

**ORDINANCE NO. 714**

**AN ORDINANCE OF THE CITY OF MANOR, TEXAS AMENDING CHAPTER 10, SUBDIVISION REGULATION, ARTICLE 10.02 SUBDIVISION ORDINANCE, ORDINANCE 263B, EXHIBIT A, AS AMENDED, OF THE CODE OF ORDINANCES OF THE CITY OF MANOR, TEXAS PROVIDING FOR THE AMENDMENT OF ARTICLE I, GENERAL, SECTION I, DEFINITIONS, AND ARTICLE III, DESIGN STANDARDS FOR IMPROVEMENTS, SECTION 48, PARK LAND DEDICATION, PROVIDING A SEVERABILITY CLAUSE, PROVIDING SAVINGS, EFFECTIVE DATE AND OPEN MEETINGS CLAUSES, AND PROVIDING FOR RELATED MATTERS.**

**WHEREAS**, the City of Manor, Texas (the “City”) is a home-rule City authorized to regulate subdivisions within its city limits and extraterritorial jurisdiction; and

**WHEREAS**, the City Council of the City of Manor, Texas (the “City Council”) reviews the City’s subdivision regulations from time to time to consider amendments to the City’s subdivision ordinance; and

**WHEREAS**, the City finds it necessary to amend the subdivision ordinance and adopt the amendments set forth in this ordinance;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANOR, TEXAS, THAT:**

**SECTION 1. Findings.** The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

**SECTION 2. Amendment of Section 1 Definitions.** The City Council hereby adds, deletes, and modifies Chapter 10, Subdivision Regulation, Article 10.02 Subdivision Ordinance, Ordinance 263B, Exhibit A of the Manor Code of Ordinances (the “Subdivision Ordinance”) to amend Article I, General, Section I, Definitions, to reflect the text found in Exhibit A. Any definitions found in Article I, Section I, of the Subdivision Ordinance that are not included in Exhibit A are not modified by this ordinance.

**SECTION 3. Amendment of Section 48 Park Land Dedication.** The City Council hereby repeals and replaces the Subdivision Ordinance Article III, Design Standards for Improvements, Section 48, Park Land Dedication, in its entirety to reflect the text in attached Exhibit B.

**SECTION 4. Conflicting Ordinances.** The Manor Code of Ordinances is amended as provided herein. All ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this ordinance shall govern.

**SECTION 5. Savings Clause.** All rights and remedies of the City of Manor are expressly saved as to any and all violations of the provisions of any ordinances affecting subdivision within the City which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**SECTION 6. Effective Date.** This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code and the City Charter.

**SECTION 7. Severability.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 8. Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

**PASSED AND APPROVED** on this 2<sup>nd</sup> day of August 2023.

**THE CITY OF MANOR, TEXAS**

\_\_\_\_\_  
Dr. Christopher Harvey, Mayor

**ATTEST:**

\_\_\_\_\_  
Lluvia T. Almaraz, City Secretary

### Exhibit A Definitions

*Amenity, Private* means private recreational facilities located in private parks, including but not limited to neighborhood swimming pools, clubhouses, tennis courts, basketball courts, practice fields with irrigation, and trails.

*Amenity, Public* means public recreational facilities located on public parkland or within a private park in which a public access easement is dedicated to the City and is open to the general public, including but not limited to, playground, tennis court, basketball court, multi-purpose regulation sports fields, and trails.

~~City Park means land area dedicated to the City of Manor for general public use. The park land area must consist of a minimum of five acres. The park may contain public drainage easements or drainage facilities designed to meet development regulations for the park only. For purposes of park land dedication, public/private drainage easements, detention ponds, nature preserves, open spaces, utility easements or other similar dedicated public uses designed to serve areas outside the park shall not be included in calculating park land dedication requirements. City Parks must have a minimum of three quarters of an acre open space, shaded areas for picnic tables and other public gathering areas with seating. Other amenities may include or provide for future locations for restrooms, drinking fountains, lighting, sport courts, ballfields, playscapes, and hike and bike trails. City Parks should be located such that the overall park land may be increased with dedication of park land from development on adjacent properties. Areas in a City Park designed to accommodate public venues, including vendors, sound amplification and lighting shall be buffered from adjacent residential properties by a combination of landscaping and setbacks.~~

*Greenbelt* means a series of connected open spaces that may follow natural features such as creeks or streams.

*Hike and bike trail* means a strip of land that is dedicated for a trail or pathway for pedestrian circulation, alternative transportation and recreational uses, that is not less than ten feet in width, and that has installed, or is planned to have installed, certain improvements, including but not limited to an all-weather concrete trail or pathway that is not less than eight feet in width, designed and constructed in compliance with standards and specifications adopted and maintained by the city

*Open Space* means an area or tract of undeveloped land which is intended to remain generally in its natural state, except for those uses allowed under the provisions of this Chapter.

*Park* means an area devoted towards open space and recreation not otherwise defined by this chapter. This definition includes, but is not limited to trails, structures and uses that are designed for recreation, educational and sport activities. Inclusive of private parks and public park or parkland

~~Nature Preserves means land reserved for passive enjoyment generally established to maintain~~

~~existing habitat for wildlife. This area may include natural waterways and designated floodplain, floodway or topography, unique to the area. No improvements shall be made in a Nature Preserve. Nature preserve area shall not be used to calculate Park Land dedication requirements but may be used in calculating Open Space Requirements. Nature preserves may be dedicated to the City of Manor.~~

*Park, Community* means parkland totaling a minimum of ten (10) acres or more, which may include an assortment of public facilities, including but not limited to, a playground, trail, restrooms, and sports and recreational facilities.

