

ARTICLE VI. - CONVEYANCE OF LAND FOR RECREATIONAL AREAS AND FACILITIES ^[99]

⁽⁹⁹⁾ **Charter reference**— Authority of city to acquire property for playgrounds, § 7.

Sec. 142-153. - Purpose.

This article is adopted to ensure that adequate neighborhood and community parks are provided to meet the additional needs created by new residential development.

Sec. 142-154. - Scope.

The provisions of this article shall apply to all new residential development within the city after the effective date of the ordinance from which this article derives for which a plat is required to be submitted to the city for approval in accordance with state law and the ordinances of the city.

Sec. 142-155. - Exemptions.

The provisions of this article shall not apply to the following:

- (1) Residential development for property to be located on a lot of record, approved prior to the effective date of the ordinance from which this article derives;
- (2) A record plat, a minor plat, or a replat which was approved prior to the effective date of the ordinance from which this article derives; or
- (3) Residential development constructed or to be constructed in accordance with a building permit issued prior to the effective date of the ordinance from which this article derives.
- (4) Residential development within the MTC McKinney Town Center zoning district (refer to Appendix G of the City of McKinney Zoning Regulations for open space standards specifically applicable to all new residential development within the McKinney Town Center zoning district).

Sec. 142-156. - General requirements.

(a) *Conveyance or payment of money required.* The owner of any property to which this article applies, which is to be developed for residential purposes, shall convey land for park purposes or make a payment of money in lieu of land, or a combination of both, to the city at the time of subdivision for single family and duplex residential development or at time of issuance of a building permit for multi-family development, to provide for the recreational needs created by such development, in accordance with the provisions of this chapter.

(b) *Proposed number of dwelling units to be submitted.* All plats, lots of record, replats, site plans or proposed improvements of land for new residential development required to be submitted to the city, shall indicate the number of proposed dwelling units to be constructed or placed within the development on such plat, lot of record, replat or site plan.

(c) *Determination of requirements.* In reviewing any lot of record, plat, site plan or proposed

improvements of land for a new residential development, the director of parks and recreation shall make a determination of whether a conveyance of land, payment of money in lieu of land or a combination of both shall be made to meet the requirements of this article.

(d) *Factors considered.* In making a determination of whether a proposed conveyance of land, money in lieu of land or a combination of both shall be made to meet the requirements of this article, the director of parks and recreation shall determine what would be in the best interest of the city, based upon relevant factors which may include, but not be limited to, the following:

- (1) Whether the proposed land to be conveyed for park purposes would be suitable as a neighborhood or community park;
- (2) The parks and recreation master plan for the area in which the development is located;
- (3) Whether the proposed land to be conveyed for park purposes is adjacent to an existing or proposed school site;
- (4) Whether there is sufficient existing public or private park land in the area of the proposed development;
- (5) Whether the park needs of the area where the proposed development is located would be best served by expanding or upgrading existing parks;
- (6) Land located adjacent to a greenbelt park/open space, which is intended to be preserved in its natural state; and
- (7) The guidelines of the current city comprehensive plan.

(e) *Suitability of proposed conveyance of land for park purposes.* A proposed conveyance of land to meet the requirements of this article shall generally be considered unsuitable for neighborhood or community park purposes if it has one or more of the following characteristics:

- (1) Generally, if more than 20 percent of the proposed park site is located within the 100-year floodplain, as shown on the latest flood insurance rate map or floodplain ordinance adopted by the city on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community. The city may accept land that is composed of more than 20 percent floodplain if it is determined in the best interest of the city;
- (2) The proposed park site dedication is less than ten acres for a neighborhood park or 40 acres for a community park, unless the proposed dedication is located in such a manner in which it could be combined with other dedications to create a park of adequate size; or
- (3) It does not or would not front an improved public street or would not be readily accessible, in whole or in part, to the public.

(f) *Combination of land and payment of money.* The director of parks and recreation may, when the best interest of the city would be served, require a combination of the dedication or conveyance of land and the payment of money in lieu of land to meet the requirements of this article, or total payment in lieu of land conveyance.

Sec. 142-157. - Conveyance of land requirements.

(a) *Required.* When the director of parks and recreation determines that a conveyance of land shall be required, in whole or in part, to meet the requirements of this article, the following provisions shall apply:

(1) *Amount.* Any required conveyance of land shall be in an amount proportionally equal to one acre per 50 residential units on all proposed residential developments as defined herein.

(2) *Manner and method.* Plats of subdivisions required to be submitted for approval by the city in accordance with V.T.C.A., Local Government Code §§ 212.001—212.017, shall show thereon a fee simple conveyance to the city of the land required by this article for park purposes as a condition to approval of such plat by the city, and the city may further require the conveyance of the park property by general warranty deed. As a condition to acceptance of the plat or deed by the city, the subdivider shall provide the city with an owner's title policy of insurance in an amount equal to the value of the land conveyed, which amount shall be determined by the city.

a. For single family, duplex residential and multi-family developments, the amount of land needed shall be based on one acre per 50 residential dwelling units or a portion thereof.

b. If any subdivision or site plan change results in an increase in the number of dwelling units allowed on a platted lot, the developer shall pay the difference as a fee in lieu of land dedicated to be paid prior to the filing of the replat or the issuance of a building permit.

