

ORDINANCE NO. 27949

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 14.25 OF TITLE 14 AND CHAPTER 19.38 OF TITLE 19 OF THE SAN JOSE MUNICIPAL CODE IN ORDER TO REVISE CREDITING PROVISIONS FOR PUBLIC RECREATIONAL IMPROVEMENTS, TO REVISE THE TIME FOR PAYMENT OF THE IN-LIEU FEES COLLECTED PURSUANT TO THESE CHAPTERS UNDER CERTAIN CIRCUMSTANCES, TO EXPAND THE USE OF THESE IN-LIEU FEES TO INCLUDE RECREATIONAL FACILITIES, AND TO MAKE TECHNICAL CHANGES**

**WHEREAS**, the requirements for park and recreational facilities imposed on new residential projects pursuant to the Parkland Dedication Ordinance, San José Municipal Code (“SJMC”) Chapter 19.38 (“PDO”) and the Park Impact Ordinance, SJMC Chapter 14.25 (“PIO”), have been under review by the City's Department of Parks, Recreation and Neighborhood Services in conjunction with other City departments, various City commissions, the residential developer community and interested members of the public since Summer of 2004; and

**WHEREAS**, before this review commenced, the fees imposed under the PDO and PIO in lieu of dedication of real property for public park purposes had not been adjusted since June 2002; and

**WHEREAS**, the Department of Parks Recreation and Neighborhood Services, the Parks and Recreation Commission, the Planning Commission and the Housing Advisory Commission have concluded the review of the PDO and PIO and have made several recommendations to this Council regarding amendments to these ordinances; and

**WHEREAS**, the accompanying Council Resolution containing the Schedule of Fees and Credits, sets forth the in-lieu fees to be charged under the PIO and PDO in addition to credits for private recreation improvements under the PDO and PIO; and

**WHEREAS**, the proposed amendments to the Schedule of Fees and Credits as set forth in the accompanying Council Resolution will increase the amount of in-lieu fees to be imposed under the ordinances to 100% of the 2005 Residential Land Value Study and will temporarily reduce the in-lieu fees for developments in the Downtown Core Area; and

**WHEREAS**, the proposed amendments to the PDO and PIO will, among other things, expand the types of improvements eligible for public recreational credit, revise the time for payment of the in-lieu fees under certain circumstances and expand the use of the in-lieu fees to include recreational facilities;

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Parts 1, 2, 3, 4 and 5 of Chapter 14.25 of Title 14 of the San José Municipal Code are amended in their entirety, to be numbered, entitled and to read as follows:

**Part 1**  
**Definitions**

**14.25.005**    **Definitions**

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

**14.25.010**    **Affordability Restrictions**

"Affordability Restrictions" shall mean covenants, conditions and restrictions running with the land and recorded in the Office of the Santa Clara County Recorder in connection with a residential unit to be utilized by Lower Income Households within the City. The Affordability Restrictions shall require that the residential unit be utilized by

Lower Income Households for a minimum period of thirty (30) years or for such other period as may be required by state or federal law.

**14.25.015 Applicant**

“Applicant” shall mean an Applicant for a building permit for one or more residential units subject to this Chapter.

**14.25.025 Community Park**

“Community Park” shall mean a City park serving the community that may include more specialized or unique facilities that are not typically provided in a Neighborhood Park to serve the diverse needs of the community such as: lighted sports fields, community gardens, swimming pools, dog parks, skate parks and community centers.

**14.25.030 Director**

“Director” shall mean the Director of Parks, Recreation and Neighborhood Services or such other director designated by the City Manager to administer this Chapter.

**14.25.035 Joint Use Agreement**

“Joint Use Agreement” shall mean a written agreement between the City and a Public Agency that provides for the development or renovation of Park Facilities and/or Recreational Facilities on the Public Agency Property and that shall at a minimum include:

- A. the specific times, days, hours, responsibilities and types of use of the Public Agency Property by the City and the Public Agency; and
- B. a provision ensuring that the dollar amount invested by the City will be commensurate with the hours of City use; and
- C. a provision that the term of the Joint Use Agreement shall be commensurate with the useful life of the proposed Park Facilities and/or Recreational Facilities.

**14.25.040 Low Income Unit**

“Low Income Unit” shall mean a residential unit subject to an Affordability Restriction.

**14.25.045 Lower Income Households**

“Lower Income Households” shall mean persons and families whose incomes do not exceed the qualifying limits for lower income households as established and amended from time to time pursuant to California Health and Safety Code Section 50079.5 as amended. In the event such standards are discontinued, the Council shall, by resolution, establish eligibility standards for low income households.

**14.25.050 Neighborhood Park**

“Neighborhood Park” shall mean a City park that serves a neighborhood and includes amenities such as play fields, hard courts, tot lots, picnic areas and open turf or natural areas.

**14.25.055 Park Facilities**

“Park Facilities” shall mean Community Parks, Neighborhood Parks, and the neighborhood and community-serving elements of Regional Parks.

**14.25.060 Park Impact Fee**

“Park Impact Fee” shall mean the fee established by the City Council pursuant to this Chapter.

**14.25.065 Parkland Agreement**

“Parkland Agreement” shall mean a written agreement between the City and the Applicant to satisfy the Applicant’s obligations under this Chapter.

**14.25.070 Public Agency**

“Public Agency” shall mean a public utility or any government agency.

**14.25.075 Public Agency Property**

“Public Agency Property” shall mean real property which the Public Agency owns in fee simple or the Public Agency owns an easement over the real property.

**14.25.080 Recreational Facilities**

“Recreational Facilities” shall mean recreational improvements that are not typically provided in either a Neighborhood Park or a Community Park such as Trails or community gardens. Recreational Facilities shall also mean recreational improvements, such as community centers or sports fields, that are not located in either a Neighborhood Park or a Community Park.