*Park Development Agreement* means a park development agreement is a legally binding contract between a property owner or developer and the city which details special terms of agreement which are authorized, but not fully specified in the regulatory text. This provides the property owner/developer with flexibility in meeting the terms and conditions of the regulations yet provides the city with the specificity needed to determine conformance with the purpose and intent of the provisions authorizing it. The legally binding contract provides the city with a mechanism to enforce the specifications of future improvements which will occur much later after the decisions have been made.

*Park Development Fee* means a development fee associated with residential developments' responsibility to provide payments to the City, for the construction of Public Amenities within Public Parkland from time to time, that represent the development's impact on the public parkland system.

*Park Fund* means a special fund established by the City to retain monies paid by developers in accordance with the payment in lieu of park land dedication and park development provisions of these regulations and to be used for the purchase of park land or improvements in the vicinity of the subdivided property for which funds have been collected.

*Park, Neighborhood* means parkland totaling a minimum of three (3) acres or more, which may include an assortment of public facilities, including but not limited to, a playground, trail, restrooms, and sports and recreational facilities.

*Park, Pocket* means parkland generally one-half acres (1/2) to three (3) acres in size, which may include an assortment of public facilities, including but not limited to, a playground, trail, restrooms, and sports and recreational facilities.

*Park, Private* means land, located within a subdivision, owned and maintained by a private entity such as a property owner's association and to which use of the facility is restricted to the residents of that subdivision. This definition may include an amenity center.

*Park, Public* means land dedicated, owned and operated by the City, a Municipal Utility District, a Water Control and Improvement District, or the County, and which is available to the general public for use as a park or recreational purposes

~~Playscape means any structure permanently anchored to the ground that is designed for recreational purposes. Sports courts such as basketball or tennis courts are not considered playscapes.~~

*Playground* means a facility, typically located within a public or private park, which provides equipment for children to play on or around. Typically includes amenities such as climbing structures, swing sets, slides, and other site furnishings.

*Public Park Facilities* means singular or a group of uses within a public park, owned by the City or another government agency, that provides for passive and/or active amenities and appurtenances including, but not to, playground equipment, sports fields, restrooms, pavilions, amphitheater, parking, trails, garden, orchard, campgrounds, etc.

~~Pocket Park — Park area established for use by residents of the subdivision where the park is located. The Pocket Park shall be owned and maintained by the Homeowners' Association. Pocket Parks may be located within the interior of the subdivision. A Pocket Park may not be used for any purpose other than those allowed within a residential neighborhood except as provided below. Neighborhood Parks may not be used to hold events designed to invite participation of the general public more than twice annually. Semi-annual events shall be sponsored by the Neighborhood Association and subject to the park use policies of the City of Manor. A Pocket Park area may be used to calculate overall park land dedication up to ten percent of the total park land dedication required.~~

*Site furnishings* mean benches, trash receptacles, bike racks, landscape beds, lighting, and signage.

**Exhibit B**

**Section 48 Park Land Dedication**

**Section 48 - Park Land Dedication.**

(a) *Purpose.* It is hereby declared by the Manor City Council that public park, conservation, and greenway areas are valuable assets that advance the public's health, safety, and welfare. This Section is adopted to provide active and passive recreational areas in the form of park facilities as a function of subdivision and site development in the City of Manor and its Extraterritorial Jurisdiction (ETJ). This Section is enacted in accordance with the home rule powers of the City of Manor granted under the Texas Constitution, and the statutes of the State of Texas, including, but not by way of limitation, Texas Local Government Code Chapter 212 as may be amended from time to time.

This Section recognizes that park land dedication is a fair, reasonable, and uniform method of financing these assets that does not impose an unfair burden on new or existing development. The intent is to require new development to pay its proportionate costs that are associated with providing new, expanded, and renovated parks, so they are borne by the new residents who are responsible for creating the additional demand. This is done by integrating such requirements into the procedure for planning and developing of property or subdivisions in the City and its ETJ, whether such development consists of new construction on vacant land or rebuilding, remodeling of multi-family dwellings that results in an increase in the number of dwelling units on existing residential property, and developing property on or along a Trail or Greenway Path as shown in the City's Parks, Recreation, and Open Space Master Plan.

The intent of these assets is to provide a variety of outdoor recreational opportunities for new residents within reasonable proximity of their homes. The primary cost of purchasing, developing, or improving parks should be borne by the landowners of property who, by reason of the proximity of their property to such parks, shall be the primary beneficiaries of such facilities.

Park land dedication is consistent with, and furthers the objectives and policies of, the City's Comprehensive Plan and the Parks, Recreation, and Open Space Master Plan to protect the health, safety, and general welfare of the public. It is coordinated with other city policies, ordinances, and resolutions by which the City seeks to ensure the provision of adequate park facilities in conjunction with the development of land.

Further, it is stated that the purpose of this Section is to:

- 1) Ensure the City creates a comprehensive network of trails that provides links to parks, homes, schools, and community facilities and to ensure multi-modal access throughout the City and its Extraterritorial Jurisdiction.
- 2) Provide for pedestrian corridors with the integration of hike and bike trails within floodplain areas.

- 3) Preserve environmentally sensitive and ecologically diverse areas.
- 4) Maintain and achieve a contiguous hierarchy of public parks and facilities, open space, and hike and bike trails that serve the recreational needs of all residents, employees, and visitors to the City.
- 5) Establish public park land design and physical characteristic policies consistent with the Parks, Recreation and Open Space Master Plan.
- 6) Establish policies for the conveyance of public park land.
- 7) Focus on the development of public community parks that ultimately serve the population equitably in order to serve a diverse demographic and expanding population.
- 8) Expand the community and regional park system.
- 9) Maintain, enhance or exceed existing level of service in accordance with the City's Parks, Recreation, and Open Space Master Plan.

