of administration and enforcement of this APG, unless otherwise stated in this APG, the following rules of construction apply:

- A. In case of any difference of meaning or implication between the text of this APG 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 number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- D. The phrase “used for” includes “arranged for,” “designed for,” “intended for,” “maintained for,” or “occupied for.”
- E. Where a regulation involves two or more connected items, conditions, provisions, or events:
 - 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.
- 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.
- G. The word “structure” includes the word “building.”
- H. The words “land,” “property,” “site,” “lot,” and “premises” are used interchangeably unless the context clearly indicates to the contrary.
- I. The words “proposal,” “application,” and “request” are used interchangeably unless the context clearly indicates to the contrary.

SECTION 4. SDC RATES, ANNUAL COST ADJUSTMENT AND METHODOLOGY.

A. SDC Rates.

- 1. As of the adoption of Resolution 2022-08 (adopting the updated system development charge methodology), the residential rates are set forth in the following Table 1 and Table 2 sets forth the non-residential rates. These rates shall be annually adjusted pursuant to Section 4.A.2.

Table 1: Residential SDCs (Resolution 2022-08)

*FY2022/23 Residential SDC Schedule**

Development Type	Persons per Unit	SDC ¹	SDC w/Admin Charge ²
Residential \$/Dwelling Unit			
District-Wide			
<i>Single-Family</i>			
Class Average Basis	2.68	\$12,264	\$12,583
SQ FT Category Basis			
<1,500 SQFT	2.12	\$9,701	\$9,954
1,500-2,500 SQFT	2.50	\$11,440	\$11,738
2,501-3,500 SQFT	2.85	\$13,042	\$13,381
>3,500 SQFT	3.05	\$13,957	\$14,320
<i>Multifamily</i>	2.01	\$9,198	\$9,437
North Bethany			
<i>Single-Family</i>			
Class Average Basis	2.68	\$14,611	\$14,991
SQ FT Category Basis			
<1,500 SQFT	2.12	\$11,558	\$11,859
1,500-2,500 SQFT	2.50	\$13,630	\$13,984
2,501-3,500 SQFT	2.85	\$15,538	\$15,942
>3,500 SQFT	3.05	\$16,629	\$17,061
<i>Multifamily</i>	2.01	\$10,959	\$11,243
Other Housing			
District-Wide			
<i>Accessory Dwelling Units</i>	1.09	\$4,988	\$5,118
<i>Senior Housing</i>	1.50	\$6,864	\$7,043
North Bethany			
<i>Accessory Dwelling Units</i>	1.09	\$5,943	\$6,097
<i>Senior Housing</i>	1.50	\$8,178	\$8,391

*All figures are rounded to nearest dollar

¹Includes compliance charge

²City and County administration charge (2.60%)

Table 2: Non-Residential SDCs (Resolution 2022-08)

*FY2022/23 Non-Residential SDC Schedule**

Development Type	Unit	TGSF/ Employee	Employees / Unit	FY2022/23 SDC	
				SDC	SDC w/Admin Charge ¹
SDC per Unit	<i>Employee</i>			\$574	\$589
District-Wide					
Food Service	<i>TGSF</i>	200	5.00	\$2,872	\$2,946
Office, Financial Service, Utilities	<i>TGSF</i>	300	3.33	\$1,914	\$1,964
Retail, Industrial	<i>TGSF</i>	600	1.67	\$958	\$982
Recreation, Church, Library	<i>TGSF</i>	900	1.11	\$638	\$655
Hardware, Paint, Furniture, Lumber	<i>TGSF</i>	1,600	0.63	\$359	\$368
Warehousing	<i>TGSF</i>	2,910	0.34	\$197	\$203
Special Categories					
College, Private School, Day Care Facility	<i>Students</i>	n/a	0.17	\$99	\$102
Hospital	<i>Beds</i>	n/a	5.89	\$3,382	\$3,470
Golf Driving Range	<i>Tees</i>	n/a	0.25	\$141	\$145
Hotel/Motel	<i>Rooms</i>	n/a	0.58	\$335	\$344
Convenience Market with Fuel Pump	<i>VFP</i>	n/a	1.33	\$761	\$781
Gas Station	<i>VFP</i>	n/a	0.75	\$433	\$445

*All figures are rounded to nearest dollar

TGSF = Thousand Gross Square Feet

¹City and County administration charge (2.60%)

B. Annual Cost Adjustment.

ORS 223.304(8) allows for the periodic adjustment in SDC rates based on changes in district-adopted cost indices. Therefore, the district shall calculate the adjustment in the dollar amounts of the SDC rates set forth in the SDC Methodology report on or about June 1st of each year to account for changes in the expected costs of debt service and of acquiring and constructing facilities. The adjustment factor shall be based on the change in average market value for the prior fiscal year of undeveloped residential land in the district, within the Metro Urban Growth Boundary, according to the records of the County Tax Assessor, and the annual average change in construction costs according to the *Engineering News Record* (ENR) Construction Cost Index for Seattle (as reported in the January issue of the ENR); and shall be determined as follows:

$$\begin{aligned}
 & \text{Change in Average Market Value X 0.50} \\
 + & \text{Change in Construction Cost Index X 0.50} \\
 = & \text{Parks and Recreation System Development Charge Adjustment Factor}
 \end{aligned}$$

The parks and recreation System Development Charge Adjustment Factor shall be used to adjust the parks and recreation SDC, unless it is otherwise adjusted by the board or the board decides to forego an adjustment. If the board decides to forego an adjustment in a given year, such action shall not prevent the board from implementing the adjustment at a later time.

