



PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: December 3, 2019

Subject

Municipal Code Amendments to Chapter 13.08 (Park Land Dedication and Fee) and Chapter 18.24 (Dedications and Reservations) to Clarify Park Land Dedication and In Lieu Fee Requirements; Adoption of the Fourth Addendum to the 2014 General Plan Final EIR; and Finding the Actions Are Not a Project Under and Exempt From CEQA.

Recommended Action

That the City Council conduct the first reading of the Draft Ordinance: “An Ordinance of the City Council of the City of Cupertino Adopting the Fourth Addendum to the 2014 General Plan Final EIR and Amendments to Chapter 13.08 and Chapter 18.24 of the Municipal Code to Clarify Standards for Park Land Dedications and Fees In lieu Thereof.” (Attachment A).

Discussion

Background

The FY2019/20 City Council Work Program directs the City to clarify objective standards within the City’s General Plan and Municipal Code. The Planning Commission and City Council reviewed areas that were identified by staff as needing clarity through Summer and Fall 2019. At the Planning Commission and City Council Study Sessions, Commissioners and Councilmembers recommended express standards for Park Land Dedications, in particular to have park land dedications situated at ground level. At the October 1, 2019 City Council meeting, the Council authorized staff to commence with amendments identified in Phase 1 and suggested that staff proceed with any readily feasible amendments listed in Phase 1.5. Staff has determined that the City can readily make the Municipal Code amendments being proposed with this draft Ordinance.

Analysis

Attachment B shows a redlined version of the Municipal Code amendments being proposed. The proposed amendments can be categorized into the following three areas:

- A. Standards related to dedicated park land;
- B. Conformance with State Law (Subdivision Map/Quimby Act); and
- C. Other minor clarifications and clean up.

These amendments are further discussed below.

A. Standards related to dedicated park land

Chapter 13.08 would be updated to clarify park land dedication standards including:

1. Adding a definition of park land dedication which specifies that park land must be situated at ground level and dedicated to the City in fee simple ownership.
2. Specifying the following requirements for land to satisfy the park land dedication requirement:
 - a. Located at ground level and dedicated to the City in fee simple ownership.
 - b. Have at least one contiguous piece of land of at least 0.27 acres, excluding any hillsides over ten percent slope, not be located in riparian setback areas and environmental mitigation areas.
 - c. At least 0.25 acres of the dedicated land be gradable to create a flat area of less than five percent slope in any direction.
 - d. All dedications shall be at least 50 feet wide and 0.10 acres in contiguous size. This standards is intended to ensure all dedicated land is usable for parks, while also facilitating the provision of pocket parks in park-poor areas of the City.
 - e. Be located adjacent to a street to promote public safety and facilitate policing.
 - f. Not include setback areas, private yards, and open areas required by zoning and/or building code or for streets and improvements that do not serve the park exclusively.
3. Clarifies factors for the City to consider in determining whether parkland dedication, in lieu fees, or a combination of both are required, including, but not limited to, adequacy of existing parkland in the surrounding area pursuant to the General Plan Recreation Parks and Community Services Element policies for distributing parks and open space throughout the community. A copy of these General Plan policies is included as Attachment D.

B. Conformance with State Law

Proposed modifications work to better align sections of the Municipal Code with the California Subdivision Map Act and Quimby Act. These include:

1. Clarifications to exceptions and credits in Chapters 13.08 and 18.24.
2. Clarifying that a credit is provided to the developer for the value of any improvements installed by the Developer in a dedicated park as required by law.

C. Other modifications and clean up

Other modifications and clean up include:

- Adding a definition of “senior citizen housing developments” to ensure consistent application of the term.

