

Chapter 3.40 - PROPERTY DEDICATION FOR PUBLIC PARKS, RECREATION FACILITIES AND OPEN SPACES

3.40.010 - Applicability.

The provisions of this chapter shall be applicable to all property development within the city. "Property development" shall mean any application for any residential or nonresidential building permit or conditional use permit for a single-family dwelling, mobile home, duplex, multifamily dwelling, industrial or commercial building; and any application for approval of a mobile home park, mobile home subdivision, planned residential development, or planned unit development; and any application for approval of a short plat or long plat subdivision or subdivision in zones allowing for development purposes.

(Ord. 1197 § 1, 2004).

3.40.020 - Basis for dedication or assessment.

All land dedications or mitigation assessments shall be made on a per unit basis or square foot basis. "Unit" shall mean each dwelling unit, mobile home or lot as applicable and as defined in Chapter 17 of this code. "Unit" for nonresidential development shall mean each additional square foot added to an existing structure or each square foot of building in a new structure.

Where the number of dwelling units or mobile homes is not precisely known at the time of property development, "unit" shall mean at least one single-family dwelling unit or mobile home for each lot, to be increased when the number of dwelling units or mobile homes become known or fixed through application for a building permit or other applicable permit.

(Ord. 1197 § 2, 2004).

3.40.030 - Credit for prior dedication, system improvement, or assessment.

This chapter is not intended to require new dedications or assessments for a unit previously subject to full and complete dedication requirements or mitigation assessments for the unit, individually or as part of a larger project. Dedication requirements or mitigation assessments shall not result in imposition of more than the cost of one unit for any single dwelling unit or mobile home. Full or partial credit shall be given for the value of any dedication of land, system improvement, or mitigation assessment previously provided by the developer for land or facilities identified in the capital facilities plan and required by the city as a condition of approving the property development.

(Ord. 1197 § 3, 2004).

3.40.040 - Land dedication suitability.

Dedication of land that is improved for public parks, recreation facilities and open spaces is one method of mitigating the impacts on such facilities caused by property development proposals within the city. Every property development proposal shall be reviewed by the park and recreation director and planning director for recommendation of suitable lands for dedication and for the level of improvements for parks, recreation facilities and open spaces in accordance with the standards set forth in the park and trail master plan. Dedication shall generally not be a suitable alternative for providing parks, recreation facilities and open spaces in the following cases:

- A. Where the area that would be required to be dedicated for the purpose would be less than twenty-five thousand square feet in any one location;
- B. Where safe and convenient access is not available;
- C. Where the property development is in close proximity to land already dedicated for such purposes and such land is in need of improvement for recreation purposes; and
- D. In cases where such dedication would not be consistent with the city's comprehensive plan, park and trail master plan, or capital improvement plan.

All property development applications shall be subject to mitigation assessments established by formula unless prior dedication or assessment for parks, recreation facilities and open space has been made such that the total dedication or assessment obligations otherwise applicable to the property development have been met.

(Ord. 1197 § 4, 2004).

3.40.050 - Dedication standards.

Where dedication is determined to be suitable, feasible, and in the best interests of the city, it shall be required in conformance with the requirements contained in "Exhibit A," Section 6—"Dedication Requirements" of the ordinance codified in this chapter.

The city council, upon recommendation of the parks and recreation director, shall determine the final suitability, location and improvements to lands proposed for dedication. Dedications of land shall be consistent with the standards adopted within the park and trail master plan.

Dedications required under this section shall be completed at the earliest applicable date as a condition of approval of any property development permit. Dedication shall be made through the delivery to the city of a fully executed and acknowledged statutory warranty deed. The statutory warranty deed shall be recorded with the Whatcom County auditor.

(Ord. 1197 § 5, 2004).

3.40.060 - Alternative to public dedication.

In some cases, it may be determined that land for parks, recreation facilities and open spaces should not be dedicated to the public, but remain under control of a

property owner, homeowner's association or other similar body. Where it is consistent with the provisions and policies of the park and trail master plan, the city council may approve lands to be set aside for private recreational or open space purposes subject to such conditions of ownership and perpetual maintenance as may be deemed acceptable. This alternative shall be subject to the same minimum requirements contained in "Exhibit A," Section 6—"Dedication Requirements" of the ordinance codified in this chapter.

