

**ORDINANCE NO. 1928**

**AN ORDINANCE OF THE CITY OF SANTA CLARA,  
CALIFORNIA, ADDING A NEW CHAPTER 17.35 (“PARK  
AND RECREATIONAL LAND”) TO TITLE 17  
 (“DEVELOPMENT”) OF “THE CODE OF THE CITY OF  
SANTA CLARA, CALIFORNIA”**

**BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, the City of Santa Clara is the Government entity responsible for providing park facilities within the City of Santa Clara;

**WHEREAS**, the population of the City of Santa Clara has increased by over 32% since the early 1970’s;

**WHEREAS**, the demand for new neighborhood and community parkland generated by development of new residential subdivisions and new non-subdivided residential projects has increased accordingly;

**WHEREAS**, the City of Santa Clara 2010-2035 General Plan includes a number of policies to maintain and increase the amount of available parkland, and to identify potential funding opportunities for new parkland and/or recreational facilities and an assessment of potential parkland dedication fees;

**WHEREAS**, the 2010-2035 General Plan includes a goal that “[n]ew parks, open space and recreation [be] provided with new development so that existing facilities are not overburdened”;

**WHEREAS**, the City has conducted a nexus study and a review of comparable cities’ park impact fees internally and through public process; and,

**WHEREAS**, the Parks and Recreation Department has recommended that the City Council establish a parkland dedication and fee requirement based on the results of the nexus study and Parks Master Plan Inventory.

**NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA  
AS FOLLOWS:**

**SECTION 1: Findings and Purpose.** The City Council hereby finds that residential developments have a significant effect on the use and availability of park and recreation space and facilities, and that the limited open space and recreation amenities provided by these residential developments are insufficient to meet the needs of the residents for open space and recreation facilities. The intent of this Chapter is to require that such developments contribute their fair share toward the purchase, development and/or improvement of park and recreational facilities. The provisions of this Chapter are enacted pursuant to the Charter, the City of Santa Clara General Plan and the authority granted as well as sections 66000-66025, 66477 and 66479 of the Government Code (the “Mitigation Fee Act” and the “Quimby Act”), as may be applicable.

**SECTION 2: General Standard.** In accordance with the City of Santa Clara Nexus Study (April 2014), it is hereby found and determined that the City of Santa Clara currently provides park and recreational facilities to its residents at a ratio of 2.53 acres per thousand residents. The public interest, convenience, health, welfare and safety require that a minimum of 3.0 acres of property for each one thousand (1,000) persons residing within the City of Santa Clara be devoted to public park and recreational facilities.

**SECTION 3:** That a new Chapter 17.35 (“Park and Recreational Land”) of Title 17 (“Development”) of “The Code of the City of Santa Clara, California” (“SCCC”) is hereby added to read as follows:

## “Chapter 17.35

### PARK AND RECREATIONAL LAND

Sections:

- 17.35.010 Definitions.
- 17.35.020 Requirement to provide park and recreational facilities.
- 17.35.030 Formula for calculation of land dedication requirement.
- 17.35.040 Formula for calculation of fee in-lieu of land dedication.
- 17.35.050 Criteria for requiring both dedication and fee.
- 17.35.060 Use of land and fees.
- 17.35.070 Credit for private open space.
- 17.35.080 Procedure.
- 17.35.090 Exceptions.

**17.35.010 Definitions.**

(a) “Active Recreational Use” shall mean activity that requires the use of organized play areas, including, but not limited to, softball, baseball, football and soccer fields, tennis and basketball courts, fitness stations and various forms of children’s play equipment.

(b) “Approving Authority” shall mean the board, body or individual otherwise empowered by this Code or state law to approve the development application.

(c) “Average Density” shall mean the average number of persons per household, as established by City Council resolution, in accordance with the most recent available Federal Census data.

(d) “Complete Application” means an application for a residential development that has been determined to be complete by the Department of Planning & Inspection.

(e) “Dwelling Unit Categories” shall mean the following two types of dwellings, as they are defined by the Zoning Ordinance, for which a separate dedication and/or fee requirement is to be set by Council resolution:

- (1) Multiple Dwelling
- (2) Single-Family Dwelling

(f) "Parkland Dedication Standard" shall mean the acreage of park and recreational facilities to be provided per 1000 City residents, which shall be initially set at 3.0 acres per 1000 residents, and as may be periodically adjusted by City Council resolution.

