

(Title: An ordinance amending Appendix B, Section IV of the Code of Ordinances of the City of Friendswood.)

ORDINANCE NO. T2012-24

**AN ORDINANCE AMENDING APPENDIX B, SECTION IV
OF THE CODE OF ORDINANCES OF THE CITY OF
FRIENDSWOOD, TEXAS.**

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WHEREAS, on January 17, 2000, the City Council of the City of Friendswood passed and adopted Ordinance No. 2000-01, setting forth regulations for, among other things, subdivision development and providing for the dedication of parkland and related matters; and

WHEREAS, Ordinance No. 2000-01 has been amended from time to time to address legislative changes and changed circumstances in development practices; and

WHEREAS, the City Council of the City of Friendswood, Texas has determined that due to additional changed circumstances, it their desire to implement certain changes to Appendix B, Section IV of the Code of Ordinances of the City of Friendswood, Texas to update the City's requirements for parkland dedication and/or the payment of fees in lieu of such dedication,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRIENDSWOOD, STATE OF TEXAS:

Section 1. Appendix B, Section IV of the Code of Ordinances of the City of Friendswood, Texas entitled "Parkland dedication" is hereby amended to read as provided for on the Exhibit "A" attached hereto.

Section 2. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or provision hereof other than the part declared to be invalid or

unconstitutional; and the City Council of the City of Friendswood, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

PASSED AND APPROVED on first reading this 1st day of October, 2012.

PASSED, APPROVED, and ADOPTED on second and final reading this 5th day of November, 2012.

Kevin M. Holland
Mayor

ATTEST:

Melinda Welsh, TRMC
City Secretary

EXHIBIT "A"

Section IV. - Parkland dedication.

a. Purpose.

1. This section provides recreational areas in the form of city parks as a function of subdivision development in the City of Friendswood, Texas. This section is enacted in accordance with the home rule powers of the City of Friendswood under the Texas Constitution, and the statutes of the State of Texas, including, but not by way of limitation, Texas Local Government Code Chapter 212 [V.T.C.A., Local Government Code ch. 212].

2. Park areas shall be recommended by the Parks and Recreation Board and shall be shown on an official parks and recreation map for the City of Friendswood, which shall be adopted and may be modified from time to time by the City Council. Proposed city parks and recreational areas will be established by review with the developer and city staff at the earliest possible stage of development planning, and a proposed subdivision or development shall be reviewed in its entirety and not by sections or phases.

3. The primary cost of city parks should be borne ultimately by residential property owners as they shall be the primary beneficiaries of such facilities. New residents will increase the demands for parks proportionally, and new growth should bear their share of the costs of those facilities. Therefore, the following requirements are adopted to effect the purposes herein stated.

b. General requirements. Residentially zoned land, to be used for single-family, townhomes, garden homes, mobile homes, and/or multifamily residential purposes.

1. Whenever a final plat is filed of record with the County Clerk of Galveston County or Harris County for development of a residential area in accordance with the platting and zoning regulations of the city, such plat shall contain a clear fee simple dedication to the city of an area of land for park purposes, which area shall be equal to one acre for each 133 proposed dwellings, based on the proposed subdivision or development in its entirety and not by sections or phases. Any proposed plat submitted to the city for approval shall show the parkland proposed to be dedicated under this subsection. The dedication required by this section may be met by a payment of money in lieu of land when permitted or required by the other provisions of this subsection. The dedication required by this section should be in accordance with goals outlined within the City of Friendswood Parks and Open Space Master Plan, as amended from time to time, or be located at the site for an identified existing park.

2. The City Council declares that development of an area smaller than five acres for the purpose of a city park is impractical. Therefore, if fewer than 655 dwellings are proposed by a plat filed for approval, the developer shall be required to pay the applicable cash in lieu of land amounts provided by subsection "d" hereof, rather than to dedicate any land area. In most instances, no plat showing a dedication to the city of less than five acres shall be approved; provided, however, that the city may accept smaller parcels where such proposed dedication is in the best interests of the city, such as when a smaller parcel is adjacent to an existing park or future park site.

