

## ***CHAPTER X.1. PARKLAND DEDICATION, IMPROVEMENT AND PARK FEE REQUIREMENTS***

### **Section X.1.1. Purpose**

This Chapter sets forth the requirements for the imposition of land dedication requirements or a fee-in-lieu of dedication to provide parks, trails and other necessary recreational and open space to serve residents of the City. This Chapter is intended to further the goals of the Park Master Plan and the Trails Master Plan to provide sufficient and appropriate parks and recreational opportunities and to support the City's adopted goal of a minimum ten-minute walk to a park for every resident and to ensure a minimum level of access and improvements for parks and trails through the land development process.

- A. A park fee is imposed on residential development to assure that park and related improvements and infrastructure, including trails, are available and adequate to meet the needs created by such development while maintaining current and proposed park and recreation standards in accordance with the adopted Healthy Infrastructure Plan, Park Master Plan and Trails Master Plan. The park fee consists of a parkland dedication requirement and a park development fee. The park fee shall be imposed by the City on all residential development, and all funds collected shall be used solely and exclusively for the purpose of acquisition and development of parks and related infrastructure and improvements necessitated by and serving such development.
- B. If a park fee (including parkland dedication or cash-in-lieu of parkland dedication) has been paid prior to the adoption of this Chapter that park fee (including parkland dedication or cash-in-lieu of parkland dedication) shall be controlled by the provisions of the ordinance in effect at the time such obligation arose.

### **Section X.1.2. Applicability**

These regulations shall be uniformly applicable to residential development of property in the City which is or will be served by parks.

- A. **Exemptions** - This Chapter does not apply to activities involving:
  - 1. The replacement, reconstruction, remodeling, rehabilitation or other improvements to an existing building;
  - 2. The rebuilding of a damaged building;
  - 3. To permits required for accessory uses; and
  - 4. The addition of a backyard cottage, as regulated by Article VII.3.1 of this UDC.
- B. Where properties are redeveloped, the park fee is only assessed on the additional number of residential units.
- C. For purposes of this Chapter, property is "served by" parks when funds collected for such improvements and infrastructure have been spent as identified in the Park Master Plan or Trails Master Plan within ten (10) years from the date of collection.

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### Section X.1.3. Authority

- A. The park fee requirements are based on the adopted Park Master Plan and Trails Master Plan for the entire City, which identifies the parks and related improvements which are to be acquired through parkland dedication requirements or financed in whole or in part through the imposition of park fees. Park fees may only be spent for parks and related improvements identified in such plans.
- B. Imposition of a park fee does not alter, negate, supersede or otherwise affect any other requirements of City, county, state or federal legislation or regulations that may be applicable to a development, including city zoning and/or land development regulations.
- C. The provisions of this Chapter shall not be construed to limit the power of the City to utilize other methods authorized under state law or pursuant to other City powers to accomplish the purposes set forth herein, either in substitution or in conjunction with this Chapter. Guidelines may be developed by resolution or ordinance to implement and administer this Chapter.

### Section X.1.4. Parkland Dedication and Improvement and Park Fee Requirements

#### A. Parkland Dedication Requirement

- 1. For residential and mixed-use development, the parkland dedication requirement shall be determined by a ratio of three (3) acres for each 100 dwelling units. For calculation of developments with less than 100 dwelling units, each dwelling unit shall equal 0.03 acres. (Example: 25 dwelling unit development will require three-quarter (0.75) acres).
  - a. Jurisdictional wetlands and property in established floodplains may be used to satisfy up to one-half (½) of the parkland dedication requirement.
  - b. All plats shall show the area proposed to be dedicated under this Section. The property must be reviewed and accepted by the Director of Parks and Recreation. If the area proposed for dedication is not consistent with the goals established in the Parks Master Plan or the Trails Master Plan, the City may require a cash-in-lieu of parkland dedication. Specified park sites and trails shall be dedicated to the City after completion and acceptance of improvements made by the developer and filing of the approved final plat.
- 2. Cash-in-Lieu of Parkland Dedication
  - a. The City may require cash-in-lieu of parkland dedication. Such payment in lieu of land shall be made prior to final plat approval or engineering site plan for multifamily and mixed-use development where a plat is not required. The payment shall be proportional to the amount of land required to be dedicated and shall use the fair market value of the land at the time of construction of the development.

The amount of the cash-in-lieu of parkland dedication shall be based on the following formula:

$$(A \times V) = M$$

A = the area of land required for dedication as determined in Subsection X.1.4.A.1 above.

V = the fair market value (per acre) of the property as established by a land appraisal conducted by a third party.

M = the number of dollars to be paid in lieu of the parkland dedication requirement.

