



## CITY OF MOUNTAIN VIEW

**MEMORANDUM**

Community Services Department

**DATE:** February 12, 2020

**TO:** Parks and Recreation Commission

**FROM:** John R. Marchant, Community Services Director  
Brady Ruebusch, Senior Management Analyst  
Lindsay Hagan, Deputy Zoning Administrator  
Angela LaMonica, Real Property Program Administrator

**SUBJECT:** Park Land Ordinance Review of Modifications

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**PURPOSE**

Provide input on proposed changes to Chapter 41 of the City Code (“Park Land Dedication or Fees In Lieu Thereof”) to provide greater flexibility in obtaining public open space while adding clarity on the City’s expectations and requirements.

**BACKGROUND**

Providing a range of housing options to meet the needs of Mountain View remains a top priority for the City Council. Precise Plans for the North Bayshore and East Whisman Areas plan for up to a combined total of 15,000 new residential units. Due to the anticipated growth in the City’s housing supply, the City will continue to experience an increase in the number and size of residential developments. These new Precise Plans and other high-density residential developments have raised questions regarding the effectiveness of the Park Land Dedication Ordinance at achieving the City’s parks and open space goals versus creating a potential burden that limits residential development. In Fiscal Years 2019-2021 Council Goals, the City Council included an item to review and update Chapter 41 of the City Code, also known as the Park Land Dedication Ordinance (Attachment 1).

Currently, the City Code requires residential developments to dedicate a certain amount of park land and/or pay an in-lieu fee, based on the number of net-new, market-rate units (affordable units are exempt) in the proposed development. Chapter 41 sets forth the City’s process for calculating, collecting, committing, and allocating in-lieu fees to parks and recreation projects. The Park Land Dedication Ordinance was

adopted in 1971 as part of the City's Subdivision Ordinance pursuant to California Government Code Section 66477, also known as the Quimby Act.

### **Land Dedication versus In-Lieu Fee**

Because the City is built out and adequate land for parks is difficult to acquire, park land dedication from new residential development is an important tool in achieving the City's parks and open space goals. In assessing park land needs, City staff adopted regulatory plans, such as the Mountain View 2030 General Plan, the 2014 Parks and Open Space Plan, and Precise Plans (e.g., North Bayshore, East Whisman), for establishing needed or planned park land by geographic area in the City. During the development process, the project developer may offer park land for new residential developments. Land dedication is a negotiated effort between City staff from the Community Development, Public Works, and Community Services Departments in tandem with the project developer and City Council. Ultimately, the land is dedicated to the City when the proposed development has site and development capacity (e.g., building height, density, acreage, etc.) to accommodate a park, is located in a planning area in need of park land, and the scale of the development generates enough demand for dedication to be required and feasible.

Alternatively, an in-lieu fee is required when: (a) park land is not dedicated as part of a residential development; (b) the proposed development is located where no park is planned or proposed in the General Plan, Precise Plan, or the Parks and Open Space Plan; (c) when dedication is impossible, impractical, or undesirable (as determined by the City's Public Works Director, Zoning Administrator, or City Council as appropriate); or (d) the proposed residential development contains fifty (50) or fewer units or parcels. The intent of the in-lieu fees is to generate revenue to offset the impacts on existing parks and open space facilities when adequate park land cannot be provided as part of a new residential development. The in-lieu fee is received at the issuance of the first building permit because the park land dedication in-lieu fee is a condition of approval for the entitlement (planning) permit. This is in-line with other fees collected by the City for new development.

## **Process for Expending Park In-Lieu Fees**

City Council Policy K-15: Prioritization of Fees Received In Lieu of Land Dedication establishes the following prioritization for the use of park land dedication in-lieu fees:

1. Acquisition;
2. Development; and
3. Rehabilitation.

In committing fees, first consideration goes to parks, trails, and recreation projects that are located within one mile of the approved new residential development generating the fee. Next, consideration goes to park, open space, or recreation projects that provide a Citywide benefit, which can be located anywhere in the City.

