

Chapter 254 Dedications and Reservations

(3468-8/00, 3562-7/02, Resolution No. 2004-80-9/04, 3827-4/09, 3879-6/10, 3960-11/12)

Note: Ordinance No. 3827 (expired 4/15/10) and Ordinance No. 3879, effective from 5/3/10 to 5/3/11, temporarily defer the payment of certain Development Impact Fees.

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254.02 Dedication of Streets, Alleys and Other Public Rights-of-Way or Easements

As a condition of approval of a tentative map, the subdivider shall dedicate, or make an irrevocable offer to dedicate, all parcels of land within the subdivision that are needed for required improvements, including access rights and abutters' rights. In addition, the subdivider shall construct or agree to construct all required improvements in accord with Chapter 255.

254.04 Waiver of Direct Access Rights

The City may require as a condition of approval of a tentative map that dedications or offers of dedication of streets include a waiver of direct access rights to any such street from any property within or abutting the subdivision. Upon acceptance of the dedication, such waiver shall be reflected in an appropriate title document, which shall be recorded, and shall become effective in accordance with its provisions.

254.06 Dedications

All dedications of property to the City for public purposes shall be made in fee title, except that, at the City's discretion, the grant of an easement may be taken for the following purposes: open space easements, scenic easements, street easements or public utility easements. All dedications in fee and grants of easements shall be free of liens and encumbrances except for those which the City, in its discretion, determines would not conflict with the intended ownership and use. The City may elect to accept an irrevocable offer of dedication in lieu of dedication.

254.08 Parkland Dedication

- A. General. This Section is enacted pursuant to the authority granted by the Subdivision Map Act and the general police power of the City including the power to zone and the power to implement open space and recreational elements of the General Plan. This Section is adopted to implement the provisions of the Quimby Act which authorizes the City to require the dedication of land for park and recreational facilities or payment of in-lieu fees incident to and as a condition of the approval of a tentative tract map or tentative parcel map for a residential subdivision. The park and recreational facilities for which dedication of land and/or payment of an in-lieu fee as required by this Section are in accordance with the policies, principles and standards for park, open space and recreational facilities contained in the General Plan. (3562-7/02)

The general purposes and objectives of this Section are: (3562-7/02)

1. To preserve, enhance and improve the quality of the physical environment of the City of Huntington Beach; (3562-7/02)
2. To provide a procedure for the acquisition, development and rehabilitation of local park and recreational facilities; (3562-7/02)
3. To secure for the citizens of Huntington Beach the social and physical advantages resulting from the provision of orderly park, recreation and open space facilities; (3562-7/02)
4. To establish conditions which will allow park and recreational facilities to be provided and to exist in harmony with surrounding and neighborhood land uses; (3562-7/02)
5. To ensure that adequate park and recreational facilities will be provided; (3562-7/02)
6. To provide regulations requiring five usable acres, or the proportionate share thereof, having a grade not exceeding two percent, for each 1,000 persons residing within the City to be supplied by persons proposing residential subdivisions. (3562-7/02)

- B. Requirements. The requirements of this Section shall be complied with by the dedication of land, payment of a fee in lieu thereof, or both, at the option of the City, for park or recreational purposes at the time and according to the standards and formula contained in this Section. The amount and location of land dedicated or the fees to be paid, or both, shall be used for acquiring, developing new or rehabilitating existing community and neighborhood parks and other types of recreational facilities in such a manner that the locations of such parks and recreational facilities bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision generating such dedication or fees, or both. Dedications for trails shall not be included as part of any requirements for park or recreational dedication. (3562-7/02)

Lands to be dedicated or reserved for park and/or recreational purposes shall be suitable in the opinion of the Director and the Director of Community Services in location, topography, environmental characteristics and development potential as related to the intended use. The primary intent of this Section shall be construed to provide the land

for passive and active recreation, including but not limited to: tot lots, play lots, playgrounds, neighborhood parks, playfields, community or regional parks, lakes, picnic areas, tree groves or urban forests, and other specialized recreational facilities that may serve residents of the City. Principal consideration shall be given therefore to lands that offer: (3562-7/02)

