

ORDINANCE NO 98-039

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AMENDING CHAPTER 22 "PARKS AND RECREATION" OF THE CODE OF ORDINANCES OF THE CITY OF DENTON BY ADDING AN ARTICLE III PROVIDING FOR PARK LAND DEDICATION OR PAYMENT OF CASH IN LIEU THEREOF AS A CONDITION TO SUBDIVISION PLAT APPROVAL AND PAYMENT OF PARK DEVELOPMENT FEES AS A CONDITION TO BUILDING PERMIT ISSUANCE IN ORDER TO PROVIDE FOR NECESSARY PARK DEVELOPMENT, ESTABLISHING A SPECIAL FUND FOR MONEY PAID FOR PARK DEVELOPMENT, PROVIDING A PENALTY IN THE MAXIMUM AMOUNT OF \$500 FOR VIOLATIONS THEREOF, PROVIDING A SEVERABILITY CLAUSE, PROVIDING FOR A SAVINGS CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council for the City of Denton, Texas has determined that the platting of residential subdivisions and development of lots results in an increase of population, which in turn creates a need for additional neighborhood park land and park improvements, thereby placing an inordinate burden on existing city park sites and facilities, and

WHEREAS, the City Council finds that it is in the public interest to insure that new residential developments in the City of Denton will dedicate sufficient land or will otherwise provide for the development of park amenities to meet the demand and need of future residents of the development for open space and neighborhood parks which contain passive or active recreational areas that are reasonably attributable to such new development, and

WHEREAS, the City Council recognizes that the establishment of public open space in the form of neighborhood parks is necessary and in the interest of public welfare, and that an effective method to provide for the same is the incorporation of procedures for the dedication of park land and facilities into the development process as set forth in the City's development rules and regulations, ordinances and state law, and

WHEREAS, the City Council has conducted a public hearing on the proposed regulations contained herein, NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON, TEXAS HEREBY ORDAINS

SECTION I That the "Parks and Recreation" Chapter of the Code of ordinances of the City of Denton, Texas, be and the same is hereby amended by the addition of a new Article III entitled "Park Dedication", so that hereafter said article shall be and read as follows

PARK DEDICATION

ARTICLE III

Sec 22-33 PURPOSE

- (a) This Article is adopted to provide recreational areas in the form of neighborhood parks as a function of subdivision development of the City of Denton. This Article is enacted in accordance with the home rule powers of the City of Denton granted under the Texas Constitution, and the statutes of the State of Texas, including, but not by way of limitation, V.T.C.A. Local Government Code, §51.071 et seq (provisions applicable to home-rule municipality) and §212.001 et seq (municipal regulation of subdivisions and property development). It is hereby declared by the City Council that recreational areas in the form of neighborhood parks are necessary and in the public welfare, and that the only adequate procedure to provide for same is by integrating such a requirement into the procedure for planning and developing property or subdivisions in the City, whether such development consists of new residential construction on vacant land or the addition of new dwelling units on existing residential land.
- (b) Neighborhood parks are those parks providing for a variety of outdoors recreational opportunities and within convenient distances from a majority of the residences to be served thereby. The primary cost of neighborhood parks should be borne by the ultimate residential property owners who, by reason of the proximity of their property to such parks, shall be the primary beneficiaries of such facilities. Therefore, the following requirements are adopted to effect the purposes stated:

Sec 22-34 DEFINITION OF TERMS

For purposes of this policy, the following terms shall be defined as follows:

- (a) "Developer/Owner" – means the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.
- (b) "Residential Subdivision" – means the division or redivision of land into five (5) or more lots, tracts, sites or parcels for the purpose of developing residential dwelling units.
- (c) "Dwelling Unit" – means a building or portion of a building which is arranged, occupied or intended to be occupied as living quarters and includes facilities for food preparation and sleeping.
- (d) "Neighborhood Park" - Open space area encompassing five (5) to twenty (20) acres. Neighborhood parks should provide recreational land for residents within an approximate one-half (1/2) mile service radius.