(b) *Applicability.*

- 1) This Section applies to a landowner who develops land with residential units and/or land included in Parks, Recreation, and Open Space Master Plan that contains a Trail or Greenway Path, and is located within the City or within its ETJ. Whenever a subdivision is also subject to regulations by a County or a special district, or both, and such regulations include park land and open space standards, the most stringent standards, whether the City's, the County's, or the special district's requirements, shall apply.
- 2) The Park land dedication and park development fees required by this Section are waived for any unit that qualifies as new, affordable, housing to be sold to low-and moderate income households, as defined by the current U.S. Department of Housing and Urban Development Income Limits or that has partnered with the Manor Public Facilities Corporation.
- 3) This article does not apply to activities involving the remodeling, rehabilitation or other improvements to an existing residential structure, or to the rebuilding of a damaged structure, unless additional dwelling units are added.
- 4) If a dedication requirement arose prior to enactment or amendment of this article, subsequent development for the subject tract to which the dedication requirement applies may be subject to vesting as set forth in V.T.C.A., Local Government Code ch. 245. Additional dedication may be required if there is an increase in the number of dwelling units from what was originally proposed.
- 5) Residential developments requiring a Site Development Permit shall be required to pay Park Land Dedication Fees and Park Land Development Fees in lieu of dedicating land unless, at the recommendation of the Parks Committee and approved by the City Council, land is required to be dedicated. Park Land Development Fees may be credited based on the number of private amenities constructed and in accordance with Subsection (s)(2).

(c) *Comprehensive Plan Considerations.* The City's Parks, Recreation, and Open Space Master Plan is intended to provide the Parks Committee and Planning and Zoning

Commission with a guide upon which to base their recommendations and the City Council a basis for approvals. Because of the need to consider specific characteristics in the site selection process and future development, the park locations indicated on the Plan are general. The actual locations, sizes, and number of parks will be determined when development occurs or when sites are acquired by the City, including by donations.

(d) *Requirements.*

1) General.

The City Manager or their designee shall administer this Section with certain review, recommendation, and approval authorities being assigned to the Parks Committee, Planning and Zoning Commission, City Council, and various City departments as specified herein.

Generally, the developer of a property must address the following requirements pursuant to this Section: dedication of land for park use or payment of a fee in lieu thereof, and payment of a development fee for park improvements necessary to transform the land into a useable park. Requirements herein are based on actual dwelling units for an entire development and/or proximity to a Trail or Greenway Path as shown in the Parks, Recreation, and Open Space Mater Plan. Increases or decreases in final unit count may require an adjustment in fees paid or land dedicated. If the actual number of dwelling units exceeds the original estimate, additional park land and additional park development fees may be required in accordance with the requirements in this Section.

The schedule of fees and required land dedications are identified in Subsection (s) "Park Land Dedication and Development Fees".

2) Land Dedication.

- i. The amount of land to be dedicated for park purposes shall be 1 acre per 50 dwelling units.
- ii. The total amount of land dedicated for the development shall be dedicated to the City in fee simple:
  - (a) Prior to the issuance of any building permits,
  - (b) Concurrently with the final plat for each phase of the development, or
  - (c) In accordance with the terms of a valid Development Agreement associated with the property.

3) If land dedication is to occur in future phases of a multiple-phase development, the developer shall provide the City with financial security against the current dedication requirements by providing a bond, irrevocable letter of credit, or other alternative financial guarantee such as a cash deposit in the amount equal to the number of acres park land required and, in a form acceptable to the City. The amount of the financial guarantee shall be the amount of fee in lieu of land dedication and improvements as set forth in Subsection (s) "Park Land Dedication and Development Fees". The financial guarantee will be released to the developer, without interest, upon the filing



of the final plat for the subsequent phase that dedicates the required park land and payment of the fee for the required improvements.

- 4) Since residents living in the ETJ are likely to use the City's park facilities, they should contribute to the cost of providing them. As a result of the difficulty faced by the City in maintaining property outside its corporate limits, the City will generally require a fee in lieu rather than the dedication of land. Alternatively, the dedication requirements of this Section may be met through the creation of private park land in the same amount required as public park land provided the developer enters into a written agreement that all such private park land be dedicated to the City at the time of full purpose annexation into the City and provided that any plat related to such development is inscribed with a notation regarding same. If the private park land option is chosen, a provision acceptable to the City for private upkeep of the facilities shall be made.
- (e) *Park Land Guidelines and Requirements.* Parks should be easy to access and open to public view so as to benefit area development, enhance the visual character of the City, protect public safety, and minimize conflict with adjacent land uses. The following guidelines and requirements shall be used in designing parks and adjacent development.
- 1) The dedicated land shall form a single parcel or tract of land at least five (5) acres in size unless the Parks Committee, Planning and Zoning Commission, and City Council determine that more than one tract or a smaller tract would be in the public interest. For developments whose required dedication is less than five (5) acres, the City Council may approve a smaller tract, a smaller tract and fee in lieu, or only a fee in lieu of land.
  - 2) Must be located within one mile from all residences and the distance should be uninterrupted by roads or free from physical barriers that would prohibit walkable access to the park.
  - 3) Any land dedicated to the City under this Section must be suitable for park and recreation uses. The dedication shall be free and clear of any and all liens and encumbrances that interfere with its use for park purposes. The City Manager or their designee shall determine whether any encumbrances interfere with park use. Minerals may be reserved from the conveyance provided that there is a complete waiver of the surface use by all mineral owners and lessees. A current title report must be provided with the land dedication. The property owner shall pay all taxes or assessments owed on the property up to the date of acceptance of the dedication by the City. A tax certificate from the Travis Central Appraisal District shall be submitted with the dedication or plat.
  - 4) Consideration will be given to land that is in the floodplain or may be considered "floodable" even though not in a federally regulated floodplain as long as, due to its elevation, it is suitable for park improvements. Sites should not be severely sloping or have unusual topography which would render the land unusable for recreational activities.
  - 5) At the discretion of the Parks Committee, Planning and Zoning Commission, and City Council, land in floodplains will be considered on a three (3) for one (1) basis. Three (3) acres of floodplain will be equal to one (1) acre of park land.
  - 6) Where feasible, park sites should be located adjacent to greenways and/or schools in order to encourage shared facilities and joint development of new sites.