- Clarifies that addressing increased demands for parks is a requirement for all developments (subject to exceptions and waivers).
- Consolidating existing exceptions and credits into one section “Exceptions and Credits” for ease of applicability. In addition to this section, the City will continue to offer a range of incentives to facilitate the development of affordable housing including waiver of park dedication fees consistent with the City’s adopted Housing Element and Below Market Rate Housing Mitigation Manual.
- Clarifications to the formulas used for calculating the park land dedication acreage, as well as in lieu fees. The clarifications are consistent with the City’s existing formula and practice and do not change the amount of acreage or fees required.
- Clarifies that if a credit is given for private open space, the open space must be accessible to all residents in a development.
- Specifies that setbacks and other required open spaces shall not be counted towards private open space credits and makes other minor clarifications to private open space requirements.
- Requires open space covenants for private parks to be approved as to form by the City Attorney.
- Codifies existing code interpretation and practice that credit is only given for existing dwelling units in a project, when those dwelling units have already contributed towards parkland dedications or paid fees in lieu thereof.
- Modifications to align timing of dedication requirements with existing practices in Chapters 13.08 and 18.24 by clarifying that parkland dedication and/or fees are to be paid upon issuance of a final map or building permits, whichever is earlier.
- Modifications to Chapter 18.24 regarding dedications and reservation for subdivisions to reference and be consistent with Chapter 13.08 and its standards and procedures for parkland dedication requirements, where possible for internal consistency.

Planning Commission Review

A preliminary draft of the proposed amendments was presented to the Planning Commission at a Study Session at its November 12, 2019 meeting, which included amendments to Chapters 13.08, 14.05 and 18.24. Since then, the amendments have been modified to no longer include any amendments to Chapter 14.05 or substantive changes to calculation of parkland dedication acreage and in lieu fees. Those potential changes can be studied and considered in later phases.

The Commission reviewed the proposed amendments, received public comments, and provided input. The main comments from Commissioners are summarized below.

1. Consider reducing the parkland dedication credit provided to developers for the creation of significant private open space from a 50% credit to a 25% credit. *Staff comment: Staff is not proposing amendments related to private open space credits at this time, but can consider amendments in future phases. For Council’s information, the following chart summarizes the credit provided for private open space in other cities.*

Jurisdictional Agency	Credit Provided for Private Open Space
San Jose	50%
Mountain View	50%
Santa Clara	50%
Saratoga	50%

Palo Alto, Sunnyvale, and Los Altos do not have express credits for private open space in their codes.

2. Consider minimum size and dimension requirements. *Staff comment: This has now been addressed in additions to the proposed amendments.*
3. Commissioners had different views on whether to refer to the federal census data for average household size and eliminate the specifications by density in Table 13.08.050 (Park Land Dedication Formula Table) or retain the existing table. One Commissioner suggested further study, including studies of other cities and a new study to determine the average household size. *Staff comment: Staff was initially considering an amendment to refer to recent Federal census data to determine average household size for purposes of calculating park land dedication requirements. However, staff is not proposing to move forward with substantive amendments to these calculations at this time. If desired, Council could consider a separate project for a future Work Program to prepare a study of average household sizes for further amendments to Chapter 13.08.*

After the meeting, Chair Wang submitted the following additional comments:

4. Have in lieu of fees as the purview of City Council and they are the discretionary approval body. *Staff comment: Section 13.08.100 already provides that the approval authority determines whether parkland dedication or in lieu fees is required. Thus when City Council approval for a project is required, they will make the determination.*
5. The Quimby Act does not apply until late 2021. *Staff comment: The Quimby Act is currently in effect and as a state law the City is required to follow it.*

The main comments from the public are summarized below:

6. Consider requiring that covenants be reviewed and approved by the City Attorney prior to recordation. *Staff comment: This has been incorporated.*
7. Consider disallowing any occupancy, including temporary occupancy, prior to recordation of covenants and/or recordation of grant deeds for private park open space. *Staff comment: The Code amendments would require recordation of open space covenants for private park open space prior to final occupancy (as opposed to the current requirement of recordation simultaneously with final occupancy). Prohibiting all occupancy before recordation of covenants and grant deeds may impose unnecessary burdens on project implementation. Temporary occupancy is at times issued to facilitate internal improvements by tenants prior to final occupancy. These tenant improvements can take some time and often occur simultaneously with construction of park improvements.*

