

ORDINANCE NO. \_\_\_\_\_

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

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SECTION I: PROJECT DESCRIPTION

Application No: MCA-2019-006  
Applicant: City of Cupertino  
Location: Citywide

SECTION II: RECITALS

WHEREAS, the City Council FY2019/2020 Work Program directs the City to clarify objective standards within the City's General Plan and Municipal Code; and

WHEREAS, at the September 18 and October 1, 2019 City Council meetings, the City Council reviewed areas that were identified by staff, the Planning Commission, and members of the public as desiring clarity, including standards related to park land dedication, in particular to have park land dedications situated at ground level, and Council authorized staff to commence with amendments identified in Phase 1 and any readily feasible amendments in Phase 1.5; and

WHEREAS, the Ordinance amends the City's Municipal Code to clarify the standards to be applied to required park land dedications and payment of fees in lieu thereof; and

WHEREAS, the Ordinance is consistent with the City's General Plan and the public health, safety, convenience, and general welfare, and the amendments herein implement the City's General Plan (Community Vision 2015-2040); and

WHEREAS, the proposed modifications will not result in any of the conditions requiring preparation of a subsequent EIR as described in Public Resources Code Section 21166 and CEQA Guidelines Section 15162; and

WHEREAS, the City has prepared a Fourth Addendum ("Fourth Addendum") to the Final Environmental Impact Report ("Final EIR") for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007) for modifications to the Municipal Code related to clarifying standards for park land dedication requirements in compliance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"); and

WHEREAS, the Fourth Addendum provides analysis and cites substantial evidence that supports the conclusion that no subsequent environmental review is required because there are no substantial changes in the Project or the circumstances under which the Project is to be undertaken that would result in new or substantially more severe environmental impacts requiring major revisions to the Final EIR, and there is no new information that involves new significant environmental effects or a substantial increase in the severity of previously identified environmental effects that would require preparation of a subsequent EIR pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162; and

WHEREAS, 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; and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission reviewed the proposed amendments and provided comments at a study session on November 12, 2019; and

WHEREAS, on November 12, 2019, the Fourth Addendum was also presented to the Planning Commission at the study session; and

WHEREAS, on December 3, 2019, upon due notice, the City Council has held at least one public hearing to consider the Municipal Code amendments; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance; and

WHEREAS, prior to taking action on this Ordinance, the City Council has exercised its independent judgment and reviewed and considered the information in the Fourth Addendum, which concludes that no further environmental review is required for the Municipal Code Amendments included in the Ordinance.

### SECTION III

NOW, THEREFORE, BE IT ORDAINED:

After careful consideration of the, maps, facts, exhibits, testimony and other evidence submitted in this matter, the City Council hereby takes the following actions:

#### Section 1.

- A. Finds that the recitals set forth above are true and correct, and are incorporated herein.
- B. Determines that the Fourth Addendum reflects the independent judgment of the City.
- C. Adopts the Fourth Addendum to the Final EIR for the modifications to the Municipal Code Titles 13 and 18 related to park land dedication requirements.
- D. In the alternative, finds that adopting the Ordinance is not a project under the requirements of the California 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. The foregoing determination is made by the City Council in its independent judgment.

#### Section 2. The City Council further finds that:

- A. The Municipal Code amendments adopted by this Ordinance implement and are consistent with the City's General Plan and the Recreation Parks and Community Services Element.
- B. The clarified standards for parkland dedications 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.
- C. 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 amendments are consistent with the City's Housing Element and they 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.

Section 3. The City Council approves the Amendments to the Municipal Code as shown in Exhibit A attached hereto and incorporated herein by reference and authorizes the staff to make grammatical, typographical, numbering, and formatting changes necessary to assist in production of the final published Municipal Code. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

Section 4. If any portion of this Ordinance or its application is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section 5. The City Clerk shall give notice of adoption of this Ordinance as required by law.

Section 6. This Ordinance shall take effect 30 days after the second reading of the ordinance.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 3<sup>rd</sup> day of December, 2019 and ENACTED at a regular meeting of the City Council of the City of Cupertino the \_\_\_\_ day of \_\_\_\_\_, 2019 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED:  _____ Steven Scharf, Mayor City of Cupertino	  _____ Date
ATTEST:  _____ Grace Schmidt, City Clerk	  _____ Date
APPROVED AS TO FORM:  _____ Heather Minner, City Attorney	  _____ Date

## **EXHIBIT A**

**SECTION 1.** Chapter 13.08, of Title 13 of the Cupertino Municipal Code is hereby amended to read as follows:

### **CHAPTER 13.08: PARK LAND DEDICATION FEE**

#### **Section**

- 13.08.010 Purpose.
- 13.08.020 Definitions.
- 13.08.030 Applicability.
- 13.08.040 Exceptions and Credits.
- 13.08.050 Park land dedication.
- 13.08.060 Fees in lieu of park land dedication.
- 13.08.070 Combination of park land dedication and fee.
- 13.08.080 Credit for private recreation or open space.
- 13.08.090 Credit for existing dwelling units.
- 13.08.100 General procedures.