- 7) Unless intended to serve a larger area, park sites should be adjacent to residential areas in a manner that serves the greatest number of users and should be located to minimize users having to cross arterial roadways to access them. Furthermore, park sites should not be encumbered by overhead utility lines or easements which may limit the opportunity for park development.
- 8) Park land shall be oriented in a way that maximizes internal pedestrian and bicycle connectivity to residential areas and to other off-site connections like a greenway system.
- 9) Where appropriate, sites with existing trees or other scenic elements are preferred.
- 10) Where park sites are adjacent to greenways, schools, or existing or proposed subdivisions, access ways may be required to facilitate public access to parks.
- 11) At least 25 percent, or proportionate to the size of the park, of the perimeter of a park shall abut a public street with the park entrance visible to the public.
- 12) Park must be adjacent to a street for ease of pedestrian, bike or parking accommodations.
- 13) No more than two sides of the park may abut the rear of homes.
- 14) The following physical land characteristics are considered unsuitable for public park land dedication unless the Parks Committee, Planning and Zoning Commission, and City Council finds that the land has recreational value that warrants its acceptance as public park land or open space and is consistent with the Parks, Recreation, and Open Space Master Plan. This includes:
  - i. Drainage ditches,
  - ii. Detention or retention ponds (unless designed with recreational facilities, amenities, site furnishings, and landscaping) and with an accompanying License and Maintenance Agreement using the City's form for the detention or retention facilities,
  - iii. Narrow strips of land (unless a minimum of twenty (20) feet. in width and used to maximize pedestrian and bicycle connectivity),
  - iv. Steep slopes equal to or greater than fifteen (15) percent (unless located along a watercourse or other acceptable special area, but at no time can more than 50 percent of the land exceed 15 percent slope),
  - v. Powerline easements (unless approval has been received to construct a connecting trail segment),
  - vi. Other easements or environmental hazards which may restrict the city's ability to construct park improvements, and any other areas which may not provide for conducive use of recreational areas.
- 15) The following utility connections shall be completed by the developer, and such connections shall not count as a credit toward park land or park development fee or park land dedication requirements:
  - i. Water meter. A two-inch metered water supply located 12 feet behind the curb in a location determined by the Public Works Department.

- ii. Waste-water stub. A six-inch gravity-feed waste-water (sewer) stub or two-inch pressurized sewer line and electricity line located 10 feet behind the curb in a location determined by the Public Works Department.
- (f) *Fee in Lieu of Land.* In lieu of dedicating land for parks, a developer may request to meet some or all of the land dedication requirements through payment of a fee in lieu thereof in the amounts set forth in Subsection (s) "Park Land Dedication and Development Fees". Such fees shall be due at the same time as fees are due for final platting or for issuance of a building permit, based on the type of residential development.
- (g) *City Final Approval.* The City Council shall have the final authority in determining what proportion of land or fee may be accepted in lieu of required land dedication after receiving recommendations from the Parks Committee and Planning and Zoning Commission. The City Council may, from time to time, require that a fee be submitted in lieu of land dedication in amounts as set forth in Subsection (s) "Park Land Dedication and Development Fees" for the park land dedication. Likewise, the City Council may, from time to time, require that land be dedicated in amounts as set forth in Subsection (d) and that no fee in lieu of land will be accepted.
- (h) *Approval Process for Park Land Dedication.*
  - i. For a land dedication to be accepted by the City, the landowner must, in the following order:
    - a. Obtain approval from City staff that the proposed dedication meets the minimum requirements,
    - b. Obtain a recommendation from the Parks Committee,
    - c. Obtain a recommendation from the Planning and Zoning Commission pursuant to the Procedures of this Chapter, and
    - d. Obtain City Council approval pursuant to the Procedures of this Chapter.
  - ii. The City Council shall consider the recommendation from the Parks Committee and Planning and Zoning Commission but may make a decision contrary to their recommendation by majority vote.
  - iii. The City of Manor will generally not accept dedications of land for parks that are less than five (5) acres, as maintaining small parks is inefficient and too costly for the City to sustain over the long-term. However, the City Council may accept and approve land dedications of less than five (5) acres if the following criteria are met:
    - a. The proposed dedication provides a sufficient amount of park land in the vicinity of the proposed development for required park land dedication, or such land provides a valuable link to the greater park system;
    - b. The proposed dedication has especially attractive park features, as determined by the City Council;
    - c. Where the proposed dedication is insufficient for a park site under existing park design standards, some or all of the dedication requirements may be in

the form of a fee in amounts as set forth in Subsection (s) "Park Land Dedication and Development Fees"; and

d. The proposed development of the park is consistent with Manor's Parks, Recreation, and Open Space Master Plan, as may be amended from time to time.

iv. In making their decision, the City Council may consider recommendations from the Parks Committee and Planning and Zoning Commission but may make a decision contrary to any recommendation in accordance with the criteria set forth herein.