**14.25.085 Regional Park**

“Regional Park” shall mean a City park that has unique features that attracts visitors from throughout the City, that protects and interprets the City’s natural and cultural resources or that provides specialized outdoor recreational facilities, such as festival sites, that are not typically duplicated in other parks in the City.

**14.25.090 Residential Care Facility for the Elderly**

“Residential Care Facility for the Elderly” shall mean a residential development licensed to provide care to the elderly pursuant to California Health and Safety Code Section 1569.10 and Chapter 8 of Division 6 of Title 22 of the California Code of Regulations, as may be amended from time to time.

**14.25.095 Schedule of Fees and Credits**

“Schedule of Fees and Credits” shall mean the resolution of the City Council setting forth the schedule of Park Impact Fees and credits applicable to residential units subject to this Chapter.

**14.25.100 Stormwater Detention Facility**

“Stormwater Detention Facility” shall mean a facility designed to manage peak stormwater runoff flow, volume and duration, and/or a treatment control device designed

to reduce stormwater pollutant loading from a developed site or a portion of a developed site.

**14.25.105 Trail**

“Trail” shall mean a linear corridor which provides a completely separated right-of way with crossflows by motorists minimized and which is designated for recreational purposes such as walking, running, horseback riding, bicycling, or in line skating.

**Part 2  
Purpose**

**14.25.200 Application of Chapter**

- A. This Chapter is enacted pursuant to the Charter of the City of San José and establishes park impact requirements to parallel the parkland dedication and in-lieu fee requirements of Chapter 19.38 of this Code for residential units that are not subject to that Chapter.
- B. Requiring dedication of land, or payment of a Park Impact Fee, or both, by residential builders for the purpose of developing, including acquisition of, or renovating Park Facilities and Recreational Facilities is in accordance with the provisions of the General Plan of the City of San José, and advances the parks and recreation goals and policies of the General Plan.
- C. Nothing in this Chapter shall restrict the ability of the City to require dedication of land, payment of fees or construction of improvements for needs other than, or in addition to, Park Facilities and Recreational Facilities.

**Part 3**  
**Park Impact Requirement**

**14.25.300 Determination of Park Impact Requirement**

- A. It is in the public interest, convenience, health, welfare and safety that at least three (3) acres of real property for each one thousand (1,000) persons residing within this City be devoted to Park Facilities.
  
- B. The park impact requirements of this Chapter shall be based on the value of real property in the City of San José and shall be calculated in the same manner as the dedication requirements are calculated under Chapter 19.38 of this Code. The Schedule of Fees and Credits under this Chapter shall be the same schedule as the Schedule of Fees and Credits established by resolution of the City Council pursuant to Chapter 19.38 of this Code.

**14.25.310 Park Impact Requirement**

- A. The requirements of this Chapter shall apply to the construction of new residential units that are not subject to the requirements of Chapter 19.38 of this Code.
  
- B. Every Applicant shall dedicate land, pay a Park Impact Fee in lieu of dedication, or both, for park or recreational purposes in conformity with the conditions, provisions, standards and formulas contained in this Chapter except as otherwise provided in this Chapter or in the Schedule of Fees and Credits. Alternatively, an Applicant may satisfy the requirements of this Chapter by entering into a Parkland Agreement for the construction of Park Facilities, Recreational Facilities or both pursuant to Section 14.25.410.
  
- C. Except as otherwise provided in this Chapter or in the Schedule of Fees and Credits, no building permit for a residential unit subject to this Chapter shall be issued unless and until the Park Impact Fee has been paid or, alternatively, the

Applicant has provided evidence of either compliance with or exemption from the provisions of this Chapter.

- D. Failure to pay the Park Impact Fee within the time specified under this Chapter shall result in the imposition of additional charges as set forth in the Schedule of Fees and Credits as well as loss of any credits previously granted pursuant to this Chapter.

**14.25.320 Determination of Land Dedication or Payment of the Park Impact Fee**

- A. The Planned Development Zoning or development permit for the residential project subject to this Chapter, whichever occurs first, shall set forth whether the City will accept land dedication or require payment of a fee in lieu thereof, or a combination of both. The determination shall be based upon, but not limited to, consideration of the following:
  - 1. The General Plan of the City of San José;
  - 2. The City's policies for the development or renovation of Park Facilities and Recreational Facilities;
  - 3. The topography, geology, access, and location of land in the residential project that is suitable for the development or renovation of Park Facilities or Recreational Facilities;
  - 4. The size and shape of the residential project and land available for dedication;
  - 5. The location of existing or proposed park sites and Trails.
- B. Land to be dedicated shall not be of such size, shape or location as to make the development of the residential project unfeasible, and shall permit the balance of

the residential project to be developed in an orderly and efficient manner. The feasibility of all dedications shall be determined pursuant to this Section.

Additionally, land to be dedicated must meet the following criteria:

1. Be at least one-half (1/2) acre in size, excluding hillsides over a ten percent (10%) grade, riparian set back areas and environmental mitigation areas. The Director may accept dedications of land less than one-half (1/2) acre if the land to be dedicated is located adjacent to an existing or planned Park Facility or Recreational Facility; and
  2. Can be graded to create a sufficiently flat area of less than three percent (3%) grade in any direction; and
  3. Be located adjacent to a public street in order to promote public safety and facilitate policing.
- C. The Applicant, as required by the City, in addition to the land dedicated pursuant to subsection A., shall:
1. Provide reasonable improvements and access to the land dedicated including, but not limited to, full street improvements and utility connections, such as curbs, gutters, street paving, traffic control devices, street trees, and sidewalks, to land which is dedicated pursuant to this Chapter;
  2. Provide for fencing along the property line of that portion of the project contiguous to the dedicated land; and
  3. Provide improved drainage through the site.