#### **13.08.010 Purpose.**

The purpose of this Chapter is to regulate, in the public interest, convenience, health, welfare and safety, the provision of park and recreational facilities upon development for which dedication of land and/or payment of a fee is required in accordance with the recreation, parks and community services element of the adopted General Plan of the City of Cupertino, and any amendments.

#### **13.08.020 Definitions.**

"Dwelling unit" or "unit" means a room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, occupied or intended for occupancy on a non-transient basis and having not more than one kitchen.

"Park land dedication" means land located at ground level, dedicated to the city, in fee simple ownership, to the center of the earth.

“Senior citizen housing development” means a development as defined in Civil Code Section 51.3 or as defined in Civil Code Section 798.76 or 799.5.

#### **13.08.030 Applicability.**

Developments of new dwelling units must address the increased demands for parks through a park land dedication, a payment of a fee in lieu thereof, or a combination of both, at the time and according to the standards and formula provided in this Chapter 13.08. The City has the discretion to determine which of the three options above shall be required.

#### **13.08.040 Exceptions and Credits.**

A. The requirements in this chapter shall not apply to the following developments:

1. Subdivisions exempt from park land dedication requirements pursuant to Government Code Section 66477

B. A credit to the park land dedication or in-lieu fee requirements may be granted by the approval authority as follows:

1. Senior citizen housing development shall be granted a credit pursuant to Section 13.08.050.

2. Developments that include private recreation or open space shall be granted a credit pursuant to Section 13.08.080.

3. Developments including existing dwelling units may be granted credit pursuant to Section 13.08.090.

#### **13.08.050 Park Land Dedication.**

A. Where dedication of a park or recreational facility is required pursuant to this Chapter, land shall be dedicated per the formula below.

Park Land Dedication (in acres) =  $\frac{\text{Average number of persons/DU} \times \text{Park Acreage Standard}}{\text{Number of Dwelling Units}}$

B. The Park Acreage Standard is three acres of property for each one thousand persons.

C. Park land dedication based on development density: Table 13.08.050 indicates the average park land dedication required per dwelling unit based on development density per the formula above (Section 13.08.050.A).

D. Average number of persons/DU shall be determined pursuant to Table 13.08.050.

E. The number of dwelling units is calculated consistent with Section 13.08.090.

F. Standards for dedicated land: To satisfy this dedication requirement, the park land must be:

1. Located at ground level and dedicated to the City in fee simple ownership, to the center of the earth;

2. At least one contiguous piece of land of at least 0.27 acres in size, excluding hillsides over a ten (10) percent slope, riparian set back areas and environmental mitigation areas;

3. At least 0.25 acres of the dedicated land must be gradable to create a flat area of less than five (5) percent slope in any direction;

4. All dedicated land must be at least 50 feet wide in any horizontal dimension and 0.10 acres in contiguous size. The City Council may waive this requirement when doing so facilitates the provision of pocket parks or other desirable park amenities.

5. Located adjacent to a street in order to promote public safety and facilitate policing; and

6. Setback areas, private yards, and other open areas required by zoning and/or building ordinances or for streets and improvements that do not serve the park exclusively, shall not be included in the computation of dedicated park or recreational acreage.

**Table 13.08.050: Park Land Dedication Formula Table**

Density (DU/acre)	Average number of persons/DU	Average Park Land Dedication/ DU (in acres)
0 - 5	3.5	.0105
5 - 10	2.0	.0060
10 - 20	2.0	.0060
20+	1.8	.0054
Senior Citizen Housing Development	1.0	.0030

**13.08.060 Fees in Lieu of Park Land Dedication.**

A. General Standard.

1. A fee in lieu of park land dedication shall be required pursuant to the requirements of this Chapter.

2. Subdivisions containing fifty units or less shall pay a fee in lieu of park land dedication except as provided in the Govt. Code Section 66477(a).



B. Amount. The amount of the fee shall be equal to the fair market value of the land prescribed for dedication pursuant to Section 13.08.050. The fee shall be calculated as follows:

In lieu fee = *Park land Dedication (in acres)*<sup>1</sup> x *(Fair Market Value of land per acre)*

<sup>1</sup> Calculated pursuant to Section 13.08.050.