(i) *Developer's warranty*

1) Prior to the City accepting the dedication and conveyance of any public park land, the Developer shall warrant in writing that the land to be dedicated to the City as public park land is:

- i. Free of fill material; unless the Public Works Director and the City Engineer approve of the placement of fill material in writing.
- ii. Free of construction debris or other refuse.
- iii. Free of any physical disturbance, including soil excavation, site grading, or removal or damage to vegetation unless the Public Works and the City Engineer approve of such physical disturbance in writing.
- iv. Free of any easements or other dedications, encumbrances, restrictions, or title defects not approved in writing by the Administrator; and
- v. Free of all hazardous substances and underground storage tanks (U.S.T.'s).

2) The City reserves the right to refuse acceptance of any land that the City finds to be not in conformance with the purposes or other requirements of this Section.

3) The Developer shall complete all public improvements (e.g. utility extensions, sidewalks, trails, streetyard trees with irrigation systems) within the park land or post fiscal security in the amount of 110 percent of the estimated cost of the public improvements prior to dedication or conveyance of the park land. The form of the fiscal security shall be approved by the Development Services Director.

(j) *Conveyance Requirements.* Public park land shall be dedicated as public park land by plat and, ultimately, conveyed by general or special warranty deed, as approved by the City. The Developer shall provide acceptable evidence of clear title and payment of all property taxes prior to or at the same time of final plat recordation. The Developer shall pay all costs of transferring title of the park land to the City, including the costs of:

1) A phase one environmental assessment, which meets the current American Society of Testing and Materials (ASTM), certified to the City. The phase one environmental assessment may not contain any recommendations for clean-up or other remediation and may not be dated earlier than the 120<sup>th</sup> day before the conveyance of the public park land to the City;

- 2) A category 1(a) land title survey certified to the City shall be provided. The survey shall be prepared by a Texas registered professional licensed surveyor and the survey shall be sealed by the surveyor no earlier than the 120<sup>th</sup> day before the conveyance of the public park land of the City;
  - 3) A title commitment with copies of all schedule B and C documents;
  - 4) A general or special warranty deed, subject to approval to form;
  - 5) Owner's Title Insurance, which is due within 90 days of closing;
  - 6) A certified tax certificate showing full payment of taxes;
  - 7) Payment of all property taxes through the conveyance date;
  - 8) Recording fees;
  - 9) Charges or fees collected by the title company; and
  - 10) All fees associate with curing all encumbrances or exceptions to the title that preclude the land's use as public park land.
- (k) *Conveyance of Public Park land by Deed.* The conveyance of public park land by deed may occur before or contemporaneously with the recordation of the final plat. The Developer shall be responsible for all costs necessary to transfer title to the City (or governing political subdivision) in accordance with Subsection (j) and shall provide a copy of the title policy within 90 days of conveyance. The following items shall be reviewed by the City prior to the conveyance of public park land.
- 1) An environmental site assessment without any further recommendations for clean-up, certified to the City not earlier than the 120<sup>th</sup> day before the closing date;
  - 2) Draft of general or special warranty deed approved by the City Attorney, and if applicable, a list of any proposed exceptions to title provided as an exhibit included within the deed. If the legal description is provided by metes and bounds, a survey sketch shall also be provided to accompany the metes and bounds description within the recorded deed;
  - 3) A title commitment with copies of all documents reflected on the associated schedules B and C;
  - 4) A certified tax certificate showing full payment of taxes;
  - 5) HUD Settlement Statement; and
  - 6) Confirmation that Developer's Warranty requirements of Subsection (i) have been satisfied.
- (l) *Park Development Fee.* In addition to the land dedication requirements for parks, there are also park development fees established herein sufficient to develop parks in ways that meet the Parks, Recreation, and Open Space Master Plan, city standards, and this Section. The amount of development fees assessed to a developer subject to this Section for parks is as shown in Subsection (s) "Park Land Dedication and Development Fees". The process for the approval and collection of development fees shall be the same as for the park land dedication

requirements to which the development relates, and shall be processed simultaneously with the park land dedication requirements.

(m) *Construction of Park Improvements in Lieu of Park Development Fee.* A developer may elect to construct park improvements in lieu of paying the associated development fees as set forth herein. In such event:

- 1) A park site plan, developed in cooperation with city staff, must be submitted and approved by city staff, or their designees, and the Parks Committee upon submission of final plat or upon application for a site plan and/or building permit, whichever is applicable.
- 2) Detailed plans and specifications for park improvements hereunder shall be due and processed in accordance with the procedures and requirements pertaining to public improvements for final plats, site plans, and for building permits issuance, whichever is applicable.
- 3) All plans and specifications shall meet or exceed the Criteria for Park Improvement in effect at the time of submission.
- 4) When private parks are considered, they shall be similar or comparable to what would be required to meet public park standards and recreational needs as set forth in Subsection (e) "Park Land Guidelines and Requirements".
- 5) Private facilities, when eligible for credit, are those outdoor amenities typically found in city public parks, which will substitute for the improvements otherwise funded by a dedication fee to meet the outdoor recreation needs of residents.
- 6) If the improvements are constructed on land that has already been dedicated to and/or is owned by the City, then the Developer must post payment and performance bonds equal to park development fees to guarantee the payment to subcontractors and suppliers and to guarantee the developer completes the work in accordance with the approved plans, specifications, ordinances, and other applicable laws.
- 7) The construction of all improvements must be completed in accordance with the requirements relating to the construction of public improvements for final plats, site plans, and issuance of building permits, whichever is applicable. This includes the guaranteeing of performance in lieu of completing the park improvements prior to final plat approval. Notwithstanding any other applicable ordinances, park improvements should be completed within two (2) years from the date of the approval, unless varied by a park development agreement.
- 8) Completion and Acceptance. Park development will be considered complete and a Certificate of Completion will be issued after the following requirements are met:
  - i. Improvements have been constructed in accordance with the approved plans,
  - ii. All park land upon which the improvements have been constructed has been dedicated as required under this Section; and

- iii. All manufacturers' warranties have been provided for any equipment installed in the park as part of these improvements.
- 9) Upon issuance of a Certificate of Completion, the developer warrants the improvements for a period of one (1) year as set forth in the requirements in Subsection (r) "Warranty Required".
- 10) The developer shall be liable for any costs required to complete park development if:
  - i. Developer fails to complete the improvements in accordance with the approved plans; or
  - ii. Developer fails to complete any warranty work.

