



Maya Sanchez
Mayor

Leticia Miranda
Alderson Place 1

David Cantu
Alderson Place 2

Miguel Najera Jr.
Alderson Place 3

Rebecca Martinez-Juarez
Alderson Place 4

George Almanzar
Alderson Place 5

ORDINANCE No. 1705.01

PARK LAND DEDICATION AND DEVELOPMENT FEE ORDINANCE

AN ORDINANCE APPROVING AND ENACTING THE “PARK LAND DEDICATION AND DEVELOPMENT FEE ORDINANCE” OF THE CITY OF SAN ELIZARIO AND PROVIDING FOR THE FOLLOWING: ESTABLISHING CRITERIA FOR PARK LAND DEDICATION AND ACCEPTANCE; IMPOSING FEES FOR PARK LAND DEDICATION AND PARK DEVELOPMENT; AND AN EFFECTIVE DATE

RECITALS

WHEREAS, the City Council (“City Council”) of the City of San Elizario (“City”) seeks to promote orderly, safe and reasonable development of land within the city limits and extraterritorial jurisdiction; and

WHEREAS, the Council recognizes and supports the rights of private property owners, and advocates clarity, predictability and efficiency in the City's regulatory program in relation to those rights; and

WHEREAS, the Council seeks to balance the right to develop property with the needs of the community via intervening regulations or regulatory changes; and

WHEREAS, the Council finds that park land regulations: enhance the community’s quality of life which embraces its livability, aesthetic integrity, and sense of community; enhance ecological and environmental preservation, and biodiversity; improve water quality, air cleansing, and flood control; provide desired facilities for recreation and sporting events for the community; engage the community in passive and active recreation; contribute economically to the vitality of the City’s business setting; and promote cultural, artistic and sporting endeavors; and

WHEREAS, pursuant to Texas Local Government Code Section 331.001, the City has the authority to acquire parks; and

WHEREAS, pursuant to Texas Local Government Code Chapter 212, a municipality may adopt rules governing the subdivision of land to promote the healthy, safety, morals, and general welfare of the municipality; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City finds that an ordinance regulating park land is for the good government, peace or order of the City and is necessary and proper for carrying out a power granted by law to the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of San Elizario:

ARTICLE I. FINDINGS OF FACT

The foregoing recitals are adopted as facts and are incorporated fully herein.

ARTICLE II. ADOPTION AND ENACTMENT

The City Council hereby adopts and enacts the “**Park Land Dedication and Development Fee Ordinance**”, contained in *Attachment A*, attached hereto and incorporated fully herein.

ARTICLE III. REPEALER AND SEVERABILITY

REPEALER: All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SEVERABILITY: Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

ARTICLE IV. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage.

PASSED AND APPROVED this, the 25th day of July, 2017, by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of San Elizario, Texas.

CITY OF SAN ELIZARIO, TEXAS



Maya Sanchez, Mayor

CITY OF SAN ELIZARIO

PARK LAND DEDICATION
AND
DEVELOPMENT FEE
ORDINANCE

Adopted July 25th, 2017

CITY OF SAN ELIZARIO
PARK LAND DEDICATION AND DEVELOPMENT FEE ORDINANCE

ARTICLE I. PURPOSE AND APPLICABILITY

A. Purpose and Intent.

- (1) The requirements contained in this Ordinance are intended to ensure that there will be sufficient land and adequate park facilities dedicated in residential development to meet the demands and needs of the community and residents of those developments for recreational areas and amenities.
- (2) It is declared by the City Council of the City of San Elizario that recreation areas in the form of parks and open spaces are necessary and in the public welfare, and that the only adequate procedure to provide for same is by integrating such a requirement into the procedure for planning and developing property or subdivisions in the City.

B. Park Land Dedication and Park Improvements Required.

A developer shall prepare a park plan to provide for sufficient and suitable park land and park improvements for the purpose of public recreation in accordance with this Ordinance. Acceptance of public improvements shall not issue nor site permits shall be issued for any residential development unless and until park lands have been dedicated or cash paid in lieu of dedication in accordance with this Ordinance.