C. Fair Market Value of land per acre. The Director of Public Works shall establish the fair market value of land within the City and update the value on an annual basis in the City's Fee Schedule. The fair market value shall be determined by reference to comparable land within the City. As used herein, the term "comparable" means land of similar size and development potential as the land which would otherwise be dedicated.

D. Use of Money. The money collected shall be paid to the Treasurer of the City or his or her authorized agent. Such money shall be placed in a special revenue fund which shall be known as the "park dedication in-lieu fee fund" and shall be used for all purposes allowed by State Law.

#### **13.08.070 Combination of Park Land Dedication and Fee.**

A. The City shall determine whether it accepts park land dedication, elects to require payment of a fee in lieu, or a combination of both a park land dedication and a fee in lieu, upon consideration of the public interest, convenience, health, welfare, and safety, including, but not limited to, the following:

1. Topography, geology, access and location of land in the development available for dedication;
2. Size and shape of the development and land available for dedication;
3. Feasibility of dedication;
4. Adequacy of existing park land in the surrounding area pursuant to the Recreation, Parks And Community Services Element policies of the General Plan;
5. The number of parcels or units in the development.

B. The determination of the City as to whether land shall be dedicated, or whether a fee shall be charged, or a combination thereof, shall be final and conclusive.

#### **13.08.080 Credit for Private Recreation or Open Space.**

A. Where private open space for park and recreational purposes, accessible to all residents in a development, is provided in a proposed development, fifty percent credit shall be given against the requirement of land dedication or payment of fees in lieu thereof, if the approval authority finds that it is in the public interest to do so and that all

the standards in Section 13.08.080B, below are met and findings in Section 13.08.080C can be made.

B. That the open space for which credit is given complies with the following standards:

1. Setback areas, private yards, and other open areas required by zoning and/or building ordinances or for streets and improvements that do not serve the park exclusively, shall not be included in the computation of such private open space.

2. The total usable open space acreage for the development must be equivalent to the park land dedication calculated pursuant to Section 13.08.050.

3. All land shall be developed for park and recreational purposes.

4. The open space must contain the mandatory elements and at least four of the six optional elements indicated in Table 13.08.080 below and meet the following criteria:

a. The combined minimum acreage for a facility with a recreation center and children's play apparatus area is 1.3 acres.

b. The minimum combined acreage for a facility not including a recreation center or children's play area is 1.5 acres.

**Table 13.08.080 - Mandatory and Optional Elements for private open space**

<b>Mandatory Element</b>	<b>Minimum Acreage</b>
Turfed playfield The playfield shall be a single unit of land which is generally level and free of physical barriers which would inhibit group play activities. All dedicated land must be at least 50' wide in any horizontal dimension.	0.50
<b>Optional Elements</b>	
Children's play apparatus area	0.15
Recreational community gardens	0.25
Family picnic area	0.25
Game, fitness or sport court area	0.25
Accessible swimming pool (42' x 75' with adjacent deck and lawn areas)	0.25
Recreation center buildings and grounds	0.15

C. The approval authority may grant park credit for a combination of the above elements or a combination of the above elements and other recreation improvements that will meet the specific recreation needs of a specialized housing development, such as a

senior housing development, with occupancy controlled via a covenant with the City named as a third party beneficiary.

D. Findings. The approval authority shall adopt the following written findings and shall require the recordation of covenants running with the land to ensure that credited elements are maintained, before credit is given:

1. That yards, court areas, setbacks, decorative landscape areas normally associated with residential site design and other areas required to remain free and clear by zoning and building ordinances and regulations shall not be included in the computation of such private open space;

2. That such space is to be wholly or partially owned and maintained by the future residents of the development and that the private ownership and maintenance of the open space is adequately provided for by recorded written agreement, conveyance or restrictions;

3. That the use of the private open space is restricted for park and recreational purposes by recorded covenant, which runs with the land in favor of the future owners of property and which cannot be eliminated without the consent of the City or its successor;

4. That the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location;

5. That the facilities proposed for private recreation or open space are in substantial conformance with General Plan policies.

#### **13.08.090 Credit for Existing Dwelling Units.**

When dwelling units exist on the property where development is proposed, a credit shall be given against the requirement of land dedication or payment of fees in lieu thereof for the number of units existing. As used herein, the term "existing" refers to units which exist at the time of approval of the dwelling units or which were demolished within one year prior to the submittal of an application for development of the dwelling units, for which previously park land dedication or fees in lieu thereof have been collected. For credits applicable to existing units included in proposed subdivisions, see section 18.24.110.

#### **13.08.100 General Procedures**

A. At the time of approval of the dwelling units, the approval authority shall determine whether a park land dedication, a fee in lieu thereof, or a combination of both, is required unless a park land dedication or fee has already been provided.

B. At the time of building permit issuance or recordation of a final subdivision map, whichever is earliest, park land shall be dedicated to the City or the fee in lieu thereof shall be paid.