C. Methodology.

1. The methodology used to establish or modify SDC rates shall consider the estimated cost of projected capital improvements needed to increase the capacity of the system to which the fee is related. The methodology shall be calculated to obtain the cost of capital improvements for the projected need for future system users.
2. The methodology used to establish or modify the improvement fee or the reimbursement fee, or both, shall be contained in a resolution adopted by the district board.

D. Review of the Methodology. The parks and recreation SDC methodology report is the basis for calculating the parks SDCs due from new development, and shall be revised, amended or replaced as follows:

1. No later than every five (5) years, as measured from the adoption of the last SDC methodology update, or as determined necessary by the administrator, the district shall undertake a review to determine that sufficient money will be available to help fund the parks and recreation SDC-CIP identified capacity increasing facilities; to determine whether the adopted SDC rate keeps pace with inflation; whether the parks and recreation SDC-CIP should be modified; and to ensure that such facilities will not be over-funded by the SDC receipts.
2. In the event that during the review referred to above, it is determined an adjustment to the SDC is necessary for sufficient funding of the SDC-CIP improvements or to ensure that the SDC-CIP improvements are not overfunded by the SDC, the district board may propose and adopt appropriately adjusted SDCs.
3. The district board may from time to time amend or adopt a new SDC methodology report by resolution.

SECTION 5. APPLICABILITY, CALCULATION AND PAYMENT AND DEFERRAL OF PARKS SYSTEM DEVELOPMENT CHARGES

- A. Applicability. The SDC applies to all new development within the district, unless it is specifically exempted from the SDC pursuant to Section 6.

The SDC imposed by this APG are separate from and in addition to any applicable tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development.

B. Calculation of SDCs.

1. Change in Use. In a case where there is a modification to an existing structure (such as a change in use, alteration, expansion or replacement), the SDC is charged only if the modification will result in a net increase in the number of dwelling units (for residential development) or employees (for non-residential development), calculated as follows:
 - a. Calculate an SDC on the proposed use as though the entire development was subject to the SDC;
 - b. Calculate an SDC on the previous use, before modification, expansion, or redevelopment, as though the previous was subject to the SDC;
 - c. Calculate the net SDC amount by subtracting the result of step b from the result of step a; if the result is zero or less than zero, no SDC is due. No refund shall be granted as a result of this calculation.
2. Parks and recreation SDCs for new development are calculated as follows:
 - a. Residential Development shall be charged per unit for the number of dwelling units to be included in the project. The rates per unit shall be those that were most recently adopted by resolution of the district board.
 - b. Manufactured housing shall be charged at the
 - i. Detached single-family dwelling unit rate if located on an individual lot; or
 - ii. At the accessory dwelling unit rate if located in a manufactured dwelling park.
 - c. Continuing Care Community. The SDCs for a continuing care community shall be the sum of the components of the community, as determined as follows:
 - i. At the senior housing rate for independent living units;
 - ii. At the employment rate (Retail – restaurant/bar) for any communal dining facilities; and
 - iii. At the appropriate employment rate for any other such amenities as may be included in the community.
 - d. Single room occupancy dwelling units shall be charged at one-half the multi-family dwelling unit rate.
 - e. Non-Residential Development
 - i. An applicant for a building permit shall indicate the type and number of square feet of building space, or other appropriate unit as provided

in Table 3 above, for each non-residential use to be included in the project. Guidelines for the number of square feet required for each employee are included in Table 3 for major standard industry classifications. Where a proposed use does not specifically match one of the classifications listed in the table, the listed classification that most closely matches the proposed use, as determined by the administrator, may be substituted.

C. When Payment is Due. Except as may be required by ORS 223.205-223.295 (Bancroft Bonding Act) or as provided below, payment of the parks SDC is due at the time of issuance of the building permit. The SDCs may be collected by the city or county with whom the district may enter into agreement for such collection. If credits have been granted pursuant to Section 7, the district shall issue “waivers” to the applicant to present to the city or county, as applicable.

D. Deferral of SDCs.

1. Deferrals of the payment of SDCs may be granted in the following circumstances:
 - a. By resolution of the board upon a finding that the subject development meets a category of special need in the district for which the district and other service providers have agreed to grant special financial treatment in order to advance a specific public benefit. The resolution shall include the timing for the deferral.
 - b. By the administrator in cases of extreme circumstances or financial hardship, the administrator is authorized to enter into an agreement deferring payment of the applicable SDCs until no later than occupancy of the first dwelling unit in a given phase. The applicant shall have the burden of proving such circumstances or hardship, which may require sharing its development pro-forma with the district, which the district shall not share with any third party. Any agreement for deferral shall be in writing, signed by the administrator and applicant, and must be submitted to the jurisdictional agency controlling the permit.
 - c. A denial of the deferral may be appealed pursuant to Section 9.
2. Deferrals do not constitute a waiver of SDC payment but, rather, a delay in the normal schedule for collection of the fee.

