

Chapter 17.44

PARK LAND DEDICATION AND IN-LIEU PARK FEES

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17.44.010 Dedication of land for parks. Pursuant to the authority granted by Section 66477 of the California Government Code, subdividers shall be required to dedicate land and/or pay in-lieu fees for park and recreational facilities in accordance with this chapter and the State Subdivision Map Act. (Ord. 483 (part), 1990).

17.44.015 Requirements. 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 town, for neighborhood and community park or recreational purposes at the time and according to the standards and formula contained in this chapter. (Ord. 483 (part), 1990).

17.44.020 General standard. It is found and determined that the public interest, convenience, health, welfare, and safety require that five acres of property for each one thousand persons residing within any subdivision subject to this chapter within the town be devoted to neighborhood and community park and recreational purposes. (Ord. 483 (part), 1990).

17.44.025 Formula for dedication of land. (a) Pursuant to the policies and standards of the general plan, the subdivider shall dedicate land for a local park sufficient in size and topography that bears a reasonable relationship to serve the present and future needs of the future residents of the subdivision. The amount of land to be provided shall be determined pursuant to the following formula:

The formula for determining acreage to be dedicated shall be as follows:

<u>Average No. Persons</u>	x	<u>.005 Acres*</u>	=	<u>Acres of Parkland</u>
Dwelling Unit		Person		Dwelling Unit

* Based on 5 acres of parkland per 1,000 population

(b) The following parkland dedication table has been established pursuant to Section 66477(b) of the California Government Code:

<i>Type</i>	<i>Average No. Persons</i>	<i>x</i>	<i>.005</i>	<i>=</i>	<i>Acres of Parkland</i>
	<i>Dwelling Unit</i>		<i>Person</i>		<i>Dwelling Unit</i>
Single Family	2.7		.005		.0135
Duplexes					
Low Density Multifamily	2.2		.005		.011
Medium & High Density Multifamily	1.75		.005		.00875

(c) For the purposes of this section, the number of proposed dwelling units shall be determined as follows: In areas zoned for one dwelling unit per lot or parcel, the number of dwelling units shall equal the number of parcels indicated on the tentative map. When all or part of the subdivision is located in an area zoned for multiple dwelling units per parcel, the number of proposed dwelling units in the area so zoned shall equal the maximum number of dwelling units allowed under that zone. For residential condominium projects, the number of dwelling units shall be the number of condominium units on the tentative map. The term "new dwelling unit" does not include dwelling units lawfully in place prior to the date on which the tentative map is approved. (Ord. 483 (part), 1990).

17.44.030 Requirements for lands to be dedicated. Lands to be dedicated or reserved for park and/or recreational purposes shall be suitable in the opinion of the planning commission and the director of public works in location, topography, environmental characteristics and development potential as related to the intended use. The primary intent of this chapter shall be construed to provide the land for functional recreation units of local or neighborhood service, including but not limited to: tot lots, playlots, playgrounds, neighborhood parks, play-fields, community or district parks and other specialized recreational facilities which may serve the family group and also senior citizen activities. Principal consideration shall be given therefore to lands which offer:

- (a) A variety of recreational potential for all age groups;
- (b) Recreational opportunities within walking distance from residents' homes;
- (c) Possibility for expansion or connection with school grounds;
- (d) Integration with hiking, riding and bicycle trails, natural stream reserves and other open space;
- (e) Coordination with all other park systems;
- (f) Access to at least one existing or proposed public street. (Ord. 483 (part), 1990).

17.44.035 Required improvements. On lands to be dedicated pursuant to Section 17.44.025, the subdivider shall provide the following without credit:

- (a) Full street improvements and utility connections including, but not limited to curbs, gutters, street paving, traffic-control devices, street trees and sidewalks to land which is dedicated;
- (b) Fencing along the property line of that portion of the subdivision contiguous to the dedicated land;
- (c) Improved drainage through the site;

Other minimal improvements which the town determines to be essential to the acceptance of the land for recreational purposes. (Ord. 483 (part), 1990).

17.44.040 Formula for fees in lieu. (a) General Formula. Where there is no park or recreation facility designated in the general plan to be located in whole or in part within the proposed subdivision, the subdivider shall, in lieu of dedicating land, pay a fee equal to the value of the land prescribed for dedication in Section 17.44.025, plus twenty percent towards off-site improvements. The amount of the in-lieu fee shall be determined for a local park which bears a reasonable relationship to serve the present and future residents of the area being subdivided.