(n) *Construction of Public Amenities in Public Parks – Criteria for Approval*

- 1) As an alternative to paying the Park Development Fee, or a portion thereof, the Developer may make a request to the Parks Committee for a recommendation to the Planning and Zoning Commission for final authorization by the City Council to construct public amenities on public park land, in accordance with the Criteria for Park Improvements and city standards. If the development is governed by a park development agreement, a request under this section must also be approved by the City Council.
- 2) Design, specification, and construction of the improvements shall be subject to review by City Staff and, upon recommendations from City Staff, approved by the Parks Committee. Construction of the amenities for the portion required for the final plat(s) approval must be completed within the time period prescribed in the development agreement; or, within two (2) years of the City's approval of the first final plat of the subdivision, when the applicant has not entered into a park development agreement. Fiscal security for the construction of amenities shall be provided in the amount required for the Park Development Fee, in a form acceptable to the City.
- 3) All park amenities shall meet all federal, state, and local regulations and guidelines as required by the Americans with Disabilities Act (ADA) and Texas Accessibility Standards (TAS), as well as guidelines established by the Commercial Park Advisory Council (CPAC) and the National Playground Safety Institute (NPSI).
- 4) Non-creditable items: shrubs, sod, re-vegetation, swimming pools, subdivision signage, administrative, professional, engineering or legal costs, development application fees, and any public improvement otherwise required through the subdivision process may not be credited toward the Park Development Fee.

(o) *Construction of Private Amenities in Private Parks – Criteria for Approval*

- 1) In accordance with the Criteria for Park Improvements, privately owned and maintained parks with non-exclusive private amenities and privately owned and maintained parks where public access is unrestricted may receive up to one hundred (100) percent credit towards fulfilling the requirements of the Park Development Fee, upon approval by the City Council.
- 2) In accordance with the Criteria for Park Improvements, privately owned and maintained parks with exclusive private amenities within developments that consist of a density of twelve (12) dwelling units per acre or greater, excluding residential developments that require a Site Development Permit, may receive up to one hundred (100) percent credit towards fulfilling the requirements of the Park Development Fee, upon approval of the City Council with the following conditions and requirements:
  - i. Fiscal security for the construction of private amenities shall be provided in the amount required for the Park Development Fee, in a form acceptable to the City.
  - ii. Regardless of whether the amenity is exclusive or non-exclusive, private amenities included within private parks approved to be credited towards meeting the requirements of this subsection and in accordance with the Criteria for Park Improvements may remain exclusive.
  - iii. Restrictive Covenants. Private parks shall be managed by a mandatory homeowner's association servicing a development subject to restrictive covenants that:
    - a. Requires each property owner within the subdivision encumbered by the restrictive covenants to pay dues and special assessments for the maintenance of the private park; and
    - b. Prohibits the dissolution of the private park until such time as the declarant cedes control of the homeowner's association to purchasers of properties within the subdivision, and then only upon amendment of the restrictive covenants, which has to be approved by  $\frac{3}{4}$  of the members of the homeowner's association.
  - iv. The private amenities, which receive credit for the Park Development Fee, shall be located contiguous to existing or proposed public park land, where practicable.
  - v. All private amenities shall be privately maintained.
  - vi. Yards, court areas, setbacks, and other open areas required to be maintained under the City's development regulations, and other regulations, shall not be included in the credit computation.



- 3) For residential developments that require a Site Development Permit with private park land and private amenities, as required by Section 14.02.062(14)-(15) or Section 14.02.064(18)-(19), may receive up to one hundred (100) percent credit towards fulfilling the requirements of the Park Development Fee based on the number of private amenities provided, as shown in Subsection (s) "Park Land Dedication and Development Fees".

(p) *Combination Public Park land and Construction of Public Amenities*

- 1) A combination of public park land and public amenities may also be considered by the Parks Committee, Planning and Zoning Commission, and approved by the City Council through alternative compliance. However, in no event may the addition of private amenities be credited toward satisfying the public park land dedication or park land fee in-lieu of dedication requirement.
- 2) In accordance with the Criteria for Park Improvements, the applicant may seek recommendations from the Parks Committee and Planning and Zoning Commission with City Council for approval for a reduction in the amount of required public park land by providing additional public amenities equal to the value of the land that would have dedicated to the City. If the development is governed by a park development agreement, a request under this section must also be approved by City Council.

(q) *Criteria for Park Improvements.*

- 1) Design, specification and construction. Design, specification, and construction of the improvements shall be subject to review and approval by the Parks Committee. So that park land design is purposeful regarding accessibility, safety, level of comfort, sociability, activation, and future maintenance it shall be in conformance with related federal, national, state or local codes including but not limited to the following:
  - i. International Play Equipment Manufacturer's Association (IPEMA);
  - ii. Consumer Product Safety Commission (CPSC) Handbook for Public Safety;
  - iii. American Society for Testing and Materials (ASTM and ASTM F08);
  - iv. Accessibility Standards for Play Areas through the ADA Accessibility Guidelines (ADAAG);
  - v. Illuminating Engineering Society of North American (IESNA RP-6-01); and
  - vi. Sports Turf Management Association (STMA).
- 2) Special design considerations for pocket parks.
  - i. Each pocket park shall be centrally located within every phase of a parcel proposed for development so that all lots or units are located no greater than ¼-mile from the edge of a privately-owned pocket park, or other privately owned/public park land. The ¼-mile distance shall be measured using walking distance along sidewalks and trails.