- D. The Director shall consult with the Director of Public Works and the Director of Planning, Building and Code Enforcement in making the determination whether to require the dedication of land.
- E. Prior to making a determination to require land dedication pursuant to subsection A. above, the Director may consult with the Applicant as to the desirability of requiring dedication rather than fees, as well as to the nature of any such dedication.
- F. Notwithstanding subsection A. above, if the proposed project contains fifty (50) or fewer parcels and is not a condominium project, stock cooperative or community apartment project as such terms are defined in California Civil Code Section 1351, as amended, the Applicant shall be allowed to pay Park Impact Fees as determined in accordance with Section 14.25.300.
- G. If a phased project results in a total residential project of more than fifty (50) units, the land dedication which could not have been otherwise required pursuant to subsection F, may be required.

**14.25.330 Land Dedication Procedure**

- A. Real property dedicated to the City shall be conveyed by grant deed, free and clear of encumbrances. Deeds, in a form acceptable to the Director of Public Works, shall be given to the Director of Public Works prior to, or concurrent with, the issuance of the first building permit , unless the Parkland Agreement specifies a different procedure for transmittal of the grant deed.
- B. The Applicant shall provide all instruments required to convey the land and shall also provide a preliminary title report and title insurance in favor of the City in an amount equal to the value of the property being conveyed as estimated by the City.

**14.25.340 Sale of Dedicated Land**

If during the time between dedication of land for park purposes and commencement of development, circumstances arise which indicate that another site would be more suitable for local park or recreational purposes serving the residential project, the land may be sold upon the approval of the City Council with the proceeds being deposited in the Park Trust Fund and used as provided in Section 14.25.350.

**14.25.350 Use of Park Impact Fees**

- A. Subject to the requirements of Subsection B, below, the Park Impact Fees collected pursuant to this Chapter shall be used for the development, including acquisition of, or renovation of:
  - 1. Park Facilities, or
  - 2. Recreational Facilities; or
  - 3. Park Facilities or Recreational Facilities on Public Agency Property pursuant to a Joint Use Agreement.
- B. The facilities developed or renovated with Park Impact Fees must serve or benefit the residential project that paid such Park Impact Fees.

**14.25.360 Appeal of Timing of Payment for Park Impact Fee**

- A. An Applicant may, prior to the issuance of the Applicant's building permit, seek to delay payment of the Park Impact Fee until the date of the final inspection of the Applicant's residential project by filing a written appeal with the Director.
- B. The exclusive grounds for granting an Applicant's appeal to delay payment of Park Impact Fees shall be as follows:

1. The City's five-year capital improvement plan does not include a Park Facilities project or a Recreational Facilities project which would serve or benefit the Applicant's proposed residential project; or
  2. The City has not appropriated or expended funds for a Park Facilities project or a Recreational Facilities project which would serve or benefit the proposed residential project.
- C. Within ten (10) business days of receipt of the Applicant's request for delay of payment, the Director shall issue a written response to either uphold or deny the Applicant's request for delayed payment of the Park Impact Fees for the Applicant's project. The decision of the Director shall be final.
- D. An appeal of the timing of the Park Impact Fee submitted after payment of the Park Impact Fee shall be deemed untimely and shall not be considered.

**14.25.370 Agreement Required for Delayed Payment of Park Impact Fees**

- A. In the event that the Director determines to uphold the Applicant's request for delay of payment, the City and the Applicant shall enter into an agreement for the delayed payment of the Park Impact Fees as a condition of issuance of the Applicant's building permit(s).
- B. The delayed payment agreement shall be recorded in the Office of the Santa Clara County Recorder and shall require the Applicant or the Applicant's successor to pay the Park Impact Fees for the Applicant's project, in full, no later than the date on which final inspection of the first unit within Applicant's project occurs. Failure to pay the Park Impact Fee, when due, shall result in the imposition of additional charges as set forth in the Schedule of Fees and Credits.
- C. The delayed payment agreement shall have attached as an exhibit a legal description of the real property on which the Applicant's project is to be built. The

Applicant shall be responsible for providing the legal description to the City at the Applicant's sole cost.

**14.25.380 Accounting of Park Impact Fees**

- A. Park Impact Fees shall be deposited into the Park Trust Fund. Money in the Park Trust Fund, including accrued interest, shall be expended solely for the uses specified in Sections 14.25.350 and 19.38.345. The Director of Finance shall report to the City Council at least annually on income, expenditures and status of the Park Trust Fund.
- B. Park Impact Fees collected pursuant to this Chapter shall be committed by the City in a budgetary year within five (5) years of receipt of payment for a specific project to serve or benefit residents of the project for which the fees were collected.
- C. If Park Impact Fees are not committed as specified in subsection B., these fees shall be distributed and paid to the current record owners of the lots or units of the residential project or projects for which the fees were charged on a prorated basis.
- D. If the administrative costs of refunding uncommitted fees pursuant to subsection C. exceeds the amount to be refunded, the City Council, after a public hearing, may determine that the uncommitted fees shall be allocated for some other purpose for which fees are collected and which serve or benefit the project for which the Park Impact Fee was originally charged.

**Part 4**

**Credit Requirements**

**14.25.400 Credit for Private Recreation Improvements**

- A. Where private open space or recreation improvements, or both, are provided in a

proposed residential project including, but not limited to, an apartment complex, a partial credit shall be given against the requirement of this Chapter as provided in this Section.

- B. The amount of the credit and the improvements eligible for credit shall be determined pursuant to the Schedule of Fees and Credits. The total credit shall not exceed fifty percent (50%) of the requirement imposed under this Chapter.
- C. Credit will be given only when the Applicant has entered into an agreement with the City in which the Applicant has agreed to construct the eligible private recreation improvements within a specified time period.
- D. No credits will be granted for improvements other than those specified in the Schedule of Fees and Credits.
- E. Private recreation improvements shall be owned by the owner(s) of the parcel(s) on which they have been constructed.