C. Application of Ordinance.

- (1) This Ordinance shall apply within the City's corporate limits, in addition to the extraterritorial jurisdiction of the City pursuant to the subdivision regulation process.
- (2) This Ordinance shall not apply to properties:
 - (a) in an application generating five dwelling units or less. An Applicant may not attempt to utilize this exemption by separating the project into a series of smaller projects. The exemption authorized by this section may only be utilized once, and may not applied to subsequent divisions of the property;
 - (b) in an application where the lots or parts are greater than five (5) acres, and no public improvements are being made; or
 - (c) in a valid preliminary or final plat application submitted before the effective date of this Ordinance.

ARTICLE II. DEFINITIONS

The following words, terms and phrases are, for the purpose of this Ordinance, defined as follows except where the context clearly indicates a different meaning:

Applicant; Developer a person or entity who submits to the City an application for development to include the property owner(s), a duly authorized agent or representative

of the property owner, or the developer; the person or entity must have sufficient legal authority or proprietary interests in the land.

<i>Application</i>	an application submitted by an Applicant or a Developer for subdivision development in accordance with the City's subdivision ordinance or for site development.
<i>City</i>	the City of San Elizario, Texas.
<i>City Administrator</i>	the City Administrator of the City of San Elizario or his/her designee.
<i>Dwelling unit</i>	an individual residential unit, including each individual residential unit in a multi-family residential structure or manufactured home park, designed or intended for habitation by a single family.
<i>Ordinance</i>	this Park Land Dedication and Development Fee Ordinance.
<i>Park purposes</i>	may include but are limited to multipurpose trails, equestrian trails, open space buffer areas, swimming pools, active recreation for team or individual sports, playground, picnic area, and similar uses.
<i>Recreational area</i>	park land that is intended for organized sporting events, individual athletic exercise, playgrounds and leisure activities, and typically has improvements designed to accommodate these types of activities; examples of uses include but are not limited to ballfields, swimming pools, playgrounds, ball courts, picnic tables, cabanas, shelters, and jogging tracks.

ARTICLE III. PARK LAND DEDICATION

A. Park Land Dedication for Residential Development Required.

An applicant with residential properties shall provide for park land dedication or a payment of cash in lieu of designated parkland in accordance with this Ordinance. Residential properties include:

- (a) single-family; or
- (b) multifamily or condominium and have five (5) or more dwelling units; or
- (c) a combination of single-family and multi-family.

B. Dedication Amount.

- (1) The amount of land to be dedicated for parkland shall be calculated at a ratio of one acre per 50 dwelling units for single and multi-family residential developments;
- (2) Where less than five acres of park land dedication are calculated and proposed, the City Administrator may:
 - (a) accept the land dedication;
 - (b) require payment of a fee-in-lieu of land dedication as specified herein; or
 - (c) accept a combination of land dedication and fee-in-lieu of as prescribed herein.

C. Multi-phase or Master Plan Development.

In the case of a multi-phase or master plan development, if the developer dedicates all park land required in the first or early phase(s) of the development, no additional park land dedication will be required in later phases unless additional lots that are not shown in the original master plan are included in the later phases of the development.

ARTICLE IV. FEE IN-LIEU-OF PARK LAND DEDICATION

A. Fee In-Lieu Requirement.

- (1) An applicant may meet the dedication requirements of this Ordinance
 - (a) in whole by a fee payment in lieu of park land; or
 - (b) in part by a combination of park land dedication and a fee in lieu of the parkland dedication accepted by the City upon approval by the City Council.
- (2) An applicant shall pay a fee in-lieu of park land dedication:
 - (a) if the amount of park land required to be dedicated is less than three (3) acres; or
 - (b) if the park land to be dedicated is unacceptable, unavailable, or unsuitable under the standards established by the criteria for acceptance as described in this Ordinance.

B. Fee Amount; Calculation.

- (1) The amount of the fee shall be calculated as shown in Article X, herein. In no case shall the fee be less than \$500, \$1050.00 per dwelling unit for residential development.
- (2) Basis for Calculation of Fee-in-Lieu. The market value per acre of the total land being subdivided or developed under a site plan shall be use in the calculation of the amount of the fee-in-lieu. The market value shall be determined at the time the Applicant submits an application. For assessing market value, the City may employ the services of the appraiser. Preliminary plat fees paid by the applicant shall include reimbursement to the city for the expense of the appraisal. Alternatively, an Applicant may acquire appraisal services from an appraiser mutually agreed upon by the City and the Applicant.