1. A variety of recreational potential for all age groups;
 2. Recreational opportunities provided and maintained in a manner that will permit the maximum use and enjoyment by residents of the City of Huntington Beach; (3562-7/02)
 3. Possibility for expansion or connection with school grounds;
 4. Integration with hiking, riding and bicycle trails, natural stream reserves and other open space;
 5. Coordination with all other park systems;
 6. Access to at least one existing or proposed public street.
- C. General Standard. It is hereby found and determined that the public interest, convenience, health, safety and welfare require that five acres of property for each 1,000 persons residing within the City be devoted to local park and recreational purposes.
- D. Standards and Formula for Dedication of Land. Where a park or recreational facility has been designated in the General Plan and is to be located in whole or in part within the proposed subdivision and is reasonably related to serving the present and future needs of the residents of the subdivision, the subdivider shall dedicate land for park and recreation facilities sufficient in size and topography to meet that purpose. The amount of land to be provided shall be determined pursuant to the following standards and formula:

$$A = \frac{5.0 (DF \times \text{No. DU})}{1000}$$

1. Definitions of terms:
 - a. A - the area in acres required to be dedicated as a park site. (3562-7/02, 3960-11/12)
 - b. DF - density factor as determined pursuant to Section 254.08 (E). (3562-7/02)
 - c. 5.0 - number of acres per one thousand persons.
 - d. No. DU - number of dwelling units proposed in the subdivision.
2. When a proposed subdivision contains dwelling units with different density factors, the formula shall be used for each such density factor and the results shall be totaled.

3. Dedication of parkland shall not be required for parcel maps or subdivisions containing 50 parcels or less; except that when a condominium project, stock cooperative or community apartment project exceeds 50 dwelling units, dedication of land may be required notwithstanding that the number of parcels may be less than 50. (3562-7/02)

E. Density.

The amount of land dedicated or fees paid shall be based upon residential density, which is determined on the basis of the approved tentative map and the average number of persons per household. The average number of persons per household by unit in a structure shall be established by City Council resolution and be derived from the most recent available federal census or state or City population and housing data. (3562-7/02)

The number of dwelling units in a subdivision shall be the number proposed for construction. When the actual number of units to be constructed is unknown, it shall be assumed for the purposes of this chapter that the maximum number permissible by law will be constructed.

- F. Standard Improvements. The dedication of land for park and recreational purposes shall not be deemed to waive any other requirements that may be imposed by the City. The subdivider may, at the time of the approval of the tentative map, be obligated by condition to said map to provide curbs, gutters, sidewalk, drainage facilities, street lighting, stop lights, street signs, matching pavement and street trees to full City standards, to stub-in requested standard improvements required for residential property plus initial on-site grading required for developing the park facility. In lieu of making said improvements and upon approval of the Planning Commission or City Council, whichever acts last on the tentative map, the subdivider may pay a sum as estimated by the Director of Public Works sufficient to cover the cost of said improvements. The environmental condition of any land dedicated pursuant to this Section shall satisfy all federal, state and local requirements applicable to parkland and recreational facilities. (3562-7/02)

G. Fees in Lieu of Land Dedication. (3562-7/02, 3960-11/12)

1. General. Whenever the requirements of this Section are met solely on the basis of the payment of a fee in lieu of land dedication, the subdivider shall pay a fee in lieu of dedication according to a schedule adopted by City Council resolution. (3562-7/02, 3960-11/12)
2. Fees in Lieu of Land - 50 Parcels or Less. If the proposed subdivision contains 50 parcels or less and has no park or recreational facility, the subdivider shall pay a fee according to a schedule adopted by City Council resolution. When a condominium project, stock cooperative or community apartment project exceeds 50 dwelling units, dedication of land may be required notwithstanding that the number of parcels may be less than 50. (3562-7/02, 3960-11/12)
3. Use of Fees. The fees paid to the City pursuant to this Section and the interest accrued from such fees shall be used, in accordance with the schedule developed pursuant to Section 254.08(M), for the purpose of acquiring, developing new or rehabilitating existing neighborhood or community park or recreational facilities reasonably related to serving the subdivision, including the purchase of necessary land and/or improvement of such land for park or recreational purposes. All fees