**17.35.020 Requirement to provide park and recreational facilities.**

Every person who constructs or causes to be constructed a dwelling unit or dwelling units or who subdivides residential property shall dedicate land, pay a fee in-lieu thereof, or provide a combination of such dedication and fee, at the discretion of the City, for the purpose of developing new or rehabilitating existing park or recreational facilities, at the time and according to the standards and formula contained in this Chapter.

(a) For subdivisions containing more than fifty (50) parcels, condominium developments of more than fifty (50) dwelling units, and residential developments not including a subdivision, the City may impose a parkland dedication requirement, a fee in-lieu of such dedication, or a combination of the two.

(b) Except as otherwise provided in this section, for subdivisions of fifty (50) parcels or fewer, the City may impose a fee only. Notwithstanding the foregoing, if a condominium project, stock cooperative, or community apartment project contains fifty (50) parcels or fewer, but will contain more than fifty (50) dwelling units, the City may impose a parkland dedication requirement, a fee in-lieu of such dedication, or a combination of the two.

**17.35.030 Formula for calculation of land dedication requirement.**

The formula for determining the required acreage to be dedicated shall be as follows:

- (a) The Average Density for the specific Dwelling Unit Category; multiplied by
- (b) The Parkland Dedication Standard; divided by
- (c) 1000 Population

By way of example, as of the adoption date of this Chapter, the Average Density for a single-family detached dwelling unit is 2.9 persons, and the Parkland Dedication Standard is 3.0 acres per 1000 residents. For a single-family detached unit, the required acreage would therefore be  $2.9 \times 3.0 / 1000 = 0.0087$  acres per single-family detached unit.

**17.35.040 Formula for calculation of fee in-lieu of land dedication.**

(a) When a fee is required to be paid in-lieu of parkland dedication, the maximum amount of such fee shall be determined by the fair market value of the amount of land that would otherwise be required to be dedicated pursuant to SCCC 17.35.030, as set forth below. The date of valuation of the property for in-lieu fee purposes shall be the date that the City determines that the developer's application for a parcel map or tentative subdivision map, or application for projects not involving a subdivision, is complete.

(b) Fair market value.

(1) The City shall determine the fair market value of the Property by using the average per acre land value for property in the City of Santa Clara, based upon a survey of land values and sale records in the City. The City Council shall set a minimum of three such average values, one for each of the three existing Zip codes in the City (95050, 95051, 95054). The City Council may, at its discretion, set average values for additional subregions of the City. The City Council shall review the fair market values not less than annually and set the values in a Council resolution.

(2) If the developer objects to this determination of fair market value, the developer may elect to have the value established by appraisal. If the developer chooses this option, the developer shall deposit with the City an amount sufficient to cover the cost of an appraisal, which the City shall conduct. The appraisal shall be completed prior to approval of the

tentative or parcel map, or for developments not involving a subdivision, prior to the issuance of a building permit.

(c) Based on the determination of fair market value set forth above in subsection (b)(1), for each of the Dwelling Unit Categories, the City Council shall set the amount of fees to be paid in-lieu of parkland dedication in a Council resolution, which the Council shall review annually.

**17.35.050 Criteria for requiring both dedication and fee.**

In subdivisions of over fifty (50) parcels of land, in condominium developments of more than fifty (50) dwelling units, and in residential developments not involving a subdivision, a combination of land dedication and fee payment may be required. In any such case, the sum of the in-lieu fees and the fair market value of the land to be dedicated shall equal the amount that would otherwise be required if the developer paid only an in-lieu fee pursuant to this Chapter.

(a) When only a portion of the land to be developed is identified in the Parks, Open Space, and Recreation Goals and Policies of the General Plan as the site for a local park, the portion identified in the General Plan shall be dedicated for local park purposes and a fee computed pursuant to the provisions of SCCC 17.35.040 shall be paid for any additional land that would have been required to be dedicated pursuant to SCCC 17.35.030.

(b) When a major part of the local park or recreational site has already been dedicated and only a small portion of land is needed from the subdivision to complete the site, the remaining portion shall be dedicated and a fee computed pursuant to the provisions of SCCC 17.35.040 shall be paid in an amount equal to the value of the land which would otherwise have been required to be dedicated pursuant to SCCC 17.35.030, the fees to be used for the improvement of the existing park and recreational facility or for the improvement of other local parks and recreational facilities in the area serving the subdivision.