3. Developers should evaluate their proposed development and proposed dedication with city staff to ensure that as soon in the development process as possible the land dedicated is usable for city parks purposes.

4. A dedication required by this section shall be made in accordance with subsection "d.1.", below. If the actual number of completed dwelling units exceeds the figure upon which the original dedication was based, an additional dedication shall be required, and shall be made by payment of the cash in lieu of land amount provided by subsection "d" hereof.

c. Timing of dedication or payment of fees in lieu of land.

1. Parkland shall be dedicated to the city at the time of filing of the final plat of the first phase and section, if a phased development. The dedication shall be made contemporaneously by separate instrument and must be accepted by the City Council prior to the filing of the final plat. Lack of acceptance of such dedication shall preclude the filing of the final plat and shall not relieve the subdivider of complying with the requirements of this section. Where a dedication of parkland for the entirety of a phased development is proposed, the parkland shall be shown on the plat, if included within the first phase, and dedicated by separate instrument, or dedicated by separate instrument if located outside of the first phase of development, at the time of filing the final plat for the first section of such phased development.

2. Payment of fees in lieu of land shall be done at the time of filing of the final plat. Where payment of fees in lieu of land for parks for the entirety of a phased development is planned, such payment may be made in full for all phases of the proposed development at the time of filing of the plat for the first phase, or payment of fees in lieu of land for each section of a phased development may be made at the time of filing of the final plat for each phase or section, at the discretion of the developer.

d. Fees in lieu of land.

1. Any landowner responsible for dedication under this section shall review their proposed development with city staff, including the Parks and Recreation Board on recommendation of staff, prior to or simultaneously with making any formal application to the city, for the purpose of evaluating compliance with this section. If no agreement is reached between the developer and city staff, then within 14 days from receipt of a written request by the developer, city staff shall submit the issue, as provided for in the developer's formal application, to the Parks and Recreation Board. If the Parks and Recreation board can reach a written agreement with the developer, that recommendation shall be final, subject to the acceptance of such dedication by City Council as described in [this] subsection "d". If the Parks and Recreation Board cannot reach an agreement with the developer, the Planning & Zoning Commission shall hear the issue at their [its] next meeting, and shall make the final decision. This decision is final unless there is a substantial change in conditions. Generally, the landowner will have the option to dedicate land or pay fees in lieu thereof. However, the city expressly reserves the right to require dedication of land rather than accept fees in instances including, but not limited to, the proposed development is adjacent to an existing city park or in areas in which additional parkland is desired.

2. As provided above, any landowner responsible for dedication under this section shall, when permitted meet the requirements of subsection "c" or [this subsection] "d" hereof in whole or in part by a cash payment in lieu of land, in the amount set forth in subsection 4 hereof. Such payment in lieu of land shall be made at or prior to the time of final plat approval for city parks as described in subsection c.1. of this section.

3. A per-dwelling unit fee shall be set from time to time by the City Council, incorporated in the fee schedule, Code of City Ordinances, appendix D, in amounts sufficient to acquire land and provide for adjacent streets and utilities for a park.

e. Parkland dedication fund.

1. There is hereby established a special fund for the deposit of all sums paid in lieu of land dedication under this section or any preceding ordinance, which fund shall be known as the "parkland dedication fund." Funds shall only be released from the parkland dedication fund upon City Council approval of a plan to utilize the funds to build or enhance an existing park or purchase land for a future park.

2. The city shall account for all sums paid in lieu of land dedication under this section with reference to the individual plats involved. Any funds paid for such purpose must be expended by the city within ten years after the filing of the final plat, or the filing of the final plat of each phase or section of the contributing subdivision, if a phased development. If not so expended, the owners of the property beginning on the first day after the expiration of such ten year period shall be entitled to a pro rata refund of such sum, computed on a square footage of area basis. The owners of such property must request such refund within one year of entitlement. Such request must be made in writing to the city manager or his designee or such right shall be barred.