collected pursuant to this Section shall be transferred for deposit into a separate fund and used solely for the purposes specified in this Section. All monies deposited into the fund shall be held separate and apart from other City funds. All interest or other earnings on the unexpended balance in the fund shall be credited to the fund. The money deposited in the fund account shall be committed to the partial or full completion of necessary purchases or improvements within five years after payment thereof or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the money is not committed, it shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of each lot bears to the total area of all lots in the subdivision. Any requests for refunds shall be submitted to the Director in accordance with the procedures set forth in Section 254.08 (P). (3562-7/02)

- H. Criteria for Requiring Both Dedication and Fee. If the proposed subdivision contains more than 50 lots, the subdivider shall both dedicate land and pay a fee in lieu of dedication in accordance with the following: (3562-7/02)
1. When only a portion of the land to be subdivided is proposed in the General Plan as the site for a local park or recreational facility, such portion shall be dedicated for local park purposes and shall be a credit toward the payment of in lieu fees at the park land acquisition and development cost per acre used to develop the in lieu fee. (3562-7/02, 3960-11/12)
 2. When a major part of the local park or recreational site has already been acquired by the City and only a small portion of land is needed from the subdivision to complete the site, such portion shall be dedicated, and shall be a credit toward the payment of in lieu fees at the park land acquisition and development cost per acre used to develop the in lieu fee. (3562-7/02, 3960-11/12)
 3. The fee shall be used for the improvement of the existing park or recreational facility or for the improvement of other neighborhood or community parks and recreational facilities reasonably related to serving the subdivision.
- I. Amount of Fee in Lieu of Park Land Dedication. Where a fee is required to be paid in lieu of park land dedication, such fee shall be according to a schedule adopted by City Council resolution. (3960-11/12)

Land Acquisition Cost Adjustment Challenge. If the subdivider objects to the park land acquisition cost per acre used to develop the in lieu fee pursuant to a schedule adopted by City Council resolution, the subdivider may, as outlined below, pay for an appraisal of the property to be developed to see if the fair market value of the land is less than the park land acquisition cost per acre. Conversely the City retains the ability to increase the in lieu fee in areas where the fair market value of land exceeds the park land acquisition cost per acre. (3960-11/12)

Fair market value of the land shall be determined by a qualified real estate appraiser who currently holds the MAI designation from the Appraisal Institute and has been selected and retained by the City at the expense of the subdivider (“Qualified Real Estate Appraiser”). The fair market value of the land shall be based on the average acre value of the property to be subdivided at the time of the recording of the final subdivision map, adjusted to reflect the value of such acre of property rough graded to a maximum two percent slope. Such appraisal shall exclude improvement. The date of value of the property for purposes of the appraisal shall be within 60 days of

payment of the fee as referenced in Section 254.08L. (3468-8/00, 3562-7/02, 3827-4/09, 3879-6/10, 3960-11/12)

Note: Ordinance No. 3827 (expired 4/15/10) and Ordinance No. 3879, effective from 5/3/10 to 5/3/11, temporarily defer the payment of certain Development Impact Fees.

If the subdivider objects to the fair market value as determined by the Qualified Real Estate Appraiser, the subdivider may request an appeal by a hearing officer within ten (10) days. The hearing officer provided for this appeal process shall be from a list provided by the Director or one selected by the mutual consent of the parties. The subdivider shall have the burden of proof in contesting the fair market value appraisal. All decisions rendered by the hearing officer shall be final for all purposes, and binding upon the parties. If the subdivider does not request an appeal within ten (10) days, the original decision shall stand, be final for all purposes, and binding upon the parties. If the deadline falls on a weekend or a holiday, the deadline extends to the next succeeding working day. (3562-7/02, 3827-4/09, 3879-6/10, 3960-11/12)

Note: Ordinance No. 3827 (expired 4/15/10) and Ordinance No. 3879, effective from 5/3/10 to 5/3/11, temporarily defer the payment of certain Development Impact Fees.

