

ARTICLE 5. PARK AND RECREATION DEDICATIONS

Sec. 13-250. PURPOSE

~~The purpose of this article is to establish the procedures for requiring park and recreational facilities in conjunction with residential developments ("PARK FEES"). Sections 13-251 through 13-261 relate to residential developments which require a subdivision and which shall be subject to State Government Code Section 66410 et seq. Section 13-261.1 through Section 262.8 refer to multi-family residential developments for renters ("apartments") which shall be subject to State Government Code Section 66000 et seq.~~

~~**Sec. 13-250. PURPOSE**~~

~~The purpose of this article is to establish the procedures for requiring park and recreational facilities in conjunction with residential subdivisions.~~

Sec. 13-250.1 SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL DEVELOPMENT WITH SUBDIVISION

Sec. 13-251. REQUIREMENT

Every residential subdivider who creates a subdivision shall be required to dedicate a portion of the land, pay a fee in lieu thereof, or do a combination of both, as established in this article for the purpose of providing park and recreational facilities to serve future residents of the subdivision.

Sec. 13-252. APPLICATION

The provisions of this article shall apply to all residential subdivisions, as defined in State Government Code Section 66410 et seq..

- (a) Subdivisions containing fewer than 5 lots and not used for residential purposes shall be exempted from the requirements of this article. However, a condition may be placed on the approval of the tentative or parcel map that if a building permit is requested for construction of a residential structure or structures on one or more of the lots within 4 years, the fee may be required to be paid by the owner of each such lot as a condition of issuing the permit.
- (b) This section does not apply to commercial or industrial subdivisions, or to residential common interest development projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building which is more than 5 years old when no new dwelling units are added.

Sec. 13-253. RELATION OF LAND REQUIRED TO POPULATION DENSITY

Consistent with the General Plan, it is hereby found and determined that the public interest, convenience, health, welfare and safety require that 5.76 acres of property for each 1,000 persons residing within the City be devoted to public park and recreational purposes. The requirement will be satisfied in part by arrangements between the City and the local school district to make available for park and recreation purposes, 1.5 acres of school sites adjacent to the proposed park for each 1000 persons residing within the City. The remaining 4.26 acres of the required 5.76 acres shall be supplied as required by this article.

Sec. 13-254. POPULATION DENSITY

For the purposes of this article, population density shall be established by resolution of the City Council, utilizing the following classifications:

- (a) **Single-family residential.** Detached single-family homes where there is no more than one dwelling unit on a lot.
- (b) **Multiple-family residential.** Apartments, common interest developments, townhouses and similar multiple-family residential developments, including detached single-family homes where there is more than one dwelling unit on a lot.
- (c) **Determination of the number of dwelling units.** The total number of dwelling units shall be determined by the number of units proposed for construction. When the actual number of units is unknown, the number of the units shall be based on the maximum number of units which are permitted by the General Plan for the property at the time the tentative or parcel map is filed with the City.

Sec. 13-255. AMOUNT OF LAND TO BE DEDICATED

The amount of land required to be dedicated by a subdivider pursuant to this section shall be based on the following formula:

$$A = 4.26(D.F. \times D.U.) / 1,000$$

Definition of terms:

- A - The area in acres required to be dedicated as park sites or to be appraised for fee payment in lieu of dedication.
- 4.26- Number of acres per 1000 persons.
- D.F.- Density factor obtained from Section 13-254 POPULATION DENSITY as applicable to the proposed development.
- D.U.- Number of dwelling units.