SECTION 6. EXEMPTIONS, AFFORDABLE HOUSING WAIVERS AND ALTERNATIVE SDC CALCULATIONS.

Notwithstanding Section 5, certain types of new development are either fully or partially exempt from paying SDCs.

A. Exempt Developments. The following new developments are fully exempt:

1. Temporary uses, so long as the use or structure proposed in the new development will be used for not more than 180 days in a single calendar year.
 2. Alteration permits for tenant improvements.
 3. Alteration, expansion or replacement of an existing residential dwelling unit where no additional residential dwelling unit is created.
 4. The issuance of a placement permit for a manufactured home unit on a lot or parcel on which applicable park SDCs have previously been paid.
 5. New development that, in the administrator's opinion, will not create demands on the parks and recreation system greater than those of the present use of the property.
 6. Public Pre-Kindergarten through 12th Grade Schools.
- B. Partial Exemption. Where new development includes a mix of exempt and non-exempt forms of development, only that/those portion(s) of the new development that qualify under this provision are eligible for an exemption. The balance of the new development that does not qualify for any exemption shall be subject to the full SDC.
- C. Applying for Exemption. Any applicant seeking an exemption under this Section shall request that exemption, in writing, no later than the time of application for the building permit. In support of the exemption request, the applicant must provide complete and detailed documentation demonstrating that the applicant is entitled to one of the exemptions described in Section 6.A.
- D. Administrator's Decision.
1. The administrator shall grant the exemption if, in the administrator's opinion, the applicant has demonstrated with credible, relevant evidence that it meets the pertinent criteria in Section 5.A.
 2. Within 21 days of the applicant's submission of the request, the administrator shall provide a written decision explaining the basis for rejecting or accepting the request.
- E. Denial of an Exemption Request. An applicant whose exemption has been denied may
1. Request an alternative SDC exemption under Section 6.A prior to the issuance of a building permit for the new development;
 2. Request a partial exemption under Section 6.B; or
 3. Appeal the denial to the board pursuant to Section 9.
- F. Affordable Housing SDC Waivers
1. Staff shall work with affordable housing developers to determine if public open space can be included in an affordable housing development and qualify for credits in accordance with Section 7.

2. In accordance with Resolution 2020-24 (A Resolution of the Board of Directors of the Tualatin Hills Park & Recreation District Adopting a System Development Charge Affordable Housing Waiver Policy), SDCs shall be waived for restricted, qualified regulated affordable housing as follows:
 - a. 100% waiver of SDCs for qualified regulated housing units restricted to those earning 30% or less than the Median Family Income (MFI) as calculated by the United States Department of Housing and Urban Development; and
 - b. 50% waiver of SDCs for qualified regulated housing units restricted to those making between 31-60% MFI.
3. An applicant applying for affordable housing waivers under the previous subsection shall provide the following information:
 - a. The number of units at the 30% MFI level and the 60% MFI level for which an SDC waiver is being sought;
 - b. A copy of a deed restriction in favor of the permitting jurisdiction requiring the property owner to maintain the number of affordable housing units receiving an SDC waiver for at least 60 years; and
 - c. A copy of the following documents:
 - i. Its organizational equity plan;
 - ii. Outreach plan for the development (should show who is looking for homes in the community and how they are targeting communities of color); and
 - iii. Lease screening criteria.
4. SDC credits granted pursuant to Section 7 shall be applied before any SDC waivers for affordable housing.
5. Affordable housing waivers issued pursuant to this section shall not exceed 632 units, of which at least 225 shall be reserved for units available to those earning 30% or less than the MFI. [Resolution 2020-24.]
6. Staff shall provide an annual reporting no later than September of each year of the following:
 - a. The number of affordable housing waivers granted in the previous fiscal year and cumulative number of affordable housing waivers granted;
 - b. The value of the affordable housing waivers granted in the previous fiscal year and the cumulative value of affordable housing waivers granted; and
 - c. The amount of grants or other funding awarded and received for SDC eligible projects in the previous fiscal year and the cumulative amount of grants or other funding awarded and received for SDC eligible projects starting in fiscal year 2020/21.