Every December, the Parks and Recreation Commission (PRC) receives a midyear update on park land in-lieu fees and funded projects. Every spring, the PRC reviews staff's recommendation for committing park in-lieu fees to parks and recreation projects and forwards a recommendation to the City Council for consideration as part of the annual Capital Improvement Program (CIP). The City Council then approves the commitment of the fees and authorizes the transfer of funds from the Park Land Dedication Fund to the specific CIP project.

Park in-lieu fees must be committed within five years of the date the City receives them per the Quimby Act. The PRC and Council cannot commit anticipated project-specific fees because it may be perceived to influence the Council's decision regarding a particular development proposal. Only Park Land Dedication funds that have been received can be committed to park and recreation-related projects.

However, through the CIP process, staff may identify unfunded projects that are anticipated to be funded by future Park Land Dedication In-Lieu fees. This allows Council and the public to be aware of upcoming capital projects.

## **Previous Chapter 41 Updates**

On October 13, 2015, Chapter 41 was amended to exclude affordable units as defined in Chapter 36 (Zoning) of the City Code from the Park Land Dedication and In-Lieu Fee calculations. Because affordable housing is an important community need and comes at a high cost, the affordable housing units in new residential developments are no longer included in the total number of dwelling units used to calculate the park land

dedication requirement. However, these units are still used to determine the density level of the development when using the density formula. Affordable units provided pursuant to State Density Bonus Law are not included in the exemption. In addition to affordable units, the City Council amended the size and service area thresholds for City parks to facilitate the use of park in-lieu fees and more adequately reflect the service areas of the City's parks.

On June 14, 2016, a density formula was established for determining the park land dedication requirement for companion units, also known as accessory dwelling units (ADUs), at 0.0016 per acre. To encourage construction of companion units, Council authorized a lower acreage requirement per dwelling unit for companion dwelling units. Previously, companion units had the same density formula as low-density residential projects (0.0081 per acre), which was considered too burdensome.

For the most recent update on April 9, 2019, Chapter 41 was amended to provide developers of net-new, market-rate residential units in the North Bayshore Precise Plan area an opportunity to request a credit up to 75 percent of the value of the land towards their park land dedication requirement in exchange for providing publicly accessible private open space. The North Bayshore Credit was added as a subcategory to the existing private open space credit.

## **DISCUSSION**

On October 15, 2019, staff reviewed the Park Land Dedication Ordinance at a City Council Study Session to receive input on the types of amendments to study further. Council recommended a two-pronged approach to Chapter 41: (1) amendments to be considered after the 2020 U.S. Census is completed and data is available (in tandem with the Parks and Open Space Plan Update), and (2) amendments to explore this fiscal year. Staff is seeking PRC input on the elements of Chapter 41 that were recommended to be examined this fiscal year.

### **Amendments to Explore After the 2020 Census**

The 2020 Census data is scheduled to be released in March 2021. With Council's support, City staff is waiting to analyze specific sections of Chapter 41 and update the 2014 Parks and Open Space Plan until the Census data is published with updated population data. Staff plans to request funds through next year's budget cycle to update the Parks and Open Space Plan in Fiscal Year 2021-22. As part of this update, City staff will reexamine the size and service area thresholds for parks, assess the density formula and categories, and determine how the City is meeting its standard of 3 acres per 1,000 residents. Attachment 2 provides the Parks and Open Space Planning

Area Map and Assessment or how each area is currently achieving the standard of 3 acres per 1,000 residents. Staff plans to conduct a nexus study for reviewing nonresidential development's impact on parks and open space.

### **Amendments to Chapter 41 for PRC Input**

Council requested staff to explore this fiscal year: (1) Section 41.9—Calculation of Requirement, to provide more certainty to developers regarding costs of land and estimated in-lieu fees; and (2) Section 41.11—Credit, to adjust private credits to encourage creative public spaces and enhanced public access to open space.

#### *Topic 1: Establishing Fee Certainty with Land Value*

Section 41.9 (Calculation of Requirement) provides the current methodology for calculating the park land requirement for developments with net-new, market-rate units using the following formula:

$$\mathbf{A \times B = L}$$

Where:

A = the park land dedication acreage required per dwelling unit calculated using the density formula described in Section 41.6.

B = the number of net-new, market-rate dwelling units in the proposed residential development.

L = the land required for dedication.