(c) If, as a result of a recent annexation or boundary change, the General Plan does not specify the specific amount of park and recreational land for a proposed subdivision containing more than fifty (50) parcels or a residential development not involving a subdivision of more than fifty (50) dwelling units, the City Council shall determine whether it accepts a land dedication, payment of a fee, or a combination of both a dedication and fee, based upon the following factors:

- (1) The topography, geology, access and location of land in the development available for dedication;
- (2) The size and shape of the development and land available for dedication;
- (3) The feasibility of dedication; and
- (4) The availability of previously dedicated park property.

(d) The determination of the City as to whether land shall be dedicated, or whether a fee shall be charged, or a combination thereof, shall be final and conclusive.

**17.35.060 Use of park in-lieu fees.**

The fees collected pursuant to this Chapter shall be deposited to the Park Impact Fee Fund, and shall be used for the purposes set forth below.

(a) Money within the Park Impact Fee Fund shall be segregated by fee source and used and expended primarily for the acquisition and/or expansion of parks and recreational facilities reasonably related to serving the public by way of purchase of necessary land.

(b) In the alternative, for residential projects involving subdivisions only, if the City Council finds that there is already sufficient land available for such uses, then as a second priority, this money shall be used for the improvement and rehabilitation of existing land and facilities for park and recreational purposes.

(c) Except as otherwise provided in this section, for developments involving a subdivision of land, the land, fees, or combination thereof shall be used to serve the subdivision. Notwithstanding the foregoing, for subdivisions for which the City requires the payment of fees or a combination of a land dedication and fees, the fees may be spent on facilities in a neighborhood other than the neighborhood of the subdivision, if all of the following requirements are met:

- (1) The neighborhood in which the fees are to be expended has fewer than three (3) acres of park area per 1000 members of the neighborhood population;
- (2) The neighborhood of the subdivision for which the fees are paid has a park area that meets or exceeds the Parkland Dedication Standard;
- (3) The City holds a public hearing before using the fees;
- (4) It is reasonably foreseeable that residents of the subdivision will use the proposed park and recreational facilities in the neighborhood where the fees are used; and
- (5) The neighborhood where the fees are used is within a 10-minute walking distance of the subdivision.

**17.35.070 Credit for private open space.**

Where private open space is to be provided in a proposed residential development, and where the developer has submitted a written request with the project application for a credit against the amount of parkland dedication or the amount of the in-lieu fee thereof, a minimum of one (1.0) acre of open space must first be dedicated to the City for public park purposes. A maximum credit of fifty (50) percent of the value of the land devoted to private open space that is eligible for credit may be given against the requirement of land dedication or fees in-lieu thereof required by this Chapter, if the Approving Authority finds that it complies with this section and that it is in the public interest to do so. In order to receive such a credit, the



Approving Authority must make findings that the private open space meets the following standards:

(a) The calculation of private open space shall not include features required to be included by zoning and building codes and other applicable laws, including but not limited to yards, court areas, setbacks, decorative landscape areas required with residential site design and other open areas.

(b) The private open space shall be devoted to Active Recreational Uses, and for developments involving a subdivision, shall be wholly or partially owned and maintained by the future residents of the development. The private ownership and maintenance of the open space shall be restricted for such use by a recorded written agreement, conveyance, covenant or restrictions. Such document shall be subject to the prior review and approval of the City Attorney, and any future proposed amendments must be first submitted to the City Attorney for approval prior to adoption.

(c) The space shall be reasonably adapted for use for recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location, and the developer must propose and agree to design and construct the necessary recreational and park facilities and improvements associated with each element of the private open space set forth below; said facilities and improvements shall be constructed prior to the issuance of a certificate of use and occupancy for the units that are receiving the credit.

(d) Facilities proposed for the open space shall be in substantial compliance with the provisions of the Parks, Open Space, and Recreation Goals and Policies of the General Plan.

(e) The developer shall supply a covenant to maintain the open space to the City Attorney prior to approval of the final subdivision map for review and approval. Once approved

by the City Attorney, such document shall be recorded simultaneously with the final subdivision map.

