

## CHAPTER 13.08: PARK LAND DEDICATION FEE

### Section

- [13.08.010](#) Purpose.
- [13.08.020](#) Definitions.
- [13.08.030](#) Applicability.
- [13.08.040](#) ~~Reserved~~[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 open space and conservation element of the adopted General Plan of the City of Cupertino, and any amendments.

#### **13.08.020 Definitions.**

“Average household size” means the average number of persons per dwelling unit in accordance with the most recently available federal census data.

"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.

“In-lieu fee” means the fee payable to the City pursuant to the determination by the approval authority that a park land dedication is not required.

"Park land dedication," "dedication of land," or "dedication" and other such references to land dedicated pursuant to this chapter means, for purposes of this chapter, land dedicated to the city at ground level 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.

Upon development of a new dwelling units must address the increased demands for parks through, at the option of the City, a park land dedication, or a payment of a fee in lieu thereof, or 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 option shall be required.

### 13.08.040 ~~Reserved~~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 fifty percent credit of the requirements of this chapter.

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 the City determines that dedication of a park or recreational facility is appropriate pursuant to be located the criteria set forth in ~~whole or in part within the proposed development~~ Section 13.08.070, land ~~sufficient in topography and size~~ shall be dedicated per the formula below.

*Park Land Dedication/Du (in acres) =*

*(Average ~~number of persons/DU~~household size) x (Park Acreage Standard)~~/1000 persons~~ x (Number of Dwelling Units)*

B. The Average Household Size means the average number of persons per dwelling unit in accordance with the most recently available federal census data..

C. 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. The number of dwelling units is calculated pursuant to Section 13.08.090.

E. Setbacks, private yards, and other open areas required by zoning and/or building ordinances or for streets shall not be included in the computation of dedicated park or recreational acreage.

~~Table 13.08.050: Park Land Dedication Formula Table~~

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

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

#### A. General Standard.

1. If the City determines that a park land dedication is infeasible or is not required, a fee shall be paid in lieu thereof.

2. Fees in Lieu of Land. If a proposed development contains fifty units or less, a fee in lieu of park land dedication shall be paid, ~~unless~~, Except for subdivisions, if a proposed development contains fifty units or less, dedication ~~is deemed~~ may be required if the City deems dedication appropriate and in the public interest ~~by, and both the Developer and the City agree to the dedication.~~

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 =*

~~(((Average Park land Dedication/DU)\*(Net new dwelling units)\*(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 ~~Department~~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.

If the owner objects to the fair market value determination made by the Director of Public Works, he or she may, at his or her own expense, obtain an appraisal of the fair market value of land within the City by a qualified real estate appraiser approved by the City, which appraisal of fair market value may be accepted by the City Council, if found reasonable.

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 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. Availability of previously acquired park property.
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. Setbacks, private yards, and other open areas required by zoning and/or building ordinances or for streets 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.

23. 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<br>The playfield shall be a single unit of land which is generally level and free of physical barriers which would inhibit group play activities. | 0.50                   |
| <b>Optional Elements</b>   |                        |
| Children's play apparatus area   | 0.15                   |
| Recreational community gardens   | 0.25                   |
| Family picnic area   | 0.25                   |
| Game, <u>fitness or sport</u> court area   | 0.25                   |
| <del>Swim</del> <u>Accessible swimming</u> 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 or a fee in lieu thereof is required unless a park land dedication or fee has already been provided.

B. At the time of building permit application, 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 and shall be recorded simultaneously with the issuance of final occupancy.

D. If park land dedication is required, the design of the park shall be reviewed and approved and construction shall be completed prior to occupancy of the development. 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.

#### **14.05.060 Standards for Amount of Fee.**

A. General Standard. The public interest, convenience, health, welfare and safety require that three acres of property for each one thousand persons be devoted for neighborhood and community park and recreational purposes.

B. Formula. All persons subject to this chapter shall pay a fee in an amount equal to that as provided in the following formula:

|                       |   |                  |
|-----------------------|---|------------------|
| Park Acreage Standard | x Average number of persons per residential dwelling unit <u>(pursuant to Section 13.08.050B)</u> | x value per acre |
|-----------------------|---|------------------|

Thus:

Fee = ~~x (3.5) (\* Average household size \* value per acre) ————— for — single family development.)/1,000.~~

#### **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 both, at the option of the

~~City, for park or recreational purposes at the time and according to the standards and formula contained in this chapter.~~Chapter 13.08. The City has the discretion to determine which option shall be required. 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 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.

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.
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 a park or recreational facility has been designated in the open space and conservation element of the General Plan of the City, and is to be located in whole or in part within the proposed subdivision to serve the immediate and future need of the residents of the subdivision, the subdivider shall dedicate land for a local park sufficient in size and topography to serve the residents of the subdivision.~~Where dedication of land is required, the subdivider shall dedicate park land in compliance with the formula set out in Section 13.08.050.

~~B. The formula for determining acreage to be dedicated shall be pursuant to Section 13.08.050.~~

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

A.

~~A. General Formula. If there is no park or recreation facility designated in the open space and conservation element of the General Plan to be located in whole or in part~~



within the proposed subdivision to serve the immediate and future needs of the residents of the subdivision, the subdivider shall, in lieu of dedicating land, pay a fee pursuant to the formula in Section 13.08.060.

~~—B. Fees in Lieu of Land—Fifty Parcels or Less. If the proposed subdivision contains fifty parcels or less, the subdivider shall pay a fee in lieu of dedication, unless dedication is deemed appropriate and in the public interest by the City.~~

~~—C. Fair Market Value of land per acre. The Fair Market Value of land per acre shall be established pursuant to Section 13.08.050C.~~

~~—D. Use of Money. The money collected shall be paid and used pursuant to Section 13.08.060D.~~

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.**

~~—In subdivisions of over fifty parcels, the subdivider shall both~~The criteria for requiring subdividers to dedicate land and pay a fee in lieu thereof ~~in accordance with the following formula:~~

~~—is set forth in~~ ~~A. When only a portion of the land to be subdivided is proposed in the open space and conservation element of the General Plan as the site for a local park, the portion shall be dedicated for local park purposes and a fee computed pursuant to the provisions of Section 13.08.070 and section 18.24.060 shall be paid for any additional land that would have been required to be dedicated pursuant to Section 18.24.050.090.~~

~~—B. When a major part of the local park or recreational site has already been acquired by the City and only a small portion of land is needed from the subdivision to complete the site, the remaining portion shall be dedicated and a fee computed pursuant to the provisions of Section 18.24.060 shall be paid in an amount equal to the value of the land which would otherwise have been required to be dedicated pursuant to Section 18.24.050, the fees to be used for the improvement of the existing park and recreational facility or for the improvement of other local parks and recreational facilities in the area serving the subdivision.~~

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

~~—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 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. If the relationship between a proposed subdivision containing fifty parcels or more and the open space and conservation element is unclear, the City Council shall determine whether it accepts land dedication or elects to require payment of a fee, by consideration of the standards identified in Section 13.08.070.~~

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 ~~lot or lots of a~~ 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 ~~pursuant to Section 18.24.100 the whether~~ land is to be dedicated and/or fees to be paid, ~~or 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 ~~as previously determined by the City Council.~~

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. If park land dedication is required, the design of the park shall be reviewed and approved and construction shall be completed prior to occupancy of the development. The City will provide a credit to the Developer for the value of any improvements installed by the Developer. The credit shall include a reduction in the amount of land dedicated or fees in-lieu thereof.

#### **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.