Sec. 13-256. AMOUNT OF FEE IN LIEU OF LAND DEDICATION

- (a) Where there is no public park or recreation facility required within the proposed subdivision, or where the subdivision contains 50 lots or fewer, the subdivider shall pay a fee in lieu of land dedication reflecting the value of land required for park and recreation purposes in accordance with the schedule of fees as adopted by resolution of the City Council. This fee shall reflect the average fair market value of neighborhood and community park land within the City. The fair market value shall be determined by an appraisal of at least one neighborhood park site and one community park site. The appraisal shall be conducted by an M.A.I. appraiser and shall consider the factors set forth in subsection (e), where applicable to the appraisal of public park land.
- (b) Nothing in this section shall prohibit the dedication and acceptance of land for park and recreation purposes in subdivisions of 50 lots or fewer, where the subdivider proposes the dedication voluntarily and the land is accepted by the City Council.
- (c) When a common interest development project, stock cooperative, or community apartment project exceeds 50 dwelling units, the City may elect to require dedication of land notwithstanding that the number of lots may be 50 lots or fewer.
- (d) For subdivisions in excess of 50 lots, the City Council may elect to receive a fee in lieu of land dedication. The amount of such a fee shall be based upon the fair market value of land which would

otherwise be required for dedication. The fair market value shall be determined by an M.A.I. appraiser acceptable to the City and at the expense of the developer as set forth in subsection (e). If more than one year elapses between the appraisal and recording of the final map, the City shall have prepared a new appraisal and shall invoice the subdivider for the cost of the appraisal.

- (e) For purposes of this section, the determination of the fair market value of neighborhood and community park land or unimproved residential land which would otherwise be required for dedication shall be determined by an M.A.I. appraiser acceptable to the City and shall consider, but not necessarily be limited to, the following:
 - (1) The value of the unimproved residential land by residential density shown on the tentative subdivision map at the time the final map is to be recorded;
 - (2) Approval of and conditions of the tentative subdivision map;
 - (3) The General Plan land use designation of the property;
 - (4) The zoning classification of the property;
 - (5) Property location;
 - (6) Off-site improvements facilitating use of the property; and
 - (7) Site characteristics.
- (f) If the subdivider objects to the amount of the fee pursuant to this section, an appeal may be made to the City Council by filing an application of appeal with the City Clerk and payment of an appeal processing fee as determined by the City Council. A notice of appeal shall be filed with the City Clerk within 7 days of payment of the in-lieu fee. The subdivider shall have the burden of proof in contesting the amount of the fee. Within 30 days of receipt of the notice of appeal, a public hearing on the appeal shall be held by the City Council, and the decision shall be final and conclusive in determining the amount of the fee.
- (g) The fee shall be paid to the Development Services Department and shall be deposited and held in appropriate trust accounts and may be expended therefrom only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreation facilities to serve the subdivision on which the fee is charged. Upon receipt of the fee, the Development Services Department shall issue a receipt, and the receipt shall be presented as proof of payment of the fee prior to the issuance of any permit for buildings and structures pursuant to this Zoning Code.
- (h) In order that the fees levied pursuant to subsection (a) keep pace with the cost of land, the fee schedule described in subsection (a) shall be periodically adjusted on a biennial basis, or as specified by City Council by resolution. The fee schedule shall be adjusted using the methodology described in subsection (a) for establishing the fee schedule.
- ~~(h) — In order that the fees levied pursuant to subsection (a) keep pace with the cost of land, the fee schedule described in subsection (a) shall be periodically adjusted on a biennial basis. The fee schedule shall be adjusted using the methodology described in subsection (a) for establishing the fee schedule.~~
- (i) Upon application to the Development Services Department, the payment of the fee in lieu of land dedication pursuant to this section may be deferred where the department makes the following findings:

- (1) The subdivider has entered into a fee agreement with written evidence of adequate security to assure payment of the fee at a date prior to the issuance of a certificate of occupancy, and in a form approved by the City Attorney; and
- (2) The deferral of the fee shall not adversely impact the development of new or the rehabilitation of existing neighborhood or community park or recreational facilities to serve the subdivision.

Sec. 13-257. COMBINATION OF LAND AND FEE

In determining whether a subdivider shall dedicate land, pay a fee in lieu of land dedication, or a combination of both, the following procedure shall be used:

- (a) Subdividers required to or desiring to dedicate property for park and recreational purposes shall, upon filing a tentative map for approval, check with the City to determine whether their property has been designated for a park site in the General Plan. If a subdivider's property is so designated, the subdivider shall coordinate with the necessary departments to incorporate the park sites(s) into the property's development plan.
- (b) If the subdivider's property is not so designated, and a school site is proposed within or in proximity to the property, a park site adjacent to the school site shall be developed and the subdivider shall coordinate with the necessary departments to incorporate the park site(s) into the property's development plan.

