

## **STAFF REPORT AND ORDINANCE AMENDMENT REVIEW SHEET**

**Amendment:** C20-2014-028 (*An Ordinance Amending City Code Title 25 Relating to Parkland Dedication and Associated Parkland Fees*)

**Recommend Action:** Adopt the revised ordinance in backup, with the additional staff-recommended changes outlined at pages 3-11 of this Report.

### **Summary of Ordinance and Proposed Revisions:**

#### ***Ordinance passed on 1<sup>st</sup> reading:***

- Requires dedication of parkland to reflect the current level-of-service for neighborhood parks (9.4 acres per 1,000 residents), instead of the existing requirement of 5 acres per 1,000 residents that is based in 1985 standards.
- Updates the formula for fee in-lieu of parkland dedication and adopts a new fee to reflect current park development costs.
- Removes some exemptions created in 1985 that are obsolete and difficult to administer.
- Clarifies and updates the ordinance to better reflect existing administrative practices.

#### ***Additional staff-recommended changes:***

- Establishes a “Parkland Dedication Urban Core” and caps the amount of land that can be required for dedication within the urban core to 15% of site area, unless the Land Use Commission authorizes a greater amount.
- Authorizes appeals of decisions by the director not to allow payment of a fee in-lieu of parkland dedication and eliminates any inference of a presumption in favor of land dedication.
- Further refines the criteria for determining whether to require dedication of land or allow payment of a fee in-lieu of dedication.

- Incentivizes recreation on infill lots by allowing private common open space designed for recreation purposes to count up to 100% toward parkland dedication if it is open to the public by way of a public recreation easement.
- Clarifies that both the fee in-lieu of parkland dedication and the parkland development fee are established by the annual fee schedule.

**Background:**

On December 11, 2014, City Council passed Resolution No. 20141211-219 initiating amendments to City Code Chapter 25-1, Article 14 (*Parkland Dedication*) and approving staff's calculation methodology as found in the Parkland Dedication Fee Methodology Report ("Report") issued by staff on November 19, 2014. The resolution directed the City Manager to develop a draft ordinance implementing the Report's recommendations.

The "Report" responded to Council's prior direction in Resolution No. 20140807-093 directing the City Manager to evaluate the City's current approach and methodology for parkland dedication. The "Report" concluded that the existing parkland dedication ("PLD") fee does not cover costs for acquiring and developing parkland, and that the current formula for determining the amount of land to be dedicated is insufficient to maintain the current quality of life in Austin.

Stakeholder roundtables and public meetings were held between October 2014 and January 2015 and input was incorporated into the draft amendments. The Planning Commission voted unanimously to recommend the ordinance on June 23, 2015. The Parks Department held another stakeholder roundtable on August 28, 2015; numerous one-on-one meetings from October 2015 through December 2015; and a final stakeholder meeting to reach consensus on December 8, 2015.

The City Council voted to approve the ordinance on 1<sup>st</sup> reading at its meeting on November 12, 2015, with a few changes, and encouraged the Parks Department to consider additional ways to address stakeholder concerns while furthering the overall goals of the ordinance before returning

to Council for 2<sup>nd</sup> and 3<sup>rd</sup> readings. The changes proposed in this report reflect the Department's efforts.

### **Staff-Recommended Revisions:**

The Parks Department recommends that Council adopt the revised version of the ordinance in backup, which is consistent with Council's actions on 1<sup>st</sup> reading, as modified by additional changes (shown below). These changes are responsive to concerns raised by stakeholders and by Council.

The proposed amendments attempt to balance the need for expanding the City's park system to accommodate new growth and development with stakeholder concerns regarding a shortage of developable property within central Austin. The amendments are structured to allow Council to adopt revisions individually, or as a whole, and to provide a framework for further changes that Council may wish to consider.