C. Open space covenants for private park or recreational facilities shall be submitted to the City prior to approval of the building permits, approved as to form by the City Attorney, and shall be recorded prior to final occupancy.

D. The City will provide a credit to the Developer for the value of any improvements installed by the Developer. This credit shall include a reduction in the amount of land dedicated or fees in-lieu thereof. Improvements and installations performed by the developer for which credits are given must be designed and constructed prior to occupancy of the development.

**SECTION 2.** Chapter 18.24, of Title 18 of the Cupertino Municipal Code is hereby amended to read as follows:

**18.24.020 Purpose.**

This section is enacted pursuant to the authority granted by the Government Code. The park and recreational facilities for which dedication of land and/or payment of a fee is required by this chapter are in accordance with the open space and conservation element of the adopted General Plan of the City of Cupertino, and any amendments.

**18.24.030 Requirements.**

A. As a condition of approval of a final subdivision map or parcel map, the subdivider shall dedicate land, pay a fee in lieu thereof, or a combination of both for park or recreational purposes at the time and according to the standards and formula contained in Chapter 13.08. The City has the discretion to determine which of the three options shall be required.

B. The provisions of this chapter are not applicable to the following land use categories:

1. Commercial or industrial subdivisions;
2. Condominium conversion projects or stock cooperatives which consist of the subdivision of air space in an existing apartment building which is more than five years old when no new dwelling units are added;
3. Convalescent hospitals and similar dependent care facilities; and
4. Subdivisions containing less than five parcels and not used for residential purposes.

#### **18.24.040 General Standard.**

The Park Land Dedication shall be as identified in the City's General Plan and Chapter 13.08.

#### **18.24.050 Dedication of Land.**

A. Where dedication of land is required, the subdivider shall dedicate park land in compliance with the formula set out in Section 13.08.050.

#### **18.24.060 Fees in Lieu of Land Dedication.**

A. Fees in Lieu of Land Required. Where fees in lieu of park land are required, the subdivider shall pay such fees in compliance with Section 13.08.060.

#### **18.24.070 Criteria for Requiring Both Dedication and Fee.**

The criteria for requiring subdividers to dedicate land and pay a fee in lieu thereof is set forth in Section 13.08.070 and Section 18.24.090.

#### **18.24.080 Subdividers not within General Plan.**

Where the proposed subdivision lies within an area not included but to be included within the City's General Plan, the subdivider shall dedicate land, pay a fee in lieu, or a combination of both, in accordance with the adopted park and recreational principles and standards of the City's General Plan and in accordance with the provisions of this chapter.

#### **18.24.090 Determination of Land or Fee.**

A. In addition to the standards identified in Section 13.08.070 for whether the City shall accept land dedication or elect to require payment of a fee, for subdivisions containing fifty parcels or more, or for a condominium project, stock cooperative, or community apartment project exceeding 50 dwelling units, the City shall also consider the policies contained in the Recreation, Parks, and Community Services element of the City's General Plan.

B. The determination of the City as to whether land shall be dedicated, or whether a fee shall be charged, or a combination thereof, shall be final and conclusive.

#### **18.24.100 Credit for Private Recreation or Open Space.**

Where private open space for park and recreational purposes is provided in a proposed subdivision, a credit shall be given against the requirement of land dedication or payment of fees in lieu thereof, pursuant to requirements of Section 13.08.080.

#### **18.24.110 Credit for Existing Residential Units.**

Where any proposed subdivision contains existing residential units, a credit shall be given against the requirement of land dedication or payment of fees in lieu thereof for each lot which contains residential unit or units. As used herein, the term "existing" refers to a residential unit or units which exist at the time of the recordation of a final map or which were demolished within one year prior of the tentative map application, for which previously park land dedication or fees in lieu of have been collected.

#### **18.24.120 Procedure.**

A. At the time of approval of the tentative subdivision map, the City Council shall determine whether land is to be dedicated and/or fees to be paid, or a combination of both, by the subdivider pursuant to Chapter 13.08.

B. At the time of the filing of the final subdivision map, the subdivider shall dedicate the land and/or pay the fees.

C. Open space covenants for private park or recreational facilities shall be submitted to the City prior to approval of the final subdivision map and shall be recorded simultaneously with the final subdivision map.

D. The City will provide a credit to the Developer for the value of any improvements installed by the Developer. This credit shall include a reduction in the amount of land dedicated or fees in-lieu thereof. Improvements and installations performed by the developer for which credits are given must be designed and constructed prior to occupancy of the development.

#### **18.24.130 Commencement of Development.**

At the time of approval of the final subdivision map, the City Council shall specify when development of the park or recreational facilities shall be commenced.