Sec. 13-258. ACTION OF CITY

- (a) At the time of tentative or parcel map approval, the Planning Commission shall determine whether to require dedication of land within the subdivision, payment of a fee in lieu thereof, or a combination of both.
- (b) Determination: Whether the City accepts land dedication, requires payment of fees in lieu thereof, or a combination of both, shall be determined by consideration of the following factors:
 - (1) The Open Space Sub-Element of the General Plan.
 - (2) Provisions of Sections 13-256 AMOUNT OF FEE IN LIEU OF LAND DEDICATION, and 13-257 COMBINATION OF LAND AND FEE, of this article.
 - (3) Topography, geology, access and location of land in the subdivision available for dedication.
 - (4) Size and shape of the subdivision and the land available for dedication.
- (c) The determination of the City that land shall be dedicated or a fee paid in lieu thereof, or a combination of both, shall be final and conclusive.

Sec. 13-259. PROCEDURES, CREDITS

- (a) **Procedures.** When land dedication is required, it shall be accomplished in accordance with the provisions of the Subdivision Map Act and applicable local ordinances. When fees are required, the same shall be deposited with the Development Services Department prior to recordation of the map or issuance of building permits.
- (b) **Credits.** Credits against the amount of land to be dedicated or the amount of fees to be paid in lieu of dedication shall be granted as follows:
 - (1) Existing dwelling units: Credit shall be granted for dwelling units demolished as a part of the development of the subdivision. This credit shall be limited to the number of units existing at the time of the approval of the project and shall not be transferred to other subdivisions.

- (2) Privately developed, owned and maintained open space: Where private facilities for park and recreational purposes are provided in a proposed subdivision and the facilities are to be privately owned and maintained by the future residents of the subdivision, the areas occupied by the facilities shall be credited against the requirement of dedication of land for park and recreation purposes or the payment of fees in lieu thereof, to the extent that the Planning Commission finds it is in the public interest to do so and that the following standards are met:
- a. That each facility is available for use by all the residents of the subdivision;
 - b. That the area and the facilities satisfy the recreation and park needs of the subdivision so as to reduce the need for public recreation and park facilities to serve the subdivision residents;
 - c. That the area provided is in excess of the minimum amount of open space required for the subdivision;
 - d. That the area provided in excess of required open space is not used as a credit or bonus incentive as provided in other sections of this Zoning Code; and
 - e. That the area provided is of sufficient size, location and design to facilitate functional use of the area to meet the park and recreation demands of the future subdivision residents.
- (3) Credits shall be granted, dollar for dollar, for the value of park and recreational area and other improvements as approved by the Planning Commission. The value of the facilities shall be established by written documentation of the actual acquisition cost of the facilities paid by the subdivider.
- (c) **Previous fees.** Credit shall be granted, dollar for dollar, for any park and recreation fees paid for the property pursuant to this Zoning Code within the preceding 5 years.
 - (d) **Improvements to dedicated land.** Credit shall be granted, dollar for dollar, if the subdivider provides park and recreation facilities and/or improvements to land dedicated for park and recreation purposes. The value of the facilities and/or improvements shall be established by written documentation of the actual acquisition cost of the facilities or construction costs of the improvements paid by the subdivider.
 - (e) **Limitation on credits.** The maximum amount of credits provided by this section shall not exceed 100% of the calculated fee in lieu of land dedication.
 - (f) **Transfer of credits.** Credits provided by this section shall not be transferred or assignable to apply to property outside of the subdivision awarded the credit.
 - (g) **The granting of credits.** Pursuant to Section 13-259(b) PROCEDURES AND CREDITS, credits shall be granted subject to the following conditions:
 - (1) The private ownership and maintenance of the facilities shall be adequately provided for by written agreement in a form acceptable to the City Attorney;
 - (2) The use of the private facilities is restricted for park and recreational purposes by recorded covenants which run with the land in favor of the future owners of property within the subdivision and which cannot be defeated or eliminated without the consent of the City Council;
 - (3) The proposed private facilities are reasonable and adaptable for use for park and recreational purposes taking into consideration such factors as size, shape, topography, geology, access and location of the private open space land; and
 - (4) The facilities proposed are in substantial accordance with the General Plan.

