



DATE: March 9, 2021

CATEGORY: Public Hearing

DEPT.: Community Services

TITLE: **Park Land Dedication or Fees In Lieu Thereof Ordinance Amendments**

RECOMMENDATION

Introduce an Ordinance of the City of the Mountain View Amending Chapter 41 (Park Land Dedication or Fees In Lieu Thereof Ordinance) of the Mountain View City Code Relating to Park Land Dedication, to be read in title only, further reading waived, and set a second reading for April 13, 2021 (Attachment 1 to the Council report).

BACKGROUND

Balancing the increase in housing development Citywide with the City's Park Land goal of three acres per 1,000 residents, a review of the Park Land Dedication Ordinance was recommended by the Parks and Recreation Commission (PRC) and included in the Fiscal Year 2019-21 City Council Major Goals Work Plan. Additionally, the City has received ongoing feedback from the residential development community regarding current park land regulations and implementation of park land improvements.

Previous Meetings

October 2019 City Council Study Session

On October 15, 2019, a City Council Study Session was held to provide an overview of the current Park Land Dedication Ordinance and receive Council direction on the amendments to consider (Attachment 2—[October 5, 2019 Council Report](#)). The City Council supported a two-phased approach to amending Chapter 41:

- Phase 1 Modifications: Explore in the Fiscal Year 2019-21 Council Goals cycle:
 - Section 41.9: Calculation of Requirement, to provide more certainty to developers regarding land valuation and in-lieu fees; and

- Section 41.11: Credit, to adjust open space credits to encourage creative public open space design and enhanced public access that reduce ongoing costs for the City.
- Phase 2 Modifications: Explore after the 2020 U.S. Census data is released (in tandem with the Parks and Open Space Plan Update) in Fiscal Year 2021-22:
 - Section 41.3.e: Size and Service Area Thresholds for Parks, to evaluate any adjustments to the size and service area thresholds for new park land;
 - Section 41.5: Standard for Land Requirement of three acres per 1,000 residents; and
 - Section 41.6: Density Formula and Categories, to review and consider modifications to the formula and/or density categories to address current development trends and to consider the introduction of nonresidential park land contributions.

February 2020 PRC Study Session

On February 12, 2020, the PRC held a Study Session to provide input on an initial set of proposed amendments (Attachment 3 – [February 12, 2020 PRC Memo](#)). The PRC supported staff's recommendation to provide additional certainty around land values and in-lieu fees through an annual land value appraisal and standard review process. The PRC also provided input on the requirements for an open space credit application and types of elements that should be required as part of an open space. Lastly, the PRC requested a review of how the open space can remain publicly accessible in perpetuity to be counted towards the City's goal of three acres of open space per 1,000 residents.

October 2020 PRC Study Session

On October 14, 2020, another PRC Study Session was held to further review the proposed amendments and whether to retain or remove the Private Open Space Credit (Attachment 4 – [October 14, 2020 PRC Memo](#)). At the February Study Session, staff presented one open space credit for Privately Owned/Publicly Accessible (POPA) open space, removing the Private Open Space Credit. After outreach to residential developers regarding the proposed amendments, staff wanted to explore the possibility of retaining the Private Open Space Credit in addition to a POPA Open Space Credit. Ultimately, the PRC recommended to retain one open space credit for POPA open space and remove the Private Open Space Credit.

October 2020 Council Study Session

On October 27, 2020, staff returned to the City Council for a Study Session on the proposed amendments, specifically requesting feedback on the minimum size of the open space credit, whether to have a tiered credit based on the size of the open space, amending the quiet parklike space element to a maintained natural habitat element, and determine if a Private Open Space Credit was desired to be kept along with a Citywide POPA Open Space Credit (Attachment 5—[October 27, 2020 Council Report](#)). The City Council supported staff's proposed changes and provided direction to make the minimum size requirement 0.4 acre, not have a tiered credit, and only have a POPA Open Space Credit, removing the Private Open Space Credit entirely.