C. Fee Payment.

- (1) The applicant shall pay the fee-in-lieu to the City prior to filing the plat for record or prior to the issuance of a building permit where a plat is not required. No permit shall be issued nor shall any construction be allowed to begin until payment of all fees required has been made.
- (2) All funds collected pursuant to this section shall be segregated in a separate fund to be spent only for the acquisition and improvements of park land within the City that meet the needs of the residents of the development or subdivision to which such payment was made.
- (3) A payment in lieu of land dedication does not relieve the Applicant of the obligation to pay the park development fee which is in addition to the park land dedication.

D. Fee Review.

The City shall review the fees established and amount of land dedication required at least once every three (3) years.

ARTICLE V. CRITERIA FOR PARK LAND DEDICATION AND ACCEPTANCE

A. Standards for Dedication of Park Land

Land dedicated for park land and recreational park purposes shall be of size, dimensions, topography, and general character, and location consistent with the following standards:

- (1) No flood-plain or ponding areas shall be deeded for parkland. Only flatland with acceptable drainage is acceptable. At least 50% of the dedicated parkland shall be level, well-drained, and suitable for use as an open playfield.
- (2) A minimum of one hundred feet (100') of frontage contiguous with a public access way is required.
- (3) Park land dedication sites shall not be abutted by private properties on more than two-thirds of the total boundary dimension of such site.
- (4) The parkland dedication shall not include land required and utilized for utility easements.
- (5) Paving frontage, curbing, gutter and utility extensions for all street frontage abutting the outside perimeter of the parkland are required.
- (6) An accessible route adjacent to the curb on all street frontage abutting the outside perimeter of the parkland of a minimum width and construction to provide accessibility to individuals with disabilities for A.D.A. compliance shall be installed.
- (7) All electrical lines shall be placed underground.
- (8) Grading, automatic irrigation and turf within the park land boundaries, the design and installation are to be installed.
- (9) Water and wastewater connections shall be readily available at the park site with water and wastewater lines located along the street frontage of the park. The Applicant must demonstrate that there is sufficient water and wastewater utility line capacity available to serve the park.
- (10) The area shall not be subject to any reservation of record, encumbrances of any kind, or easements which will interfere with the use of the land for park or recreational purposes.
- (11) A site containing hazardous and or municipal waste materials or an existing or prior dump site will not be accepted under any circumstance by the City for park land dedication.
- (12) Rare, unique, endangered, historic or other significant natural areas will be given a high priority for dedication. Areas that provide an opportunity for linkages between parks or that preserve the natural character of the surrounding environment may be required by the City to be included in the park land dedication.

B. Onsite Inspection.

The City Administrator shall make an onsite inspection of the property for the purposes of determining site suitability and identification of any visual hazards or impediments to park development and use.

C. Identification of Park Land Dedication.

Each corner of the park land dedication shall have an iron rod or pin set. In the absence of a plat, the location of iron rods or pins set for corners shall be identified on a recordable land survey and approved by the City.

D. Plat Application Compliance; Conveyance to City.

- (1) The area to be dedicated for the purpose of parkland shall be shown on the conceptual plan, the preliminary plat, and the final plat, and shall be included in the dedication statement. If the project is built in phases, designated park land for the entire development shall be shown on the preliminary plat and final plat for all phases. A plat application must include approval of compliance with this Ordinance.
- (2) The Applicant shall dedicate parkland to the City as a part of the final plat approval. Prior to recording of the final plat, the Applicant shall deliver to the City Administrator the deed conveying fee simple title to the City of all park land shown on the approved final plat. Where a plat is not required, the park land shall be dedicated to the City prior to the issuance of a building permit in fee simple to the City through a general warranty deed and acceptable evidence of clear title and evidence that all taxes have been paid.

ARTICLE VI. PARK DEVELOPMENT FEE

A. Park Development Fee.

- (1) The City Council declares that a park development fee shall be required for the development of amenities and improvements on the dedicated land in order to meet the standards for a neighborhood park to serve the area in which the subdivision is located.
- (2) An Applicant shall pay a park development fee in addition to the required dedication of land or fee-in-lieu of park land dedication.