(b) Subdivisions of Fifty Parcels or Less. If the proposed subdivision contains fifty parcels or less, the subdivider shall, in lieu of dedicating land, pay a fee equal to the value of the land prescribed for dedication in Section 17.44.025, plus twenty percent towards off-site improvements. The amount in the in-lieu fee shall be determined in accordance with Section 17.44.050. However, nothing in this section shall prohibit the dedication and acceptance of land for park and recreation purposes in subdivisions of fifty parcels or less, where the subdivider proposes such dedication voluntarily and the land is acceptable to the town.

(c) Use of Money. The money collected herein shall be used only for the purpose of acquiring necessary land and developing new or rehabilitating existing park or recreational facilities. (Ord. 483 (part), 1990).

17.44.045 Criteria for requiring dedication and fee. In subdivisions of over fifty parcels, the subdivider shall both dedicate land and pay fee in lieu thereof in accordance with the following:

(a) When only a portion of the land to be subdivided is proposed in the general plan as the site for a park or recreation facility, such portion shall be dedicated for local park purposes. Such land to be dedicated shall be subject to the improvement requirements of Section 17.44.035. If additional land would have been required for dedication pursuant to Section 17.44.025, a fee, computed pursuant to Section 17.44.050, shall be paid for the value of any additional land, plus twenty percent toward costs of off-site improvements.

(b) When a major part of the local park or recreation site has already been acquired by the town or any other local agency and only a portion of land is needed from the subdivision to complete the site, such remaining portion shall be dedicated for local park purposes. Additionally, a fee computed pursuant to Section 17.44.050 shall be paid in an amount equal to the value of the land, plus twenty percent toward costs of off-site improvements, which would otherwise have been required to be dedicated pursuant to Section 17.44.025, such fees to be used for the improvement of the existing park and recreation facility, or for the improvement of other local parks and recreation facilities in the area serving the subdivision. (Ord. 483 (part), 1990).

17.44.050 Amount of fee in lieu of land dedication. When a fee is to be paid in lieu of land dedication, the amount of such fee shall be based upon the fair market value of land within any subdivision subject to this chapter, which would otherwise be required for dedication pursuant to Section 17.44.025, plus twenty percent toward costs of off-site improvements. For the purposes of this section, off-site improvements are defined as those improvements which would have been required if land had been dedicated using the provisions of Section 17.44.025. The in-lieu fee shall be determined by the following formula:

In-lieu fee =

$$\text{Proposed Dwelling Units} \quad \times \quad \frac{\text{Acres of Parkland}^*}{\text{Dwelling Unit}} \quad \times \quad \frac{\text{FMV}}{\text{Acre}} \quad \times \quad 1.20$$

* From Section 17.44.025

FMV = Fair Market Value as determined by Section 17.44.055 (Ord. 483 (part), 1990).

17.44.055 Determination of fair market value. (a) The fair market value shall be determined by the town with a written appraisal report prepared and signed by an appraiser acceptable to the town. The appraisal shall be made immediately prior to the filing of the final map. The subdivider shall notify the town of the expected filing date at least six weeks prior to filing of the final map. If more than one year elapses prior to filing the final map, the town will prepare a new appraisal and will bill the subdivider for the cost of the reappraisal. For the purposes of this chapter, the determination of the fair market value of an acre, as defined in Section 17.44.050, shall consider, but not necessarily be limited to, the following:

- (1) Approval of and conditions of the tentative subdivision map;
- (2) The general plan;
- (3) Zoning;
- (4) Property location;
- (5) Off-site improvements facilitating use of the property;
- (6) Site characteristics of the property.

(b) If the subdivider objects to the determined fair market value, he/she may appeal to the town council. The burden of proof shall lie with the subdivider. (Ord. 483 (part), 1990).

17.44.060 Determination of land or fee. (a) In determining whether to accept land dedication or to require payment of a fee in-lieu thereof, or a combination of both, the town council shall consider the following factors:

- (1) The natural features, access, and location of land in the subdivision available for dedication;
- (2) Size and shape of the subdivision and land available for dedication;

- (3) Feasibility of dedication;
 - (4) Compatibility of dedication with the general plan;
 - (5) The location of existing and proposed park sites and trailways.
- (b) The determination of the town council as to whether land shall be dedicated, or whether a fee shall be paid in lieu thereof, or a combination of both, shall be final and conclusive. (Ord. 483 (part), 1990).