Environmental Assessment

In 2014, the City Council certified a Final Environmental Impact Report (EIR) for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007), which was a program EIR prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The Final EIR analyzed land use alternatives that included citywide development allocations (as well as building heights and densities) in connection with the adoption of the Cupertino Community Vision 2015-2040 (General Plan). The General Plan and Associated Rezoning were adopted in December 2014, the Housing Element Update was adopted in May 2015, and modifications to the text and figures of the General Plan adopted in 2015 and 2019 following adoption of Addenda to the EIR.

When a lead agency has certified an EIR, Public Resources Code Section 21166 and CEQA Guidelines 15162 provide that no subsequent environmental review shall be required unless specified conditions have occurred (substantial changes in the project, substantial changes with respect to the circumstances under which the project is undertaken, or new information of substantial importance which was not known and could not have been known when the EIR was certified) and would result in new significant environmental effects or a substantial increase in the severity of significant environmental effects requiring major revisions to the EIR. CEQA Guidelines Section 15164 further states that if some changes or additions to a previously certified EIR are needed, but subsequent review is not required under CEQA Guidelines 15162, an addendum shall be prepared.

The City has prepared a Fourth Addendum to the Final EIR to evaluate whether the proposed modifications to the Municipal Code described in this Staff Report would require major revisions to the Final EIR or a subsequent EIR due to new significant environmental effects or a substantial increase in the severity of significant environmental effects previously identified in the EIR. The Fourth Addendum, which is included as Attachment C, provides analysis and cites substantial evidence in support of the conclusion that no subsequent environmental review is required because none of the conditions that would require preparation of a subsequent EIR pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162 have occurred.

Therefore, it is recommended that the City Council adopt the Fourth Addendum, and no further environmental review is required for the modifications described in this Staff Report.

In the alternative, adopting the proposed amendments to the Municipal Code is not a project under the requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that the Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a

significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, compliance with the City's Municipal Code, including the park land dedication requirements in Chapters 13.08 and 18.24 as amended will continue to ensure that adequate parklands and recreational facilities are provided to reduce the cumulative impacts of residential development in the City. Authorizing these amendments would have no or only a de minimis effect on the environment because the amendments help reduce the environmental effects of land use projects and they do not change the amount of development allowed under the City's General Plan and Zoning Ordinance.

Other Determinations

The amendments implement and are consistent with the City's General Plan and the Recreation Parks and Community Services Element.

City staff have reviewed the proposed amendments and have determined that the clarified standards do not exceed the standards and criteria being applied by the City to its publicly financed parks, including because no city parks are above ground level.

In addition, the amendments will not impede the ability to develop the City's Regional Housing Needs Allocation or housing for all income levels as anticipated by the City's Housing Element. The proposed amendments are consistent with the City's Housing Element. The amendments retain the ability to pay fees in lieu of park land dedication. Further, the City will continue to offer a range of incentives to facilitate the development of affordable housing including waiver of park land dedication fees consistent with the City's adopted Housing Element and Below Market Rate Housing Mitigation Manual. The City will thus continue to be able to address the housing needs of the region.

Sustainability Impact

No sustainability impact. Park land dedication requirements are retained and clarified.

Fiscal Impact

No fiscal impact. Fees are not being adjusted from existing calculations.

Prepared by: Chad Mosley, Assistant Public Works Director/City Engineer

Reviewed by: Roger Lee, Director of Public Works

Approved for Submission by: Deborah Feng, City Manager

Attachments:

A – Draft Ordinance

B – Redline Municipal Code amendments

C – Fourth Addendum to the Final EIR

D – General Plan Parkland Distribution Goal and Policies