- J. Determination of Land or Fee. Whether the City accepts land dedication, or elects to require the payment of a fee in lieu of, or a combination of both, shall be determined by the Director after consideration of the following: (3562-7/02)
1. Policies, standards and principles for park and recreational facilities in the General Plan; (3562-7/02)
 2. Topography, geology, access and location of land in the subdivision available for dedication;
 3. Size and shape of the subdivision and land available for dedication;
 4. Feasibility of dedication;
 5. Compatibility of dedication with the General Plan;
 6. Availability of previously acquired park property.

The determination by the City as to whether land shall be dedicated, or whether a fee shall be charged, or a combination of both, shall be final and conclusive.

- K. Credit for Improvements and Private Open Space. If the subdivider provides park and recreational improvements to the dedicated land other than those referenced in Section 254.08 (F), the value of the improvements together with any equipment located thereon shall be a credit toward the payment of fees or dedication of land required by this Section. (3562-7/02)

Common interest developments as defined in Sections 1351 of the California Civil Code shall receive partial credit, not to exceed 50 percent, against the amount of land required to be dedicated, or the amount of the fee imposed, pursuant to this Section, for the value of private open space within the development, which is usable for active recreational uses, if the City Council, on the recommendation of the Community Services Commission, finds that it is in the public interest to do so, and that the following standards are met. (3562-7/02)

1. That yards, court areas, setbacks and other open areas required by Titles 20-24 (Zoning) shall not be included in the computation of the private open space;
2. That the private ownership and maintenance of the open space is adequately provided for by recorded written agreement, conveyance, or restrictions;
3. That the use of the private open space is restricted to park and recreational purposes by recorded covenant, which runs with the land in favor of the future owners of property, and which cannot be defeated or eliminated without the consent of the City or its successor;
4. That the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access, and location; and
5. That facilities proposed for the open space are in substantial accord with the provisions of the General Plan.

L. Procedure. (3562-7/02)

1. As determined by the City pursuant to the Section, the subdivider shall: (3562-7/02, 3960-11/12)
 - a. Dedicate the land at the time of the recording of the final map or parcel map, and/or (3562-7/02, 3960-11/12)
 - b. Pay the fees prior to final building permit approval. (3562-7/02, 3960-11/12)
2. Open space covenants for private park or recreational facilities shall be submitted to the City prior to approval of the final map or parcel map and, if approved, shall be recorded concurrently with the final map or parcel map.

M. Schedule of Use. At the time of the approval of the final map or parcel map, the City shall make a preliminary determination of how, when, and where it will use the land or fees, or both, to develop or rehabilitate park or recreational facilities to serve the residents of the subdivision. Final scheduling of improvements to these new or rehabilitated parks or recreational facilities shall be made as part of the City's capital improvement program. (3562-7/02)

N. Not Applicable to Certain Subdivisions. The provisions of this Section do not apply to: (1) commercial or industrial subdivisions; or (2) to condominium projects or stock cooperatives that consist of the subdivision of airspace in an existing apartment building which is more than five years old when no new dwelling units are added. (3562-7/02)

O. Exemptions. The following development shall be exempt from the payment of fees pursuant to this Section: (3562-7/02)

Development of real property into housing units that are either rented, leased, sold, conveyed or otherwise transferred, at a rental price or purchase price which does not exceed the "affordable housing cost" as defined in Section 50052.5 of the California Health and Safety Code when provided to a "lower income household"

as defined in Section 50079.5 of the California Health and Safety Code or “very low income household” as defined in Section 50105 of the California Health and Safety Code, and provided that the applicant executes an agreement, in the form of a deed restriction, second trust deed, or other legally binding and enforceable document acceptable to the City Attorney and binding on the owner and any successor-in-interest to the real property being developed, guaranteeing that all of the units developed on the real property shall be maintained for lower and very low income households whether as units for rent or for sale or transfer, for the lesser of a period of thirty years or the actual life or existence of the structure, including any addition, renovation or remodeling thereto. (3562-7/02, 3960-11/12)