**14.25.410 Credit for Public Park and Recreation Improvements**

- A. The Applicant may enter into a Parkland Agreement, prior to issuance of the Applicant's building permit(s), which obligates the Applicant to make public park and recreation improvements to property dedicated by the Applicant to the City or to either existing Park Facilities or Recreational Facilities in exchange for credit towards the Applicant's obligations under this Chapter. Credit may be granted up to the actual cost of the improvements in accordance with this Section.
- B. In order for Park Facilities improvements and Recreational Facilities improvements to be eligible for credit, the Director must find that the improvements are consistent with the City's construction standards, policies and practices and that it is in the best interest of the City to accept the improvements.

**14.25.420 Credit for School District Property and Public Agency Property**

A. Real property dedicated by the Applicant for a new public school will be eligible for credit equal to its square footage if the following requirements are met:

1. the real property dedicated to the school district would be available and open to the general public for recreational use during non-school hours; and
2. the real property is improved with public park improvements in accordance with City's standards; and
3. the school district grants an easement to the City in a form acceptable to the City Attorney which restricts the improved school property for public park and recreational purposes.

B. Credit for Public Agency Property will be eligible for credit equal to its square footage if the following requirements are met:

1. the Public Agency Property is not available for public park or recreational purposes and meets the requirements for land dedication for Park Facilities purposes as specified in Section 14.25.320; and
2. the Public Agency Property is improved with public park improvements in accordance with City's standards; and
3. the Public Agency grants an easement to City in a form, acceptable to the City Attorney, which allows use of the property for public park and recreational purposes; and
4. the Public Agency Property is no more than fifty (50%) percent of an improved park site dedicated to the City pursuant to this Chapter.

**14.25.430 Credit for Stormwater Detention Facilities**

- A. Real property that is dedicated by the Applicant to the City for public park and recreational purposes which also serves as a Storm Water Detention Facility for the Applicant's residential project will be eligible for credit against the requirements of this Chapter as provided in this Section.
  
- B. Credit may be granted if the Storm Water Detention Facility meets the following criteria:
  - 1. The Stormwater Detention Facility meets applicable City requirements for management of peak stormwater runoff flow, volume and duration, and/or reduction of stormwater pollutant loading from Applicant's residential project.
  
  - 2. The Stormwater Detention Facility is a minimum of eight thousand (8,000) square feet of uninterrupted flat contiguous turf having a grade suitable for active recreational purposes, excluding the area for vegetated swales, infiltration basins, or the intake area around the drain inlet of the Stormwater Detention Facility, and the Applicant demonstrates to the satisfaction of the Director that the Stormwater Detention Facility will be available for public park and recreational purposes for at least 300 calendar days per year.
  
  - 3. The Applicant has provided the City with the management and maintenance requirements for the Stormwater Detention Facility demonstrating to the satisfaction of the Director and the Director of Public Works that the Stormwater Detention Facility can be operated and maintained to manage peak stormwater runoff flow, volume and duration, and/or reduce stormwater pollutant loading during the full range of storm events for which it was designed.

4. The Applicant has demonstrated to the satisfaction of the Director and the Director of Public Works that the Stormwater Detention Facility can be maintained:
    - a. in accordance with applicable maintenance standards for Stormwater Detention Facilities and City park maintenance standards; and
    - b. to conform to all applicable laws and regulations relating to Stormwater Detention Facilities.
  5. The Applicant must also demonstrate to the satisfaction of the Director that there is a funding mechanism in place that will provide for the ongoing maintenance needs of the Stormwater Detention Facility as a Stormwater Detention Facility and as a Park Facility.
- C. The total amount of credit for the dedication of a Stormwater Detention Facility to the City shall be fifty percent (50%) of the actual square footage of the Stormwater Detention Facility that is used for eligible park and recreational purposes.
- D. Credit will be given only when the Applicant has entered into an agreement with the City in which the Applicant has agreed to construct the Stormwater Detention Facility and eligible park and recreational improvements within a specified time period or phase of the project.
- E. Credit for Stormwater Detention Facilities under this Section is a pilot program and shall expire and be of no further force and effect as of February 10, 2008 unless Council by further action amends or extends the pilot program.

**14.25.440 Credit for Trail Dedication**

- A. Real property dedicated by the Applicant to City for a Trail will be eligible for credit equal to the square footage of land to be dedicated if the following requirements are met:
1. the real property to be dedicated meets the City's Trail requirements; and
  2. the Applicant dedicates the real property to City in accordance with the procedures specified in Section 14.25.330; and
  3. the real property to be dedicated shall be used for a Trail that is identified in the City's General Plan or in the City's master plan for parks and recreational facilities; and
  4. the real property to be dedicated is not less than twenty-four (24) feet wide; and
  5. the real property to be dedicated is not already dedicated for public park or recreational purposes.

**14.25.450 Credit for Public Park and Recreation Improvements by Community Facilities or Assessment Districts**

The Applicant may propose that a community facilities district or special assessment district be formed, pursuant to the provisions of this Code or applicable State law, in order to fund the construction or acquisition of Park Facilities and/or Recreational Facilities that will meet or exceed the requirements of this Chapter. If the City agrees, and such a district is formed to fund the construction or acquisition of Park Facilities and/or Recreational Facilities that will meet or exceed the requirements of this Chapter, the Applicant's obligation under this Chapter will be deemed satisfied.

**Part 5**  
**Exemptions**

**14.25.500 Low-Income Unit Exemption**

Effective January 1, 2006, low-income units will be exempt from the requirements of this Chapter.