If an in-lieu fee is to be paid instead of dedicating land, the fee is calculated using the following formula:

$$\mathbf{A \times B \times C = F}$$

Where:

A and B = the same variables as described above.

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

F = the in-lieu fee required.

Currently, the fair market value per acre of land (Variable C) is calculated separately for each development proposal by the City's Real Property Program Administrator. The development community has raised concerns to City staff and Councilmembers about the uncertainty in park land requirements based on fluctuating land values due to market conditions; and, in particular, how this impacts securing financing for new residential development. As a result, Council requested staff to look into alternatives for calculating the fair market value per acre of land to stabilize the park land fee estimates.

After reviewing how other nearby cities determine their fair market value per acre of land ("land value") and examining best practices (Attachment 3), there are two primary considerations for how to calculate land value in Mountain View.

1. **Geographic Consideration.** Currently, Mountain View sets land value on a development-by-development basis. Other options to consider include setting a land value by Parks and Open Space Plan area or setting a Citywide land value.
2. **Frequency of Setting.** Currently, Mountain View determines land value when the developer requests the estimate, which may occur any time prior to a development application or during application review. It should be noted many development projects that have greater than 50 units take 12 to 18 months to be entitled after submittal of a formal application, so market conditions can vary during that time impacting the land value. Other options to consider include setting a land value annually or biannually.

**TABLE 1: EVALUATING A SET LAND VALUE**

| ADVANTAGES   | DRAWBACKS OR CHALLENGES   |
|--|---|
| <ul style="list-style-type: none"> <li>• Creates a consistent, transparent, and fixed process for calculating the land value;</li> <li>• Sets expectations for an annual evaluation of land value; and</li> <li>• Provides the public and developers with land value information to independently estimate park land requirements during the planning phase of a development.</li> </ul> | <ul style="list-style-type: none"> <li>• There could be land value appreciation that occurs in a geographic area over the one-year period which would not be captured in the park land fee estimate placed on a project. This may result in a “loss” in land value the City would not capture in the fee collection as the fee would be based on a fixed land value; and</li> <li>• An added City budget request to cover the cost of annual appraisal (Estimated at \$5,000).</li> </ul> |

When looking at the fluctuations in land value by geography and over time, staff recommends annually setting a land value by Parks and Open Space Plan area. An independent real estate land value study can be conducted by a third-party appraiser every year that provides a range of values for an acre of land relating to the various densities described in Table 41.6, namely:

- Low density
- Medium-low density
- Medium density
- Medium-high and high density

The land value study will not provide values for any specific property within the City as this is not an appraisal for a specific property or development. The values will reflect the most probable value of property within a specific density range. The actual value of any given property is affected by many factors such as location, size, development costs, etc. If the property was recently purchased, the cost per acre value will be based on that purchase price, not the range of value estimate, although the purchase price in theory should fall within the range of value. The Real Property Program Administrator (RPPA) will have the discretion to determine final value.

This approach can provide greater certainty to developers while also providing flexibility to adjust land values and park land dedication requirements according to location and time of year the application is submitted. In addition, one year is an industry standard for holding a valid land appraisal.

The fee for the land value study is estimated at \$5,000 and typically takes four weeks to complete. If this approach is selected, the cost will be absorbed by the Biennial Real Estate Technical and Legal Services CIP.

Additionally, staff recommends establishing the park land requirement for a residential development within the first 30 days after a formal development application is submitted to the City. The value would be provided by the Real Property Program Administrator and be honored for up to a maximum of two years based on the applicant diligently (and in a timely fashion) moving through the development review process with a stable project scope. Additionally, the City will request all park land requirements be met prior to issuance of the first building permit. This process follows current practice and provides consistency for all development projects Citywide.

*Topic 2 (A): Establishing a Privately Owned Publicly Accessible (POPA) Open Space Credit*

Currently, Section 41.11 (Credit) outlines guidelines for two types of credits: (1) Private Open Space (Citywide); and (2) North Bayshore Precise Plan Area Publicly Accessible Private Open Space. An applicant can apply for one open space credit per development project. The Private Open Space credit requires an applicant to provide one contiguous acre of land and contain four of the following seven elements:

1. 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;
2. Children's play apparatus area;
3. Landscaped, parklike quiet area;
4. Family picnic area;
5. Game court area;
6. Swimming pool; and
7. Recreation center buildings and grounds.