(h) **Additional credits.** In lieu of the dedication of land for park and recreation purposes or the payment of a fee, the Development Services Director, with the approval of the Planning Commission may permit the following:

- (1) Dedication of land for park or recreation purposes outside of the subdivision;
- (2) Improvements to be made to an existing City park or upon land being dedicated as a public park;
- (3) Recreational facility to be installed upon land being dedicated as a City park; or
- (4) Any combination of 1, 2, or 3, above, provided that the land to be dedicated, the improvements to be made or the facilities to be installed or constructed are so located as to bear a reasonable relationship to the use thereof by future inhabitants of the subdivision.

The dedication of land or providing of improvements or facilities may only be used as a credit against the otherwise required dedication or fee to the extent of the value of the land, improvements or facilities as determined by the Planning Commission to be equal to or greater than the value of the land which would have been dedicated or the fee which would be paid pursuant to Section 13-256 AMOUNT OF FEE IN LIEU OF LAND DEDICATION.

Sec. 13-260. STATEMENT OF CITY RESPONSIBILITY

The City shall comply with all requirements of State Government Code Section 66477 with regard to acceptance and use of land dedicated or fees paid for park and recreational purposes.

Sec. 13-261. PARK AND RECREATION FEE IN LIEU OF LAND DEDICATION NOTICE

Where the residential subdivision contains 50 lots or fewer, the Development Services Department shall affix to any permit for buildings or structures and any vesting tentative map issued pursuant to this Zoning Code located within the subdivision a notice to read as follows:

PARK AND RECREATION FEE IN LIEU OF LAND DEDICATION NOTICE:

The City of Costa Mesa is giving consideration to enactment of a resolution or ordinance, or a combination thereof, for the increase in the park and recreation fees in lieu of land dedication pursuant to Section 13-256(a) AMOUNT OF FEE IN LIEU OF LAND DEDICATION, and State Government Code Section 66477. The owner of the project designated in this permit or vesting tentative map shall be obligated to pay to the Development Services Department a park and recreation fee in lieu of land dedication if such a fee is adopted in the future by the City of Costa Mesa. The fee will only be used for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision.

Sec. 13-261.1 MULTI-FAMILY RESIDENTIAL DEVELOPMENT FOR RENTERS (APARTMENTS)

Sec. 13-261.2 REQUIREMENT

Every residential developer who creates a multi-family residential development for renter households ("apartments") shall be required to remit a park fee as established in this section for the purpose of providing park and recreational facilities to serve the future residents of the apartments.

Sec. 13-261.3. APPLICATION

The provisions of this article shall apply to all residential developments, which are not subdivided and subject to State Government Code Section 66000 et. seq.

Sec. 13-261.4 RELATION OF LAND REQUIRED TO POPULATION DENSITY

Consistent with the General Plan, it is hereby found and determined that the public interest, convenience, health, welfare and safety require that 4.26 acres of property for each 1,000 persons residing within the City be devoted to public park and recreational purposes.

Sec. 13-261.5 POPULATION DENSITY

For the purposes of this section, population density shall be established by resolution of the City Council, utilizing the following classifications:

- (e) **Apartments** Any building (or portion thereof) or collection of buildings which provide two or more self-contained dwelling units not designated for separate ownership.
- (f) **Small Multiple-Family residential, renter.** Apartments and other multiple-family residential developments, with less than 50 units, where the units are for rent and are not legally subdivided for homeownership.
- (g) **Large Multiple-Family residential, renter.** Apartments and other multiple-family residential developments, with 50 units or more, where the units are for rent and are not legally subdivided for homeownership.
- (h) **Determination of the number of dwelling units.** The total number of dwelling units shall be determined by the number of units proposed for construction. When the actual number of units is unknown, the number of the units shall be based on the maximum number of units which are permitted by the General Plan for the property at the time the tentative or parcel map is filed with the City.