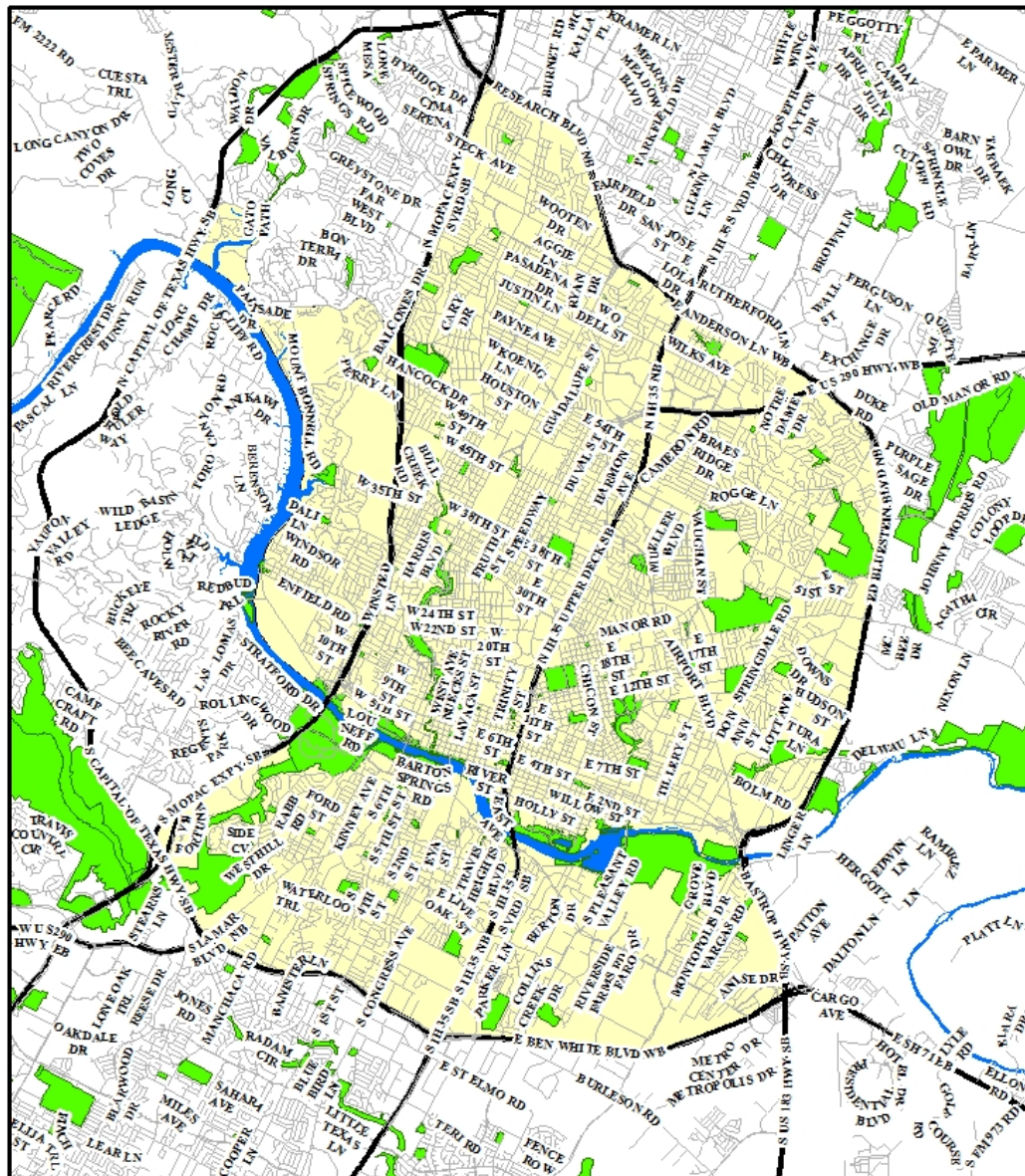
## **Amendment 1: Revised Fee In-Lieu Requirements**

### **A. *New Definitions***

***Purpose:*** These revisions would define two new terms that are used in the revised fee in-lieu requirements proposed in Part B, below, and elsewhere in the ordinance.