(f) The private open space must contain at least four (4) of the following eight (8) elements:

(1) Turfed play field, comprised of a single unit of land which is generally level and free of physical barriers which would inhibit group play activities with a minimum contiguous area of one-half (0.50) acres;

(2) Children's play apparatus area that conforms to the then current Federal Consumer Product Safety Commission guidelines;

(3) Landscaped and furnished, park-like quiet area;

(4) Recreational community gardens;

(5) Family picnic area;

(6) Game, fitness or sport court area;

(7) Accessible swimming pool (minimum size 42' × 75') with adjacent deck and lawn areas;

(8) Recreation center buildings and grounds.

(g) Shape and Size.

(1) The combined area of Active Recreational Uses for a facility to qualify is a minimum of three quarters (0.75) acre.

(2) The shape and location of the open space shall provide the greatest utility possible to the greatest number of residents of the development for which credit is sought. If limited access recreation areas are proposed, their credit value can only be applied against the park fee obligation generated by those residents with access to the said recreation area.

(3) Irregularly shaped pieces of property of less than optimum utility or burdened by topographic considerations that render them unsuitable for Active Recreational Uses shall not be eligible for credit.

(h) Housing developments for which 100% of the units are affordable to low- and/or moderate-income households, and housing developments for senior citizens authorized by the California Civil Code or the Federal Fair Housing Amendments Act, will be eligible for up to an additional 15% credit toward the parkland dedication requirement or fees in-lieu thereof, provided that the Approving Authority finds that (1) the development complies with all other provisions of this section and that (2) providing the additional credit would serve the public interest.

**17.35.080 Procedure.**

(a) Upon receiving a complete application for a residential development or subdivision, the Director of Parks and Recreation shall determine the conditions necessary to comply with the requirements for parkland dedication or fees in-lieu thereof as set forth in this Chapter and said conditions shall be proposed to the Approving Authority as conditions of approval for the project. The establishment of such conditions for projects that do not involve a subdivision shall comply with the procedures set forth in Government Code Sec. 66001 et seq.

(b) At the time of project approval, the Approving Authority shall consider the recommendation of the Director of Parks and Recreation and make a final determination as to the land to be dedicated and/or fees to be paid by the developer.

(c) Any in-lieu fees imposed under this Chapter shall be due and payable to the City prior to issuance of a building permit for each dwelling unit.

(d) Refunds. In the event a developer does not use a building permit for construction of a dwelling unit, the City will refund the fee collected for that dwelling unit at the time of

expiration of the building permit. In addition, the City shall commit the funds to the uses authorized under this Chapter within five (5) years of the latter of the date the fee was paid, the issuance of buildings permits on one-half of the lots created by the subdivision, or the construction of one-half of the dwelling units for developments not involving subdivisions. If such fees are not committed within this time, they, without any deductions, shall be distributed and paid to the then record owners of the properties in the same proportion that the size of their lot bears to the total area of all lots within the development.

**17.35.090 Exceptions.**

This Chapter shall not apply to the following developments:

- (a) Commercial or industrial subdivisions that involve no residential component.

Notwithstanding the foregoing, the City may, at its discretion, impose a condition on the approval of a parcel map or subdivision map requiring that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels within four years, the City may require the owner of each parcel to pay the fee as a condition of the issuance of the permit.

- (b) Convalescent hospitals and similar dependent care facilities.

- (c) Residence halls on the campus of a college or university.

- (d) In the event that a developer pays a fee or dedicates land pursuant to this Chapter for a multifamily rental housing development without a subdivision, and the developer or his successors subsequently subdivides the development within fifteen (15) years, the developer or his successors shall not be required to pay the fee or dedicate land for the subsequent subdivision that would be required under this Chapter.”

- (e) Accessory Dwelling Units, as defined by the Zoning Ordinance.


**SECTION 4: Savings clause.** The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

**SECTION 5: Constitutionality, severability.** If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

**SECTION 6: Effective date.** This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”


**PASSED FOR THE PURPOSE OF PUBLICATION** this 24<sup>th</sup> day of June, 2014, by the following vote:

AYES:	COUNCILORS:	Davis, Gillmor, Kolstad, Mahan, Marsalli and O’Neill and Mayor Matthews
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:   
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ROD DIRIDON, JR.  
CITY CLERK  
CITY OF SANTA CLARA

**FINALLY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA** this 15<sup>th</sup> day of July, 2014, by the following vote:

AYES:	COUNCILORS:	Davis, Gillmor, Kolstad, Mahan, Marsalli and O’Neill and Mayor Matthews
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:   
\_\_\_\_\_  
ROD DIRIDON, JR.  
CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference: None