(3) *Credit for prior dedications.*

a. Where a gift of land was made prior to the effective date of the ordinance from which this article is derived by the owner of land required to convey land under the provisions of this article, the former gift of land shall be credited on a per-acre basis toward the required conveyance provided by this article when the Council finds that:

The gift was made within five years of the effective date of the ordinance from which this article is derived;

The land given was within one-half mile of the new development for which land is required to be conveyed;

The land given is not being presently used for purposes incompatible with park purposes and is suitable for park purposes; and

A credit may be given for on-site improvements that are compatible with long range development plans for the proposed park.

b. The credit provided for herein shall not be transferable and shall only be given to the donor of the land who is the owner of the property being developed for which a conveyance of land is required by this article, unless said prior conveyances were included as a part of an executed facilities and/or development agreement with the city and the developer.

(4) *Credit for private recreation facilities.* Where private recreation facilities are built for the residents for the subdivision or development, a credit may be granted by the director of parks and recreation. The value of these private recreation facilities shall be determined by the director of parks and recreation but shall not exceed 50 percent credit and shall be consistent with credit guidelines to be promulgated as part of the city comprehensive plan and park master plan.

(5) *Credit for conveyance of floodplains.* In cases where floodplain land or property is proposed to be conveyed to satisfy the parkland requirements, a credit will be given based upon the following formula or ratio: ten acres of floodplain shall equal one acre of nonfloodplain land.

(6) *Location.* The land required to be conveyed may be located inside or outside the boundaries of the development, as long as the land is so located and in such proximity to the development so as to serve or benefit persons residing therein, as approved by the director of parks and recreation.

(b) *Improvements to be made.* The person required to convey land shall be responsible for, and pay the costs of, providing convenient access by improved streets, sidewalks and, adequate drainage improvements so that the site is suitable for the purpose intended, and shall provide water, sewer and electrical utilities to the property in accordance with the procedures applicable to other public improvements as specified in the subdivision ordinance of the city. However, the city council may waive, in whole or part, such required improvements where an amount of land in excess of the requirements of this article is conveyed, the value of which is equal to or greater than the cost of the improvements being waived. Such waivers shall be specified on a case-by-case basis in a facilities agreement between the developer and the city for the given subdivision.

Sec. 142-158. - Money in lieu of land.

Where the director of parks and recreation determines that a payment of money in lieu of land shall be made, the following provisions shall apply:

(1) *Amount required to be paid.* Any payment of money required to be paid by this article shall be in an amount equal to the value of the property established by the most recent appraisal of all or part of the property made by the central appraisal district. Periodically the city may have an independent appraisal conducted for a sampling of properties to determine if the appraised value established by the central appraisal district is appropriate. The city council may adjust the amount assessed based on any difference between the value of property established by the central appraisal district and the value of property per the independent appraisal. The adjustment shall be a percentage change to all properties of the values established by the central appraisal district.

(2) *Time of payment.* any payment of money required herein shall be paid as a condition to the approval of any final plat or replat. Payment shall be made prior to the filing of the plat for single family and duplex residential developments and prior to the issuance of a building permit for multi-family developments, unless otherwise stated in a facilities agreement approved by the city.

(3) *Parkland dedication fund.* All cash payments paid to the city in accordance with this article shall be deposited in a separate parkland dedication fund. The city shall account for all such payment with reference to each development for which the payment is made.

(4) *Use of funds.* Any payments made to the parkland dedication fund may be used solely for the acquisition, development, expansion or upgrading of neighborhood or community parks located within the same park district or general area where the proposed development for which payment was made is located.

(5) *Right to refund.* If all or part of the payments made for a development are not expended for the purposes authorized herein within six years of the date that 95 percent of all certificates of occupancy have been issued for the completed development of the property for which the payments were made, the person or entity who made such payments shall be entitled to a refund on all unexpended funds if a request for a refund in writing has been made within one year of entitlement.

If no such timely request is made, the right to a refund of the unexpended funds shall be considered waived.

Sec. 142-159. - Penalties, sanctions and redeterminations.

(a) *Requirements to be satisfied prior to development.* It shall be unlawful for any person who is required to convey land, or pay money in lieu of land as required by this article, to begin, or allow any other person or contractor to begin, any construction or improvements on any land within any development to which this article applies until the required conveyance of land or payment of money in lieu of land is made to the city in accordance with this article.

(b) *Permits and services to be withheld.* No building permits shall be issued for, and no permanent utility services shall be provided to, any land within any development to which this article applies until the required conveyance of land or payment of money in lieu of land is made to the city in accordance with this article.

(c) *Redetermination of requirements for proposed additional dwelling units.* After the council has made a determination of the requirements of this article, or after the requirements of this article have been met, based upon the proposed number of residential dwelling units for any land to which this article applies, any person who desires to construct a number of dwelling units in excess of the number of dwelling units for which the requirements of this article were determined or met must submit to the council a revised zoning proposal for additional dwelling units for the development. Once the council has approved a zoning ordinance increasing the number of dwelling units allowed on a platted lot, the developer shall either convey the additional park land through a plat or replat or shall pay a fee in lieu of parkland for the additional dwelling units at the issuance of the building permits. Where a payment of money was originally made to meet the requirements of this article, the person proposing to construct additional dwelling units may be required to convey land for all or part of the development. In such case, after the required conveyance is made, the payments, or portion thereof, previously made, which are satisfied by the dedication of land shall be returned by the city.

Sec. 142-160. - Penalties.

Any person violating any of the provisions of this article shall, upon conviction, be fined a sum not exceeding \$500.00; and each day and every day that the provisions of this article are violated shall constitute a separate and distinct offense. This penalty is in addition to and cumulative of any other remedies as may be available at law and equity.

Secs. 142-161—142-189. - Reserved.