***Text:*** At page 3 of the ordinance, add the following new definitions to Section 25-1-601(D) (*Dedication of Parkland*) and renumber the remaining definitions accordingly:

- (7) PARKLAND DEDICATION URBAN CORE means an area bound by Highway 71/Ben White Boulevard to the south; Highway 183 to the east and north; Loop 1 (MOPAC) on the west to FM 2222; FM 2222 on the north to Loop 360; Loop 360 on the west to Lake Austin; Lake Austin on the west to Loop 1 (Mopac); and Loop 1 (MOPAC) on the west to Highway 71 (Ben White);



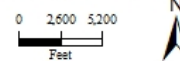
## Parkland Dedication Urban Core



### Legend

- City of Austin Parks
- Lakes
- Parkland Dedication Urban Core

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. This product has been produced by the Parks and Recreation Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



- (8) DEFICIENT PARK AREA MAP means a map depicting areas that the director has determined lack sufficient parkland based on locational criteria established by the Parkland Dedication Operating Procedures and the parkland policies of the Imagine Austin Comprehensive Plan.

## **B. *Fee In-Lieu Requirements***

**Purpose:** This amendment does three things. First, it fleshes-out the criteria for allowing payment of a fee in-lieu of parkland dedication to better reflect the key planning principles that inform the Parks Department's evaluation of such requests. Second, it clarifies that the criteria are to be applied without a presumption in favor of land dedication or payment of a fee in-lieu. Third, it clarifies the Director's authority to require a combination of fee in-lieu and land dedications (rather than one or the other) consistent with existing practices.

**Text:** At page 7-8 of the ordinance, replace Subsections (A) and (B) in Section 25-1-605 (*Fee In-Lieu of Parkland Dedication*) with the following language and add a new Subsection (E) as shown below:

- (A) The director [~~of the Parks and Recreation Department~~] may require or allow a [subdivider] subdivision or site plan applicant to[:] deposit with the City a [~~cash payment or fiscal security instead~~] fee in-lieu of [the] land dedication under Section 25-1-602 (*Dedication of Parkland*) if:
- (1) the director determines that payment of a fee in-lieu of dedication is justified under the criteria in Subsection (B) of this section; and
  - (2) the following additional requirements are met:
    - (a) less than six acres is required to be dedicated under Section 25-1-602 (*Dedication of Parkland*); or
    - (b) [~~(2)~~] the land available for dedication does not comply with the standards for dedication under Section 25-1-603 (*Standards for Dedicated Parkland*).
- (B) [~~A subdivider must make the deposit before the subdivision may be approved, except that for the portion, if any, of the subdivision that requires a site plan, the subdivider may defer the deposit until after a site plan is filed.~~] In determining whether to require dedication of land under Section 25-1-602 (*Dedication of Parkland*) or allow payment of a fee in-lieu of dedication under this section, the director shall consider whether the subdivision or site plan:

- (1) is located within the Deficient Park Area Map;
  - (2) is adjacent to existing parkland;
  - (3) has sufficient acreage to meet the standards for dedicated parkland under the Parkland Dedication Operating Procedures;
  - (4) is needed to address a critical need for parkland or to remedy a deficiency identified by the Deficient Park Area Map; or
  - (5) would provide increased connectivity with existing or planned parks or recreational amenities.
- (E) If the director determines that payment of a fee in-lieu of parkland dedication is authorized under this section for only a portion of the land required to be dedicated under Section 25-1-602 (*Dedication of Parkland*), the director may allow an applicant to pay a fee in-lieu for that portion and require that the remaining land be dedicated. If an applicant dedicates parkland under Section 25-1-602 (*Dedication of Parkland*), the director may not include that acreage in calculating the fee in-lieu required by this section for any remaining land not included in the dedication.

***Text:*** At page 3 of the ordinance, in Section 25-1-602 (*Dedication of Parkland*), replace Subsection (A) with the following:

- (A) A [~~subdivider~~] subdivision or site plan applicant shall provide for the parkland needs of the residents by the dedication of suitable land for park and recreational purposes under this article or by payment of a fee in-lieu of dedication under Section 25-1-605 (*Fee In-Lieu of Parkland Dedication*).

## **Amendment 2: Appeals Process**

This amendment would authorize applicants to appeal the Director's decision on whether to require dedication or allow payment of a fee in-lieu of dedication to the Land Use Commission. Consistent with the general requirements for administrative appeals under the Land Development Code,

the Commission would “sit in the shoes” of the Director and would not be required to grant deference to the Director’s determination.