- b. The Director of Parks and Recreation shall be responsible for verifying the amount due.

- c. A combination of parkland dedication and cash-in-lieu of parkland dedication can be utilized to meet the parkland dedication requirement.
- 3. Minimum Park Improvements—Unless waived by the Director of Parks and Recreation and the City Engineer, parks and trails shall be improved by the developer prior to acceptance by the City. The minimum park and trail improvements shall include:
  - a. ~~G~~grading and clearance of unwanted vegetation, except that all protected and heritage trees as defined in Section II.2.1 of the Unified Development Code shall be preserved;
  - b. ~~I~~nstallation of drainage and erosion controls;
  - c. ~~E~~stablishment of turf and planting of trees;
  - d. ~~I~~nstallation of perimeter streets, sidewalks, and streetlights;
  - e. ~~P~~rovision of water and sewer service; and
  - f. When required, the installation of trails in accordance with the design standards in the Parks Master Plan and Trails Master Plan.
- 4. Additional Improvements - The developer may request to construct additional park improvements above the minimum improvements above if in conformance with the design criteria and objectives of the Healthy Infrastructure Plan, Park Master Plan and Trails Master Plan. Additional improvements may be denied by the Director of Parks and Recreation and the City Engineer if they would impose an unreasonable maintenance responsibility on the City or are judged to be premature based on service demand.
- 5. ~~Park Plan and Development Agreement — If the developer desires to add additional improvements outlined in Section X.1.4 above a park plan shall be submitted as part of the engineering site plan. The plan shall include all proposed improvements with cost estimates. Prior to improving the site, the developer and the City shall execute a subdivision improvement agreement which details construction schedules, costs, performance surety and the amount to be reimbursed and a schedule for reimbursement.~~

**Commented [SA1]:** Rationale: Healthy Infrastructure Plan and subsequent Texas Forest Service Grant Reports call for protecting existing tree canopy

**Commented [SA2]:** Rationale: Ensure walkable access to park

**B. Park Development Fee**

- 1. The amount of the park development fee shall be based on the following formula:  
 $(R \times DU) = F$   
 R = the park development fee rate found in Volume 1, Chapter 2.VIII.201 of the Code of Ordinances.  
 DU = the total number of dwelling units in the residential development.  
 F = the number of dollars to be paid.
- 2. ~~Credit against~~ Park Development Fee Escrow — The director of parks and recreation may, in her sole and absolute discretion, choose to allow a developer to construct park improvements in order to receive a credit for all or a portion of the park development fee in the form of the release of park development fee funds escrowed by the developer, as set forth herein.
  - a. ~~The plan shall include all proposed improvements with cost estimates. Park Development Agreement — The developer's cost to provide certain park improvements in addition to the minimum improvements required in Subsection A.3 above may qualify for reimbursement of part or all of the required park development fee. The developer shall enter into a park development agreement with the City prior to the approval of the engineering site plan or construction plans, as applicable. The park development agreement shall, among other terms and conditions:~~

**Commented [SA3]:** Rationale: Healthy Infrastructure Plan goal of establishing a park within 10 Minutes of every resident's front door. This section will give the City the capacity to work with developers to achieve this in a timely manner as new residential development occurs and new residents move in. The park and park amenities, like streets and utilities, are essential infrastructure for new developments.

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- 1) ~~set forth the total amount of the park development fee to be escrowed as set forth in section X.1.4.B.2.b, below, and the conditions under which the escrowed park development fee is to be released;~~
- 2) ~~require a park improvements plan, including a detailed, scaled drawing, often referred to as construction plans, certified by a design professional (engineer, landscape architect, etc.) for proposed park improvements with cost estimates, adhering to all applicable statutes and regulations, all development standards established in the City's long-term park plans, and all guidelines used by the Parks and Recreation department;~~
- 3) ~~provide for dedication of the property as set forth in Section X.1.5 upon completion and acceptance of the park improvements;~~
- 4) ~~require that as-built plans including a detailed, scaled drawing reflecting the exact location of the park improvements be provided to the City once construction is complete; and~~
- 4) ~~set forth a two (2) year warranty and two (2) year maintenance bond for the proposed improvements.~~

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- b. ~~Escrow of Park Development Fee – The developer shall escrow with the City the park development fee at the time set forth in section X.1.5., below, and the fee shall be escrowed until all conditions for release set forth in the park development agreement required by section X.1.4.B.2.a, above, are satisfied. Any interest earned on the escrowed fee shall belong to the City. If the park development agreement required by section X.1.4.B.2.a, above, is terminated for any reason prior to the release of the escrowed park development fee, such fee shall no longer be escrowed, but shall permanently convey to the City for use for the purposes set forth for park development fees in this Chapter.~~
- c. ~~Improvements eligible for consideration for a park development fee credit shall exceed all other minimum park dedication requirements set forth herein, and may include, but are not limited to the following:~~

