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RULE NO.: R161-16.15

NOTICE OF PROPOSED RULE

POSTING DATE: July 1, 2016

The Director of the Department of Parks and Recreation proposes to adopt the following rule after August 1, 2016.

Comments on the proposed rule are requested from the public. Comments may be submitted on-line at <http://www.austintexas.gov/online-form/parkland-dedication-rules-review> or in writing to D'Anne Williams; Department of Parks and Recreation, 919 W. 28 ½ Street, Austin, Texas 78705, (512) 974-9456 To be considered, comments must be submitted before August 1, 2016, the 32nd day after the date this notice is posted. A summary of the written comments received will be included in the notice of rule adoption that must be posted for the rule to become effective.

An affordability impact statement regarding the proposed rule has been obtained and is available for inspection or copying at the address noted in the preceding paragraph

EFFECTIVE DATE OF PROPOSED RULE

A rule proposed in this notice may not become effective before the effective date established by a separate notice of rule adoption. A notice of rule adoption may not be posted before August 1, 2016 (the 32nd day after the date of this notice) or not after September 28, 2016 (the 90th day after the date of this notice).

If a proposed rule is not adopted on or before September 28, 2016, it is automatically withdrawn and cannot be adopted without first posting a new notice of a proposed rule.

TEXT OF PROPOSED RULE

A copy of the complete text of the proposed rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

The Parks and Recreation Department located at 919 W. 28 ½ Street, Austin Texas 78705, see D'Anne Williams; and

Office of the City Clerk, City Hall, located at 301 West 2nd Street, Austin, Texas.

BRIEF EXPLANATION OF PROPOSED RULE

Rule R161-16.15: Proposed addition to the Building Criteria Manual, Section 14.3.0
PARKLAND DEDICATION OPERATING PROCEDURE RULES

- Proposes rules for the administration of Land Development Code Ordinance 20160128-086 to provide staff, applicants for development and other stakeholders the information on how decisions are made to determine whether parkland dedication is required or whether fees-in-lieu are allowed. The rule also provides standards for parkland to be dedicated.

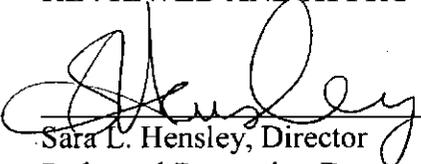
AUTHORITY FOR ADOPTION OF PROPOSED RULE

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of a provision of the City Code is provided in Chapter 1-2 of the City Code.

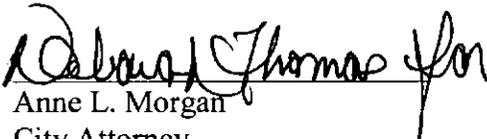
CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Proposed Rule R161-16.15, the City Attorney certifies the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

REVIEWED AND APPROVED


Sara L. Hensley, Director
Parks and Recreation Department

Date: 6/28/16


Anne L. Morgan
City Attorney

Date: 6/28/16

SECTION 14 - PARKS AND RECREATION DEPARTMENT (PARD)

14.3.0 – PARKLAND DEDICATION OPERATING PROCEDURE RULES

§ 14.3.1 Purpose

- (A) These rules constitute the Parkland Dedication Operating Procedures (hereafter “PDOP”) required under City Code § 25-1-609 (*Administrative Authority*). The PDOP is used by the director in administering the Parkland Dedication Ordinance, codified in Chapter 25-1, Article 14 (*Parkland Dedication*), or its successor Code.
- (B) The criteria and standards adopted in the PDOP:
 - (1) guide the director’s determination on whether to require parkland dedication or allow payment of a fee in-lieu of parkland dedication, consistent with criteria established under the Parkland Dedication Ordinance;
 - (2) specify standards for dedicated parkland;
 - (3) establish application requirements for parkland dedication, including requests for payment of a fee in-lieu; and
 - (4) provide general policy direction, for the benefit of applicants, neighborhoods, and other City departments, regarding the administration and enforcement of the Parkland Dedication Ordinance.

§ 14.3.2 Applicability

These rules apply to any development for which parkland dedication is required under Chapter 25-1, Article 14.