As long as the designated open space meets the criteria above, and other standards set forth in the City Code, the applicant is eligible for a maximum credit of up to 50 percent of the value of the land, which must be approved by the City Council. The Private Open Space credit does not have any geographical restrictions, so any development in



the City subject to park land requirements can apply for this credit. In the past five years, one project has applied and was approved for this credit at 777 West Middlefield Road.

For new residential developments in the North Bayshore Precise Plan area, there is an option to apply for a credit toward their park land dedication requirement for providing publicly accessible private open space for up to a maximum of 75 percent of the value of the land, which must be approved by the City Council. The space needs to be a minimum of one acre of contiguous land and contain at least three of the following five elements:

1. Turf play field: The playing field shall be a single unit of land which is generally level and free of physical barriers which would inhibit group play activities;
2. Landscaped, parklike quiet area;
3. Family picnic area;
4. Game court area; and
5. Children's playground or play structure.

The shape and location of the open space must be conducive for public use, comply with the City's guidelines for restroom buildings, include signage regarding available public access, and be publicly accessible during City park hours (sunrise to one-half hour after sunset). One project has applied and been approved for this credit at 1255 Pear Avenue.

As part of the North Bayshore Precise Plan Publicly Accessible Private Open Space credit, Council included a section for Alternate Proposals. This allows developers of residential and mixed-use residential developments within the North Bayshore Precise Plan to submit a request for a credit for providing publicly accessible private open space and elements other than those listed in Chapter 41. At the sole discretion of the City Council, the request may be granted if it is found the alternative will further the goal of providing publicly accessible private open space in the North Bayshore Precise Plan area.

At the October 15, 2019 Study Session, Council provided direction to staff to explore amending the private open space credit of Chapter 41 to encourage publicly accessible open spaces that are privately owned for which the City would not be responsible for maintaining while providing quality open space for future residents of Mountain View.

Councilmembers also noted an interest to encourage creative types of open spaces and recreational elements to expand the variety available to the community.

In evaluating the options to restructuring the private credit, staff reviewed plans of recently approved projects with dedicated park lands (e.g., 400 San Antonio Road, 2296 Mora Drive) and publicly accessible, privately owned open spaces, whether they fulfilled a park land requirement or not (e.g., 700 East Middlefield Road, 1255 Pear Avenue). Reviewing these projects helped staff gauge the types, sizes, and elements in the parks and open spaces frequently proposed with new residential development. In developing a POPA open space credit, staff identified evaluating factors to consider, which are summarized in Table 2.

**TABLE 2: EVALUATING A NEW POPA CREDIT**

| ADVANTAGES   | DRAWBACKS OR CHALLENGES   |
|--|---|
| <ul style="list-style-type: none"> <li>• Sets City expectations for a park land credit by establishing minimum universal requirements, some of which maintain public elements consistent with City parks (e.g., access, restrooms, etc.);</li> <li>• Establish requirements that are clear, straightforward, and accessible to interested developers or members of the public;</li> <li>• Provides greater opportunities for developers by expanding the POPA credit Citywide;</li> <li>• Create greater flexibility in recreational elements;</li> <li>• Utilize alternate proposals as a method to actualize large-scale open spaces within large developments; and</li> <li>• Potential for greater amount of public open spaces with less maintenance and operational costs for the City.</li> </ul> | <ul style="list-style-type: none"> <li>• Concerns with overly defining or prescribing requirements that result in “cookie cutter” open spaces;</li> <li>• Having too much flexibility or lack of clarity may result in credit requests with undesirable open space layouts, elements, scale, or public interface;</li> <li>• Modifying the timing for public input on open space design and amenities to occur during the development review process as part of the overall project design, not through a City-led CIP process postconstruction of the development; and</li> <li>• Loss of in-lieu fee collection as a result of approving POPA credits, resulting in the private development of public space.</li> </ul> |

With reviewing all of the information, staff recommends making the following amendments:

- **Create a New Consolidated Credit Category.** Instead of the private open space and North Bayshore credits, staff recommends having one Privately Owned, Publicly Accessible (POPA) Open Space Credit. The POPA Credit would be applicable Citywide and require that any private open space be publicly accessible to receive the credit. This achieves the goals of creating more space that resembles public parks and simplifies the application of the credit for staff and residential developers.