G. Alternative SDC Rate Calculation.

1. An applicant may request an alternative SDC rate calculation if:
 - a. The applicant believes that the number of persons per dwelling unit resulting from the new development is, or will be, less than the number of persons per dwelling unit established in the SDC methodology report, and for that reason, the applicant's SDC should be lower than that calculated by the district.
 - b. The applicant believes that the number of employees resulting from the new development is, or will be, less than the number of employees established in the SDC methodology report, and for that reason, the applicant's SDC should be lower than that calculated by the district.
2. If an applicant believes that the occupancy or employment assumptions for the class of structures that includes new development are inaccurate, the applicant must request an alternative SDC rate calculation under this section prior to the issuance of a building permit for the new development. Alternative SDC rate calculations must be based on analysis of occupancy of classes of structures, not on the intended occupancy of a particular new development.
3. In support of the alternative SDC rate request, the applicant must provide complete and detailed documentation, including verifiable dwelling occupancy or employment data, analyzed and certified by a suitable and competent professional. The applicant's supporting documentation must rely upon generally accepted sampling methods, sources of information, cost analysis, demographics, growth projections, and techniques of analysis as a means of supporting the proposed alternative SDC rate. The proposed alternative SDC rate calculation shall include an explanation with particularity why the rate established in the SDC methodology does not accurately reflect the new development's impact on the district's capital improvements.
4. The administrator shall apply the alternative SDC rate if, in the administrator's opinion, the following are found:
 - a. The evidence and assumptions underlying the alternative SDC rate are reasonable, correct and credible and were gathered and analyzed in compliance with generally accepted principles and methodologies consistent with this section;
 - b. The calculation of the proposed alternative SDC rate was by a generally accepted methodology; and

- c. The proposed alternative SDC rate better or more realistically reflects the actual impact of the new development than the rate set forth in the SDC methodology report.
- 5. If, in the administrator's opinion, all of the above criteria are not met, the administrator shall provide to the applicant (by certified mail, return receipt requested) a written decision explaining the basis for rejecting the proposed alternative parks and recreation SDC rate.
- H. Appeal of a Denial of an Alternative Rate SDC. The decision of the administrator may be appealed to the district board, as described in Section 9. In addition, all persons who object to the calculation of a system development charge have a right to challenge the decision and petition for review of a final board decision pursuant to ORS 34.010 to 34.100.

SECTION 7. SDC CREDITS.

Applicants may apply for credits against (reductions of) the amount of SDCs they owe. Credits may be given by the district for the value of the:

- Donation or contribution of land;¹
- An improvement or another asset that is considered a “qualified public improvement;” or
- Construction of other park or recreation facilities in the district's SDC-CIP list and approved by the administrator as an SDC credit project.

The following provisions shall serve as a “safe harbor” for an applicant in that if the procedures set forth in this section are followed, the applicant shall be entitled to SDC credits.

- A. Requests for Credits. Prior to filing of an application for a building permit for which SDC's will be due, the applicant shall submit to the administrator a request for credits for qualified public improvements, donation or contribution of land or construction of park or recreation facilities on the district's SDC-CIP list. Such request shall include a proposed plan and estimate of cost for contributions of land and/or improvements. The proposed plan and estimate shall include:
 1. A designation of the development for which the proposed plan is being submitted;
 2. A description of any land proposed to be donated and/or improved;
 3. A list of the contemplated capital improvements contained within the plan, including:
 - a. How they meet the criteria for a “qualified public improvement;” or

¹ Requests by the applicant for cash payment for land shall be subject to board approval and subject to board policies on land acquisition, as well as the process described in Section 7.D.

- b. Evidence that the proposed improvements are on the SDC-CIP list and how they reduce the development's demand upon existing capital improvements and/or the need for future capital improvements;
 - 4. An estimate of the proposed construction costs; and
 - 5. A proposed time schedule for completion of the proposed improvement(s), including any master planning and outreach that may be required. Any required engagement shall be consistent with district engagement procedures.
- B. District Response. The administrator shall respond to the applicant's request in writing within 21 days of when a completed request is submitted on whether the district will proceed with the requested credit, or if additional time or material is required to review the request. If additional time or material is required, the administrator shall notify the applicant, in writing, of the amount of time and/or additional material required. If denied, the administrator shall provide a written explanation of the decision on the SDC credit request.
- C. Remedy to District's Response. If the applicant disputes the administrator's decision with regard to the amount of an SDC Credit or a denial of an SDC Credit request, the applicant may seek an appeal pursuant to Section 9.
- D. Conditions for SDC Land Acquisition Credits. If an SDC credit request for the acquisition of land is approved, the following conditions must be met in order for an applicant to receive SDC credits. Failure to meet any or all of these requirements shall result in forfeiture of the right to credits, unless otherwise agreed to, in writing, by the administrator.
 - 1. The district and the applicant shall enter into a letter of intent or Memorandum of Understanding (MOU) outlining the terms for the purchase and sale of the property, including timing for appraisal, appraisal review, due diligence and closing.

In the event the governing jurisdiction, either through code or condition of approval, requires assurances that property will be transferred to the district, or actual transfer, by a given time, the parties may enter into a purchase and sale agreement (PSA) in lieu of an MOU or letter of intent for the acquisition of land. In such instance, the PSA shall provide that the price will be determined by appraisal consistent with subsection 7.D.3.
 - 2. A SDC Credit Agreement must be signed by the applicant and approved by the administrator.
 - 3. Upon receipt of the legal description from the applicant, the district may obtain a written appraisal based on fair market value by a qualified and professional appraiser based on comparable sales of similar properties between unrelated parties in a bargaining transaction. For lands with an appraised value over \$100,000, the appraisal shall be verified by an independent appraisal review. In

new urban areas, all appraisals and appraisal reviews shall be based on the underlying zone and the assumption (with the exception of natural resource land, which shall be valued recognizing restrictions on development) that the property is developable pursuant to the applicable zoning regulations, but with the property unentitled and unimproved. The valuation date shall be the date the district receives the legal description for the property to be acquired. Appraisals and appraisal reviews will be completed in accordance with District Compiled Policy 8 – District Property. If closing occurs more than one year after the date of appraisal, the appraisal shall be updated at the cost of the seller.