SECTION 2. Parts 1, 2, 3, 4 and 5 of Chapter 19.38 of Title 19 of the San José Municipal Code are amended in their entirety, to be numbered, entitled and to read as follows:

**Part 1**  
**Definitions**

**19.38.005 Definitions**

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

**19.38.010 Affordability Restrictions**

“Affordability Restrictions” shall mean covenants, conditions and restrictions running with the land and recorded in the Office of the Santa Clara County Recorder in connection with a residential unit to be utilized by Lower Income Households within the City of San Jose. The Affordability Restrictions shall require that the residential unit be utilized by Lower Income Households for a minimum period of thirty (30) years or for such other period as may be required by state or federal law.

**19.38.020 Community Park**

“Community Park” shall mean a City park serving the community that may include more specialized or unique facilities that are not typically provided in a Neighborhood Park to

serve the diverse needs of the community such as: lighted sports fields, community gardens, swimming pools, dog parks, skate parks and community centers.

**19.38.025 Director**

“Director” shall mean the Director of Planning, Building and Code Enforcement or such other director as designated by the City Manager.

**19.38.030 Joint Use Agreement**

“Joint Use Agreement” shall mean a written agreement between the City and a Public Agency that provides for the development or renovation of Park Facilities and/or Recreational Facilities on the Public Agency Property and that shall at a minimum include:

- A. the specific times, days, hours, responsibilities and types of use of the Public Agency Property by the City and the Public Agency; and
- B. a provision ensuring that the dollar amount invested by the City will be commensurate with the hours of City use; and
- C. a provision that the term of the Joint Use Agreement shall be commensurate with the useful life of the proposed Park Facilities and/or Recreational Facilities.

**19.38.035 Low Income Unit**

“Low Income Unit” shall mean a residential unit subject to an Affordability Restriction.

**19.38. 040 Lower Income Households**

“Lower Income Households” shall mean persons and families whose incomes do not exceed the qualifying limits for lower income households as established and amended from time to time pursuant to Health and Safety Code Section 50079.5 as amended. In the event such standards are discontinued, the Council shall, by resolution, establish eligibility standards for Lower Income Households.

**19.38.045 Neighborhood Park**

“Neighborhood Park” shall mean a City park that serves a neighborhood and includes amenities such as play fields, hard courts, tot lots, picnic areas and open turf or natural areas.

**19.38.050 Park Facilities**

“Park Facilities” shall mean Community Parks, Neighborhood Parks, and the neighborhood and community-serving elements of Regional Parks.

**19.38.055 Parkland Agreement**

“Parkland Agreement” shall mean a written agreement between the City and the Subdivider to satisfy the Subdivider’s obligations under this Chapter.

**19.38.060 Parkland Fee**

“Parkland Fee” shall mean the fee established by the City Council pursuant to this Chapter.

**19.38.065 Public Agency**

“Public Agency” shall mean a public utility or any government agency.

**19.38.070 Public Agency Property**

“Public Agency Property” shall mean real property which the Public Agency owns in fee simple or the Public Agency owns an easement over the real property.

**19.38.075 Recreational Facilities**

“Recreational Facilities” shall mean recreational improvements that are not typically provided in either a Neighborhood Park or a Community Park such as Trails or community gardens. Recreational Facilities shall also mean recreational improvements, such as community centers or sports fields, that are not located in either a Neighborhood Park or a Community Park.

**19.38.080 Regional Park**

“Regional Park” shall mean a City park that has unique features that attracts visitors from throughout the City, that protects and interprets the City’s natural and cultural resources or that provides specialized outdoor recreational facilities, such as festival sites, that are not typically duplicated in other parks in the City.

**19.38.085 Residential Care Facility for the Elderly**

“Residential Care Facility for the Elderly” shall mean a residential development licensed to provide care to the elderly pursuant to California Health and Safety Code Section 1569.10 and Chapter 8 of Division 6 of Title 22 of California Code of Regulations, as may be amended from time to time.

**19.38.090 Schedule of Fees and Credits**

“Schedule of Fees and Credits” shall mean the resolution of the City Council setting forth the schedule of Parkland Fees and credits applicable to residential units subject to this Chapter.

**19.38.095 Stormwater Detention Facility**

“Stormwater Detention Facility” shall mean a facility designed to manage peak stormwater runoff flow, volume and duration, and/or a treatment control device designed to reduce stormwater pollutant loading from a developed site or a portion of a developed site.

**19.38.100 Subdivider**

“Subdivider” shall mean a person who submits a Tentative Map for City’s approval that is subject to the provisions of this Chapter.

**19.38.105 Tentative Map**

“Tentative Map” shall mean both a tentative map and a tentative parcel map.

**19.38.110 Trail**

“Trail” shall mean a linear corridor which provides a completely separated right-of way with crossflows by motorists minimized and which is designated for recreational purposes such as walking, running, horseback riding, bicycling, or in line skating.

**Part 2  
Purpose**

**19.38.200 Purpose**

- A. The purposes for which dedication of land and/or payment of fees is required by this Chapter are in accordance with the parks and recreation goals and policies of the General Plan of the City of San José and advance the parks and recreation goals and policies of the General Plan.
- B. This Chapter is enacted consistent with Section 66477 of the Government Code of California and pursuant to the Charter of the City of San José.
- C. This Chapter shall only apply in the event of the subdivision of land.
- D. Nothing in this Chapter restricts the ability of the Director to require dedication of land, payment of fees or construction of improvements for needs other than or in addition to Park Facilities and Recreational Facilities.

### **Part 3**

### **Requirements**

#### **19.38.300 Requirements**

- A. Every residential Subdivider shall dedicate land, pay a Parkland Fee in lieu of dedication, or both, for park or recreational purposes in conformity with the conditions, provisions, standards and formulas contained in this Chapter. Alternatively, a Subdivider may satisfy the requirements of this Chapter by entering into a Parkland agreement for the construction of Park Facilities, Recreational Facilities or both pursuant to Section 19.38.410.
  