§ 14.3.3 Deficient Park Area Map

- (A) Except as provided in Subsection (C), PDOP-Exhibit A is the Deficient Park Area Map required under the Parkland Dedication Ordinance and depicts areas in which payment of a fee in-lieu of dedication may not be allowed.
- (B) The deficient areas depicted on the map meet the following locational criteria:
 - (1) Areas that have no parkland within:

- (a) ¼-mile, for areas within the Parkland Dedication Urban Core established by City Code § 25-1-601(8); and
 - (b) ½-mile, for areas outside of the Parkland Dedication Urban Core;
 - (2) Potential creek greenways; and
 - (3) Corridors designated by the Urban Trails Master Plan.
- (C) Updates to the Deficient Park Area Map may be made administratively, without amending PDOP-Exhibit A, if necessary to reflect changes in deficient area boundaries under Subsection (B) and expansions of the city limits or extraterritorial jurisdiction due to annexation. However, the PARD director shall formally amend PDOP-Exhibit A on a regular basis to reflect administrative updates to the Deficient Area Map, and shall make a current copy of the updated map available on the department's website at all times.

§ 14.3.4 Parkland Dedication Review and Submittal Requirements.

- (A) PARD shall review applications for preliminary plans, final plats, site plans, and building permits, as required, in order to:
- (1) determine whether to allow or require payment of a fee in-lieu of parkland dedication under the Parkland Dedication Ordinance, City Code § 25-1-605 (*Fee In-Lieu of Parkland Dedication*); and
 - (2) evaluate the amount of land available for dedication that meets the standards for dedication under Parkland Dedication Ordinance, City Code § 25-1-603 (*Standards for Dedicated Parkland*) and PDOP § 14.3.6 and § 14.3.7.
- (B) As part of its review, PARD may meet with applicants before or after a development application is filed and may request a site visit to evaluate the suitability of land for dedication.
- (C) As part of the application process, PARD may require information that it deems necessary to determine the amount of land available for dedication that meets the standards referenced in Subsection (A)(2). At a minimum, an application must include the following:
- (1) the total number of residential units proposed as part of the preliminary plan, final plat, or site plan application;

- (2) lot dimensions or metes and bounds acreage of parkland to be dedicated;
 - (3) site acreage amounts for land within the 25- and 100-year floodplain, as well as land located outside the floodplain;
 - (4) the location, size, and general description of any Critical Environmental Features (CEFs) existing on the site;
 - (5) a tree survey;
 - (6) a slope analysis, including the location of erosion hazard zones, to aid in determining the percentage of dedicated land that may be developed with park amenities including the indication of any erosion hazard areas; and
 - (7) the location of all existing and proposed: (a) structures; (b) above and in-ground utilities; and (c) public and private easements.
- (D) An application filed in connection with a Municipal Utility District (MUD), Public Improvement Districts (PID), or a Planned Unit Developments (PUDs) must include the following additional elements.
- (1) A Land Use Plan that shows the location and acreage amounts of proposed public parkland, private parkland and greenbelts in different colors. Additionally:
 - (a) for a MUD or a PID, the acreage amounts shown on the plan should match any acreage amounts delineated in an agreement for creation of the MUD or PID; and
 - (b) for a PUD, the acreage amounts shown on the plan should indicate amount of parkland required to meet the “superior development” standard.
 - (2) A Park Plan, with a map and corresponding tables that delineate how credited acreage for parks was determined and how it will be distributed within the development. This may include an exhibit that shows buffers around proposed parkland by ¼-mile in the Parkland Dedication Urban Core and ½-mile outside that urban core, to ensure that all residents are located near a park.

- (3) For a PUD, provisions in the PUD ordinance that establish timing requirements for the dedication of parkland.

§ 14.3.5 Binding Parkland Determination Prior to Submittal of Development Application.

- (A) As authorized by the Parkland Dedication Ordinance, City Code § 25-1-605, an applicant may request a binding determination from PARD regarding whether payment of a fee in-lieu is allowed and/or the amount of land that is required for dedication. An application for a binding determination must include, at a minimum, the information required under PDOP § 14.3.4.
- (B) A binding determination issued under this section shall apply to any development application submitted within 1-year from the date the determination is issued, provided that the number of units has not changed by more than 10% from the number of units originally provided by the applicant and relied on by PARD to make the determination. A binding determination expires if no development application is submitted within one-year from the date the determination was issued.

§ 14.3.6 Supplemental Criteria for Evaluating Fee In-Lieu Requests.