4. Upon agreement between the applicant and district on the price, as supported by appraisals performed in accordance with the previous subsection, the parties shall enter into a Purchase and Sale Agreement.
5. Purchase of land shall be subject to:
 - a. Board approval;
 - b. Due diligence determined necessary by the District; and
 - c. Other such conditions as deemed warranted by the District.

E. Conditions for SDC Credit Development Projects. If an SDC credit request is approved for the development of an amenity, the following conditions must be met in order for an applicant to receive SDC credits. Failure to meet any or all of these requirements shall result in forfeiture of the right to credits, unless otherwise agreed to, in writing, by the administrator.

1. Prior to the commencement of work on the project, the district and the applicant shall enter into a Memorandum of Understanding (MOU) outlining the project goals and objectives. The MOU shall, at a minimum, specify the estimated project costs, public engagement efforts, construction and inspection schedule, schedule for meetings between the applicant and district project managers and other project requirements and conditions.
2. A SDC Credit Agreement must be signed by the applicant and approved by the administrator.
3. Any improvement that is not subject to an existing board-approved master plan shall under-go a master planning process. The master planning process shall be approved by the administrator and shall comply with the district's policies and procedures for public outreach. Master plans for new parks shall be subject to board approval.
4. Development plans and specifications must be reviewed and approved by the district at the following times:
 - a. In advance of applying for land use approval from the City or County;
 - b. At the 50% construction document level (including specification table of contents and cost estimate);

- c. At the 90% construction document level (including complete technical specifications) prior to submittal to the City or County; and
 - d. City or County approved full plan set.
 - 5. All materials must be approved by the district and meet district standards, which may be different from City and County standards, as set forth in the applicable Functional Plan(s).
 - a. If materials submitted are incomplete, the district shall notify the applicant of missing materials within 10 business days.
 - b. The district shall provide comments on materials within 10 business days of receiving all necessary materials.
 - 6. Americans with Disabilities Act (ADA) access standards must be met in the construction of all public parks and recreation facilities. Any exceptions to accessibility requirements must be consistent with the applicable Functional Plan(s).
 - 7. Upon approval of plans, costs and any other required documentation, the district will issue a notice to proceed for construction. Construction started before the issuance of a notice to proceed may be (1) subject to forfeiture of SDC credits and (2) require removal of improvements not constructed to district standards at the expense of the applicant.
 - 8. After construction close-out, the applicant shall provide as-built plan drawings and a minimum of a one-year written warranty guarantee for all improvements constructed on land to be transferred to the district. The warranty period begins the day SDC credited improvements are accepted by the district or at closing, whichever is later.
- F. Final Inspection; Correction of Deficiencies.
- 1. When an applicant has completed construction, and is otherwise ready to claim SDC credits on approved capital improvements constructed in accordance with the conditions in Section 7.E., the applicant shall request a final inspection. District staff will inspect all improvements and, if necessary, develop a closeout deficiency list. Once all deficiency list items have been satisfied, the one-year warranty will go into effect and, upon receipt of the close out documents or at closing whichever is later, including the as-built plan drawings and final permit approvals, credits will be issued as provided in this guide and consistent with the SDC Credit Agreement.
 - 2. In the event that closeout deficiency items are not completed within 30 days of notice of deficiencies, the district may opt to correct the deficiencies and withhold SDC credits in the amount necessary for the corrective action. In such an event, the district shall provide the applicant written notice of the outstanding deficiencies and the cost of corrective action. In the event the applicant fails to

correct deficiencies, the district may also avail itself of the remedies provided in Section 7.H.

G. Calculating the Amount of SDC Credits.

1. Land Acquisition. For land required to be donated to or otherwise acquired by the district by conditions of approval or through an approved community or comprehensive plan, the district shall provide SDC credits for the acquisition. The value of the credits shall be based on the appraisal process described in Section 6.D.
2. Qualified Public Improvements. If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the district's minimum standard facility size or capacity needed to serve the particular development or project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request for credit shall be filed in writing no later than 60 days after the acceptance of the improvement by the district.
3. Credits for Capital Improvements Other Than Qualified Public Improvements. Where the district and an applicant agree the capital improvement project is eligible for SDC credits in accordance with Section 7.A.3.b, eligible costs shall include soft (design, engineering and permitting) and hard (construction and materials) costs. Costs will be determined, as follows:
 - a. The cost to the district to construct the improvements, shall be determined by a qualified third-party estimator. Upon approval of construction plans and items eligible for credit, the district and developer shall agree on an estimator. The applicant shall include the district communications with the third-party estimator, including submission of items to be included in the estimate. The district shall review the third-party estimate and provide comments within five (5) business days. If there is a dispute over items included in the estimate, the applicant and district shall meet to resolve such dispute. The cost shall include no more than a five percent (5%) contingency. Requests for the use of the contingency fee shall be submitted to the district, in writing, with supporting documentation and must be approved by the district, in writing, to be eligible for credit.
 - b. In the alternative to calculating credits in the preceding subsection, the applicant may request to be reimbursed actual costs to the applicant. Such costs shall be submitted to the district for review and approval prior to the commencement of any construction activity. The district shall have five (5)