- (e) "Park Dedication Requirements"- Collectively, dedication and/or construction of park facilities, in lieu dedication fee and park development fee

Sec 22-35 APPLICABILITY

The park dedication requirements of this Article shall apply to every residential subdivision and every building permit for construction of a dwelling unit approved after the effective date of this ordinance, except as hereinafter expressly provided to the contrary

- (a) Land dedication requirements set forth in sec 22-37 shall not apply to an application for approval of a preliminary or final plat for a residential subdivision that was initially filed before the effective date of this ordinance, and which plat has not expired. For all plat applications for a residential subdivision filed after the effective date of this ordinance, land dedication and/or construction requirements for park facilities shall be imposed at the time of preliminary plat approval
- (b) Requirements for payment of fees in lieu of park land dedication set forth in sec 22-38 shall not apply to any final plat for a residential subdivision that was approved prior to the effective date of this ordinance, nor to any application for a building permit within such subdivision thereafter filed, provided that no replat is necessary. Fees in lieu of park land dedication for all other residential subdivisions shall be paid at the time of release of the final plat for any portion of the subdivision by the City for filing in the Denton County plat records
- (c) Requirements for park development fees set forth in sec 22-39 shall not apply to any application for a building permit in a residential subdivision that was filed prior to the effective date of this ordinance. Park development fees for all other residential building permits shall be paid prior to issuance of such permits
- (d) Following initial imposition and satisfaction of park dedication requirements, additional requirements shall apply to revised plat applications for residential subdivisions and to renewed applications for building permits to construct residential dwellings only if such revised or renewed application results in an increase in the number of dwelling units. In such case, park dedication requirements then in effect shall apply only to the additional dwelling units proposed in the application

Sec 22-36 PLANNING

- (a) It is the policy of the City of Denton to require Developer/Owners of residential subdivisions and lots to provide for park land and park facilities at the time of development approval in proportion to the need for such improvements created by the developments and in proportion to the benefits received from contribution of such facilities. It is the City's further policy to impose park dedication requirements consistent with the City's Comprehensive Plan and officially adopted park and recreation plan

- (b) The City of Denton shall require developers of residential subdivisions or lots to dedicate land for neighborhood parks, make payment of cash in lieu thereof, make payment of cash for park development fees or construct recreational or park improvements in lieu thereof, or require dedication of additional park land, as hereinafter provided, for park purposes to meet the park and recreational needs as a condition of the development approval. The City shall have the right, in its sole discretion, to require a combination of park land dedication and/or payment of cash in lieu thereof, and/or payment of cash for park development fees and/or construction of recreational and park improvements in lieu thereof in order to meet park dedication requirements.
- (c) The City of Denton shall base park dedication requirements on the number of persons expected to reside in a development. The standard for public park land shall be 2.5 acres per 1,000 population. For each residential subdivision, the following formula shall be used to calculate park land needs:

$$\frac{2.5 \text{ Acres} \times (\text{No. of Units}) \times (\text{Persons/Unit})}{1,000 \text{ population}} = \text{Acres to be dedicated}$$

The number of persons per unit shall be based on both current U.S. Census information and data compiled by the City and shall be periodically reviewed and updated. The following figures represent the average number of persons per unit by current density categories, and shall be used to calculate park land dedications:

1	Single Family Detached/ Duplex	2.8 Persons/Unit
2	Multi-Family	1.8 Persons/Unit

- (d) Park Development Fees shall be based upon an assumed cost of typical improvements for a 1.5-acre neighborhood park of \$208,000. Development costs shall be apportioned among types of dwellings and park development fees shall be charged in accordance with the following formula:

1	Single Family Dwelling	\$291
2	Multi-Family Dwelling	\$187

- (e) Where a substantial private park and recreational area is provided in a proposed residential subdivision and such area is to be privately owned and maintained by the future residents of the subdivision, partial credit may be given to the Developer/Owner, not to exceed 50% of the total acreage requirements for land dedication if the City finds that it is in the public interest to do so and that all the following standards are met:

- (1) That yards, court areas, setbacks and other open areas required to be maintained by the zoning and subdivision rules and regulations ordinances shall not be included in the computation of such private open space,

