

## CHAPTER FIVE: PLANNING, ZONING, USE, AND DEVELOPMENT OF LAND AND IMPROVEMENTS

### Subchapter 5.13: Park Land Dedication

#### 5.13.010 Authority

This subchapter is enacted pursuant to the authority granted by the Subdivision Map Act, Government Code section 66477, and the general police power of the Town. The park and recreational facilities for which dedication of land and/or payment of a fee is required by this subchapter are in accordance with the General Plan of the Town of Colma, and any amendments thereto.

[*History:* ORD. 641, 3/14/06]

#### 5.13.020 General Requirement

(a) A person shall dedicate land for park, trail or recreational purposes, pay a fee instead, or do a combination of both, as a condition of approval of a tentative map or parcel map of land zoned or planned for residential use by one or more dwelling units.

(b) Subdivisions containing less than five parcels and not used for residential purposes shall be exempt. However, in that event, a condition may be placed on the approval of a parcel map 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 fee may be required to be paid by the owner of each parcel as a condition of issuance of the permit.

[*History:* Ord. 641, 3/14/06]

#### 5.13.030 General Standard for Dedication of Land or Payment of Fee

(a) The amount of land to be provided shall be determined by multiplying 0.003 acres per person in the dwelling unit (which is the same as three acres per 1,000 persons) times the total number of dwelling units in the development times the average number of persons per dwelling unit in the subdivision for which approval of a map is sought.

(b) The City Council finds and determines that the public interest, convenience, health, welfare and safety require that three acres of property for each 1,000 persons residing within the city be devoted to local park, trail and recreational purposes.

[*History:* Ord. 641, 3/14/06]

#### 5.13.040 Formula for Dedication of Land

(a) The amount of land to be provided shall be determined by multiplying 0.003 acres per person in the dwelling unit (which is the same as three acres per 1,000 persons) times the total number of dwelling units in the development times the average number of persons per dwelling unit in the subdivision for which approval of a map is sought.

(b) There shall be a rebuttable presumption that the average number of persons in a dwelling unit in the subdivision will be 3.47. An applicant proposing that the average number of persons in a proposed development will be less than 3.47 persons per dwelling unit shall include sufficient data in the project application to justify the proposal.

(c) The developer may be required, without credit against the amount of land to be dedicated, to:

- (1) Provide full street improvements and utility connections pursuant to city standards to the dedicated land;
- (2) Provide improved grading and drainage throughout the dedicated land; and
- (3) Provide other improvements which the City Council determines to be essential to the use of the dedicated land.

[History: Ord. 641, 3/14/06]

#### **5.13.050 Formula for Fees in Lieu of Land Dedication**

(a) *General Formula.* If there is no park or recreational facility designated in the Town of Colma's General Plan to be located in whole or in part within the proposed subdivision to serve the immediate and future needs of the residents of the subdivision, the developer shall, in lieu of dedicating land, pay a fee equal to the value of the land prescribed for dedication in section 5.13.040 and in an amount determined in accordance with the provisions of section 5.13.090, the fee to be used for a local park or recreational facility which will serve the residents of the area being subdivided.

(b) *Fees in Lieu of Land--50 Parcels or Less.* If the proposed subdivision contains 50 parcels or less and is not a condominium, stock cooperative or community apartment project containing more than 50 dwelling units, the developer shall pay a fee equal to the land value of the portion of the local park or recreational facility required to serve the needs of the residents of the proposed subdivision as prescribed in Section 5.13.040 and in an amount determined in accordance with the provisions of Section 5.13.090.

[History: Ord. 641, 3/14/06]

#### **5.13.060 Use of Fees**

(a) *Purpose.* The money collected hereunder shall be used only for the purpose of providing park or recreational facilities reasonably related to serving the subdivision by way of the purchase of necessary land or, if the City Council deems that there is sufficient land available for the subdivision, for improving of such land for park and recreational purposes.

(b) *Facilities.* The City Council finds and determines that the relatively compact geography of Town, the range of recreational programs offered by the Town and non-profit groups which use Town facilities, and the mobility of its residents result in residents of each area of the Town making use of and being served by all parks and recreational facilities owned by the Town.

Accordingly fees collected under this Article may be used in any Town park or recreational facility.

(c) *Time to Commit.* The money shall be committed within five (5) years after payment or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the money is not committed, it shall be distributed and paid to the then record owners of the subdivision in the same proportion the size of their lot bears to the total area of all lots in the subdivision.

[*History:* Ord. 641, 3/14/06]

#### **5.13.070 Criteria for Requiring both Dedication and Fee.**

In subdivisions of over 50 lots, or, in the case of a condominium project, stock cooperative or community apartment project, if the subdivision contains more than fifty (50) dwelling units the developer shall both dedicate land and pay a fee in lieu of dedication in accordance with the following:

- (1) When only a portion of the land to be subdivided is proposed in the General Plan as the site for a local park or recreational facility, such portion shall be dedicated for local park purposes and a fee computed pursuant to the provisions of section 5.13.090 hereof shall be paid for any additional land that would have been required to be dedicated pursuant to § 5.13.040.
- (2) When a major part of the local park or recreational site has already been acquired by the Town and only a small portion of land is needed from the subdivision to complete the site, such remaining portion shall be dedicated and a fee computed pursuant to section 5.13.090 shall be paid in an amount equal to the value of the land which would otherwise have been required to be dedicated pursuant to section 5.13.040. The fees shall be used for the improvement of the existing park and recreational facility or for the improvement of other local parks and recreational facilities reasonably related to serving the subdivision.