days to notify the applicant of any additional materials needed to review costs. The district shall have no less than ten (10) business days from receipt of all necessary materials to review cost estimates and shall provide any objections to the applicant in writing. Cost overruns must be submitted to the district, in writing, with documentation supporting the overrun and be approved by the district, in writing, to be eligible for credit.

- c. In addition to costs determined under subsection a or b above, soft costs (design, engineering and permitting) in the following amounts may be included:
 - i. \$0-\$500K Construction = 20% soft cost (up to \$100K)
 - ii. \$501K - \$1.5M Construction = 17% soft cost (\$85K-\$255K)
 - iii. \$1.51M + Construction = 14% soft cost (\$210K)
- d. The following costs are not eligible for SDC credits:
 - i. Mitigation directly related to the greater development of the project site.
 - ii. Improvements needed to accommodate other agencies other than the district.
 - iii. Costs related to the applicant's error.
 - iv. Costs related to wet weather construction.

H. District Remedies. In the event that improvements are constructed without prior district review and approval of plans and/or costs do not meet district specifications/standards or the applicant did not follow the requirements in Section 7.E., the district, at its option, may:

- 1. Refuse to accept the improvements and withhold SDC credits;
- 2. Require such improvements to be reconstructed or replaced to meet district specifications/standards or removed. The extra costs associated with the reconstruction, replacement or removal shall be assumed by the applicant. Additional SDC credits will not be allowed for extra work required to meet district specifications/standards;
- 3. Remedy the deficiency and deduct such cost from the SDC credits; and/or
- 4. Require an extended warranty pursuant to Section 7.I.

I. Extended, Insured Warranties. Extended, insured warranties may be required in the following circumstances:

- 1. The district agrees to accept improvements where plans or costs were not provided for the district's review and approval prior to the commencement of construction;
- 2. The district was not provided opportunity to inspect improvements at agreed to intervals;

3. Improvements were not constructed in accordance with district standards and/or approved plans;
 4. The applicant failed to follow any of the requirements of Section 7.E. or terms of an SDC Credit Agreement, MOU, or other written agreement; or
 5. The parties have agreed, in writing, to an extended warranty in exchange for a modified inspection schedule.
- J. Deductions from SDC credits. Deductions or withholdings may be made to SDC credits under the following circumstances and/or for the following district costs:
1. Costs to correct deficiencies pursuant to Section 7.F.
 2. Costs to correct deficiencies where work by the applicant was not performed in accordance with district-approved plans or to district standards. Prior to deducting such cost, the district shall provide the applicant written notice of the deficiency and the estimated cost to correct such deficiency. The applicant shall have (10) business days from receipt of such notice to inform the district whether it will correct the deficiency.
 3. The applicant shall be responsible for the district's project management costs that exceed the cost if the district had managed the construction of the improvements.
 - a. At the outset of the project, the district shall notify the applicant of the estimated cost for the district to manage the design, permitting and construction of the project.
 - b. The district shall notify the applicant when its project management costs have reached the amount in the preceding section and shall subsequently submit the applicant monthly invoices for its project management time.
 - c. The amount of the district's project management costs as submitted pursuant to subsection J.3.b shall be deducted from the amount of SDC credits due to the applicant.
- K. Reimbursement of SDCs. Any applicant who submits a proposed plan pursuant to this Section, and desires the immediate issuance of a building permit, shall pay applicable system development charges. Said payment shall not be construed as waiver of any credit. If credits are subsequently approved, any difference between the amount of SDCs paid and the amount that would have been paid net of credits, as determined by the administrator, shall be refunded to the applicant, less the processing fee charged by the issuing jurisdiction. In no event shall a refund by the district under this subsection exceed the amount of SDCs originally paid by the applicant.
- L. Excess Credits.
1. Where the amount of an SDC Credit approved by the administrator under this Section exceeds the amount of the SDCs assessed by the district upon a new

development, the excess credit may be applied against SDCs that accrue in subsequent phases of the original development project. In no event shall SDC credits granted exceed the amount of SDCs due on a development project.

2. Credits shall not be transferable from one development to another, unless authorized, in writing, by the administrator.