17.44.065 Credit for private open space. The town council may grant credits against land or fees required by this chapter for private open space, provided that the council finds that it is in the public interest to do so and that all of the following standards are met:

(a) That yards, court areas, setbacks, and other open areas required by the zoning and building ordinances and regulations shall not be included in the computation of such private open space; and

(b) The private park and recreation facilities shall be owned by a homeowners' association composed of all property owners in the subdivision and being an incorporated nonprofit organization capable of dissolution only by a one hundred percent affirmative vote of the membership, operated under recorded land agreements through which each lot owner in the subdivision is automatically a member, and each lot is subject to a charge or a proportionate share of expenses for maintaining the facilities; and

(c) That the use of the private open space is restricted for park and recreation purposes by recorded covenants which run with the land in favor of the future owners of property and which cannot be defeated or eliminated without the consent of the town; and

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

(e) That facilities proposed for the open space are in substantial accordance with the provisions of the general plan; and

(f) That the open space for which credit is given is a minimum of one acre and provides all of the local park basic elements listed below, or a combination of such and other recreation improvements that will meet the specific recreation park needs of the future residents of the area:

(1) Recreational open spaces, which are generally defined as park areas for active recreation pursuits such as soccer, golf, baseball, softball, and football and have at least three acres of maintained turf with less than five percent slope;

(2) Court areas, which are generally defined as tennis courts, badminton courts, shuffleboard courts, or similar hard-surfaced areas especially designed and exclusively used for court games;

(3) Recreational swimming areas, which are defined generally as fenced areas devoted primarily to swimming, diving, or both, including decks, lawned area, bathhouses, or other facilities developed and used exclusively for swimming and diving and consisting of no less than fifteen square feet of water surface area for each three percent of the population of the subdivision;

(4) Recreation buildings and facilities designed and primarily used for the recreational needs of the residents of the development;

(g) The credit for private open space shall not exceed fifty percent of the required land dedication or payment of fees.

The determination of the council as to whether credit shall be given and the amount of credit shall be final and conclusive. (Ord. 483 (part), 1990).

17.44.070 Procedure. At the time of approval of the tentative map pursuant to this chapter, the planning commission shall determine, pursuant to Section 17.44.025, the land required for dedication. At the time of the filing of the final map or parcel map pursuant to this chapter, the subdivider shall:

- (a) Dedicate the lands as required by the planning director; or
- (b) Where the town council determines at the time of final map approval that fees shall be paid in lieu of or in addition to the dedication of land, the council shall set the in-lieu fees based on the land dedication requirements established at the time of tentative map approval. In setting the fees, the council shall use current land values of any subdivision subject to this chapter at the time of the tentative map approval, and the formula set forth in Section 17.44.050. The subdivider shall pay the required fees prior to recordation of the final or parcel map. (Ord. 483 (part), 1990).

17.44.075 Disposition of land or fees. Land or fees required under this chapter shall be conveyed or paid directly to the town. The fees shall be deposited into a subdivision park trust fund, or other similar fund. Moneys in said fund, including accrued interest, shall be expended solely for the acquisition or development of park land or improvements related thereto. The town or other local public agency to which the land or fees are conveyed or paid shall develop a schedule pursuant to Section 66477 of the Government Code specifying how, when, and where it will use the land or fees, or both, to develop park or recreation facilities to serve the residents of the subdivision. Collected fees shall be appropriated by the local agency to which the land or fees are conveyed or paid for a specific project to serve the residents of the subdivision in a budgetary year within five years of receipt of payment, or within five years after issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If such fees are not so committed, these fees, less an administrative charge, shall be distributed to the then-record owners of the subdivision lots in the same proportion that the size of their lot bears to the total area of all lots within the subdivision. The director of public works shall report to the council on an annual basis as to the income, expenditures and status of the town subdivision park trust fund. (Ord. 483 (part), 1990).

17.44.080 Sale of dedicated land. If during the ensuing times between dedication of land for park purposes and the issuance of building permits circumstances arise which indicate that another site would be more suitable for local park or recreational purposes serving the subdivision and the neighborhood, the land may be sold upon the approval of the town council. The resultant funds shall be used for the purchase of a more suitable site. (Ord. 483 (part), 1990).

17.44.085 Exceptions. The following types of subdivisions shall be exempt from the parkland dedication requirements contained in this chapter:

- (a) Subdivisions containing less than five lots or parcels and not used for residential purposes. However a condition may be placed on the approval of such parcel map that if a building permit is requested for construction of a residential structure or structures on one or more parcels within four years the fee may be required to be paid by the owner of each parcel as a condition to the issuance of such permit;
- (b) Commercial or industrial subdivisions;
- (c) Condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building which is more than five years old when no new dwelling units are added. (Ord. 483 (part), 1990).

17.44.090 Severability. If any provision or clause of this chapter or the application thereof to any person or circumstances should be held unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions, and every provision and clause hereof is declared to be severable from all others. (Ord. 483 (part), 1990).