

Sec. 30-18. - Provision of land for public use.

(a) *Required.* Pursuant to Minn. Stats. § 462.358, subd. 2b, except as otherwise provided in this section, the city requires all owners or developers, as a prerequisite to approval of a plat, subdivision or development of any land, to convey to the city, or dedicate to the public use, a reasonable portion of any such proposal for public use as streets, roads, sewers, electric, gas and water facilities, stormwater drainage and holding areas or ponds, similar utilities and improvements, or parks, playgrounds, trails or open space, such portions to be approved and acceptable to the city.

(b) *Suitability of dedicated land.* Any land to be dedicated as a requirement of this section shall be reasonably adaptable for its proposed use and shall be at a location convenient to the people to be served. Factors used in evaluating the adequacy of proposed park and recreation areas shall include size, shape, topography, geology, tree cover, access and location.

(c) *Park dedication requirements.* Except as otherwise provided in this subsection, subdividers and developers of land within the city shall be required to dedicate to the city for park, playground, trail and public open space purposes the following minimum amounts of land or cash, or both, whichever the city, at its option, shall require. The required dedication shall be made prior to the city's release of the final plat for filing. Subdividers and developers may, however, pay the park dedication fee at any time after the final plat has been approved by the city council. The amount of any required cash contribution shall be calculated based upon rates established by the city and in effect as of the date of the release of the final plat for filing. For purposes of this subsection (c), words such as, but not limited to, "total acreage," "subdivision area," "the property in the plat, subdivision or development," and "the property being platted," whenever such words appear in this subsection or any resolution or policy adopted pursuant thereto, shall mean the gross area of the plat, subdivision or development except any undeveloped outlot that will, by current standards, be required to make the dedication required in this subsection at such time as the outlot is developed, subdivided or platted in the future.

(1) *Residential dedications.*

a. Land shall be dedicated pursuant to the following schedule, wherein density is calculated by considering the total acreage of the entire plat, subdivision or development being considered:

Dwelling Units per Gross Acre	Dedication Requirement
Less than <u>9</u>	10 percent of subdivision area
<u>9</u> and more	11 percent of subdivision area plus an additional 1 percent for each additional dwelling unit per acre over <u>9</u>

The following schedules shall apply in the specific situations listed below:

1. Developments that include affordable units (affordable as determined by the city) shall receive a 25 percent reduction from the single unit rate for each affordable unit.
2. Developments with multiple dwelling structures that have a density of 14 units per acre, a minimum of eight units per structure and has a common internal access corridor for all units shall receive a 20 percent reduction from the single unit rate for each unit that satisfies the above.
3. Developments that include memory care and assisted living units shall apply the commercial rate to the percentage of memory care and/or assisted living units that are in the project multiplied by the project net acres.

The above schedules shall not be utilized cumulatively.

b. A cash contribution in lieu of land dedication may be required at the discretion of the city. The cash contribution shall be calculated by the city estimating the fair market value per acre of residential property in the city, and such value shall then be multiplied by ten percent and the resulting figure divided by the average density of residential development existing in the city. The city shall establish the cash contribution by resolution, which shall not exceed the above calculation.

c. The city may require the subdivider or developer to make a combination cash and land dedication pursuant to the following formula:

1. The amount of land which could be required in accordance with this chapter shall be calculated.
2. From the total calculated under subsection c.1 of this subsection, the actual amount of land the city determines to be needed to fulfill the purposes of this subsection c shall be subtracted.
3. The balance arrived at under subsection c.2 of this subsection shall be converted into a cash contribution in lieu of land dedication pursuant to a standard formula established by the city, which formula takes into consideration such things as, but not necessarily limited to, the fair market value of the property in the plat, subdivision or development and the percentage of the total park dedication obligation represented by such balance.

(2) *Commercial and industrial dedication requirements.*

a. Land dedication, if required, shall be 7½ percent of the subdivision or development.

b. If the city requires payment of fees in lieu of land dedication, that fee shall be based upon the same percentage set forth in subsection a of this subsection, multiplied by the acreage of the proposed plat, development or subdivision, and by the council's estimate, as established at least annually by resolution, of the fair market value per acre of undeveloped commercial/industrial land in the community.

c. Where a combination land and cash dedication is made, the lands dedicated will be deducted from the total park dedication land requirement, and the balance of required dedication acreage will be

multiplied by the current council estimate established pursuant to subsection b of this subsection to determine the amount of cash dedication.

(3) *Miscellaneous requirements.* The following requirements apply to all dedications or conveyances for park, playground, trail or public open space purposes:

a. *Suitability of land.* Land conveyed or dedicated pursuant to the provisions of this subsection (c) must be located outside of drainageways, floodplains and ponding areas after the site has been developed.

b. *Installation of improvements.* As part of their development contract or site plan approval responsibilities, owners and developers shall be responsible for making certain improvements to the developments for park, playground, trail and public open space purposes, including, but not limited to, finished grading and ground cover for all park, playground, trail and public open spaces within their developments.

c. *Standards for location.*

1. The park board shall develop and recommend to the city council for adoption standards and guidelines for determining what geographic location of each such development should reasonably be required to be so conveyed or dedicated.