M. Time Limit for Use of Credits. Credits must be used within 10 years from the date the credit is given.

SECTION 8. RECEIPT, USE, EXPENDITURE, AND REFUNDS OF PARKS SDC REVENUES

A. Deposits

1. The district shall establish separate accounts for each type of SDC, i.e., improvement and compliance and administration fees, which shall be maintained apart from all other accounts of the district. The proportion of SDC revenues to be allocated to each fund shall be determined from the most recent SDC methodology that was adopted by resolution of the district board.
2. Until needed for an authorized use, moneys deposited in the SDC accounts may be invested by the district, and any interest earned shall be credited to the SDC accounts in proportion to the amounts on deposit.

B. Authorized Uses

1. **Capital Improvement Fees.** The capital improvement must be included in the district's parks and recreation SDC-CIP. The SDC-CIP must: (1) list the specific projects that may be funded with SDC revenues; (2) provide the cost of each project; and (3) provide the estimated timing of each project. The SDC-CIP may be amended at any time. Moneys in the SDC improvement fee fund must be used for capital improvements that create additional capacity for new users. Moreover, the portion of a project that may be funded with improvement fee revenue must not exceed the eligibility percentage of that project that is specified for that project in the SDC-CIP.
2. Fees collected may be used for the direct costs of complying with the State statutes governing SDCs and for the costs of administering the SDC program.
3. SDC revenues may be used for purposes that include, but are not limited to, the following:
 - a. Design and construction plan preparation and consultant fees;
 - b. Permitting;
 - c. Land and materials acquisition, including any costs of acquisition or condemnation. Land acquisition costs shall include environmental clean-up and demolition of structures;
 - d. Construction of parks and recreation capital improvements;

- e. Design and construction of new drainage facilities required by the construction of parks and recreation capital improvements and structures;
 - f. Design and construction of new streets or other street improvements, drainage facilities, or other public improvements required by the construction of parks and recreation capital improvement structures. Improvements that an applicant is required to construct as a condition of approval of a development application shall not be eligible for SDC revenues;
 - g. Relocating utilities required by the construction of improvements;
 - h. Landscaping;
 - i. Construction management and inspection;
 - j. Surveying, soils and material testing;
 - k. Acquisition of capital equipment that is an intrinsic part of a facility;
 - l. Demolition that is part of the construction of any of the improvements on this list;
 - m. Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the district to provide money to construct or acquire parks and recreation facilities; and
 - n. 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 methodologies and capital improvement program; and the costs of collecting and accounting for system development charge expenditures.
- C. Prohibited Uses. Money on deposit in the parks and recreation SDC accounts shall not be used for:
- 1. Any expenditure that would be classified as a maintenance or repair expense; or
 - 2. Costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements; or
 - 3. Costs associated with acquisition or maintenance of rolling stock; or
 - 4. Operating costs after completion of capital improvements.
- D. Challenges of Expenditures.
- 1. Any citizen or other interested person may challenge an expenditure of SDC revenues by filing a challenge to the expenditure with the administrator within two (2) years after the date of the disputed SDC revenue expenditure. The fee for filing such a challenge shall be \$100.
 - 2. A challenge to an expenditure shall be submitted, in writing, 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.
3. The administrator will review the challenge and determine whether or not the expenditure was made in accordance with the provisions of the methodology, the APG and/or ORS 223.
 4. If the district finds that the expenditure was not appropriate, the parks and recreation SDC account(s) must be reimbursed from other sources.
 5. The district shall notify the person who submitted the challenge of the results of the review within twenty (20) business days following completion of the review.
- E. Refunds of SDCs.
1. The district shall grant a refund of SDCs for the following reasons:
 - a. The administrator finds that there was a clerical error in the calculation of the SDC. In such an event, the SDC refund shall be in the amount of any overcharge;
 - b. The SDCs have not been expended within ten (10) years of receipt; or
 - c. The district determines through an alternative SDC rate calculation, alternative SDC credit calculation, alternative SDC exemption, or appeal that the amount paid for the SDCs exceeded the amount determined to be appropriate for the new development.
 2. An applicant or owner shall be eligible to apply for a refund if:
 - a. The building permit or placement has expired, and the development authorized by such permit was not commenced. If development was started but not completed, no refund shall be due for completed structures that are suitable for occupancy; or
 - b. The SDCs have not been expended or encumbered prior to the end of the fiscal year immediately following the 10th anniversary of the date upon which such charges were paid. For the purposes of this Section, first funds received shall be deemed to be the first funds expended.
 3. An application for a refund shall be filed, in writing, with the administrator and shall contain the following information:
 - a. The name and address of the petitioner;
 - b. The location of the property that is subject of the SDC;
 - c. A notarized, sworn statement that the petitioner is the current owner of the property on behalf of which the SDC fees were paid; including proof of ownership, such as a certified copy of the latest recorded deed;
 - d. The date the SDC fees were paid;
 - e. A copy of the receipt of payment of the SDC fees; and, if appropriate,

- f. The date the building permit or placement permit was issued and the date of expiration.
4. The application for a refund shall be filed within ninety (90) days of the expiration of the building permit, placement permit, or within ninety (90) days of the end of the fiscal year following the 10th anniversary of the date upon which the SDC fee was paid. Failure to timely apply for a refund of the SDC fee shall waive any right to a refund.
5. Within thirty (30) days from the date of receipt of a petition for refund, the district will advise the petitioner of the status of the request for refund and, if such request is valid, the SDC shall be returned to the petitioner.
6. Refunds shall not be allowed for failure to timely claim credit or for failure to timely seek an alternative SDC rate under Section 6.F at the time of submission of an application for a building permit.
7. Refunds shall include interest earned on funds while on deposit in the parks and recreation SDC account.
8. Denial of a refund may be appealed pursuant to Section 9.