3. Where funds or a dedication for a phased development have been paid or made for the entire development at one time, and the original developer does not complete all phases of the entire development, credit for such prior dedication or payment shall be applied to subsequent plats for the same land on a pro rata basis. Increased density will require the dedication of additional parkland or payment of additional fees.

f. Additional requirements.

1. Any land dedicated to the city under this section must be suitable for park and recreation uses. The following characteristics of a proposed area are preferred wherever possible:

(a) The city reserves the right to decline any dedication of proposed parkland if it is determined to be in the best interests of the city.

(b) Park sites should preferably be located so that users are not required to cross arterial roadways to access them.

(c) Sites should be located adjacent to schools, where possible, in order to encourage both shared facilities and the potential co-development of new sites.

(d) Sites should be located adjacent to a greenbelt system, where possible, so that connections to a trail network may be easily achieved.

(e) Sites should not have unusual topography which would render the land unusable for organized recreational activities where these activities are necessary to the type of park.

(f) Sites should have and retain existing trees or other scenic elements.

(g) Land subject to an easement or a right-of-way shall comprise no more than 25

percent of the total land dedicated under the provisions of this section. In addition, any land that is subject to an easement or a right-of-way and which is dedicated under this section must be contiguous with the other area dedicated to the city and must conform with all other requirements of this section.

(h) All offers of dedication must be accompanied by a phase one environmental study verifying the absence of conditions which would inhibit or prohibit its future use and development as park facilities.

2. Parks should be easy to access and be open to public view so as to benefit area development, enhance the visual character of the city, protect public safety and minimize conflict with adjacent land uses. The following guidelines should be used in designing parks and adjacent development:

(a) Where physically feasible, parks should be bounded by streets, or by other public uses (e.g., school, library, recreation center).

(b) A proposed subdivision adjacent to a park may not be designed to restrict reasonable access to the park from other area subdivisions. Street or pedestrian connections to existing and future adjoining subdivisions may be required to provide reasonable access to parks.

(c) Where a nonresidential use directly abuts a park, the city may require the developer to construct, at his expense, screening of a minimum height of eight feet. The screened area must be landscaped on the park side. Access points from the non-residential use to the park may be permitted.

(d) Alleys may abut a park, where otherwise allowed by ordinance, but they should not be designed to encourage motorized traffic to the park.

(e) Streets abutting a park shall be built in accordance with the thoroughfare plan and the standards of this section; however, the city may require any residential street built adjacent to a park to be constructed to collector width to ensure access and prevent traffic congestion, subject to a proportionality review of the impacts generated by the subdivision(s). Provided, further, that the city may enter into a development agreement with the subdivider to share the costs of street construction for abutting streets.

(f) Wildlife, existing trees and shrubs on the site shall be preserved to the greatest extent practicable.

3. When parkland is acquired, the city shall reserve sufficient land to provide a minimum of 50 percent of the total street width where a street is required to abut a park.

4. In all cases, the city shall review and may require modification of the proposed street alignment fronting on city parks and recreation areas. Developers should also provide, where possible, street or pedestrian access to all creeks or drainage ways which are maintained by a homeowner association or dedicated as a drainage and floodway easement to the city or the applicable drainage district.

5. Drainage areas may be accepted as part of a park if the drainage facilities are constructed in accordance with city engineering standards, and if no significant area of the park is cut off from access by such drainage facilities. Where the city has designated a

floodplain as part of the city park system, the park design shall provide public access for all areas of the park.

6. Any parkland proposal considered by the commission under this subsection shall have been reviewed by the director of community services and his recommendation given to the commission. The commission may make a decision contrary to such recommendation by a simple majority vote.

g. Partial credit for land, private parkland, private recreation facilities, or open space. The Parks and Recreation Board, upon an affirmative recommendation of the director of community services, may reduce the amount of parkland to be deeded to the city or reduce the fees in lieu of parkland to be paid to the city as provided below.