***Text:*** At page 9 of the ordinance, in Section 25-1-605 (*Fee In-Lieu of Parkland Dedication*), add the following Subsection (F) to read as follows:

(F) If the director rejects a request to pay a fee in-lieu of dedication under Subsection (B) of this section, the applicant may appeal the director’s decision to the Land Use Commission consistent with the procedures in Article 7, Division 1 (*Appeals*) of this chapter. Before the Land Use Commission considers the appeal, the director shall present the case to the Parks Board for a recommendation, but failure by the Parks Board to act shall not prohibit the Land Use Commission from considering the appeal.

### **Amendment 3: Cap on Land Dedications in the Urban Core**

***Purpose:*** The changes proposed in this amendment would cap the amount of land the Director could require an applicant to dedicate for projects located within the urban core to no greater than 15% of gross site area, except where the Director has: (1) identified a critical parkland need; and (2) has obtained approval from the Land Use Commission to require a dedication up to (but never above) the full amount of land required by the standard formula, which is:

9.4 parkland acres  
1,000 residents

as established by Section 25-1-602(E) (*Dedication of Parkland*).

In cases where the cap is triggered, the proposed amendment would require the Director to consider criteria established in the Parkland Dedication Operating Procedures in deciding whether to request Commission approval for requiring dedications above the 15% cap. An applicant would be required to pay a fee in-lieu for any land that is not required to be dedicated due to the 15% cap.

Because the Operating Procedures cannot be adopted until after approval of the ordinance, the proposed amendment includes placeholder criteria as an

exhibit to the ordinance so that the process can be implemented right away. These criteria would be superseded at such time as the Director adopts Operating Procedures through the administrative rules process.

**A. *Cap on Land Dedications in the Urban Core***

**Text:** At page 4 of the ordinance, in Section 25-1-602 (*Dedication of Parkland*), replace Subsection (E) and add a new Subsection (J) to read as follows:

- (E) Except as provided under Subsection (J) of this section, the [The] amount of parkland required to be dedicated to the City is [five] 9.4 acres for every 1,000 residents, as determined by the following formula:

$$\frac{9.4 \text{ [5]} \times (\text{Number of Units})}{\text{x (Residents Per Unit)}} = \text{Acres of parkland}$$

1000

- (J) The amount of parkland required to be dedicated within the Parkland Dedication Urban Core may not exceed 15% of gross site area for the development required to provide the dedication except upon consent of the applicant or as authorized under this subsection.

- (1) The director may request that the Land Use Commission approve dedication in excess of the 15% cap, up to the amount required under Subsection (E) of this section, if doing so is necessary to:

- (a) address a critical shortage of parkland for an area identified in the Deficient Parkland Area Map; or
- (b) provide connectivity with existing or planned parks or recreational amenities.

- (2) Before the Land Use Commission considers a request under this subsection for approval, the director shall present the request to the Parks Board for a recommendation.

- (3) In considering a request from the director under this subsection, the Land Use Commission may:



- (a) deny the director's request and limit the required dedication to no more than 15% of gross site area; or
- (b) require additional parkland dedication beyond the 15% cap, up to the lesser of:
  - (i) the amount required under Subsection (E) of this section; or
  - (ii) the minimum amount the Land Use Commission finds to be necessary based on the criteria in Paragraph (1)(a)-(b) of this subsection and the Parkland Dedication Operating Procedures.
- (4) If an applicant dedicates less than the amount of land required for dedication under Subsection (E) due to the cap imposed by this subsection, the director shall require payment of a fee in-lieu of dedication under Section 25-1-605 (*Fee In-Lieu of Parkland Dedication*) for the remaining undedicated land.
- (5) A request by the director under this subsection may be consolidated with an appeal by the applicant under Section 25-1-605(F) (*Payment of Fee In-Lieu Dedication*).

**B. *Parkland Dedication Operating Procedures – Exhibit A***

**Text:** At page 15 of the ordinance, add a new Part 4 to read as follows and renumber the remaining part accordingly:

**PART 4.** The City Manager is directed to use the criteria in Exhibit A to this ordinance in applying Sections 25-1-602 (*Dedication of Parkland*) and 25-1-605 (*Fee In-Lieu of Parkland Dedication*) until the department adopts Parkland Dedication Operating Procedures by administrative rule, which shall supersede Exhibit A.