- (A) PARD shall evaluate requests to pay a fee in-lieu of dedication under the criteria specified under City Code § 25-1-605 (*Fee In-Lieu of Parkland Dedication*). If land available for dedication generally meets those criteria, and satisfies the standards for dedication under PDOP § 14.3.7, PARD shall consider the overall value of the land to the City's park system based on whether:
 - (1) the site provides a connection to existing or future parkland;
 - (2) the land available for dedication provides an opportunity to expand an existing park; and
 - (3) onsite parkland would further goals of the Imagine Austin Comprehensive Plan by providing:
 - (a) gathering areas and outdoor play in corridors and centers;
 - (b) opportunities for health-enhancing activities for residents;
 - (c) useable green infrastructure, or

(d) increased connectivity for pedestrian and bicycle traffic.

(B) PARD may, as authorized by City Code § 25-1-605(E) (Fee In-Lieu of Parkland Dedication), accept a reduced land dedication in combination with payment of a fee in-lieu of land and/or amenities of equal value where doing so best furthers the goal of maintaining a viable City park system. PARD will calculate a combination of land, amenities and/or fees with the following methodology:

- (1) Determine the percentage of credited acres being dedicated from the total amount of acres owed according to City Code § 25-1-602. (For example, 30% of the land owed is being dedicated).
- (2) Calculate the fee in-lieu of land owed as if no land were being dedicated (For example, \$100,000 in fees is owed per the number of residential units or hotel/motel rooms).
- (3) Multiply (1) by (2) above to determine the amount to be subtracted from the fee owed. (For example, $.30 * \$100,000 = \$30,000$)
- (4) Subtract (3) from (2) to determine the remaining fee in-lieu owed. (For example, $\$100,000 - \$30,000 = \$70,000$)
- (5) The remainder (For example, \$70,000) shall be paid by:
 - a. the construction of amenities of a value equal to or more than the remainder;
 - b. a fee in-lieu of parkland; or
 - c. a combination of a. and b.

§ 14.3.7 Supplemental Standards for Dedicated Parkland

(A) PARD shall evaluate the suitability of land available for dedication under the standards established in City Code § 25-1-603 (*Standards for Dedicated Parkland*) and on the additional standards described in this section.

- (1) The interior of a park should be visible from an existing or proposed public right-of-way. In order to achieve this visibility, a park of two or more acres in size should include at least 200 feet of right-of-way frontage for every two acres of credited parkland. For a park smaller

than two acres, the right-of-way frontage should be no less than half of the width of the park at its widest point. Right-of-way frontage on at least two sides of a park is recommended. Exceptions to the recommended frontage may be acceptable to accommodate environmental, historical, topographic, or other constraints; a park that serves mainly as a greenbelt; or a critical park need.

- (2) At least 50 percent of dedicated parkland site should be less than 10% grade, well drained, and suitable for active play, unless the parkland's only intent is to provide trail connections or connections to open space with preservation features.
- (3) The proposed land shall not be encumbered by recorded easements, or easements proposed to be recorded, such that it prevents construction of recreation amenities desired on the parkland.
- (4) In order to accept land for dedication, PARD must be able to connect it to potable water on all park sites and to sewer on sites of two acres or larger. Site plans and subdivision applications must demonstrate sufficient water and wastewater capacity to serve the park.
- (5) Parkland should be accessible to those in the neighborhood, either by walking or by the provision of parking.
- (6) Locating parkland in a central location within the development is preferred, except where:
 - (a) the park is adjacent to an existing or proposed school site, other parkland, greenway or natural resource area;
 - (b) a location at the edge of a subdivision will facilitate the combination of dedicated park areas to form a single park to serve two or more subdivisions. (To this end, applicants are encouraged to contact adjoining landowners and present a schematic plan proposing joint dedication); or
 - (c) a central location would not be accessible to the public.
- (7) If necessary for optimum park placement, larger tracts to be dedicated may be split into two (2) or more separate park sites as long as:

- (a) Each site is a minimum of ¼-acre in size;
 - (b) Each site meets parkland standards; and
 - (c) Splitting the tract will not adversely affect ecological connectivity for wildlife habitat, vegetative species diversity and protection of steep slopes, or interfere with other City Comprehensive Plan goals and city policies.
- (B) If doing so would achieve greater consistency with the standards in Subsection (A), PARD may allow an applicant to dedicate parkland required for a subdivision at another site owned by the same applicant within:
- (1) ¼-mile, for areas within the Parkland Dedication Urban Core established by City Code § 25-1-601(8); or
 - (2) ½-mile, for areas outside of the Parkland Dedication Urban Core.