- Create Two Credit Thresholds.** Staff recommends having two levels for the POPA Credit depending on the size of the open space being proposed. If the open space is one acre or less, it can qualify for a credit up to 50 percent of the value of the land or up to 75 percent if the open space is greater than one acre. For either credit, the open space must meet the minimum requirements in Table 3. Staff believes these parameters will provide POPA open space that is in line with expectations for other park and public facilities in the City and avoid getting POPA Credit applications that will not provide quality open space.

Since most of the park dedications that the City is receiving from new residential developments are less than one acre, the two levels for the POPA Credit will allow similar-sized open spaces, which aligns with development recently approved by the City. Additionally, these sized spaces will not create ongoing maintenance and operation costs to the City. By introducing more credit for POPA open space over one acre, it opens the door for developers interested in providing large, publicly accessible private open spaces.

**TABLE 3: POPA CREDIT REQUIREMENTS**

| Size                  | Maximum Credit                             | Min. Requirements   |
|-----------------------|--|---|
| One acre or less      | Up to 50% with a minimum of two elements   | <ul style="list-style-type: none"> <li>A contiguous piece of land;</li> <li>Prominent frontage on the development property (e.g., a public street);</li> <li>Minimum dimension of 100' in width and length;</li> <li>Comply with City guidelines for park restrooms, hours of operation, signage; and</li> <li>Must be maintained and publicly accessible in perpetuity.</li> </ul> |
| Greater than one acre | Up to 75% with a minimum of three elements |   |

- Expanded List of Elements.** Staff also recommends providing a larger and more detailed list of elements for the open space to increase the diversity of amenities. Each element is accompanied by a minimum size threshold and descriptive

requirement so as to set clear expectations for the quality and scale of the open spaces and amenities. Table 4 identifies the recommended list.

**TABLE 4: PROPOSED POPA CREDIT ELEMENTS**

| <b>Element</b>                  | <b>Size</b> | <b>Requirements</b>  |
|---------------------------------|-------------|--|
| Open, Usable Field              | 0.5 acre    | Level with proper irrigation and water amenities to support active recreation.   |
| Dog Park                        | 0.5 acre    | Have separate areas for large dogs and small dogs. Adequate amenities that will be maintained such as bag dispensers and dog-friendly hydration stations.        |
| Community Garden                | 0.35 acre   | Must be able to support 30 gardeners from the associated development or general public. Have adequate water access and guidelines for operation and programming. |
| Game Courts                     | 0.25 acre   | Must meet standards of associated activity's professional association. Must have hydration stations.   |
| Playgrounds                     | 0.2 acre    | Must have at least two structures: one for tots (ages 2 to 5) and one for youth (ages 5 to 12) with hydration stations.  |
| Picnic Area                     | 0.2 acre    | Must be able to sit at least 30 individuals and have 1 barbecue for every 2 tables.  |
| Exercise Area                   | 0.15 acre   | Must be able to support 10 people using equipment at same time, have ADA-accessible equipment, and have hydration stations.                                      |
| Landscaped, Parklike Quiet Area | 0.15 acre   | Must have seating, shade, and be distinguishable from other elements of the open space.  |

As part of the credit request, staff recommends requiring the developer to: (1) submit a written description of the park credit request and how the proposed open space achieves the requirements; (2) provide dimensioned plans that detail the proposed open space and amenities design; and (3) conduct an analysis of elements at the five closest public parks or POPA open spaces to their project site. If three or more parks/open spaces in that analysis have the same element(s), the applicant must select a different element(s) to provide in the open space. This will help ensure a variety of passive and active elements are provided throughout the

City and require the applicant to demonstrate due diligence in assessing the aspects of their proposed POPA open space.

- **Other Credit Details.** Staff recommends retaining that POPA open spaces must only apply to the open space credit for purposes of park land requirements and cannot satisfy other requirements of development or zoning standards, such as common area requirements, and required building setbacks. For a more specific example, walkways and pathways that lead through a residential development to the POPA open space would not count towards satisfying the open space credit as these may be mandated for accessibility per the Building Code, fire access requirements, and/or only enhance the private property access to the POPA open space without providing a greater benefit to the public.

*Topic 2 (B): Alternate Proposals in the POPA Credit*

Currently, the ordinance contains an “Alternate Proposal” subsection under the North Bayshore Precise Plan Publicly Accessible Private Open Space Credit section. Staff recommends retaining an “Alternate Proposal” section for the POPA Credit but modify its application to address two types of proposals:

1. **Alternate Element.** A developer can provide an alternate element for any one element listed. If an alternative element is proposed, the amenity must be comparable to the function or utility of a listed element or provide a unique amenity to the community that would not otherwise be met.
2. **Alternate Proposal.** A developer can request an alternate proposal for a POPA open space as long as the open space is greater than one acre in size, meets the minimum requirements of the POPA credit (in Table 3), and is located within a Master Plan area with a significant residential land use.

A Master Plan is a comprehensive guiding plan for future development of a particular property or collection of properties, which may have one or more property owners. The Plan allows for coordinated development, while providing flexibility for individual buildings or development phasing to occur over time. The Plan conceptually provides the location and parameters of land uses, public infrastructure, parks, and other key development requirements. These are different from the City’s Precise Plans in that they are proposed by a property owner(s) and are not a City-initiated process. They often cover tens of acres of land, and the level of detail is often less than what is included in a Precise Plan.

By tying this credit option to Master Plans, it provides flexibility when encountering unique situations for future developments while discouraging small proposals that will not provide the quality of open space that the City desires. In addition, staff believes Master Plans may be great opportunities for innovative solutions to providing open space in Mountain View. Any alternate proposal would require City Council approval.

### **FISCAL IMPACT**

The proposed amendments to setting land values are intended to provide greater certainty to developers for their park land dedication in-lieu fee amounts but could cause a nominal loss on individual fees due to the land value being set for one year. The cost for the annual appraisal study can be absorbed by the Biennial Real Estate Technical and Legal Services CIP.

Staff anticipates seeing an increase in the amount of proposals for the POPA Credit after these amendments. This could reduce the amount of park land dedication in-lieu fees received from future residential developments. However, it will also provide more publicly accessible open space, which is the primary purpose for the fees.

### **SUMMARY**

Based on Council direction at a Study Session on October 15, 2019, three sections of Chapter 41 of the City Code ("Park Land Dedication or Fees In Lieu Thereof") are recommended to be updated in conjunction with the update of the Parks and Open Space Plan, which will occur after 2020 Census data is published in March 2021.

Staff recommends making changes to two sections of Chapter 41 this fiscal year. First, staff recommends codifying the methodology for calculating land value. The new methodology can provide greater certainty to developers during initial development feasibility, design, and financing of their projects. It will also reduce the amount of staff time needed to communicate with a developer about the process or appraised land values.

Second, staff recommends modifying the Credit Section of Chapter 41 to establish a Citywide publicly accessible private open space (POPA) credit. The goal of these changes is to encourage the creation of quality open space with a variety of recreational amenities, while not requiring ongoing maintenance and operational costs to the City.

## **NEXT STEPS**

After receiving Parks and Recreation Commission input, staff will take the proposed amendments to Council in March or April for consideration of adoption.

In Fiscal Year 2021-22, staff will update the Parks and Open Space Plan using updated population data from the completed 2020 Census, which is supposed to be published in March 2021. In conjunction with updating the Parks and Open Space Plan, staff will explore conducting a nexus study to determine the impact of new commercial and office development on our City's parks, trails, and open space. After these documents have been updated, staff will review Chapter 41 of the City Code and recommend amendments based on the data and information collected from these other efforts.

**PUBLIC NOTICING** – Agenda posting.

JRM-BR-LH-ALM/2/CSD

240-02-12-20M

- Attachments:
1. Copy of Chapter 41 of City Code
  2. Parks and Open Space Planning Area Map and Assessment
  3. Comparison of Neighboring Jurisdictions