- (2) That the private ownership and maintenance of the open space is adequately provided for by recorded agreement, covenants or restrictions,
- (3) That the use of the private open space is restricted for park and recreation purposes by recorded covenant, which runs with the land in favor of future owners of the property and which cannot be defeated or eliminated without the written consent of the City or its successors,
- (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 facilities proposed for the private open space are in substantial accordance with the provisions of the Comprehensive Plan, Parks and Recreation Plan and other adopted plans of City, and
- (6) That the private open space for which credit is given is a minimum of two (2) acres and provides a minimum of four (4) of the local park elements listed below, or a combination of such and other recreational improvements that will meet the specific recreation park needs of the future residents of the area

<u>Criteria List</u>	<u>Credit Acres</u>
Children's play apparatus area	50 - 75
Landscape park-like and quiet areas	50 - 1 00
Family picnic area	25 - 75
Game court area	25 - 50
Turf playfield	1 00 - 3 00
Swimming pool (42' X 75') [with adjacent deck and lawn areas]	25 - 50
Recreation center building	15 - 25
Recreation community gardening	15 - 25

Before credit is given, the City shall make written findings that the above standards are met

Sec 22-37 LAND DEDICATION

- (a) Dedication of park land shall be proportional to the number and type of dwelling units proposed for a residential subdivision. The number of acres of land to be dedicated shall be determined using the formula in sec 22-36(c)
- (b) Where a proposed residential subdivision contains multi-family dwelling units and information is not provided concerning the number of such units, the City shall assume the highest density allowed for the property to determine the projected population for the development

- (c) The land required to be dedicated or conveyed may be located inside or outside the subdivision development so long as the land is located within one-half (1/2) to one (1) mile of the periphery of the development so as to serve or benefit the residents of such subdivision
- (d) The Parks and Recreation Department, based upon review of the preliminary plat, initially shall determine the feasibility of park land dedication for a residential subdivision and the amount of land to be dedicated to the City for neighborhood park purposes, utilizing site selection criteria contained in sec 22-41. The Department's determination shall be forwarded to the Denton Department of Planning and Development for processing with the preliminary plat
- (e) In residential subdivisions which are to be platted in two or more phases, the required park land dedication, pursuant to this ordinance, must be provided in each phase of the subdivision with one exception. In its sole discretion, the City may authorize the developer to reserve park land for dedication in subsequent phases of the subdivision by paying into a City escrow fund a dollar amount equal to the fees in lieu of dedication otherwise due for the phase under sec 22-38. The form and provisions of the escrow agreement shall be approved by the City Attorney and City Engineer. The escrow funds must be paid to the City prior to the filing of the first phase final plat and shall be maintained in the escrow fund pending the platting of the project phase that contains the park land to be dedicated. Escrow funds will be returned to the developer, without interest, upon the filing of the final plat for the subsequent phase that dedicates the required park land. In addition, the developer shall dedicate a reversionary public access easement on the final plat of the initial phase(s) where necessary to provide effective public access, maintenance and use of any park land to be dedicated
- (f) If a replat is filed, the dedication requirements shall be controlled by the regulations in effect at the time of original platting, except that land dedication (or fee in lieu of) requirements then in effect shall be applied to any additional dwelling units proposed for the replat

Sec 22-38 PAYMENT OF FEES IN LIEU OF PARK LAND DEDICATION

- (a) If the calculation for required park land within the proposed subdivision development results in less than five (5) acres or does not meet criteria as per sec 22-41, the Parks and Recreation Department shall determine the amount of a fee in lieu of park land dedication in accordance with this section
- (b) The amount of the fee in lieu of park land dedication shall be calculated as follows. The Department first shall determine the total amount of land required to be dedicated in accordance with sec 22-37. The value of the land shall be calculated as the average estimated fair market value per acre of the land being subdivided at the time of preliminary plat approval, reduced by the value of any land actually to be dedicated for park purposes. The net value of the land otherwise to be dedicated shall be apportioned among the total number of dwelling units proposed for the residential subdivision and by dwelling unit type
- (c) If the Developer/Owner objects to the fair market value determination, the Developer/Owner,

at his own expense, may obtain an appraisal of the property by a State of Texas certified real estate appraiser, mutually agreed upon by the City and the Developer/Owner, which appraisal will be considered by the City in determining fair market value. All costs required to obtain such appraisal shall be borne by the Developer/Owner.