§ 14.3.8 Partial Credit for Dedication and Easement Acreage

- (A) This subsection describes the circumstances in which PARD will count an acre of land at 50% credit for purposes of meeting the parkland dedication requirement under City Code § 25-1-602 (*Dedication of Parkland*).
- (1) If land is located within a Critical Environmental Feature (CEF) buffer or within a Critical Water Quality Zone, as established under City Code Chapter 25-8 or a successor Code, PARD may credit the acreage at 50% per acre if recreational amenities are allowed under applicable Land Development Code requirements. If recreational amenities are not allowed, the acreage may be included but will not receive credits toward acreage owed.
 - (2) Land containing a water quality or detention pond may be accepted at 50% per acre credit if the pond is designed and developed with PARD-approved recreational amenities.
 - (3) A fire lane may be accepted at 50% per acre credit if it is also designed to function as a trail that connects to a larger trail system.
 - (4) Land within the 100-year floodplain may be accepted at 50% per acre credit if:

- (a) PARD determines that the land meets the criteria described in Subsection (B); and
 - (b) the dedication also includes any adjacent land on the same site that is located within the 25-year floodplain, which shall receive no credit towards meeting the required parkland dedication.
- (B) In evaluating the acceptance of land for dedication within the 100-year and 25-year floodplain, or within a critical environmental feature area, PARD shall consider:
 - (1) whether the floodplain area would be easily accessible to pedestrians and maintenance vehicles;
 - (2) the extent to which the natural character of the waterway and the floodplain area has been or will be altered;
 - (3) whether the configuration and topography is suitable for the placement of low-intensity recreational amenities, in compliance with applicable watershed requirements; and
 - (4) whether the floodplain
 - (a) would function as linear parkland by providing neighborhood access between private residential lots;
 - (b) is visible to the public and easily identified as a public recreation area; and
 - (c) would provide suitable passive recreation, scenic views, wildlife habitat protection, tree protection, or trail connectivity to the more intensive uses in non-flood plain areas.

§ 14.3.9 Determining Superiority.

- (A) This section specifies the criteria that PARD applies in determining if land proposed for dedication would result in “superior development” for purposes of evaluating an application for a Municipal Utility District (MUD), Public Improvement District (PID), or Planned Unit Development zoning district (PUD).
- (B) To be considered “superior development,” land proposed for dedication must:

- (1) include at least 10.4 credited acres per 1,000 residents, which reflects the combined citywide level-of-service for neighborhood, greenbelt, and district parks (This amount exceeds by one acre the parkland dedication required under City Code § 25-1-602(E) that is based on a lower citywide level-of-service and includes only neighborhood parks and greenbelts.);
 - (2) be developed in accordance with a plan approved by PARD; and
 - (3) be dedicated to a governmental entity.
- (C) The 15% cap on parkland dedication in the urban core delineated in City Code § 25-1-602 (J) does not apply to PUDs or PIDs.

14.3.10 Standards for Private Parkland.

- (A) As authorized by City Code § 25-1-604 (Private Parkland), PARD may allow an applicant to satisfy up to 100% of the parkland dedication required for a development by providing a recreational easement to the public rather than deeding the land to the City in fee simple.
- (B) In order to earn credit for private parkland, it must be encumbered with a recreational easement that provides for full public access and must:
- (1) be visible from a right-of-way frontage or provide a connection to a trail system and
 - (2) provide signage, approved by PARD, which:
 - (a) states that the area, including any recreational amenities, is open and available for public use; and
 - (b) is posted at the park entrance or in a location visible to the public.
- (C) The credited acreage is calculated as in PDOP § 14.3.6 through 14.3.8. PARD then evaluates the amount of parkland dedication credit to be given using the following weighted factors:

- (1) (40%) The presence of active recreational amenities including, but not limited to, playscapes, sport courts, table game recreation, and climbing or exercise structures or trails.
 - (2) (30%) The ability of the public to access and use the land for recreation purposes in perpetuity by including within the Park Recreation Easement a provision declaring the land to be parkland “within the meaning of Article II, Section 7, Paragraph (A) of the Austin City Charter.”
 - (3) (10%) The presence of group gathering spaces, such as open lawns, picnic areas, plazas or pavilions
 - (4) (10%) Landscaping that enhances the park recreation features by providing shade, educational opportunities, fruit and nut trees, or wildlife habitat.
 - (5) (10%) The ability of PARD to provide programming in the space.
- (D) If private parkland is credited, recreational amenities must be constructed onsite and approved by PARD during site plan or subdivision review. Amenities must be shown on the site plan or construction plan, unless PARD authorizes another method of approval.
 - (E) An applicant must post fiscal surety for amenities included on private parkland during site plan or subdivision review. PARD will notify the Applicant and the Development Services Fiscal Office in writing, stating the amenities to be constructed and the amount of Fiscal Surety to be held until the items are constructed.
 - (F) If credited acreage does not satisfy the entire parkland requirement, PARD will calculate the remaining fee using the same process described in PDOP § 14.3.6 (B).