Exemptions shall only be granted when the following findings can be made:
(Resolution No. 2004-80-9/04, 3960-11/12)

- i. The project meets the minimum on-site private and common open space requirements; or (Resolution No. 2004-80-9/04)
- ii. The exemption will not individually or cumulatively result in adverse impacts to public recreational opportunities in the coastal zone; and (Resolution No. 2004-80-9/04)
- iii. The exemption will not individually or cumulatively lead to overcrowding or overuse of public facilities by the public in any single area in the coastal zone. (Resolution No. 2004-80-9/04)

P. Appeals. Any person may appeal a determination of the City regarding the interpretation and implementation of this Section. Any such appeal shall be filed with the Director consistent with the requirements of Section 248.24 of the Huntington Beach City Zoning and Subdivision Ordinance. (3562-7/02)

Q. Refunds. Requests for refunds of in-lieu fees paid pursuant to this Section may be directed to the Director at any time. The Director may approve of a refund or a partial refund of park fees paid or release of security instruments when the following has been verified: (3562-7/02)

1. That the refund amount requested corresponds to the amount of fees actually deposited in the fund account established pursuant to Section 254.08 (G) (3) for a given number of dwelling units; and (3562-7/02)
2. That the local park requirement for the dwelling units in question had been met by actual Council acceptance of park land, or by an irrevocable recorded offer to dedicate a park land on a final tract map or parcel map; or (3562-7/02)
3. The subdivision or building permit approval for which fees were required has been withdrawn or is otherwise no longer valid. (3562-7/02)

254.10 School Site Dedication

A. General. As a condition of approval of a tentative map, a subdivider who develops or completes the development of one or more subdivisions within one or more school districts maintaining an elementary school shall dedicate to the school district or districts such lands as the City Council shall deem to be necessary for the purpose of constructing thereon elementary schools necessary to assure the residents of the subdivision adequate public school service.

- B. Procedure. The requirement of dedication shall be imposed at the time of approval of the tentative map. If within 30 days after the requirement of dedication is imposed by the City Council the school district does not offer to enter into a binding commitment with the subdivider to accept the dedication, the requirement shall be automatically terminated. The required dedication may be made any time before, concurrently with, or up to 60 days after the filing of the final map or parcel map on any portion of the subdivision.
- C. Payments to Subdivider for School Site Dedication. The school district shall, if it accepts the dedication, repay to the subdivider or his or her successors the original cost to the subdivider of the dedicated land, plus a sum equal to the total of the following amounts:
 - 1. The cost of any improvements to the dedicated land since acquisition by the subdivider;
 - 2. The taxes assessed against the dedicated land from the date of the school district's offer to enter into the binding commitment to accept the dedication;
 - 3. Any other costs incurred by the subdivider in maintenance of such dedicated land, including interest costs incurred on any loan covering such land.
- D. Exemptions. The provisions of subsections (A), (B), and (C) shall not apply to a subdivider who has owned the land being subdivided for more than 10 years prior to the filing of the tentative map.

254.12 Reservations

- A. General. As a condition of approval of a tentative map, the subdivider shall reserve sites, appropriate in area and location, for parks, recreational facilities, fire stations, libraries or other public uses according to the standards and formula contained in this section.
- B. Standards for Reservation of Land. Where a park, recreational facility, fire station, library, or other public use is shown on the General Plan or an adopted specific plan, the subdivider may be required by the City to reserve sites as so determined by the City in accordance with the policies and standards contained in the General Plan or the adopted specific plan. The reserved area must be of such size and shape as to permit the balance of the property within which the reservation is located to develop in an orderly and efficient manner. The amount of land to be reserved shall not make development of the remaining land held by the subdivider economically infeasible.

The reserved area shall be consistent with the General Plan or the adopted specific plan and shall be in such multiples of streets and lots as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period.