- ii. The pocket park shall take access from a local street and be no smaller than the average lot size of the lots platted in that phase of the subdivision, or ½-acre, whichever is larger.
  - iii. At a minimum, the pocket park shall include an ADA-compliant trail connecting all amenities to the sidewalk, a shaded children's play area (ages 2—12), swings, a shade pavilion with a minimum of one (1) picnic table, social seating, fitness activity, and other site furnishing typical of a pocket park.
  - iv. In addition, each pocket park shall include at least one (1) of the following: mini-sports court, community garden, open grass play area, enclosed off-lease area for dogs, or other amenity approved by the Park Committee.
- 3) Special design considerations for neighborhood parks.
- i. Each neighborhood park should be centrally located within the parcel proposed for development to maximize access to as many residents as possible.
  - ii. The neighborhood park shall take access from local or collector street and be no smaller than three (3) acres in size.
  - iii. At a minimum, the neighborhood park shall include the same minimum requirements as a pocket park, as defined in subsections (2)(iii) and (2)(iv), above.
  - iv. In addition, each neighborhood park shall include an ADA-compliant loop trail and three (3) of the following additional amenities: neighborhood serving pool, full sports court or field and if necessary with fencing, community garden, enclosed off-leash area for dogs, shaded picnic pavilion with at least two (2) picnic tables, or other neighborhood-scaled amenity approved by Parks Committee.
- 4) Special design considerations for community parks.
- i. Each community park should be centrally located within the parcel proposed for development to maximize access to as many residents as possible, unless other land within the development is more suitable based on the Park Land Guidelines and Development criteria.
  - ii. The community park shall take access from collector street or higher classification roadway and be no smaller than ten (10) acres in size.
  - iii. At a minimum, the community park shall include the same minimum requirements as a neighborhood park, as defined in subsections (3)(iii) and (3)(iv) above.
  - iv. In addition, each community park shall include at least two (2) ADA-compliant looping trails and three (3) of the following additional amenities: community serving pool, full sports court or field and if necessary with fencing, community garden, enclosed off-leash area for dogs with a dog wash station, shaded picnic

pavilion with at least two (5) picnic tables, restrooms, or other community-scaled amenity approved by Parks Committee.

- 5) Special design considerations for trail development. When a parcel proposed for development, including non-residential development, includes a Greenway Trail or Path, as identified on the Parks, Recreation, and Open Space Master Plan, or trail development in general, the property owner/developer shall be responsible for constructing and extending the trail segments across the property, as may be applicable, the placement, construction, and dedication of trails shall comply with the following:
- i. For greenway trails located in floodplains, this requires dedication of the property to the City and construction of the trail to city specifications.
  - ii. For multiuse paths (i.e., oversized sidewalks along priority corridors to facilitate citywide recreational and transportation connections), this requires construction to city specifications and dedication as part of future right-of-way.
  - iii. This also requires the placement and construction of appropriate neighborhood connector trails throughout the parcel proposed for development so that adequate access is provided to the greenway trail and path system. These connectors shall be protected by permanent 20-foot access easements.
  - iv. When a parcel proposed for development abuts off-site floodplain which is identified as a priority trail corridor, the property owner/developer shall ensure connection to the off-site greenway trail corridor by dedicating one (1) or more 20-foot access easements which provide access to the property.
  - v. In no instance may a property owner/developer prohibit, through the use of subdivision of lots or other improvements, the future development of the city's regional trail system.
  - vi. Areas within the parcel proposed for development which include connector trails to the City's existing or proposed greenway system shall be owned and managed in perpetuity as part of common property of a property owners association, or dedicated, as may be set out in the Park Development Agreement.
  - vii. All trail development used to meet the requirements of these regulations shall be developed per the Parks, Recreation, and Open Space Master Plan and other city specifications and have a 20-foot minimum public access easement based on the centerline of the trail.
  - viii. At a minimum, all trails need to include site furnishings. When not provided elsewhere within the parcel proposed for development, the trail system shall be further amenitized meeting the same minimum requirements as a pocket park, as defined in subsections (2)(iii) and (2)(iv), above.