§ 14.3.11 Use and Expenditure of Parkland Fees.

- (A) The guidelines in this section specify how PARD uses fees in-lieu of parkland dedication and parkland development fees consistent with the requirements in City Code § 25-1-607 (*Fee Payment and Expenditure*).

(B) The 27 zones established as “Park Planning Areas” under the PARD Long Range Plan are designated as Parkland Service Areas for purposes of using fees collected in-lieu of parkland dedication. A fee in-lieu of dedication must be used within the service area where it was assessed and, to the greatest extent possible, should be used to address the following priorities:

- (1) PARD will attempt to acquire land which meets the standards in City Code § 25-1-603 (*Standards for Dedicated Parkland*) and is located within a ½ mile radius if the development is located within a Parkland Deficient Area or if the land would serve a critical parkland need or provide increased connectivity.
- (2) If no land that meets the requirements for dedicated parkland is available for acquisition within a Parkland Deficient Area, PARD may use funds to acquire parkland within a two-mile radius.
- (3) If no additional land that meets the requirements for dedicated parkland is available for acquisition within a two-mile radius, PARD may use funds to acquire parkland at any location within the Parkland Service Area that will benefit the development for which the fees were assessed.
- (4) If no land that meets the standards in Paragraphs (B)(1)-(3), above, is available for acquisition within one year from the date that a fee in-lieu of dedication was paid, PARD may spend the fees to construct recreational amenities or improvements that enhance capacity of an existing park within the applicable Parkland Service Area.

(C) A parkland development fee collected under City Code § 25-1-606 (*Parkland Development Fees*) shall be spent to develop recreational amenities at neighborhood parks that meet the locational guidelines for use of a fee in-lieu of dedication under Subsection (B). However, if no neighborhood park that meets the locational guidelines is appropriate for development of recreational amenities, a parkland development fee may be spent to develop recreational amenities at:

- (1) a district park within the parkland service area where the site plan or subdivision project that paid the fee is located; or
- (2) A metro park, if no district park within the applicable service area is appropriate for development of recreational amenities.

§ 14.3.12. – Methodology for Determining Fees

(A) Fee in Lieu of Land (City Code § 25-1-605)

PARD shall submit annually a fee derived from a Land Cost Per Person. The Land Cost per person will be calculated from the variables in the table below. PARD will update the variables annually to establish the fee and present the fee for adoption by City Council with the City’s annual Fee Schedule.

Variables	Description
Parkland Level of Service	Population/Park Acres expressed as 1 acre per X people OR X acres per 1,000 people
Park Acres	Park Acres (excludes Metro and District Parks)
City Population	Current city population
Parkland Cost Factor	Average land cost of acres purchased over the last five years

(1) The formula to calculate the fee is as follows:

Step 1: Parkland Cost Factor/Parkland Level of Service = Land Cost Per Person

Step 2: Density (2.8, 2.2 or 1.7) X Land Cost Per Person = Fee In-Lieu of Land by Density

(B) Fee for parkland development (City Code § 25-1-606)

PARD shall submit annually a fee derived from a Park Development Cost per person. The Park Development Cost per person will be calculated from the variables in the table below. PARD will update the variables annually to establish the fee and present the fee for adoption by City Council with the City’s annual Fee Schedule.

Variables	Description
Facilities Level of Service	Population / Number of Developed

	Parks expressed as 1 park per X people
Number of Developed Parks	Count of all developed parks
City Population	Current city population
Park Development Cost Factor	Average cost of last 5 neighborhood parks

The formula to calculate the fee is as follows:

Step 1: $\text{Parkland Cost Factor} / \text{Parkland Level of Service} = \text{Land Cost Per Person}$

Step 2: $\text{Density (2.8, 2.2 or 1.7)} \times \text{Park Development Cost Per Person} = \text{Parkland Development Fee by Density.}$