(Ord. 1197 § 6, 2004).

3.40.070 - Mitigation assessments.

When dedication of land for public purposes is determined by the city to be infeasible, unwarranted, or not in the best interests of the city, mitigation assessments shall be required in conformance with this chapter.

(Ord. 1197 § 7, 2004).

3.40.080 - Mitigation assessment formulas.

Mitigation assessments for public parks, recreation facilities and open spaces shall be calculated in accordance with the formulas established by Ordinance ##### (adoption of 2020 budget) and subject to review and increase as approved through the City's budget process, found in "Exhibit A," Section 7—"Mitigation Assessments" of the ordinance codified in this chapter. These formulas shall be periodically reviewed and revised as determined by the city council to reflect changes in acquisition and development costs for such facilities. Mitigation assessments contributed under this section shall be due and payable as follows: provided that, -Fees due at the time of building permit for a single-family home may be eligible to be deferred consistent with provisions of chapter LMC-3.47 LMC:

Development Type	Assessment due at project approval	Assessment due at building permit application
Development including the subdivision of property and a building permit approval	50% of assessment for all proposed units	50% of assessment for each unit
Creation of new, additional lots on property where one or more previously existing units are located	50% of assessment for net new units	50% of assessment for each new unit

Non-subdivision development approval (e.g., conditional use permit)		Total assessment
Development for which building permit only is required		Total assessment
Building of a structure on a lot of record as defined in Section 17.01.030 LMC established prior to September 1994		50% of assessment
Development for which no building permit will be required following project approval (including conditional use permit where applicable)	Total assessment	

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(Ord. 1197 § 8, 2004).

3.40.090 - Administration of assessments.

There is created and established a special purpose, nonoperating park impact fund, to which all mitigation assessments are paid. Fund administration shall be as follows:

- A. **Separate Account for Each Development.** Any assessments paid to the city shall be deposited in the fund and administered as a separate account for the development in question, and the account balance shall be applied only to the completion of improvements or acquisition projects specified in the capital improvement plan as approved or amended by the city council.
- B. **Interest Earned.** Interest and investment income earned by the fund shall be redeposited in the fund and allocated proportionally to each subaccount.
- C. **Time Limit for Expenditures.** Any funds remaining in a development's account shall be refunded with interest to the property owner of record within six years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than six years. Such extraordinary or compelling reasons shall be identified in written findings by the city council.
- D. **Impact Fees Paid Under Protest.** Impact fees may be paid under protest in order to obtain a property development permit or approval.
- E. **Refund for Expired Property Development Permit or Approval.** If a developer pays any assessments to the park impact fund for mitigation purposes, and the development's building permit or other approval expires before any substantial construction has commenced, the developer or the developer's successors in

interest shall be entitled to a refund of the payments made plus interest, less a charge of ten percent of the original assessment for processing of the account. Any amount erroneously paid or collected shall be refunded in full.

- F. Administration of Impact Fee Refunds. All refunds of impact fees authorized in this chapter shall be administered in accordance with RCW 82.02.080 and as it is hereafter amended.

(Ord. 1197 § 9, 2004).

3.40.100 - Impact fee—Exception.

Any person(s) required to pay a fee or dedicate land pursuant to RCW 43.21C.060 for system improvements shall not be required to pay an impact fee or dedicate land under this chapter for those same system improvements.

(Ord. 1197 § 10, 2004).

3.40.110 - Deferral. Appeals and adjustments.

A. Application to defer the payment of impact fees due at the time of building permit in association with the construction of a single-family home may be made in accordance with ~~to LMC~~chapter 3.47 LMC.

B. Any person(s) seeking an adjustment to the dedication or mitigation assessments required by this chapter shall have a right to appeal to the city council. Any such appeal shall be filed with the city clerk in writing within ten days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required by this chapter. Following receipt of such an appeal, the city council shall hold a public hearing to consider the appeal at its next available meeting. In considering the appeal the city council may, in its discretion, take into account unusual circumstances in a specific case and may consider studies and data submitted by the appellant(s). The city council shall issue such determination as it deems fair and equitable. The decision of the city council shall be in writing and shall be the final decision of the city.

(Ord. 1197 § 11, 2004).