- B. Every Tentative Map and parcel map (if a tentative map was not required by the City Engineer) for a residential project shall contain a condition requiring compliance with this Chapter.
  
- C. Except where the condition required by subsection B. above is fully satisfied by dedication of land, such condition may be deemed satisfied where prior to approval of the parcel map or final map the Subdivider has paid the Parkland Fees due in full or, in the alternative, has entered into a binding Parkland Agreement with the City. Such agreement shall provide for the payment of fees and/or the construction of improvements. A Parkland Agreement for the construction of improvements may require the Subdivider to pay fees to the City which are incidental to the construction of the improvements.
  
- D. Failure to pay the Parkland Fees within the time specified in Section 19.38.335 or to construct improvements within the time set forth in the Parkland Agreement shall result in the imposition of additional charges as set forth in the Schedule of Fees and Credits as well as loss of any credits previously granted pursuant to this Chapter.

**19.38.305 Determination of Land Dedication and/or Payment of Parkland Fees**

- A. The Director shall indicate on the Tentative Map whether the City will accept land dedication or require payment of a fee in lieu thereof, or a combination of both. The Director's determination shall be based upon, but not limited to, consideration of the following:
1. The General Plan of the City of San Jose;
  2. The City's policies for the development of Park Facilities and Recreational Facilities;
  3. The topography, geology, access, and location of land in the subdivision that is suitable for the development or renovation of Park Facilities or Recreational Facilities;
  4. The size and shape of the subdivision and land available for dedication;
  5. The location of existing or proposed park sites and Trails.
- B. The Director shall consult with the Director of Public Works and the Director of Planning, Building and Code Enforcement in making the determination whether to require the dedication of land.
- C. Land to be dedicated shall not be of such size, shape or location as to make the development of the subdivision unfeasible, and shall permit the balance of the subdivision to be developed in an orderly and efficient manner. The Director shall determine the feasibility of all dedications pursuant to this Section. Additionally, land to be dedicated must meet the following criteria:
1. Be at least one-half (1/2) acre in size, excluding hillsides over a ten percent (10%) grade, riparian set back areas and environmental mitigation

areas. The Director may accept dedications of land less than one-half (1/2) acre if the land to be dedicated is located adjacent to an existing or planned Park Facility or Recreational Facility; and

2. Can be graded to create a sufficiently flat area of less than three percent (3%) grade in any direction; and
3. Be located adjacent to a public street in order to promote public safety and facilitate policing.

D. The Subdivider, as required by the City, in addition to the land dedicated pursuant to subsection A., shall:

1. Provide reasonable improvements and access to the land dedicated including, but not limited to, full street improvements and utility connections, such as curbs, gutters, street paving, traffic control devices, street trees, and sidewalks, to land which is dedicated pursuant to this Chapter;
2. Provide for fencing along the property line of that portion of the subdivision contiguous to the dedicated land; and
3. Provide improved drainage through the site.

E. Prior to making a determination to require land dedication pursuant to subsection A. above, the Director may consult with the Subdivider as to the desirability of requiring dedication rather than fees, as well as to the nature of any such dedication.

F. Notwithstanding subsection A. above, if the proposed subdivision contains fifty (50) or fewer parcels and is not a condominium project, stock cooperative or

community apartment project as such terms are defined in California Civil Code Section 1351, as amended, the Subdivider shall be allowed to pay Parkland Fees, as determined in accordance with Section 19.38. 325.

- G. If a phased project results in a total subdivision project of more than fifty (50) parcels, the total project will be treated as one subdivision for purposes of this Chapter and the Director may require land dedication which could not have been otherwise required pursuant to subsection F of this Section.

**19.38.310 Formula for Dedication of Land**

- A. The amount of land to be dedicated shall be determined pursuant to the following formula:

Minimum acreage dedication = .003 acres x Number of dwelling units x Average number of persons per dwelling unit.

- B. For purposes of this Section, the estimated residential population of the subdivision shall be determined on the basis of the type of dwelling unit allowed and the average household size for the dwelling unit as indicated in the most recent available federal census data.
- C. If the most recent federal census does not include information about the average household size for a particular type of dwelling unit, the City Council may adopt a resolution specifying an average household size for that type of dwelling unit.

**19.38.315 Number and Type of Units Designated**

- A. The Subdivider shall designate on the Tentative Map the maximum number of dwelling units for the subdivision. Subdividers of condominiums, community apartment projects or stock cooperative projects shall designate the maximum number of dwelling units for the purposes of this Chapter only, and such

designation shall not, in accordance with Government Code Section 66427, constitute an approval of the design or location of the units. If the number is not designated, the total number of dwelling units shall be the maximum number of such units permitted by the City's General Plan, or existing zoning, whichever is greater, on the land included within the proposed subdivision at the time the City approves the Tentative Map.

- B. The Subdivider shall designate on the Tentative Map the dwelling unit type of each dwelling. If the dwelling unit type is not designated by the Subdivider, the dwelling unit type which yields the highest subdivision population shall be used to determine the subdivision population.

**19.38.320 Additional Dedication or Payment Requirement for Additional Units**

The Subdivider shall be required to dedicate additional land and/or pay additional fees, pursuant to the provisions of this Chapter, if at any time after the recordation of the final map there is an increase in the number of units to be built or a change in the dwelling unit type designated pursuant to Section 19.38.315 which results in an increase in density. The additional fees, shall be the fees in effect at the time of payment.

**19.38.325 Fee In Lieu of Land Dedication**

When a Parkland Fee is to be paid in lieu of land dedication, the Subdivider shall pay the Parkland Fees as set forth in the Schedule of Fees and Credits. The Parkland Fees imposed pursuant to this Chapter shall be based on the value of land in the City of San José as set forth in the Schedule of Fees and Credits.