Residential Developer Outreach

City staff met with members of the residential development community to discuss concerns regarding the current park land requirements and gather input on proposed modifications. A summary of input and written public comments is available in Attachment 5.

ANALYSIS

The following is a summary of the proposed amendments to the City's Park Land Dedication Ordinance and City processes based on input from the City Council, along with other minor updates for clarity and consistency. The amendments are focused on providing greater certainty on park land requirements, including setting land values, providing in-lieu fee certainty to developers, and modifying the park land credits to create more opportunities for private development to create quality publicly accessible open space with minimal City maintenance responsibility. A redlined version of the ordinance is included as Attachment 6 to this report.

In addition to the park land ordinance amendments described below, staff has provided a brief overview of the park land delivery process. While not directly related to the amendments, residential developers raised questions about the public park design, construction process, and schedules when discussing the advantages of the timing of POPA open space developments. Thus, the overview is included for Council's reference and provides context to the implementation of park land dedication regulations and the advantages and challenges to different approaches to design and construction of public parks.

Establishing Land Value and Fee Certainty

Through input from developers, the PRC, and the City Council, providing greater certainty around the fair market value of land and in-lieu fee calculation is a major concern to address in this ordinance update due to its impact on a residential developer's ability to secure financing. The park land dedication requirement or in-lieu fee estimate for a residential development is based on the fair market value of the land, which can fluctuate due to market conditions while a project goes through the City's development review process. To help limit fluctuation, staff is recommending amendments and procedures to set land values annually, which will stabilize the value for developers while also retaining competitive land values for the City's park land acquisition, design, and construction needs.

Proposed Amendments to Section 41.8, Calculation of Fair Market Value

Staff proposes to amend Section 41.8, Calculation of Fair Market Value, to facilitate the timely estimation of the fair market value of land. The proposed amendment would result in the City utilizing an appraiser to perform an appraisal study of Citywide land values that establish a fair market value range for an acre of land for each density category listed in Table 41.6. The ranges established in the appraisal study will be adopted by a Council resolution in tandem with the annual budget process each fiscal year. Adopted land value ranges will be located in the City's Master Fee Schedule, which is publicly accessible. The adopted range of land values provides developers with information needed for financing their proposed developments and estimate park land requirements prior to submission of a formal application. In addition, one year is an industry standard for holding a valid land value appraisal, so this approach aligns with best practices.

At the initial review of a formal application, the Real Property Program Administrator (RPPA) will make a determination on the land value and in-lieu fee within the adopted range of land values for a proposed development. The value ranges allow reasonable flexibility for the RPPA to adjust the land value based on project location, preexisting site conditions, and account for recent comparable property values.

If the design of a proposed development changes significantly during the City's development review process, resulting in changes to the dwelling density category in Chapter 41, then a new land value can be estimated using the adopted land value ranges at the time of application resubmittal.

Documentation and Process Modifications

In addition to the proposed amendments, staff is adjusting the City's development review processes to incorporate documentation of a project's park land dedication requirement in the initial 30-day review of a formal development application received by the Planning Division. The park land dedication requirement, which will include the land dedication and/or in-lieu fee estimates, will be provided by the RPPA utilizing the adopted land value ranges in the Master Fee Schedule. The park land dedication requirement estimates provided during this initial review will be honored throughout the development review process unless a change occurs with the proposed development density as described above.

The park land estimate will also be reflected in the final project Conditions of Approval with the project-specific park land dedication requirement and/or in-lieu fee. By providing the project-specific Conditions of Approval, the park land requirement will be "locked in" for the two-year project entitlement period. This is different from other residential development impact fees, such as sewer or utility capacity fees, which are calculated prior to building permit issuance.

Privately Owned/Publicly Accessible Open Space Credit

Section 41.11, Parkland Credits, currently has four credit options: (1) Private Open Space Credit; (2) North Bayshore Precise Plan Publicly Accessible/Privately Owned Open Space Credit; (3) Historic Resource Credit; and (4) Affordable Housing Credit. Based on direction received at the October Study Session, staff has amended Section 41.11 to remove the Private Open Space and North Bayshore Precise Plan Publicly Accessible/Privately Owned Open Space Credits and, instead, introduce one Citywide open space credit for POPA open space. A majority of the PRC and Council did not support retention of a Private Open Space Credit due to less public access and benefits than open space that is publicly accessible.

POPA Open Space Credit Amount

Previous direction provided by the PRC and City Council was for the POPA Open Space Credit to be up to 75 percent of the value of the land. While staff had originally proposed up to an additional 25 percent credit for POPA open spaces greater than one acre in size, both the PRC and Council expressed the desire for the POPA Open Space credit to be valued lower than the actual land dedication to the City by retaining less than 100 percent credit.

POPA Open Space Eligibility Criteria

The proposed eligibility criteria for the POPA Open Space Credit differ from the current open space credit standards in three significant ways: reducing the minimum size requirement to 0.4 contiguous acre; establishing minimum design and operational requirements; and updating the element requirements in the POPA open space.

Reducing the minimum size requirement from one contiguous acre to 0.4 contiguous acre allows the credit to be available to more residential developments, which, in turn, can increase the publicly accessible open space that counts towards the City's goal of three acres of open space per 1,000 residents in each parks and open space planning area. The design and operational requirements provide greater clarity of City expectation for the POPA open space to ensure high-quality design and accessibility for the public. The other items in the Standards section are similar to the standards currently in the ordinance.

The proposed amendments to Subsection 1, Standards, are summarized below:

- Size Minimum: Minimum 0.4 acre of contiguous land. If located in a Precise Plan with identified open space, must meet minimum size identified in that Precise Plan to qualify for credit.
- Maximum Credit: Up to 75 percent the value of the land.
- Applicability:
 - Citywide.
 - Yards, court areas, setbacks, decorative landscape areas, bike and pedestrian paths 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 open space for a POPA open space.
- Design/Operational Requirements:
 - Must have prominent, highly visible entrance and/or frontage on a public street(s). Must have minimum 100' dimensions (length and width).
 - Include signage consistent with City requirements.
 - Abide by City park hours and accessibility requirements.

- All open space areas must have adequate hydration stations available to meet the needs of the desired activities and uses of the park.

Elements

Staff created a separate “Elements” subsection that requires the entire POPA open space to be cumulatively comprised of elements, in any combination, as listed in Table 41.11 in Attachment 1. This approach requires at least one element but allows for greater variation and flexible design options for the POPA open space. However, all elements in the open space must meet the minimum requirements specified for each element listed in the table to ensure quality parklike amenities.

At the October Study Session, Council asked staff to refine components of the “Maintained Natural Habitat Space” element to balance the preservation of the existing tree canopy while allowing flexibility to encourage planting new trees when appropriate. Staff is proposing a canopy coverage requirement of 65 percent to 75 percent within five years following construction completion of the open space.

As part of the list of elements, staff added an “Alternate Element” option. As part of a credit application, an applicant can propose an alternate element to replace one of the other listed elements as long as the alternate element similarly serves the public. The alternate element allows for the introduction of a creative amenity that may be appropriate but is not listed in Table 41.11.

Alternate Proposals

A recurring theme at the Study Sessions and with the development community has been to facilitate creativity and flexibility in the design of open spaces while still establishing clear standards and expectations to receive a park land dedication credit. In an effort to provide flexibility for unique development situations, staff has incorporated an Alternate Proposal section, similar to the section that currently exists in the North Bayshore open space credit. Under the Alternate Proposal, a developer can apply for an open space credit if the proposed POPA open space is greater than one contiguous acre in size and meets key objectives.

The Alternate Proposal is proposed to have a level of credit of up to 75 percent of the value of the land, which is the same credit available for open spaces 0.4 acre to one contiguous acre in size.

The City has received one request for a POPA Open Space Credit over one acre in size by Google in Google's Middlefield Park Master Plan proposal, which was submitted in anticipation of the amendments before Council in this ordinance. Google is requesting the POPA open space for the 2.8-acre Ellis Park area along the VTA light rail tracks with a one-acre public plaza at the Middlefield Light Rail Station (which is identified in the East Whisman Precise Plan as a desired public open space) and 1.8-acre linear portion that terminates at the future pedestrian-bicycle bridge location north of the plaza. Google is proposing to have a variety of amenities and programming to support public use and recreation. Ultimately, Google is requesting Council consideration for the open space to count for 100 percent of the value of the land toward the project's park land dedication requirements based on the scale of the space and the quality of open-space amenities proposed to be provided to the public.

Term and Maintenance

Staff is proposing to add a new subsection to address the maintenance and operation requirements of a POPA open space. At the first PRC Study Session, staff was asked to explore maintenance requirements and maintaining public accessibility in perpetuity. In response, staff recommends any POPA open space to remain publicly accessible in perpetuity through a recorded public access easement, covenant, restriction, or similar legal instrument. In addition, the City and property owner(s) will be required to enter into an agreement that identifies maintenance responsibilities, process for any future modifications or upgrades, and actions for violations and penalties.

This subsection also addresses future redevelopments of a previously credited POPA open space where the subsequent developer will be required to retain the same total area of the existing POPA open space but can adjust the shape or location on-site. However, the new POPA open space would need to meet the requirements of the Park Land Ordinance in place at the time of redevelopment.

Other Amendments

In addition to the amendments to establish a new POPA Open Space credit, staff is recommending to create clear process and approvals subsections for all of the park land credits as well as other minor amendments for clarity and consistency.

Process and Approvals

Staff is proposing to update the Process section and add a separate Approval section to provide greater clarity regarding application requirements and approval authority. The changes to the Process section clarify any credit request is due at submittal of a formal

development application. This is to prevent late requests in the development review process, which limits opportunities for public input and review by City staff. In addition to providing a written request outlining the credit request and demonstration of compliance, the Process section identifies the following additional requirements:

- For the POPA Open Space Credit, the applicant is required to provide three items as part of their credit application:
 - Dimensional site, design, and landscaping plans that detail the proposed POPA open space and elements; and
 - A demographic analysis within the area within one mile of the proposed POPA open space, including the targeted demographics of the new residential development; and
 - An element analysis of the closest parks or POPA open spaces within one mile of the project site, up to a maximum of five parks and/or POPA open spaces. If three or more parks/open spaces in that analysis have the same element(s), the applicant must select a different element(s) unless the applicant can adequately justify need of the element(s) through the demographic analysis.
- For the Affordable Housing credit, the applicant will need to submit the number of proposed affordable units within the residential development.
- For the Historic Resource credit, the applicant will need to submit an itemized cost estimate of the rehabilitation or relocation costs of the historic resource.

By clarifying these application requirements, clear expectations are set to qualify for a credit, and it facilitates review by staff and the appropriate approval body.

Lastly, the new Approval subsection states that POPA Open Space and Historic Resource Credits must be approved by the City Council, including any Alternate Proposal or Alternate Element. The Affordable Housing credits will maintain its current approval process where it can be approved by the decision-making body of the residential development as long as all application requirements are met, such as by the Zoning Administrator or City Council.