**Amendment 4: Credit for Private Parkland**

**Purpose:** This amendment would allow up to 100% credit for privately owned and maintained parkland that is open to the public and up to 100% credit for amenities constructed on that parkland. The current ordinance allows up to 50% credit for privately owned and maintained parkland that is

open to the public and no credit for amenities constructed. Parkland Dedication Operating Procedures will define how the percentage credits are awarded.

**Text:** At pages 6-7 of the ordinance, in Section 25-1-604 (*Private Parkland*):

- Replace the introductory Subsection (A) and Paragraph (A)(1) with the following language:
  - (A) The director [~~of the Parks and Recreation Department~~] may allow up to a [~~50~~] 100 percent credit toward fulfilling the requirements of:
    - (1) Section 25-1-602 (*Dedication of Parkland*) [~~this article~~] for privately owned and maintained parkland [~~park and recreational facilities~~] or recreational easements that are available for use by the public and meet the standards of the Parkland Dedication Operating Procedures; and
- Delete existing Subsection (E), which is no longer needed due to the allowance for up to 100 percent credit, and replace it with the following language:
  - (E) If private parkland is allowed, a recreation easement must be recorded prior to site plan or subdivision approval.

### **Amendment 5: Refund Procedures**

**Purpose:** This amendment clarifies procedures for parkland dedication fee refunds as recommended by the 2013 Audit of parkland dedication.

**Text:** At page 13 of the revised ordinance, replace Paragraph (1) of Section 25-1-607(D) (*Fee Payment and Expenditure*) with the following language:

- (1) A refund may only be requested for unbuilt units for which a fee in-lieu of dedication was paid. The refund request must be made in writing and filed with the Parks and Recreation Department not later than 180 days after the expiration of the deadline under Subsection (C).

## **Amendment 6: Adoption of Fee In-Lieu and Parkland Development Fee with Annual Fee Schedule**

**Purpose:** This amendment would simply clarify the City Council's authority to adopt the fee in-lieu and parkland development as part of the annual fee schedule.

**Text:** At pages 8-9 of the revised ordinance, in Section 25-1-605 (*Fee In-Lieu of Parkland Dedication*), replace Subsection (D) and Paragraph (D)(2)(a) with the following language, but leave the remaining paragraphs unchanged.

- **Subsection (D):**

(D) The amount of the fee in-lieu of parkland dedication is established in the annual fee schedule based on a recommendation by the director in accordance with this subsection.

- **Paragraph (D)(2)(a):**

(a) “Parkland Cost Factor” is determined by the director based on the average purchase price to the City for acquiring an acre of parkland, excluding a metro or district park or golf course; and

**Text:** At page 11 of the revised ordinance, in Section 25-1-606 (*Parkland Development Fee*), replace Subsection (B) and Paragraph (B)(2)(a) with the following language, but leave the remaining paragraphs unchanged.

- **Subsection (B):**

(B) The amount of the development fee is established in the annual fee schedule based on a recommendation by the director in accordance with this subsection.

- **Paragraph (B)(2)(a):**

(a) “Park Development Cost Factor” is determined by the director based on the average cost of developing an acre of parkland up to the standards of a neighborhood park; and

**Prior Board and Commission Actions:**

**November 18, 2014:** Parks and Recreation Board. Fee calculation method approved.

**May 27, 2015:** City Council Open Space Committee. Draft ordinance amendment presented with opportunity for public comment. Lack of quorum/No action taken

**June 23, 2015:** Planning Commission. Approved Unanimously

**Prior Council Actions:**

**August 14, 2014:** Council directed the City Manager to report and provide analysis and recommendation for adjustment of the parkland dedication fee and conduct a comprehensive review and make recommendations for revisions to the existing Parkland Dedication Ordinance

**December 11, 2014:** Council passed a resolution adopting the proposed new fee methodology and initiated a parkland dedication code amendment

**August 6, 2015:** Public Hearing set by City Council

**September 17, 2015:** Public Hearing at City Council

**November 12, 2015:** Approved on 1<sup>st</sup> reading

**December 17, 2015:** 2<sup>nd</sup> reading Postponed

**Ordinance Number:** N/A

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