**19.38.330 Land Dedication Procedure**

- A. Where a dedication of land is required, it shall be accomplished in accordance with the provisions of the California Subdivision Map Act and this Title.
- B. Real property dedicated to the City shall be conveyed by grant deed, free and clear of encumbrances. Deeds, in a form acceptable to the Director of Public

Works, shall be given to the Director at the time the final subdivision map or final parcel map, for which the deeds are given, is submitted for approval, unless the Parkland Agreement specifies a different procedure for transmittal of the grant deed.

- C. If a subdivision map or a final parcel map is rejected by the City or withdrawn by a Subdivider prior to the City's approval, the deeds shall be returned to the Subdivider. If the map is approved, the deeds received will be recorded by the Director.
- D. The Subdivider shall provide all instruments required to convey the land and shall also provide a preliminary title report and title insurance in favor of the City in an amount equal to the value of the property being conveyed as estimated by the City.

**19.38.335 Fee Payment Procedure**

- A. When payment of the Parkland Fee in lieu of dedication of land is required by this Chapter, the Subdivider may pay the Parkland Fees due on the Subdivider's project in full prior to City's approval of the parcel map or final map. Alternatively, as a condition of City's approval of the Subdivider's final map or parcel map, the Subdivider shall enter into a Parkland Agreement with the City which provides for payment of the Parkland Fees in full, concurrent with the issuance of the first building permit for the Subdivider's project, but no later than one (1) year after City's approval of the Subdivider's final or parcel map unless the Schedule of Fees and Credits provides for delayed payment of the Parkland Fees. No building permit shall be issued for property for which payment of Parkland Fees is a prerequisite unless and until such Parkland Fees have been paid in full.
- B. Subdivisions for which Parkland Fees required under this Chapter have been paid in full shall not be required to pay additional fees under this Chapter except

to the extent required for any additional or changed residential units pursuant to Section 19.38.320.

C. Unless otherwise specified in the Schedule of Fees and Credits, the Parkland Fee to be paid shall be the fee set forth in the Schedule of Fees and Credits in effect:

1. at the time of payment in the event the Subdivider pays the Parkland Fee prior to City's approval of the final map or parcel map; or
2. on the date City executes the Parkland Agreement with the Subdivider for the payment of the Parkland Fee as provided in Subsection A., above.

**19.38.340 Appeals**

The Subdivider may appeal any condition imposed pursuant to this Chapter. The appeal procedure shall be as set forth in this Title.

**19.38.345 Use of Parkland Fees**

A. Subject to the requirements of Subsection B, below, the Parkland Fees collected pursuant to this Chapter shall be used for the development, including acquisition of, or renovation of:

1. Park Facilities, or
2. Recreational Facilities; or
3. Park Facilities or Recreational Facilities on Public Agency Property pursuant to a Joint Use Agreement.

B. The facilities developed or renovated with Parkland Fees must serve or benefit the residential project that paid such Parkland Fees.

**19.38.350 Accounting of Parkland Fees**

A. Parkland Fees shall be deposited into the Park Trust Fund. Money in the Park Trust Fund, including accrued interest, shall be expended solely for the uses specified in Sections 14.25.350 and 19.38.345. The Director of Finance shall report to the City Council at least annually on income, expenditures, and status of the Park Trust Fund.

B. Parkland Fees collected pursuant to this Chapter shall be committed by the City for a specific project to serve residents of the subdivision. Such commitment shall be in a budgetary year within five (5) years of receipt of payment or within five (5) years after the issuance of building permits on one-half (1/2) of the lots created by the subdivision, whichever occurs later.

C. If Parkland Fees are not committed as specified in subsection B., these fees shall be distributed and paid to the then record owners of the subdivision in the same

proportion that the sizes of their lots bear to the total area of all lots in the subdivision.

- D. If the administrative costs of refunding uncommitted fees pursuant to subsection C. exceeds the amount to be refunded, the City Council, after a public hearing, may determine that the uncommitted fees shall be allocated for some other purpose for which fees are collected and which serve the project for which the Parkland Fees was originally charged.

**19.38.355 Sale of Dedicated Land**

If during the time between dedication of land for park purposes and commencement of development, circumstances arise which indicate that another site would be more suitable for local park or recreational purposes serving the subdivision, the land may be sold upon the approval of the City Council with the proceeds being deposited in the Park Trust Fund and used as provided in Section 19.38.345.

**Part 4**

**Credit Requirements**

**19.38.400 Credit for Private Recreation Improvements**

- A. No credit shall be given for private recreation improvements in the subdivision except as provided in this Section.
- B. A common interest development, as defined in Section 1351 of the California Business and Professions Code, as amended, shall be eligible for a partial credit against the requirements of this Chapter.
- C. Credit will be given only when the Subdivider has agreed to construct the eligible improvements and has entered into a Parkland Agreement which requires construction of the improvements within a specified time period.

- D. The amount of the credit and the improvements eligible for credit shall be determined pursuant to the Schedule of Fees and Credits. The total credit shall not exceed fifty percent (50%) of the requirement imposed under this Chapter.
  
- E. Private recreation improvements shall be owned by:
  - 1. An incorporated nonprofit homeowners association composed of all property owners in the subdivision and any of the subdivisions annexed into the association, and which is an organization, operated under recorded land agreements through which each lot owner in the subdivision is automatically a member, and each lot is subject to a charge for a proportionate share of expenses for maintaining the facilities; or
  - 2. In the case of apartments, the owner(s) of the parcel(s).
  
- F. Use of the private recreation improvements shall be restricted for recreation purposes by a recorded covenant which runs with the land in favor of the future owners of the property and which expressly cannot be defeated or eliminated without the consent of the City.