Additional Amendments

In addition to the amendments described above, other minor text amendments are proposed by staff to provide consistency with State law and greater clarity, including:

- Accessory Dwelling Units (ADUs): On November 10, 2020, Council adopted amendments to Chapter 36 (Zoning Ordinance) of the City Code to update ADU regulations to align with State laws, which became effective January 1, 2020 (Senate Bill 13, Assembly Bill 68, Assembly Bill 587, Assembly Bill 670, Assembly Bill 671, and Assembly Bill 881). At this time, staff is recommending to remove all mention of companion units, also called ADUs, from Chapter 41 to conform with these recent changes in State law. By removing ADUs as a density category, ADUs will no longer be subject to park land requirements or payment of an in-lieu fee. For the City to continue to require a park land dedication for ADUs, the City will need to conduct a new nexus study to meet current fee requirements under State law.
- Definitions: Added definitions for POPA Open Space and Historic Resources.
- Zoning Calculations: Added clarifying text that dedicated park land can count toward development standards of a project related to floor area, lot size, and density. This is currently applied for any development project proposing to dedicate park land.
- Affordable Housing: Updated the Zoning Code reference in the affordable housing credit to reflect the recent Density Bonus Ordinance introduced to Council on February 9, 2021 and scheduled for a second reading on March 9, 2021.

PROCESS AND TIMELINE FOR NEW CITY PARKS

Related to, but separate from, the Park Land Ordinance amendments is the process and schedule for the delivery of new City parks. One of the advantages of a POPA open space to a residential development is that it can be designed and constructed in coordination with the housing units. Through discussions with residential developers regarding this advantage, some housing developers who are dedicating park land adjacent to their projects requested that the City review current processes in order to schedule the completion of the new, adjacent City parks more closely with the completion and occupancy of their new housing developments. In some cases, the developer has suggested that the developer may be able to design and construct these parks as part of the developer's developments to save time. Staff has analyzed this delivery model and concluded that it is unlikely to significantly reduce the schedule, costs, and/or City staffing resources required to deliver new City parks as further described below.

Overview of Park Delivery Process

After the City acquires park land through dedication or purchase and funding is available to develop the park, a process of design, public outreach, review and approval, and construction of the park begins. This process, shown in Figure 1, has evolved to deliver a new park in a timely manner while also meeting all City requirements and providing for significant public input.

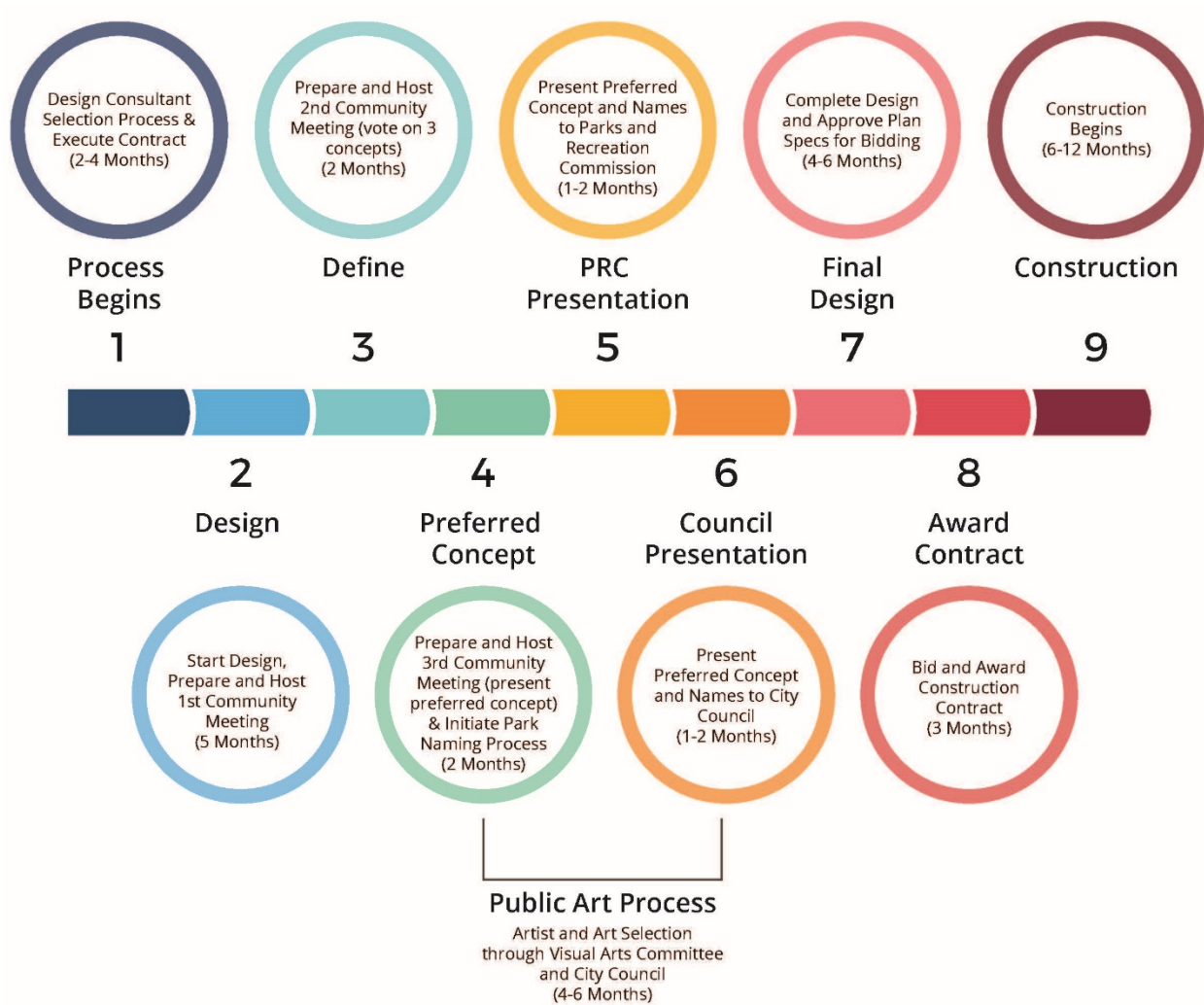


Figure 1: Park Delivery Process

Step 1 may begin once the park land is secured and there are sufficient funds available for design and construction. The time required to develop a park is typically 24 to 36 months and depends on a number of factors, including the complexity of the project, available staff resources, and the progress of the public input process. Over the last few

years, staff has taken the following steps to streamline the process to gain efficiencies and reduce the delivery time by two to four months, including:

- Placing items, such as approval of conceptual design or approval of plans and specifications, on Council's Consent Calendar rather than as a New Business item.
- Seeking Council approval for staff to award the construction contract if the bids are within the project budget.
- Reducing the number of public meetings when staff has been able to reach consensus on a conceptual design in two meetings. Where consensus has not been reached in two meetings, a third meeting is held.

To further streamline the process, staff proposes to implement the following for future parks projects:

- Begin Design While Housing is in Construction: The past practice has been for park design to start after the new housing development is completed and occupied, usually because there was insufficient funding or staffing resources to begin the project sooner. One advantage of this delay is that it provided the opportunity for the new residents to provide input into the design process; however, a significant disadvantage was that the park was completed two or more years after the new housing was occupied. To facilitate an earlier delivery of the park, staff will prioritize beginning the design process while the housing project is still under construction, assuming enough Park Land funding is available. There will still be public input from current residents in the surrounding area. Notably, park construction may be delayed until after housing occupancy if the developer is using the vacant park land for their construction staging needs.

Delivering Parks as Part of Private Development

As noted above, developers have inquired about designing and constructing park improvements on land dedicated as part of their development. Some considerations with this model include:

- Assuming the same level of public outreach and advisory body/Council review, most of the activities that drive the schedule do not change;
- If the developer's park land requirement is used to both dedicate land and fund the improvements, the amount of land dedicated is reduced. If the City wishes to

maximize the land dedication, the City will need to provide Park Land funds to the developer for the construction costs;

- Potential efficiencies with this model include the developer procuring design and construction services rather than the City, which initially may appear to reduce the duration of and staff effort associated with these activities. However, these efficiencies are offset by additional administrative effort associated with monitoring the use of City funds, including entering into a reimbursement agreement, processing payments, and ensuring the public contract code process is followed. Additional staff effort would also be needed during the entire process as staff is one step removed from and not in direct oversight of the designer or contractor. Staff must ensure that construction meets City standards and can be cost-effectively operated and maintained by the City;
- Considerable staff effort is still required to oversee the public outreach process, prepare for advisory body (PRC and VAC) and Council meetings, and review the design and construction throughout the entire process; and
- Developers typically use the dedicated park land for construction staging, so construction of the park cannot begin until construction of the development is substantially complete and the contractor has vacated the site adequately to begin constructing the new park.