B. Park Development Fee Amount.

- (1) The park development fee for residential development shall be computed on the basis of the cost of developing an average neighborhood park in accordance with the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers. This index shall be updated annually by the City.
- (2) The fee amount shall be calculated as shown in Article X, herein, but in no case shall be less than \$750, \$400.00 per dwelling unit for a residential development.

C. Payment of Park Development Fee.

Park development fees shall be paid to the City prior to approval of a final plat or short form plat, or in the case of multifamily development, prior to issuance of a site development permit.

D. Construction Option in Lieu of Park Development Fee

- (1) In lieu of payment of a park development fee, and upon approval by the City Administrator, the Applicant may construct the park improvements in accordance with the standards and minimum design and construction requirements of the City's Design and Construction Standards for Park Facilities.
- (2) These park improvements shall be designed, reviewed and permitted in conjunction with a site development permit application, and/or subdivision construction plans, as deemed appropriate by the City Administrator.
- (3) All plans and specifications for the construction of such amenities and improvements shall be submitted for review and approved by the City.
 - (a) All construction shall be sealed by a landscape architect registered in the State of Texas, and be reviewed and approved by the City Administrator prior to construction.

- (b) The Applicant shall financially guarantee the construction of such park improvements by providing performance and payment bonds or an irrevocable letter of credit prior to beginning construction of the park improvements. Performance and payment bonds shall name the City as dual obligee and shall cover 100% of the estimated construction cost of such park improvements as shown in a construction contract executed by the Applicant. Such fiscal surety shall be held by the City until either the City has accepted all public park improvements and title to the public park land, or the City has approved on final inspection all private park improvements. Such fiscal surety shall be in a form that shall not expire unless specifically released by the City.
 - (c) All park improvements may be inspected by the City while construction is in progress.
 - (d) Upon completion of construction, the Applicant shall provide to the City a two year maintenance bond that is equal in an amount to 100% of the construction cost of said park improvements and a manufacturer's letter stating that the main play structure and safety surface was installed in accordance with the manufacturer's installation requirements.
- (4) All park areas and playground equipment shall be in accordance with the U.S. Consumer Products Safety Commission - Publication 325, as currently amended and in accordance with current provisions of the Americans with Disabilities Act and applicable State statutes.
 - (5) Amenities and improvements shall include one (1) or more children's play areas, picnic areas, game court areas, turf play fields, swimming pools, recreational buildings, trails (sidewalks, walkways or bike trails), and landscaped sitting areas.
 - (6) The value of amenities and improvements shall be greater than or equal to \$400.00 per dwelling unit.
 - (7) The park improvements shall be completed prior to release of fiscal surety or, in the case of a multifamily development, prior to issuance of a certificate of completion or a certificate of occupancy for the project.
 - (8) Upon acceptance of the park improvements by the City, the Applicant shall deed and convey such improvements to the City free and clear of any lien or other encumbrances.

ARTICLE VII. PARK FUND

A. Park Fund Established; Purpose.

The City hereby creates a separate fund to be entitled "Park Fund." Contributions collected as a fee in-lieu of park land dedication, and park improvements fees, shall be held in said fund in trust to be used by the City solely and exclusively for the purpose of purchasing, improving, and/or renovating public park and recreational land and shall not be used for maintaining or operating public park facilities. Such fund shall be invested or held in an interest-bearing account and all earnings and interest shall accrue to the Park Fund.

B. Refunds.

The cash contributions must be expended within ten (10) years from the date of contribution for the acquisition, maintenance or improvements of park land that benefits the applicant's subdivision. This period may be extended by up to five (5) years if the Applicant's subdivision is less than fifty percent (50%) constructed, as determined by the city engineer. If at the end of the period, the contributions have not been expended, the Applicant is entitled to a refund of any remaining fees. If during the period provided by this section the plat is vacated or replatted

for a less-intense use, the Applicant may request a partial refund of any unexpended balance on an annual *pro rata* basis. A refund request must be submitted in writing to the City within six (6) months of eligibility for the refund or the right to receive the refund will be deemed waived and the funds shall remain as property of the City and be used for the general purpose of park land acquisition, design and development as expressed in this Ordinance.