**19.38.410 Subdivider Credit for Public Park and Recreation Improvements**

- A. The Subdivider may enter into a Parkland Agreement which obligates the Subdivider to make public park and recreation improvements to property dedicated by the Subdivider to the City or to existing Park Facilities or Recreational Facilities in exchange for credit towards Subdivider's dedication requirements. Credit will be granted up to the actual cost of the improvements in accordance with this Section.
  
- B. In order for Park Facilities improvements and Recreational Facilities improvements to be eligible for credit, the Director must find that the

improvements are consistent with the City's construction standards, policies and practices and that it is in the best interest of the City to accept the improvements.

**19.38.420 Credit for School District Property and Public Agency Property**

A. Real property dedicated by the Subdivider for a new public school will be eligible for credit equal to its square footage if the following requirements are met:

1. the real property dedicated to the school district would be available and open to the general public for recreational use during non-school hours; and
2. the dedicated real property is improved with public park improvements in accordance with City's standards; and
3. the school district grants an easement to the City in a form acceptable to the City Attorney which restricts the improved school property for public park and recreational purposes.

B. Credit for Public Agency Property will be eligible for credit equal to its square footage if the following requirements are met:

1. the Public Agency Property is not available for public park or recreational purposes and meets the requirements for dedication for Park Facilities purposes as specified in Section 19.38.305; and
2. the Public Agency Property is improved with public park improvements in accordance with City's standards; and
3. the Public Agency grants an easement to City in a form, acceptable to City's Attorney, which allows use of the property for public park and recreational purposes; and

4. the Public Agency Property is no more than fifty (50%) percent of an improved park site dedicated to the City pursuant to this Chapter.

**19.38.430 Credit for Stormwater Detention Facilities**

- A. Real property that is dedicated by the Subdivider to the City for public park and recreational purposes which also serves as a Storm Water Detention Facility for the Subdivider's residential project will be eligible for credit against the requirements of this Chapter as provided in this Section.
- B. Credit may be granted if the Storm Water Detention Facility meets the following criteria:
  1. The Stormwater Detention Facility meets applicable City requirements for management of peak stormwater runoff flow, volume and duration, and/or reduction of stormwater pollutant loading from Subdivider's residential project.
  2. The Stormwater Detention Facility is a minimum of eight thousand (8,000) square feet of uninterrupted flat contiguous turf having a grade suitable for active recreational purposes, excluding the area for vegetated swales, infiltration basins, or the intake area around the drain inlet of the Stormwater Detention Facility, and the Subdivider demonstrates to the satisfaction of the Director that the Stormwater Detention Facility will be available for public park and recreational purposes for at least 300 calendar days per year.
  3. The Subdivider has provided the City with the management and maintenance requirements for the Stormwater Detention Facility demonstrating to the satisfaction of the Director and the Director of Public Works that the Stormwater Detention Facility can be operated and

maintained to manage peak stormwater runoff flow, volume and duration, and/or reduce stormwater pollutant loading during the full range of storm events for which it was designed.

4. The Subdivider has demonstrated to the satisfaction of the Director and the Director of Public Works that the Stormwater Detention Facility can be maintained:
    - a. in accordance with applicable maintenance standards for Stormwater Detention Facilities and City park maintenance standards; and
    - b. to conform to all applicable laws and regulations relating to Stormwater Detention Facilities.
  5. The Subdivider must also demonstrate to the satisfaction of the Director that there is a funding mechanism in place that will provide for the ongoing maintenance needs of the Stormwater Detention Facility as a Stormwater Detention Facility and as a Park Facility.
- C. The total amount of credit for the dedication of a Stormwater Detention Facility to the City shall be fifty percent (50%) of the actual square footage of the Stormwater Detention Facility that is used for eligible park and recreational purposes.
- D. Credit will be given only when the Subdivider has entered into an agreement with the City in which the Subdivider has agreed to construct the Stormwater Detention Facility and eligible park and recreational improvements within a specified time period or phase of the project.

- E. Credit for Stormwater Detention Facilities under this Section is a pilot program and shall expire and be of no further force and effect as of February 10, 2008 unless Council by further action amends or extends the pilot program.

**19.38.440 Credit for Trail Dedication**

- A. Real property dedicated by the Subdivider to City for a Trail will be eligible for credit equal to the square footage of land to be dedicated if the following requirements are met:
1. the real property to be dedicated meets the City's Trail requirements; and
  2. the Subdivider dedicates the real property to the City in accordance with the procedures specified in Section 19.38.330; and
  3. the real property to be dedicated shall be used for a Trail that is identified in the City's General Plan or in the City's master plan for parks and recreational facilities; and
  4. the real property to be dedicated is not less than twenty-four (24) feet wide; and
  5. the land real property to be dedicated is not already dedicated for public park or recreational purposes.

**19.38.450 Credit for Public Park and Recreation Improvements by Community Facilities or Assessment Districts**

The Subdivider may propose that a community facilities district or special assessment district be formed, pursuant to the provisions of this Code or applicable State law, in order to fund the construction or acquisition of Park Facilities and/or Recreational Facilities that will meet or exceed the requirements of this Chapter. If the City agrees, and such a district is formed to fund the construction or acquisition of Park Facilities

and/or Recreational Facilities that will meet or exceed the requirements of this Chapter, the Subdivider's obligation under this Chapter will be deemed satisfied.

**Part 5**  
**Exemptions**

**19.383.500 Low-Income Unit Exemption**

Effective January 1, 2006, low-income units will be exempt from the requirements of this Chapter.

SECTION 3. This Ordinance will be effective on February 10, 2007.

PASSED FOR PUBLICATION of title this 12<sup>th</sup> day of December, 2006, by the following vote:

AYES:	CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE, NGUYEN, PYLE, REED, WILLIAMS; GONZALES
NOES:	NONE
ABSENT:	NONE
DISQUALIFIED:	NONE
VACANT:	DISTRICT 6

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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk