

CHAPTER 41 - PARK LAND DEDICATION OR FEES IN LIEU THEREOF

**Sections:**

SEC. 41.1. - Findings and purpose.

The city council hereby finds that development of residential subdivisions as well as single-family dwellings, duplex dwellings, multiple dwellings, apartments, mobile homes, townhouses, companion units and other dwelling units have a significant effect on the use and availability of park and recreation space and facilities, and that the limited open space and recreation amenities provided by these residential developments are insufficient to meet the needs of the residents for open space and recreational facilities. The intent of this chapter is to require that such developments contribute their fair share toward the purchase, development and/or improvement of park and recreational facilities. The provisions of this chapter are enacted pursuant to the Charter, the open space section of the environmental management chapter of the general plan and the park and open space plan of the city as well as Sections 66477 and 66479 of the Government Code of the State of California, as may be applicable.

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15)

SEC. 41.2. - Definitions.

As used in this chapter:

"Affordable housing" for purposes of this chapter shall mean housing which costs a very low-, low- or moderate-income household no more than approximately thirty (30) percent of its gross monthly income as defined in Section 36.40.05 of Chapter 36, Article XIV of the City Code.

"Community park" shall include, but is not limited to, shoreline at Mountain View Regional Recreation and Wildlife Area.

"Land dedication," "dedicate land," or "land to be dedicated" and other such references to land dedicated pursuant to this chapter shall mean, for purposes of this chapter, land dedicated to the city in fee simple ownership.

"Subdivider" shall mean a person, firm, corporation, partnership, or association who proposes to divide, divides, or causes to be divided real property into a subdivision.

"Subdivision" shall mean the same as defined in Section 66424 of the California Government Code.

"Subdivision map" shall mean any map filed pursuant to any proceedings for subdivision as defined in Chapter 28 and this chapter.

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15)

SEC. 41.3. - Requirements for single-lot development projects.

As a condition of approval to construct any new single-family dwelling, duplex dwelling, multiple dwelling, apartment building, mobile home, townhouse, companion unit and other dwelling unit other than a subdivision (hereinafter referred to as "residential development" in this chapter), the owner and/or developer shall dedicate land, pay a fee or both at the option of the city, for park or recreational purposes. The terms "single-family dwelling, duplex dwelling, apartment, mobile home, townhouse, companion unit and other dwelling unit" shall be as defined in Chapter 36 of this Code. Said land dedication or fee payment, or both if required, shall be a condition precedent to the issuance of any required building, electrical, plumbing or mechanical permit for new residential development, except as otherwise provided in Government Code Section 66007(a) and (b), and in the event of deferred fee payment, the owner and/or developer shall enter into a recordable agreement pursuant to Government Code Section 66007(c) and subject to the approval of the city.

- a. **Dedications of sites.** Where a park or recreational facility has been designated in the open space section of the environmental management chapter of the general plan, a precise plan or the park and open space plan of the city, and the park or facility is to be located in whole or in part within a proposed residential development, to serve immediate and future needs of residents of the residential development, the owner and/or developer may be required to dedicate land for park and recreational facilities sufficient in size to serve the residents of the residential development. The park land to be dedicated shall conform to locations and standards set forth in the general plan, a precise plan, if applicable, and the park and open space plan of the city. The slope, topography and geology of the site, as well as its surroundings, must be suitable for the intended park or recreation purpose. The amount of land to be provided shall be determined pursuant to the standards set forth in Section 41.5 through 41.9 of this chapter establishing the formula for land dedication or for payment of fees in lieu thereof. Any land offered for dedication to the city that creates new parcels or alters existing property lines shall comply with the subdivision regulations required in Chapter 28 of this code.
- b. If park land is dedicated in accordance with this section, the development standards for a project, as set forth in Chapter 36 of the City Code or an adopted precise plan, shall be calculated to include the dedicated park land.
- c. **Fees in lieu of land dedication.** If there is no public park or recreational facility designated or required in whole or in part within the proposed residential development, which meets the requirements set forth herein, the owner and/or developer shall be required to pay a fee in lieu of land dedication equal to the value of the land as determined by Section 41.5 through 41.9 of this chapter.

A fee in lieu of land dedication hereunder shall be required when:

1. An applicant is developing land on which no park is shown or proposed in the general plan, a precise plan or the park and open space plan; or
  2. Dedication is impossible, impractical or undesirable as determined by the public works director, zoning administrator or city council as appropriate; or
  3. The proposed residential development contains fifty (50) or fewer units.
- d. **Dedication and fees required.** In certain residential developments in excess of fifty (50) units, a combination of land dedication and fee payments may be required. These shall be residential developments in which:
    1. Only a portion of the land to be developed is proposed in the general plan, a precise plan or park and open space plan as the location for a park or recreational facility, in which case that land, or a portion thereof within the residential development, shall be dedicated for park purposes, and a fee shall then be required in lieu of any additional land that would have been required to be dedicated under this chapter; or
    2. A major part of the park or recreation site falling within the residential development has already been required, and only a small portion of the land is needed from the applicant to complete the park or recreation site, in which case, the land needed shall be required for dedication, and a fee shall then be required in lieu of the additional land that would have been required to be dedicated under this chapter.
  - e. **Use of and basis for in-lieu fees.** The fees collected pursuant to this chapter are to be used only for the purpose of providing park or recreational facilities to serve the residential development from which fees are collected in accordance with the service area requirements as shown in Table 41.3 of this chapter. Fees so collected shall be used to purchase land, buy equipment, construct improvements or rehabilitate a proposed or existing mini-park, neighborhood park, community park, recreational facility, Stevens Creek Trail, community gardening facility or combination thereof serving said residential development. The fee so required shall be based on the fair market value of the land that otherwise would have been required for dedication.

Table 41.3 PARK SERVICE AREA AND SIZE		
PARK TYPE	SERVICE AREA	DESIRABLE SIZE
Mini-Park	1 mile	Up to 1 acre
Neighborhood Park	1 mile	1 to 5 acres
Community Park and/or Recreational Facility	Entire city	>5 acres
Stevens Creek Trail	Entire city	N/A

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15)

SEC. 41.4. - Requirements for residential subdivisions.

As a condition of approval of any final subdivision map, the subdivider shall dedicate land, pay a fee in lieu thereof, or both, at the option of the city, for park or recreational purposes according to the following standards:

- a. **Dedication of sites.** Where a park or recreational facility has been designated in the parks and recreation section of the open space section of the environmental management chapter of the general plan, a precise plan or the park and open space plan of the city, and the park or facility is to be located in whole or in part within the proposed subdivision, to serve the immediate and future needs of the residents of the subdivision, the subdivider shall be required to dedicate land for park and recreational facilities sufficient in size to serve the residents of the subdivision area. The park land to be so dedicated shall conform to locations and standards set forth in the general plan, a precise plan, if applicable, and the park and open space plan of the city. The slope, topography and geology of the site, as well as its surroundings, must be suitable for the intended park or recreation purpose. The amount of land to be provided shall be determined pursuant to the standards set forth in Sections 41.5 through 41.9 of this chapter establishing the formula for land dedication or for payment of fees in lieu thereof.

If park land is dedicated in accordance with this section, the development standards for a project, as set forth in Chapter 36 of the City Code or an adopted precise plan, shall be calculated to include the dedicated park land.

- b. **Fees in lieu of land dedication.** If there is no park or recreational facility designated or required in whole or in part within a proposed subdivision which meets the requirements set forth herein, the subdivider shall be required to pay a fee in lieu of land dedication equal to the value of the land as determined by Sections 41.5 through 41.9 of this chapter.

A fee in lieu of land dedication hereunder shall be required when:

- 1. A subdivider is subdividing land on which no park is shown or proposed in the general plan, a precise plan or the park and open space plan; or