Sec. 13-261.6 PARK FEE FORMULA FOR APARTMENTS

The amount of park fee required pursuant to this section shall be based on the following formulas:

For Apartment projects with less than 50 units:

Use the fee assigned to multi-family subdivided developments in Sec. 13-255

For Apartment projects with 50 units or more:

$FEE = 4.26 (D.F. \times D.U. \times P.C.) / 1,000$

Definition of terms:

FEE – The per unit cost to be appraised for fee payment

4.26- Number of acres per 1000 persons.

A.D.F. - Apartment density factor obtained from Section 13-261.5 POPULATION DENSITY as applicable to the proposed development.

D.U. - Number of dwelling units.

P.C. Proportionate cost is the sum of the weighted cost of park land acquisition per acre of land and cost of construction per acre of land.

Sec. 13-261.7. AMOUNT OF PARK FEE FOR APARTMENTS

- (i) The park impact fee for apartments must meet all benefit requirements for State Government Code Section 66000 as follows:
 - (6) Identifies the purpose of the fee;
 - (7) Identifies the use to which the fee is applied;
 - (8) Shows a reasonable relationship between the use of the fee and the type of development project on which the fee is imposed;
 - (9) Demonstrates a reasonable relationship between the need for the public facilities and the type of development projects on which the fee is imposed; and
 - (10) Demonstrates a reasonable relationship between the amount of the fee and the cost of the public facilities or portion of the public facilities attributable to the development on which the fee is imposed.
- (j) Nothing in this section shall prohibit the dedication and acceptance of land for park and recreation purposes where the developer proposes the dedication voluntarily and the land is accepted by the City Council at their discretion. When land dedication is provided, it shall be accomplished in accordance with the provisions of the Subdivision Map Act and applicable local ordinances.
- (k) If the developer objects to the amount of the fee pursuant to this section, an appeal may be made to the City Council by filing an application of appeal with the City Clerk and payment of an appeal processing fee as determined by the City Council. A notice of appeal shall be filed with the City Clerk within 7 days of payment of the fee. The developer shall have the burden of proof in contesting the amount of the fee. Within 30 days of receipt of the notice of appeal, a public hearing on the appeal shall be held by the City Council, and the decision shall be final and conclusive in determining the amount of the fee.
- (l) The fee shall be paid to the Development Services Department and shall be deposited and held in appropriate trust accounts and may be expended therefrom

only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreation facilities to serve the development on which the fee is charged. Upon receipt of the fee, the Development Services Department shall issue a receipt, and the receipt shall be presented as proof of payment of the fee prior to the issuance of any permit for buildings and structures pursuant to this Zoning Code.

(m) In order that the fees levied pursuant to subsection (a) keep pace with the cost of land, the fee schedule described in subsection (a) shall be periodically adjusted on a biennial basis, or as specified by City Council by resolution. The fee schedule shall be adjusted using the methodology described in subsection (a) for establishing the fee schedule.

(n) Upon application to the Development Services Department, the payment of the fee may be deferred where the department makes the following findings:

(1) The developer has entered into a fee agreement with written evidence of adequate security to assure payment of the fee at a date prior to the issuance of a certificate of occupancy, and in a form approved by the City Attorney; and

(2) The deferral of the fee shall not adversely impact the development of new or the rehabilitation of existing neighborhood or community park or recreational facilities to serve the development.

Sec. 13-261.8 PROCEDURE, CREDIT

(a) **Procedure.** When fees are required, the same shall be deposited with the Development Services Department prior to issuance of building permits.

(b) **Credit.** Credit shall be granted for dwelling units demolished as a part of the development. This credit shall be limited to the number of units existing at the time of the approval of the project and shall not be transferred to other developments. A second dwelling unit legally established in conjunction with and subordinate to a primary dwelling unit in an R1 zone (i.e. accessory apartment, granny unit, granny flat, or in-law apartment) shall not be subject to the park fee.