~~The following improvements in a park may be counted towards the park development fee reimbursement:~~

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- a. ~~1) Landscaping;~~
- 2) ~~b. Park improvements as required for each park as determined by the Director of Parks and Recreation, including but not limited to:~~
  - 1) ~~m~~Multi-use paths and trails;
  - 2) ~~p~~Playgrounds and play structures;
  - 3) ~~a~~Accessory ~~and shade~~ structures;
  - 4) ~~s~~Seating;
  - 5) ~~s~~Signage; and
  - 6) ~~l~~ighting

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**Section X.1.5. Processing and Collection**

Applicants for a residential development must submit an engineering site plan or a plat for review and approval in accordance with the requirements of this UDC.

- A. The parkland dedication requirement (or cash-in-lieu of parkland dedication) and park development fee shall be imposed on all residential development in the City at the time of approval of an engineering site plan or filing a final plat pursuant to the land development regulations, and all amounts due shall be paid prior to final plat or engineering site plan approval, except when all or part of the parkland development fee is to be escrowed as set forth in section X.1.4, above.
- B. The parkland dedication requirement for each residential development shall contain a clear, fee simple dedication of an area of land within the development to the City for parks. Parks should be clearly identified as separate lots with the label "Dedicated to the City of Lewisville in fee simple as a city park" on the final plat; except that a property for which park development fees are being escrowed under Section X.1.4.b.2 above shall be initially labeled as "open space" and later amended as set forth in the park development agreement required by that section.
- C. Upon receipt of an engineering site plan, preliminary plat or final plat the City shall calculate the amount of the park development fee and the amount of cash-in-lieu of parkland dedication (when applicable) due pursuant to Section X.1.4 above.
- D. For multi-family developments, if fewer dwelling units are constructed than planned by the site plan, the property owner may apply for a refund for the difference in the number of dwelling units pursuant to Section X.1.7 below. For single-family developments, if the plat is amended to reduce the total number of dwelling units, the property owner may apply for a refund for the difference in the number of dwelling units pursuant to Section X.1.7 below. If fewer dwelling units are constructed than planned by the final plat or site plan, the property owner may apply for a refund for the difference in the number of dwelling units pursuant to Section X.1.7 below.

**Commented [SA4]:** Rationale: This will create clarity of ownership on plats.

**Commented [SA5]:** Rationale: establishing clearer guidelines for requesting a refund of park development funds in the event they are not used in a timely manner

### Section X.1.6. Use of Funds

- A. Cash-in-lieu of parkland dedication and park development fees collected must be used solely for one (1) of the following purposes:
  - 1. To acquire and develop parks, in accordance with the Park Master Plan and Trails Master Plan, subject to the provisions herein;
  - 2. To reimburse the City for prior acquisition and development of such parks, which will benefit the new residential development inhabitants; or
  - 3. To make refunds in accordance with Section X.1.7.
- B. ~~Neither cash-in-lieu of parkland dedication nor park~~ development fees collected ~~shall may not~~ be used to maintain or operate the existing park system or to finance park and recreational activities other than park and trail improvements.
- C. Nothing in this Chapter shall prevent the City from issuing and utilizing general obligation bonds, revenue bonds, revenue certificates or other certificates of indebtedness as are within the authority of the City in such manner and subject to such limitations as may be provided by law in furtherance of the financing and provision of park infrastructure and improvements as set forth in the Park Master Plan. Cash-in-lieu of parkland dedication and park development fees paid pursuant to this Chapter, however, shall be used for park and trail land acquisition and development.
- D. Interest earned on cash-in-lieu of parkland dedication and park development fees shall be used solely for the purposes specified herein.
- E. The City shall establish adequate financial and accounting controls to ensure that cash-in-lieu of parkland dedication and park development fees disbursed are utilized solely for the purposes and intent of this

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Chapter; provided, however, that such funds shall be expended within a reasonable period of time, not to exceed ten (10) years from the date the funds are collected.

- F. The City shall maintain and keep financial records for the cash-in-lieu of parkland dedication and park development fees which shall show the source and disbursement of all funds collected.