- (d) Park dedication fees shall be imposed at the time of preliminary plat approval. Fees shall be paid prior to release by the City of any final plat for filing in the deed records of Denton County. Park dedication fees established for the preliminary plat shall apply to subsequent approved final plats for a period of two years from the date of preliminary plat approval by the Planning and Zoning Commission. Thereafter, park dedication fees shall be redetermined and applied to final plats in accordance with subsection (b), using current appraised value of land in the subdivision at time of final plat submittal.
- (e) All fees collected shall be used for the acquisition of land for a neighborhood park, or development or construction of improvements to existing park land, within one-half (1/2) mile of the periphery of the proposed subdivision development. However, if [1] such acquisition opportunities are not available, or [2] existing park land is already developed or improved, within one-half (1/2) mile of the proposed subdivision development, then areas within one (1) mile of the periphery of the proposed subdivision development may be considered for the acquisition, of neighborhood park land and/or construction of improvements to existing park land within such periphery.

Sec 22-39 PAYMENT OF PARK DEVELOPMENT FEES

- (a) Park development fees shall be established for the purpose of funding neighborhood park improvements. Fees shall be proportional to the cost of neighborhood park facilities, the demand for which is generated by each new dwelling unit. Fees shall be established separately for single-family and multi-family dwelling units. Current park improvement costs and park development fees are set forth in sec 22-36(e).
- (b) Park development fees shall be imposed at the time of building permit application and shall be paid prior to issuance of building permits for the number of dwelling units designated in the application.
- (c) Park development fees shall be expended on park improvements located in a neighborhood park that benefits the dwelling unit paying the fee, typically within one-half (1/2) to one (1) mile of the subdivision in which the dwelling unit is located. The criteria for selection of the park site for improvements shall be the same as set forth in sec 22- 41.
- (d) The standard costs for development of a neighborhood park as set forth in §22-36(d) may be updated from time to time on the basis of current development costs, and park development fees shall be adjusted to reflect such updated development costs.

Sec 22-40 SPECIAL FUND, RIGHT TO REFUND

- (a) There is hereby established a special fund for the deposit of all fees in lieu of park land dedication collected under this article, which fund shall be known as the park land dedication fund. Within the fund, fees paid shall be earmarked for acquisition of new neighborhood parks or for improvements in existing parks generally located within one-half (1/2) to one (1) mile of the residential subdivision upon which the fee is imposed.
- (b) There is hereby established a special fund for the deposit of all park development fees collected under this article, which fund shall be known as the park development fund. Within the fund, park development fees paid shall be earmarked for expenditure on park improvements in a neighborhood park generally located within one-half (1/2) to one (1) mile of the subdivision in which the dwelling unit for which the fee is paid is located.
- (c) All fees in lieu of park land dedication and all park development fees paid must be expended within ten (10) years from the date of receipt for park facilities benefiting the residential subdivision or dwelling unit for which the fees are paid. Fees shall be considered expended if they are spent for acquisition or development, respectively, of neighborhood parks located within one-half (1/2) to one (1) mile of the subdivision for which the fees were paid within the ten-year period. If fees are not expended within such period, the Developer/Owner shall be entitled to a refund of the principal deposited by the Developer/Owner in such fund, together with accrued interest. The Developer/Owner must request such refund in writing within three hundred sixty-five (365) days of entitlement or such right shall be waived.
- (d) Interest accruing to the park land dedication fund and to the park development fund shall be expended on neighborhood park land acquisition and for neighborhood park improvements, respectively.

Sec 22-41 SITE SELECTION/CHARACTERISTICS OF PARK

- (a) In selecting a site for a park, the City shall avoid an accumulation of unrelated parcels of land or an accumulation of land unsuitable for park purposes.
- (b) Parks shall be selected on the basis of obtaining natural, park-like settings where available and shall consist of diverse topography and open space suitable for the development of recreational facilities.
- (c) Neighborhood park size should be a minimum of five (5) acres and obtained as one complete parcel. If a development parcel cannot provide the minimum five (5) acre parcel or a smaller parcel which can potentially be contiguous to existing or future park parcels, then a fee in lieu of park land or a combination of fee and park land dedication shall be required in accordance with sec 22-37.
- (d) Park sites shall be located, whenever possible, adjacent to and contiguous with school sites and other public or non-profit agency sites in order to make maximum use of common facilities and