[*History:* Ord. 641, 3/14/06]

#### **5.13.080 Amount of Fee in Lieu of Park Land Dedication.**

(a) When a fee is required to be paid in lieu of park land dedication, the amount of the fee shall be based upon the average estimated fair market value of the land being subdivided or the fair market value of the land which would otherwise be required to be dedicated according to 5.13.040.

(b) The fair market value shall be as determined by the Planning Department at the time of final map or parcel map approval. If the developer objects to the fair market value determination, the developer may request the Town to obtain an appraisal of the property by a qualified real estate appraiser mutually agreed upon by the Town and the developer, which appraisal will be considered by the Town in determining the fair market value. All costs required to obtain such appraisal shall be borne by the developer.

[History: Ord. 641, 3/14/06]

**5.13.090** Subdivisions not within General Plan.

When the proposed subdivision lies within an area not then within, but to be included within, the Town's General Plan, the developer shall dedicate land, pay a fee in lieu thereof, or both, in accordance with the adopted park and recreational principles and standards of the Town's General Plan and in accordance with the provisions of this article.

[History: Ord. 641, 3/14/06]

**5.13.100** Determination of Land or Fee.

(a) Land dedication, or payment of a fee in lieu thereof, or a combination of both, shall be determined by consideration of the following:

- (1) Community Resources of the Town's General Plan;
- (2) Topography, geology, access and location of land in the subdivision available for dedication;
- (3) Size and shape of the subdivision and land available for dedication;
- (4) Feasibility of dedication; and
- (5) Availability of previously acquired park property.

(b) The determination by the Town as to whether land shall be dedicated, or whether a fee shall be charged, or a combination, shall be final and conclusive.

[History: Ord. 641, 3/14/06]

**5.13.110** Credit for Private Recreation or Open Space.

(a) Where a substantial private park and recreational area is provided in a proposed subdivision and such space is to be privately owned and maintained by the future residents of the subdivision, partial credit, not to exceed 50%, may be given against the requirement of land dedication or payment of fees in lieu of, if the City Council finds that it is in the public interest to do so and that all the following standards are met:

- (1) That yards, court areas, setbacks and other open areas required to be maintained by the zoning and building ordinances and regulations shall not be included in the computation of such private open space;
- (2) That the private ownership and maintenance of the open space is adequately provided for by recorded written agreement, conveyance or restrictions;
- (3) That the use of the private open space is restricted for park and recreational purposes by recorded covenant, which runs with the land in favor of the future

owners of property and which cannot be defeated or eliminated without the consent of the Town or its successor

- (4) That the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location;
- (5) That facilities proposed for the open space are in substantial accordance with the provisions of the General Plan; and
- (6) That the open space for which credit is given provides one or more of the following local park basic elements listed below, or a combination of such and other recreational improvements that will meet the specific recreation park needs of the future residents of the area: children's play apparatus area, landscaped park-like and quiet areas, family picnic area, game court area, turf playfield, recreation center building, recreational community gardening area, and public access to public trails and parks.

(b) Before credit is given, the City Council shall make written findings that the above standards are met.

*[History: Ord. 641, 3/14/06]*

#### **5.13.120 Procedure.**

(a) At the time of approval of the tentative subdivision or parcel map, the City Council shall determine, after a report and recommendation from the City Planner whether land is to be dedicated or in-lieu fees are to be paid by the developer or any combination of land and fees. The recommendation by City Planner shall include the following:

- (1) The amount of land required; or
- (2) That a fee be charged in lieu of land; or
- (3) That land and a fee be required; and/or
- (4) That a stated amount of credit be given for private recreation facilities or unique natural and special features, etc.;
- (5) The action in subsection a. above shall be reviewed by the Planning Commission or the Zoning Administrator for concurrence. If concurrence is not obtained, this matter will be forwarded to the City Council for final determination. In making its determination, the Council shall be guided by the same standards contained in this article where applicable.

(b) At the time of the filing of the final or parcel map, the developer shall dedicate the land and/or pay the fees as determined by the Town.

(c) Open space covenants for private park or recreational facilities shall be submitted to the Town prior to approval of the final subdivision map and shall be recorded contemporaneously with the final subdivision map.

(d) The City Planner shall develop a schedule specifying how, when and where the Town will use the fees to develop park or recreation facilities in compliance with Section 5.13.090. This schedule may be presented to the City Council and, after their review, incorporated in the Capital Improvement Program of the Town. The schedule may be amended from time to time and may be modified by action of the City Council in the adoption of the Capital Improvement Program or by other Council action.

[*History*: Ord. 641, 3/14/06]

#### **5.13.130 Commencement of Development.**

At the time of approval of the final or parcel map, the Town shall specify when development of the park or recreational facilities shall be commenced.

[*History*: Ord. 641, 3/14/06]

#### **5.13.140 Non-Applicable Subdivisions.**

The provisions of this article do not apply to commercial or industrial subdivisions, condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building which is more than five years old when no new dwelling units are added.

[*History*: Ord. 641, 3/14/06]

#### **5.13.150 Severability.**

Each of the provisions of this ordinance is severable from all other provisions. If any article, section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

[*History*: ORD. 641, 3/14/06]