2. When dedication is impossible, impractical or undesirable as determined by the subdivision committee or city council as appropriate; or
  3. When the proposed subdivision contains fifty (50) parcels of land or less.
- c. **Dedication and fees required.** In certain subdivisions in excess of fifty (50) parcels of land, a combination of land dedication and fee payment may be required. These shall be subdivisions in which:
1. Only a portion of the land to be subdivided is proposed in the general plan, a precise plan, or the park and open space plan as the location for a park or recreational facility, in which case that land, or a portion thereof within the subdivision, shall be dedicated for park purposes, and a fee shall then be required in lieu of any additional land that would have been required to be dedicated under this chapter; or
  2. A major part of the park or recreation site falling within the subdivision has already been acquired, and only a small portion of land is needed from the subdivider to complete the park or recreation site, in which case the land needed shall be required for dedication, and a fee shall then be required in lieu of the additional land that would have been required to be dedicated under this chapter.
- d. **Use of and basis for in-lieu fees.** The fees collected pursuant to this chapter are to be used only for the purpose of providing park or recreational facilities to serve the subdivision from which fees are collected in accordance with the service area requirements as shown in Table 41.3. Fees so collected shall be used to purchase land, buy equipment, construct improvements or rehabilitate a proposed or existing mini-park, community park, neighborhood park, recreational facility, Stevens Creek Trail, community gardening facility or combination thereof serving said subdivision. The fee so required shall be based on the fair market value of the land that otherwise would have been required for dedication.

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15)

SEC. 41.5. - Land requirement.

In accordance with the open space section of the environmental management chapter of the Mountain View general plan, it is hereby found and determined that the city currently provides park and recreational facilities to its residents at a ratio in excess of the three (3) acres per thousand standard set forth in state law. The public interest, convenience, health, welfare and safety require that three (3) acres of property for each one thousand (1,000) persons residing within the city be devoted to public park and recreational facilities.

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15)

SEC. 41.6. - Density formula.

In calculating dedication and in-lieu fee requirements under this chapter, the following table, derived from the density assumptions of the general plan, shall apply:

Table 41.6 DENSITY FORMULA			
DWELLING DENSITY	DWELLING UNITS PER ACRE	DENSITY OF PERSONS PER DWELLING UNIT	ACREAGE REQUIREMENT PER DWELLING UNIT WITHIN

			SUBDIVISION
Low	1—6	2.7	.0081
Medium-Low	7—12	2.3	.0069
Medium	13—25	2.0	.0060
Medium-High and High	26+	2.0	.0060
Mobile Homes	7—14	1.5	.0045
Companion Unit	-	-	.0016

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15; Ord. No. 10.16, § 1, 6/14/16.)

SEC. 41.7. - Procedure.

The public works director, zoning administrator, subdivision committee or city council, as appropriate, shall, upon approving a residential development or subdivision map, determine the conditions necessary to comply with the requirements for park land dedication or fees in lieu thereof as set forth in this chapter, and said conditions shall be attached as conditions of approval. The establishment of said conditions for projects other than a subdivision map shall comply with Government Code Section 66001.

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15)

SEC. 41.8. - Calculation of fair market value.

At the time of submission of a completed application for a building permit or the filing of a final subdivision map for approval, whichever applies, the city shall, in those cases where a fee in lieu of dedication is required either in whole or in part, determine the fair market value of the land in the proposed residential development, and this determination shall be used in calculating the fee to be paid. If the developer objects to the fair market value, the city, at developer's expense, shall obtain an appraisal of the property by a qualified independent real estate appraiser, agreed to by the city and the developer, and the value established by said appraiser using standard recognized appraisal techniques to establish fair market value will be accepted as the fair market value of the land in the proposed development. Alternatively, the city and the developer may agree as to the fair market value.

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15)

SEC. 41.9. - Calculation of requirement.

For the purpose of the formula established by this section, the following definition shall apply:

"A" equals the park land dedication acreage required per dwelling unit within the proposed residential development for park and recreational facilities as set forth herein and in Section 41.6 of this chapter.

"B" equals the number of new dwelling units in the proposed residential development.

"C" equals the fair market value per acre of land in the proposed residential development.

"F" equals the in-lieu fee required.

"L" equals the land required for dedication.

The following formula shall be used in calculating the land required for the dedication under this chapter:

$$A \times B = L$$

The following formula shall be used in calculating the in-lieu fees required to be paid under this chapter:

$$A \times B \times C = F$$

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15)

#### SEC. 41.10. - Commencement of development.

Any fees collected for these purposes shall be committed within five (5) years after payment of such fees or issuance of building permits on one-half of the units of the residential development, whichever occurs later. The requirements of this section as they relate to fees collected from developments other than subdivisions shall be consistent with Government Code Section 66001.