2. Such standards and guidelines may take into consideration the zoning classification to be assigned to the land to be developed, the particular use proposed for such land, amenities to be provided and factors of density and site development as proposed by the owners or developers.

3. The park board shall further recommend changes and amendments from time to time to such standards and guidelines to reflect changes in the usage of land which may occur, changes in zoning classifications and concepts, and changes in planning and development concepts that relate to the development and usages to which land may be put.

d. *Park board recommendations.* The park board shall, in each case, recommend to the city council the total area and location of such land that the park board feels should be so conveyed or dedicated within the development for park or playground purposes.

e. *Acquisition of sites proposed on official map or comprehensive plan.* Where a proposed park, playground, trail, open space or other recreational area that has been indicated on the official map and/or comprehensive plan is located in whole or in part within a proposed subdivision, such proposed site shall be designated as such and be dedicated to the city. If the subdivider chooses not to dedicate an area in excess of the land required under this section for such proposed site, the council shall not be required to act to approve or disapprove the plat of the subdivision for a period of 90 days after the subdivider meets all the provisions of this chapter, in order to permit the council to consider the proposed plat and to take the necessary steps to acquire, through purchase or condemnation, all or part of the public site proposed on the official map or comprehensive plan.

f. *Density and open space requirements under zoning regulations.* Land area so conveyed or dedicated for park, playground, trail and open space purposes may not be used by an owner or developer as an allowance for purposes of calculating the density requirements of the development as set out in chapter 36 and shall be in addition to and not in lieu of open space requirements for planned unit developments pursuant to chapter 36

g. *Private open space.* Where private open space for park, playground, trail, open space or other recreation purposes is provided in a proposed subdivision and such space is to be privately owned and maintained by the future residents of the subdivision, such areas may be used for credit at the discretion of the city council against the requirement of dedication for purposes described in this subsection (c), provided the city council finds it is in the public interest to do so and that the following standards are met:

1. Yards, court areas, setbacks and other open space required to be maintained by the zoning and building regulations shall not be included in the computation of such private open space;
2. The private ownership and maintenance of the open space shall be adequately provided for by written agreement;
3. The private open space shall be restricted for park, playground, trail, open space or recreational purposes by recorded covenants which run with the land in favor of the future owners of property within the tract and which cannot be eliminated without the consent of the city council;
4. The proposed private open space must be reasonably adaptable for use for such purposes, taking into consideration such factors as size, shape, topography, geology, access and location of the private open space land;
5. Facilities proposed for such purposes must be in substantial accordance with the provisions of the recreational element of the comprehensive plan, and be approved by the city council; and
6. Where such credit is granted, the amount of credit shall not exceed 25 percent of the amount calculated in subsection (c)(1) or (2) of this section, whichever is applicable.

h. *Disposition of cash contributions.* The park board shall establish a separate fund into which all cash contributions received from owners and developers in lieu of conveyance or dedication of land for park, playground, trail and open space purposes shall be deposited. The park board shall establish separate budgeting and accounting procedures for such fund and shall make from time to time appropriations from such fund for acquisition of land for such purposes, for developing existing park, playground, trail and open space sites or for debt retirement in connection with land previously acquired for such purposes.

i. *Administrative procedures.* The park board shall establish such administrative procedures as it may deem necessary and required to implement the provisions of this subsection (c).

(4) *Determination of land type.* The determination of whether land is residential, commercial, or industrial shall be based upon the zoning of the particular land for which dedication is required. Zoning classifications shall be categorized as follows:

Zoning	Land Type
R-A, R-1, R-2, R-2b, R-3, R-4, R-5	Residential
B, FF	Commercial
I	Industrial
Planned unit development (PUD), FP, S, and W	See underlying zoning classification
PUD district	See major use approved when zoned PUD

(5) *Waivers.* The park dedication requirement may be waived by the city council in connection with lands described in subsections a and b of this subsection, subject to the requirements of subsections c and d of this subsection. Such lands include:

- a. Land owned by a government or governmental subdivision, which land is or will be devoted to a public purpose; and
- b. Privately owned land that is intended to be maintained or developed so as to contain on at least 90 percent of the gross subdivision area large park-like areas open to use by the public such as a golf course.
- c. Prior to subdivision approval and any such waiver, the property owner (public or private) must present to the city in recordable form a covenant running with the land and satisfactory to the city wherein the owner agrees for himself, his heirs, successors, and assigns to make park dedication for the land according to prevailing requirements at the time dedication is required in any of the following circumstances:
 1. Whenever public lands or uses or portions thereof which are otherwise exempt become privately owned and do not or will not meet the 90 percent requirement set forth in this subsection, as measured at the time of the covenant;
 2. Whenever more than ten percent of the gross subdivision area of any privately owned property, as measured at the time of the covenant, becomes developed so as to prevent the public by design or implication from unrestricted access to the land; or

3. If the actual or intended use of the land changes so as to be inconsistent with the types of public activities and uses set forth in this subsection.

d. The covenant referred to in subsection c of this subsection shall be filed in the office of the county recorder at the owner's expense at or before the recording of the plat by which the subdivision is accomplished.

(Code 1984, § 350:27; Ord. No. 04-25, § 1, 12-6-2004; Ord. No. 08-14, § 1, 11-3-2008)