grounds

- (e) Careful consideration shall be given to the need for development of parks around natural drainage and wooded areas, which provide potential recreational uses. Criteria for floodplain areas (based upon 100 year storm) usage is as follows
- 1 Floodplain and natural drainage areas shall generally not exceed seventy five (75%) percent of the total park site
 - 2 At least fifty (50%) percent of required dedicated park land shall have slopes in range of 2-5%, well drained, and suitable for active use development
 - 3 Floodplain acreage may be dedicated at a ratio of three to one (3:1) in acres in lieu of non-floodplain property. Any consideration of additional floodplain acreage shall be as agreed upon between the Parks and Recreation Department and the Developer/Owner
- (f) Proposed park land boundaries shall provide street frontage for readily accessible entry into the park area by the public and water, sanitary sewer and electric improvements shall be readily available to the park from an adjacent street right-of-way or public utility easement. If the Developer/Owner requests delay in the construction of said improvements because of phasing of subdivision development, the Developer/Owner shall escrow sufficient funds in behalf of the City, the form and provisions of such escrow agreement shall be approved by the City Attorney and the City Engineer, to cover the cost of such construction as determined by the City Engineer
- (g) Prior to dedication of land, the Developer/Owner shall make full disclosure of the presence of any hazardous substances and/or underground storage tanks (U S T 's) of which the Developer/Owner has knowledge. The City, at its discretion, may proceed to conduct such initial environmental tests and surveys on the land, as it may deem appropriate, and the Developer/Owner shall grant to the City and its agents and employees such reasonable access to the land as is necessary to conduct such surveys and tests
- (h) If the results of such surveys and tests indicate a reasonable possibility of environmental contamination or the presence of U S T s, the City may require further survey and tests to be performed at the Developer/Owner's expense as the City may deem necessary prior to its acceptance of the dedication, or in the alternative, the Developer/Owner may be required to identify alternative property or pay the fees in lieu of such park land dedication
- (i) The park site shall be free of trash and debris and if the dedicated park land's natural condition is disturbed during construction of subdivision improvements then Developer/Owner shall be responsible for returning the dedicated land to its natural condition prior to or at the time of final plat filing and the public improvements to be constructed per the applicable subdivision plat will not be accepted by the City until such time that the above conditions have been met

Sec 22-42 DECISION MAKING, APPEALS

Unless otherwise provided herein, an action by the City in determining compliance with the terms of this article refers to a determination by the Parks and Recreation Department. The Developer/Owner of land subject to park dedication requirements may appeal any determination by the Parks and Recreation Department under this article to the City Council for a final decision. The appeal shall be in writing and shall be filed with the Planning and Zoning Commission, which shall make its recommendation to the City Council. The City Council will not review the appeal of any determination by the Parks and Recreation Department without first obtaining the recommendation of the Planning and Zoning Commission. No final plat shall be approved by the Planning and Zoning Commission which varies the terms of this article or which does not comply with the Parks and Recreation Department's determination without final resolution of the appeal by the City Council.

SECTION II That any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding a maximum amount of 500.00. Each day that a provision of this ordinance is violated shall constitute a separate and distinct offense.

SECTION III That if any section, subsection, paragraph, sentence, clause, phrase or word in this ordinance, or application thereof to any person or circumstances is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and the City Council of the City of Denton, Texas hereby declares it would have enacted such remaining portions despite any such validity.

SECTION IV That save and except as amended hereby, all the provisions, sections, subsections, paragraphs, sentences, clauses, and phrases of Chapter 22 of the Code of Ordinances shall remain in full force and effect.

SECTION V That this ordinance shall become effective fourteen (14) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this ordinance to be published twice in the Denton Record-Chronicle, a daily newspaper published in the City of Denton, Texas, within ten (10) days of the date of its passage.

PASSED AND APPROVED this the 17th day of February, 1998



JACK MILLER, MAYOR

ATTEST
JENNIFER WALTERS, CITY SECRETARY

BY Jennifer Walters

APPROVED AS TO LEGAL FORM
HERBERT L. PROUTY, CITY ATTORNEY

BY