1. A reduction from the initial park land dedication requirement may be made where parkland within the same park area as the subdivision which generates the required conveyance is dedicated for a private park. For purposes of this subsection, the private parkland dedication shall meet the following minimum requirements:

(a) The park area shall be leveled and seeded by the subdivider to produce green space. The city will determine if the parkland can be left in its natural state. If so determined, any limitations to the maintenance, or lack thereof, shall be identified on the final plat;

(b) The park area shall be located within the subdivision generating the parkland requirements; and

(c) If the developer decides to provide, and the city agrees to accept, a private park, restrictive covenants shall be filed of record in the appropriate county providing for the perpetual maintenance of the tract, albeit through the creation and operation of a homeowner association or some other mechanism. In the case of such private park area within a multifamily development, such as an apartment complex, the restrictive covenants shall provide for maintenance and improvement by the owners of the multifamily development.

2. A reduction from the initial park land dedication requirement may be made for recreational improvements made to private park land within the same park area as the subdivision which generates the required conveyance. Such recreational improvements to parkland may include, but are not limited to, the following: children's play apparatus, landscaped areas, picnic areas, game court areas, playfields, swimming pools, and recreation center buildings and facilities. All improvements shall meet the same applicable regulations or codes as for like improvements on public property.

3. A reduction from the initial parkland dedication requirement may be made for common open space, whether public or private, within the subdivision which generates the required conveyance. Such open space may be in the form of greenbelts along creek beds, or around the perimeter of the subdivision, and may include improvements such as hike and bike trails. In no case shall credit be given under this subsection for landscaped or seeded medians. A further reduction may be given where the common open space is linked with undeveloped or developed parkland or other recreational facilities.

4. In order to receive the credits under subsection [g.]1, [g.]2, or [g.]3, above, the subdivider shall provide documentation to the director of community services at the time of final plat filing sufficient to establish the validity of the estimated costs that will be used to

determine the reduction under this subsection. In the event that the developer proposes to construct the improvements at a later date, as in a phased development, the city may require that the developer obtain a surety bond, performance bond, or other form of guarantee that the recreational amenities will be installed within four years from the date of filing of the final plat of the first phase of the phased development. The director of community services shall evaluate the documentation submitted and shall approve the value prior to any reduction being given under this subsection. Credits are cumulative, but in no case shall credits given under this subsection exceed 100 percent of the total dedication of land or fees required for city parks under this ordinance. In cases where the estimated costs of the improvements are disputed, the value shall be as finally determined by the director of the community services. If no agreement is reached between the developer and city staff, then within 14 days from receipt of written request by the developer, city staff shall submit the issue to the Parks and Recreation Board. If the Parks and Recreation Board can reach an agreement with the developer that recommendation shall be final. If the Parks and Recreation Board cannot reach an agreement with the developer, the Planning & Zoning Commission shall hear the issue at their next meeting, and shall make the final decision. This decision is final unless there is a substantial change in conditions.

5. A credit may be given of up to 50 percent of the total dedication of land or fees required under this ordinance [appendix] where the developer makes improvements to public parks, as described under subsection [g.]2, above.

6. Credit for city parks may be based on previously installed amenities within a phased development, where amenities and recreational improvement have been constructed in earlier phases, where no parkland dedication was required, subsequent phases for which park dedication is required, may count those previously installed amenities. Under no circumstances will double credit be given for a previously installed amenity.

h. Minimum park improvement standards. Prior to acceptance by the city and prior to the filing of the final subdivision plat, any park land dedicated to the city, or developed as a private park for credit against park land dedication under this section, shall meet the following minimum standards:

1. The public park area shall be leveled and seeded (as deemed necessary by the city) by the subdivider to produce green space prior to the completion of the first phase of the development of the subdivision, if the development is being executed in phases. Existing trees and shrubs on the site shall be preserved to the greatest extent practicable. The subdivider will be responsible for the maintenance of the public park area for a minimum of one year after the completion of the subdivision (or the completion of the final phase or section of the subdivision), at which time the city will assume maintenance responsibilities in the park. The subdivider is also responsible for notifying each homeowner in the subdivision of the existence of any private park area and its conditions of ownership.

2. Any improvements provided by the developer to park land shall comply with applicable regulations and codes set forth for such improvements.