(r) *Warranty Required.*

- 1) All materials and equipment provided to the City shall be new unless otherwise approved in advance by the City Manager or their designee and all work shall be of good quality, free from faults and defects, and in conformance with the designs, plans, specifications, and drawings, and recognized industry standards. This warranty, any other warranties express or implied, and any other consumer rights, shall inure to the benefit of the City only and are not made for the benefit of any party other than the City.
- 2) All work by the developer or landowner not conforming to these requirements, including but not limited to unapproved substitutions, may be considered defective.
- 3) This warranty is in addition to any rights or warranties expressed or implied by law.
- 4) Where more than a one (1) year warranty is specified in the applicable plans, specifications, or submittals for individual products, work, or materials, the longer warranty shall govern.
- 5) This warranty obligation may be covered by any performance or payment bonds tendered in compliance with this Section.
- 6) If any of the work performed by the developer or landowner is found or determined to be either defective, including obvious defects, or otherwise not in accordance with this Section, the designs, plans, drawings or specifications within one (1) year after the date of the issuance of a Certificate of Final Completion of the work or a designated portion thereof, whichever is longer, or within one (1) year after acceptance by the City of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this ordinance, developer shall promptly correct the defective work at no cost to the City.
- 7) During the applicable warranty period and after receipt of written notice from the City to begin corrective work, developer shall promptly begin the corrective work. The obligation to correct any defective work shall be enforceable under this Code of Ordinances. The guarantee to correct the defective work shall not constitute the exclusive remedy of the City, nor shall other remedies be limited to the terms of either the warranty or the guarantee.
- 8) If within twenty (20) calendar days after the City has notified developer of a defect, failure, or abnormality in the work, developer has not started to make the necessary corrections or adjustments, the City is hereby authorized to make the corrections or adjustments, or to order the work to be done by a third party. The cost of the work shall be paid by developer.
- 9) The cost of all materials, parts, labor, transportation, supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects shall be paid by developer, its contractors, or subcontractors or by the surety.
- 10) The guarantee shall be extended to cover all repairs and replacements furnished, and the term of the guarantee for each repair or replacement shall be one (1) year after the installation or completion. The one (1) year warranty shall cover all work, equipment, and materials that are part of the improvements made under this Section of the ordinance.

(s) *Park Land Dedication and Development Fees.*

- 1) The park land dedication fee in-lieu is established at \$50,000.00 per acre, or a portion thereof, for the value of platted land to be developed for residential uses that would otherwise be dedicated and conveyed to the City as public park land. The fee in lieu of park land dedication is based upon the fair market value of the land, that is developable for single family use and that would otherwise be required to be dedicated as public park land for the proposed development, with all utilities extended to and through the property and situated outside of the 100-year floodplain. The fee may be evaluated on an annual basis by the Parks Committee and Planning and Zoning Commission. Any recommendation for amending the established fee amount shall be forwarded to the City Council for approval. The price per acre for fair market value may be modified upon submittal of an appraisal satisfying the property value criteria outlined above in this Subsection. The appraisal may not be more than six months old.
  - i. For residential developments that require a Site Development Permit, the park land dedication fee in lieu shall be \$700.00 per dwelling unit. The total park land dedication fee may be proportionally reduced using the above per acre rate if the City Council requires a land dedication in lieu of a fee.
- 2) The park development fee is established at \$600.00 per dwelling unit.
  - i. For residential developments that require a Site Development Permit, the park development fee is as follows:

Number of Amenities	Park Development Fee per Unit
0	\$600
1	\$500
2	\$400
3	\$300
4	\$200
5	\$100
6+	\$0

- ii. The number of amenities from the table above are prescribed in Section 14.02.062(14)-(15) and Section 14.02.064(18)-(19). Only those amenities that are equivalent to those found in public parks qualify to reduce the Park Development Fee. For example, a swimming pool would qualify as an amenity but a kitchen available for resident use would not.

- iii. Residential developments that require a Site Development Permit that construct more than the prescribed number of amenities from Section 14.02.062(14)-(15) or Section 14.02.064(18)-(19) that qualify under this Section can reduce the Park Development Fee in accordance with the table.
- (t) *Submitting Fee.* Any fees required to be paid pursuant to this Section shall be remitted:
  - 1) Prior to the issuance of any building permits; or
  - 2) Upon the submission of each final plat.
- (u) *Use of Fees.* Fees may be used only for the acquisition, development, and/or improvement of park facilities to which they relate; fees shall not be used for maintenance purposes.
- (v) *Reimbursement for City Acquired Park Land.* The City may from time to time acquire land for parks in advance of actual or potential development. If the City does take such action, then it may require subsequent dedications to be in fee in lieu of land only. The fees will serve to reimburse the City for the cost(s) of acquisition.
- (w) *Special Fund; Right to Refund.* The City shall account for all fees in lieu of land and all development fees paid under this Section with reference to the individual plat(s) involved. Any fees paid for such purposes must be encumbered or expended by the City within 10 years from the date received by the City for acquisition, development, and/or improvement of a park as required herein. Such funds shall be considered to be spent on a first-in, first-out basis. If the funds are not so encumbered by contract of purchase order or expended, then the owners of the property on the last day of the 10-year period will be entitled to a refund of the unexpended sum upon request. The owners of the property as shown on the current tax roll or proven by other instrument, must request a refund within one year of the expiration of the 10-year period. The request must be made in writing to the Development Services Director.
- (x) *Appeals.*
  - 1) The property owner or applicant for new development may appeal the following decisions to the Development Services Director, or their designee:
    - i. The applicability of the land dedication, fee in lieu, or development fee;
    - ii. The amount of the land dedication or fee due;
    - iii. The determination of credit for private property amenities; and/or
    - iv. The amount of the refund due, if any.
  - 2) All appeals shall be taken within 30 days of notice of the action from which the appeal is taken. The burden of proof shall be on the appellant to demonstrate that the amount of the dedication, fee, refund, or credit was not calculated according to the requirements of this ordinance. The appellant may appeal the decision of the Development Services Director to the City Council. A notice of appeal to the Council must be filed by the applicant with the City Secretary within 30 days following the Director's decision. The filing of an appeal shall not stay the collection of the fee due. If the notice of appeal is

accompanied by a payment in an amount equal to the fee due as calculated by the City, the plat or building permit application shall be processed.

- (y) *Prior Dedication or Absence of Prior Dedication.* If a dedication requirement arose prior to enactment or amendment of this Section, subsequent development for the subject tract to which the dedication requirements applies may be subject to vesting as set forth in Chapter 245 Texas Local Government Code. Depending on the circumstances, additional dedication may be required for the increase in dwelling units or bedrooms from what was originally proposed.