SECTION 9. APPEALS

- A. Appeals. Any person may appeal to the district board any decision of the administrator made pursuant to this APG by filing a written request with the administrator within fourteen (14) days after the delivery of the administrator's written decision to the applicant. The fee for appealing a decision to the district board shall be \$250.
 1. The appeal to be filed with the district board should contain the following information:
 - a. The name and address of the applicant;
 - b. The legal description of the property in question;
 - c. If issued, the date the building permit was issued;
 - d. A brief description of the nature of the development being undertaken pursuant to the building permit;
 - e. If paid, the date the system development charges were paid; and
 - f. A statement of the reasons why the applicant is appealing a decision.
 2. Upon receipt of an appeal, the district shall schedule a hearing before the board of directors 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 date, time and place of the hearing.
 3. The district board shall conduct a hearing 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 present information and evidence.
4. An applicant who appeals a decision and desires the immediate issuance of a building permit must pay the applicable system development charges prior to the time the request for hearing is filed. Such payment shall be deemed paid under “protest” and shall not be construed as a waiver of any review rights.
 5. An applicant may appeal a decision under this Section without paying applicable system development charges, but no building 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.
 6. The district board shall decide an appeal within one hundred twenty (120) days of the date of the appeal unless otherwise agreed to between the appellant and the district board. The decision of the district board may be reviewed under ORS 34.919 to 34.100, and not otherwise.

SECTION 10. AMENDMENT OF THE SDC-CIP

Any capital improvement being funded wholly or in part with revenues from the district’s SDC fund shall be included in the district’s adopted SDC-CIP. This list may be modified at any time by resolution of the district board. If the district’s SDC will be increased by a proposed modification of the SDC-CIP to include one or more SDC-eligible capacity-increasing capital improvements, the following provisions shall apply.

- A. The district shall provide at least 30-days’ notice of the proposed modification to persons who have requested notice. Such notice shall include the proposed adoption date.
- B. If the district receives a written request for a hearing on the proposed modification within fourteen (14) days of the date the proposed modification is scheduled for adoption, the district shall hold a public hearing. The district shall provide written notice to such persons requesting a hearing of the date, time and location for the hearing. To allow adequate time to provide notice, the hearing (and any action on the proposal) shall be scheduled for the next public meeting after the date the proposed modification was scheduled for adoption.
- C. If the district does not receive a written request for a public hearing, none is required, and the proposed modification and increase in the SDC may be adopted by the district board.
- D. Any decision of the district to increase the SDC by modifying the SDC-CIP may be judicially reviewed only as provided in ORS 34.010 to 34.100.

SECTION 11. NOTICE

- A. Maintenance of List. The district shall maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for park SDCs. The district may periodically delete names from the list, but at least 30 days prior to removing a name, the district must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.
- B. Notice. Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a park SDC. The methodology supporting the SDC shall be available at least 60 days prior to the first hearing to adopt or amend a SDC. The failure of a person on the list to receive a notice that was mailed shall not invalidate the action of the district. No legal action intended to contest the methodology shall be filed after 60 days following adoption or modification of an SDC ordinance or resolution.

SECTION 12. RECORD KEEPING

- A. Records of Receipts. All parks and recreation SDCs received should be listed in chronological order, with each record indicating the date received, the amounts received, the name and location of the development for which the SDC was paid, the number(s) of the building permit(s), and the name of the applicant who paid the SDC.
- B. Records of Investments. Any funds on deposit in the parks and recreation SDC accounts that are not immediately necessary for expenditure, must be invested by the district, with all income derived from such investments deposited in the account. All investment transactions should include the date and a description of the transaction.
- C. Records of Expenditures. Records of disbursements should be recorded for each account, and should include the date of the expenditure and the name of the specific capital improvement project for which the funds are expended. In the case of a refund, the date and name of the person receiving the refund should be recorded.
- D. Timeliness of Records. Records of receipts and disbursements of SDCs shall be updated on each business day during which a transaction occurred. This information shall be recorded for each SDC transaction and shall be forwarded to the district at frequencies agreed upon by the district and the city and/or county.
- E. Reports. The district is required by ORS 223.311 to prepare by January 1 of each year an annual report accounting for all receipts and expenditures of parks and recreation SDC revenues. The annual report must show the total amount of system development charge revenues collected for each system and the projects that were funded in the previous fiscal year, and must include a list of the amount spent on each project funded, in whole or in part, with system development charge revenues.

SECTION 13. SEVERABILITY

If any clause, section or provision of this APG shall be declared unconstitutional or invalid for any reason or cause, the remaining portion this APG shall be in full force and effect and be valid.