### Section X.1.7. Refunds

- A. The current owner of property on which a cash-in-lieu of parkland dedication payment and park development fee has been paid may apply for a refund of such funds if:
  - 1. The property on which the funds have been paid has not been served by parks, as provided in Section X.1.2 above, within ten (10) years of payment of the cash-in-lieu or fee; or
  - 2. Fewer dwelling units are constructed than planned by the final plat or engineering site plans set forth in section X.1.5.D above.
- B. Only the current owner of the property may petition for a refund. A petition for refund shall be filed within one (1) year of the event giving rise to the right to claim a refund, or the refund will not be granted.
- C. The petition for refund must be submitted to the Director of Parks and Recreation on a form provided by the City for such purpose. The petition must contain the following: a certified copy of the latest recorded deed for the property; a current legal description; and a statement of the reasons for which a refund is sought.
- D. A refund shall be due under Subsection X.1.7.A.1 only if the Director of Parks and Recreation determines that the total funds collected for which a refund is being sought exceeds the total expenditures for park facility purposes allowed by this Chapter for the same period ("excess amount"). The refund amount shall be the development's pro rata share of the excess of funds collected over expenditures, together with interest earned on such amount for the period. The City may periodically compute the difference between expenditures and funds collected for purposes of reviewing refund requests under this subsection. The City Council may, after notice by publication in the section of a local newspaper reserved for legal notices, and after a public hearing, vote to apply any unclaimed excess amounts to the remaining park improvements. When the City Council votes to apply the excess amounts, the right to refund of the applied excess amounts shall be extinguished.
- E. Within one (1) month of the date of receipt of a petition for refund, the Director of Parks and Recreation must provide the petitioner, in writing, with a decision on the refund request. The decision must include the reasons for the decision. If a refund is due to the petitioner, the Director of Parks and Recreation shall notify the City's finance department and request that a refund payment be made to petitioner.
- F. The petitioner may appeal the determination of the Director of Parks and Recreation to the City Council, and its decision shall be final.

**Commented [SA6]:** Rationale: establishing clearer timeline for requesting a refund of park development funds in the event they are not used in a timely manner

### Section X.1.8. Procedures for Updating the Parkland Dedication Requirement and Park Fee

- A. At least every five (5) years, the Director of Parks and Recreation shall prepare a report to the City Council on the parkland dedication and park fee program. In the preparation of such report, the following information shall be reviewed:
  - 1. A statement summarizing the parkland dedication requirements and the cash-in-lieu of parkland dedication requirements and park development fees collected and disbursed since the previous report;
  - 2. A statement summarizing park acquisition and development and the status thereof since the previous report;

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3. A statement summarizing the administration and enforcement of the parkland dedication and park fee program; and
  4. A statement and recommendation from the park board on all aspects of the parkland dedication and park fee program and city park needs.
- B. The report shall make recommendations, if appropriate, on amendments to this Chapter, changes in the administration or enforcement, changes in the parkland dedication requirements, cash-in-lieu of parkland dedication and park development fee rates, and changes in the Park Master Plan and the Trails Master Plan.
- C. Based upon the report and such other factors as the City Council deems relevant and applicable, the City Council may amend the park fee. If the City Council fails to take action, the park fee then in effect shall remain in effect. Nothing herein precludes the City Council or limits its discretion to amend the park fee at such other times as may be deemed necessary.

#### **Section X.1.9. Appeals**

- A. The property owner or applicant may appeal the following decisions of the Director of Parks and Recreation to the City Council:
1. The applicability of the parkland dedication and park fee program;
  2. The amount of the dedication or park fee due; or
  3. The amount of refund due, if any.
- B. The burden of proof is on the property owner or applicant to demonstrate that the amount or applicability of the dedication, fee or refund, was not calculated according to the applicable schedule of dedication or fees or the guidelines established for determining such amounts. The property owner or applicant must file a notice of appeal with the City Secretary within 30 days following the determination by the Director of Parks and Recreation. The filing of an appeal shall stay the matter until final determination by the City Council.
- C. The City Council may approve an appeal from any requirements of this Chapter, upon written request by a property owner or applicant, only upon a finding that a strict application of such requirement would result in a substantial hardship which is not common to similarly situated property owners.

#### **Section X.1.10. Parkland Dedication and Park Fee as Additional and Supplemental Requirement**

- A. The parkland dedication requirements and park fee is additional and supplemental to and not in substitution of any other requirements imposed by the City on the development of the land. It is intended to be consistent with and to further the objectives and policies of the Park Master Plan, the Trails Master Plan and the comprehensive plan and to be coordinated with other city policies, ordinances and resolutions by which the City seeks to ensure the provision of adequate park access, land and improvements in conjunction with the development of land. In no event shall a property owner be obligated to dedicate land or pay for park improvements in an amount in excess of the amount calculated pursuant to this division; but provided that a property owner may be required, pursuant to city zoning and land development regulations, to provide open lands, setbacks, buffers and other non-buildable areas on-site in addition to meeting the park fee requirements.