- C. Procedure. The public agency for whose benefit an area has been reserved shall, at the time of approval of the final map or parcel map, enter into a binding agreement to acquire such reserved area within two years after the completion and acceptance of all improvements unless the period of time is extended by mutual agreement.
- D. Payment to Subdivider. The purchase price for the reserved area shall be the market value thereof at the time of the filing of the tentative map plus the taxes against the

reserved area from the date of the reservation and any other costs incurred by the subdivider in the maintenance of the reserved area, including interest costs incurred on any loan covering the reserved area.

- E. Termination. If the public agency for whose benefit an area has been reserved does not enter into a binding agreement in accordance with this section, the reservation of the area shall automatically terminate.

254.14 Local Transit Facilities

As a condition of approval of a tentative map, the subdivider shall dedicate, or make an irrevocable offer of dedication, of land within the subdivision for local transit facilities such as shelters, benches, bus turnouts, park-and-ride facilities and similar items which directly benefit the residents of the subdivision, if: (a) the subdivision as shown on the tentative map has the potential for 200 dwelling units or more if developed to the maximum density shown on the General Plan or contains 100 acres or more; and (b) if the City finds that transit services are or will be, within a reasonable time period, made available to the subdivision.

254.16 Bridges and Major Thoroughfares

The subdivider shall be required to pay a fee for the impacts of their proposed development on the city transportation system in accordance with Chapter 17.65 of the Huntington Beach Municipal Code.

254.18 Supplemental Improvement Capacity

- A. As a condition of approval of a tentative map, the City may impose a requirement that improvements installed by the subdivider for the benefit of the subdivision contain supplemental size, capacity, number or length for the benefit of property not within the subdivision and that those improvements be dedicated to the public. However, when such supplemental size, capacity, number or length is solely for the benefit of property not within the subdivision, the City shall, subject to the provisions of the Subdivision Map Act, enter into an agreement with the subdivider to reimburse the subdivider for that portion of the cost of such improvements equal to the difference between the amount it would have cost the subdivider to install such improvements to serve the subdivision only and the actual cost of such improvements.
- B. The City Council shall determine the method for payment of the costs required by a reimbursement agreement which may include but is not limited to the establishment and maintenance of local benefit districts for the levy and collection of such charge or costs from the property benefited.
- C. No charge, area of benefit or local benefit district shall be established unless and until a public hearing is held thereon by the City Council and the City Council finds that the charge, area of benefit or local benefit district is reasonably related to the cost of such supplemental improvements and the actual ultimate beneficiaries thereof.
- D. In addition to the notice required by Chapter 248, written notice of the hearing shall be mailed to those who own property within the proposed area of benefit as shown on the last equalized assessment roll, and the potential users of the supplemental improvements insofar as they can be ascertained at the time (10 days prior to the date established for the hearing).

254.20 Drainage Fees

The subdivider shall be required to pay a fee for the development of drainage facilities in accordance with Chapter 14.48 of the Huntington Beach Municipal Code.

254.22 Solar Access Easements

As a condition of approval of a tentative map, the City may impose a requirement that the subdivider dedicate easements for the purpose of assuring that each parcel or unit in the subdivision shall have the right to receive sunlight across adjacent parcels or units in the subdivision for any solar energy system. In establishing such easements, the City shall consider the feasibility, contour, configuration of the parcel to be divided, and cost. Required easements shall not result in reducing allowable densities or the percentage of a parcel which may be occupied by a building or a structure under applicable planning and zoning provisions in force at the time such tentative map is filed.

At the time of tentative map approval, the Zoning Administrator or the Planning Commission, as may be the case, shall specify: (1) the standards for determining the exact dimensions and locations of such easements; (2) any restrictions on vegetation, buildings and other objects that would obstruct the passage of sunlight through the easement; and (3) conditions, if any, under which an easement may be revised or eliminated.

This section is not applicable to conversion projects.

254.24 Other Public Facilities

As a condition of approval of a tentative map, the subdivider shall be required to dedicate land, pay fees, or both, for fire stations, library sites, child day care, public art or any other public facilities pursuant to, and in order to implement, the provisions of the General Plan regarding such facilities.