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15)

#### SEC. 41.11. - Credit.

a. **Private open space.** Where private open space is provided in a proposed residential development, a maximum credit of fifty (50) percent of the value of the land devoted to private open space that is eligible for credit may be given against the requirement of land dedication or fees in lieu thereof required by this chapter, if the following standards are met and it is in the public interest to do so.

##### 1. **Standards.**

- (a) Yards, court areas, setbacks, decorative landscape areas required with residential site design and other open areas required to be maintained by a precise plan, zoning and building ordinances and regulations shall not be included in the computation of such private open space.
- (b) The private open space shall be devoted to active recreational uses, as defined below, and shall be wholly or partially owned and maintained by the future residents of the development. The private ownership and maintenance of the open space shall be restricted for said use by recorded written agreement, conveyance or restrictions subject to the review and approval of the city attorney.
- (c) The space shall be reasonably adapted for use for recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location, and the developer must propose and agree to design and construct the necessary recreational and park facilities and improvements associated with each element of the private open space set forth below; said facilities and improvements shall be constructed prior to the issuance of an occupancy certificate for the units that are receiving the credit.

- (d) Facilities proposed for the open space shall be in substantial compliance with the provisions of the open space section of the environmental chapter of the general plan.
- (e) The open space must contain at least four (4) of the following seven (7) elements:
  - (i) **Turfed play field.** The play field shall be a single unit of land which is generally level and free of physical barriers which would inhibit group play activities;
  - (ii) Children's play apparatus area;
  - (iii) Landscaped, park-like quiet area;
  - (iv) Family picnic area;
  - (v) Game court area;
  - (vi) Swimming pool;
  - (vii) Recreation center buildings and grounds.

The combined minimum acreage for a facility is one (1.0) acre and shall be a single, contiguous unit of land.

- (f) The shape and location of the open space shall provide the greatest utility possible to the greatest number of residents of the development for which credit is sought. If limited access recreation areas are proposed, their credit value can only be applied against the park fee obligation generated by those residents with access to the said recreation area.
- (g) Irregularly shaped pieces of property of less than optimum utility or burdened by topographic considerations that render them unsuitable for active recreational uses shall not be eligible for credit.

b. **North Bayshore Precise Plan Area and publicly accessible private open space.** Where publicly accessible private open space is provided in a proposed residential or mixed-use residential development within the North Bayshore Precise Plan Area, a maximum credit of seventy-five (75) percent of the value of the land devoted to publicly accessible private open space that is eligible for credit may be given against the requirement of land dedication or fees in lieu thereof required by this chapter, if the following standards are met and it is in the public interest to do so.

1. **Standards.**

- (a) The publicly accessible private open space shall be devoted to active and passive recreational uses, as defined below, and shall be wholly or partially owned and maintained by the owner (in the case of a rental development) or homeowner association (in the case of an ownership development) of the development.
- (b) The right of the public to access and utilize the open space shall be recorded against the property either by an easement, covenant or restrictions subject to the review and approval of the city attorney, and such right shall run with the land in perpetuity.
- (c) Improvements associated with any of the elements of the publicly accessible private open space set forth above shall be constructed prior to the issuance of a certificate of occupancy for the units that are receiving the credit and shall be in substantial compliance with the provisions of the parks, open space and community facilities chapter of the general plan.
- (d) The publicly accessible open space must contain at least three (3) of the following five (5) elements:
  - (i) **Turfed play field.** The play field shall be a single unit of land which is generally level and free of physical barriers which would inhibit group play activities;
  - (ii) Landscaped, park-like quiet area;
  - (iii) Family picnic area;