**ARTICLE VIII. PRIVATE PARK LAND AND PARK IMPROVEMENTS;
HOMEOWNERS' ASSOCIATION**

A. Privately Owned & Maintained Parks.

An Applicant may submit to the City for review and approval a plan to provide privately owned and maintained park land and park improvements meeting all requirements of this Ordinance in-lieu of public park land dedication and public park improvements. Such a plan shall meet the following:

- (1) Private ownership and perpetual maintenance of such areas and facilities shall be adequately provided for by recorded written agreement, conveyance, and/or restrictions.
 - (a) The conditions, covenants and restrictions (CCRs) and association documents, such as the articles of incorporation and association by-laws for a Homeowners' Association, shall be submitted to the city for review and approval along with the preliminary plat application, and shall be filed of record at the county prior to final plat approval in order to ensure that there is an entity in place for long-term maintenance of these improvements.
 - (b) Said documents must, at a minimum, include provisions that allow the city to take over the maintenance of common property, including but not limited to private streets and private recreation facilities, using association funds, if such action becomes necessary due to nonperformance or inaction by the association or if the association goes defunct.
 - (c) Provisions shall also be included which would convey ownership to the City of the private streets (if any) and all other common areas, and which would allow the city to remove any improvements or amenities from the common areas and sell any buildable land area, as residential lots, to recoup the city's expenses for maintenance or demolition of the improvements. Any monies that remain after the city has recovered all of its expenses shall be retained for future maintenance or upgrading of the streets, common areas, screening walls, or other improvements within the subdivision.
- (2) The use of such areas and facilities in the plan shall be restricted to park and recreational purposes by a recorded covenant, which runs with the land in favor of the future owners of property, and which cannot be defeated or eliminated without the consent of the Council.

B. Membership Qualifications.

A property owners' or homeowners' association shall be an incorporated nonprofit organization operating under recorded land agreements through which:

- (1) each lot owner within the described land area is automatically a mandatory member; and
- (2) each lot is automatically subject to a charge for a proportionate share of the expenses for the property owners or homeowners association's activities, such as maintenance of common open spaces or private streets, or the provision and upkeep of common recreational facilities.

ARTICLE IX. APPROVAL AND APPEAL PROCESS

- A. The City Administrator shall be review and approve of all park land dedication and park development fees submitted.
- B. Any decision made by the City Administrator under this Ordinance may be appealed to the Planning and Zoning Commission of the City of San Elizario. If submitted as part of a plat, a final decision shall be issued by the City Council.

ARTICLE X. CALCULATIONS

I. Calculation of Fee-in-Lieu of Park Land Dedication

The fee-in-lieu is an estimate of the cost to the City to purchase land for park land. The amount shall equal the value of the amount of park land acreage corresponding to the anticipated dwelling units. To calculate the fee, the cost of acquiring one acre of vacant land in a developing area of the community is determined. This cost shall be calculated as the average estimated fair market value per acre of the land being subdivided at the time of the Applicant's application.

Calculation Examples: at 1 acre per 50 dwelling units (DU):

- a. Cost of the land = \$50,000/acre; conveyance = 1acre/50 DU; then $\$50,000/50 = \$1,000/DU$
- b. Cost of land = \$75,000/acre; conveyance = 1acre/50 DU; then $\$75,000/50 = \$1,500/DU$
- c. Cost of land = \$100,000/acre; conveyance = 1acre/50 DU; then $\$100,000/50 = \$2,000/DU$

II. Calculation of Park Development Fee

The park development fee is the cost to the City of developing an average park with improvements and facilities with costs in accordance with the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers, updated annually by the City. The dedication factor shall be applied to the cost to determine the pro-rata share per new dwelling unit for recreational improvements-facilities.

Calculation Example: based on the cost of developing an average neighborhood park in the City.

- a. Cost for developing an average neighborhood park = \$1.2mil;
- b. One neighborhood park serves 2,500 people (LOS = 2 acres/1,000 population or 1 acre/500); Park size of 5 acres serves 500 people/acre x 5 = 2,500 people;
- c. Cost to develop an average inter-generational neighborhood park: $\$1.2\text{mil}/2,500 = 480/\text{person}$.
- d. The average household contains 2.77 persons;
- e. Neighborhood park development fee is calculated as: $\$480 \times 2.77 = \$1,330/DU$