Versions of this park delivery model have been used for several parks with varying degrees of success. Staff is not able to estimate time savings associated with this model as each development/park is unique and success depends on a number of factors, including the developer and designer involved. While staff is open to evaluating specific requests from developers that they design and construct a City-owned park, staff does not anticipate that this delivery model will reduce the schedule or costs for the park nor reduce the City staffing resources required.

FISCAL IMPACT

The timing of the proposed process could cause a nominal loss on individual project fees collected by the City due to potential increases in land value between when the park land requirement is determined and the payment is due. However, the proposed amendments to setting land values annually are intended to provide greater certainty to developers for their park land dedication in-lieu fee requirement, and while the process being proposed is more formalized, the timing is similar to staff's current practices. Therefore, it should have a minimal fiscal impact compared to current processes.

Additionally, with these amendments, there could be an increase in the amount of proposals for the POPA Open Space Credit. This could reduce the amount of park land dedication in-lieu fees received by the City from residential developments. However, it will also provide more publicly accessible open space to the community, which is the primary goal of the ordinance. Further, it will provide the City savings on design and construction costs for these open spaces, placing these costs on the developer. In turn, the residential developers gain greater design opportunities of the space or other project infrastructure underneath the space and can construct the space in tandem with the project.

Lastly, the cost for the annual appraisal study is approximately \$6,000 and can be absorbed by the existing Biennial Real Estate Technical and Legal Services CIP.

CONCLUSION

Following four Study Sessions with the City Council and the Parks and Recreation Commission and outreach to residential developers, staff is recommending amendments to Chapter 41, Park Land Dedication or Fees In-lieu Thereof Ordinance, to provide: (1) greater certainty regarding land values through an annual appraisal study adopted by Council and improvements to the development review process regarding disclosure of park land requirements; (2) removal of the Private Open Space and North Bayshore Precise Plan Publicly Accessible/Private Owned Open Space Credits; (3) the addition of a new Privately Owned/Publicly Accessible Open Space Credit available Citywide to increase opportunities for residential developers to create parklike open spaces, which count toward their park land requirements and the City's park land goals; (4) create a new elements table with clear minimum requirements; (5) introduce new alternate element and alternate proposal sections to allow for unique and creative design opportunities for POPA open spaces; (6) add terms and maintenance obligations to set expectations for the POPA open spaces in perpetuity; and (7) other amendments to clarify park land dedication credit application requirements, approval processes, and maintain consistency with City regulations and State law.

Lastly, staff outlined the process and schedule for delivery of new City parks. However, that review is not related to the recommended ordinance updates.

ALTERNATIVES

1. Approve the amendments to the Park Land Dedication Ordinance with modifications.

2. Refer the ordinance back to staff and the Parks and Recreation Commission for further analysis and reconsideration.
3. Do not approve the amendments and keep the Park Land Dedication Ordinance as is.

PUBLIC NOTICING

The City Council agenda is advertised on Channel 26, and the agenda and this report appear on the City's website. All residential developers who provided feedback to City staff and other interested stakeholders were notified of this meeting.

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- Attachments:
1. Ordinance to Amend Chapter 41
 2. [October 15, 2019 Council Report](#)
 3. [February 12, 2020 PRC Memo](#)
 4. [October 14, 2020 PRC Memo](#)
 5. [October 27, 2020 Council Report](#)
 6. Redlined Proposed Ordinance