- (iv) Game court area; and
  - (v) Children's playground or play structure.
- (e) The size of the publicly accessible open space shall be a minimum of one (1) acre and shall be a single, contiguous unit of land.
  - (f) The shape and location of the open space for which credit is sought shall provide the greatest utility and accessibility possible to the greatest number of residents of the development and the public.
  - (g) Irregularly shaped pieces of property of less than optimum utility, accessibility or burdened by topographic considerations that render them unsuitable for active recreational uses shall not be eligible for credit.
  - (h) The publicly accessible open space complies with the city's guidelines for restroom buildings in city parks.
  - (i) The publicly accessible open space includes signage that is visible from the public right-of-way and is approved by the community services department.
  - (j) The open space shall be publicly accessible during the city's park hours.
  - (k) The local school strategy will be a factor considered when determining any credit.
2. **Alternate proposals.** As an alternative to the publicly accessible private open space credit standards listed in subsection b.1., developers of residential and mixed-use residential developments within the North Bayshore Precise Plan Area may submit a request for a credit for providing publicly accessible open space and elements other than those listed in subsection b.1. Such requests may be granted at the sole discretion of the city council, if the city council makes a finding that such alternative will further the goal of providing publicly accessible private open space in the North Bayshore Precise Plan Area and the request provides benefits equal to or greater than the criteria in subsection b.1.
- c. **Historic resource.** Where a historic resource is preserved or rehabilitated as part of a residential development, a credit may be given against the requirement of land dedication or fees in lieu due on the residential development, required by this chapter, up to a maximum of fifty (50) percent of the value of the land dedication or fees in lieu thereof required by this chapter. This section may also apply to the relocation of an historic resource provided it is preserved or rehabilitated in conjunction with the relocation. The developer, as part of the application for a credit, shall file an application for a historic preservation permit pursuant to Sec. 36.54.45 et seq. Credit may be awarded pursuant to subsection d. of this section when it is in the public interest to do so.
- d. **Affordable housing.** Because affordable housing is an important community need, the affordable housing units included in new development projects shall not be included in the total number of dwelling units used to calculate the park land dedication requirement set forth in Sec. 41.5 through 41.9. This exemption shall not include affordable housing units provided pursuant to density bonus law (under state law and as set forth in Chapter 36, Article IV, Division 11 of the City Code).
- e. **Process.**
- 1. To request a credit pursuant to this section, the developer shall submit a written request specifying the credit being sought, in conjunction with the development or building permit applications submitted.
  - 2. The credit may be awarded when the public works director, community development director, community services director, subdivision committee or city council, as appropriate to the application, makes written findings that the applicable requirements are met. A credit for publicly accessible private open space may only be granted by the city council.
  - 3. The timing for the credit determination depends on the type of permits and entitlements sought. Upon their request, the developer(s) will be advised as part of the application process as to when the determination will be made.



4. Only one (1) open space credit may be awarded for a project; either private open space or publicly accessible private open space.

(Ord. No. 4.97, 3/25/97; Ord. No. 4.07, 6/12/07; Ord. No. 2.12, § 3, 2/14/12; Ord. No. 7.15, § 1, 10/13/15; Ord. No. 2.19, § 1, 4/9/19.)

SEC. 41.12. - Exclusions.

- a. The requirements established in Section 41.3 relating to single-lot development projects shall not apply to the subdivision of land as defined by the Subdivision Map Act of the State of California; nor shall they be construed to limit the city's power to require fees or land dedication for park or recreation purposes as a condition of approval of a tentative map or preliminary parcel map pursuant to the Subdivision Map Act of the State of California or Chapter 28 of this Code; nor shall they apply to the repair of damages caused by natural disasters such as earthquakes, floods or fires as determined by the city; nor shall they apply to the construction of any nonresidential buildings or structures; nor shall they apply to any unit for which the park and recreation fee has been paid based on the fee density formula established on July 28, 1971; nor shall they apply to an existing building that is altered or expanded where no additional residential units are created and where the use is not changed; nor shall they apply to the first single-family dwelling unit in a single-family residential district (R1) as defined in Chapter 36 of the Mountain View City Code; nor shall they apply to single room occupancy (SRO) living unit facilities as defined in Chapter 36 of the Mountain View City Code.
- b. The requirements established in Section 41.4 relating to subdivisions shall not apply to commercial or industrial subdivisions, nor do they apply to nonresidential condominium units, nor do they apply to projects or stock cooperatives which consist of the subdivision of air space in an existing apartment building which is more than five (5) years old when no new dwelling units are added, nor do they apply to parcel maps for a subdivision containing less than five (5) parcels and not used for residential purposes; nor do they apply to a maximum of two (2) dwelling units that exist on a property if, at the time the subdivision is approved, the existing units are to remain on the property, nor do they apply to any units for which the park and recreation fee had been paid based on the density formula established on July 28, 1971.

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15)