

ORDINANCE NO. 3.21

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
AMENDING CHAPTER 41 (PARK LAND DEDICATION OR FEES IN LIEU
THEREOF ORDINANCE) OF THE MOUNTAIN VIEW CITY CODE
RELATING TO PARK LAND DEDICATION

WHEREAS, the City Council of the City of Mountain View has reviewed and considered comments from the Parks and Recreation Commission provided on February 12, 2020 and October 14, 2020 relating to Park Land Dedication Ordinance Amendments to Chapter 41 of the Mountain View City Code; and

WHEREAS, the City Council of the City of Mountain View finds and declares that Chapter 41, entitled "Park Land Dedication," of the Mountain View City Code should be amended to provide increased certainty regarding land values and in-lieu fees, modify and clarify the available credits, and conform with recently enacted State regulations related to accessory dwelling units;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 41, Section 41.1 of the Mountain View City Code is hereby amended to read as follows:

"SEC. 41.1. - Findings and purpose.

The city council hereby finds that development of residential subdivisions as well as single-family dwellings, duplex dwellings, multiple dwellings, apartments, mobile homes, townhouses and other dwelling units 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 recreational 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 open space section of the environmental management chapter of the general plan and the park and open space plan of the city as well as Sections 66477 and 66479 of the Government Code of the State of California, as may be applicable."

Section 2. Chapter 41, Section 41.2 of the Mountain View City Code is hereby amended to read as follows:

“SEC. 41.2. - Definitions.

As used in this chapter:

“Affordable housing” for purposes of this chapter shall mean housing which costs a very low-, low- or moderate-income household no more than approximately thirty (30) percent of its gross monthly income as defined in Sec. 36.40.05 of Chapter 36, Article XIV of the city code.

“Community park” shall include, but is not limited to, Shoreline at Mountain View Regional Recreation and Wildlife Area.

“Historic resource” is as defined in Chapter 36, Article XVI, Division 15 of the city code.”

“Land dedication,” “dedicate land” or “land to be dedicated” and other such references to land dedicated pursuant to this chapter shall mean, for purposes of this chapter, land dedicated to the city in fee simple ownership.

“Privately owned/publicly accessible open space” (POPA) shall mean a parcel of private land made accessible to the public that meets the requirements set forth in Sec. 41.11.

“Subdivider” shall mean a person, firm, corporation, partnership or association who proposes to divide, divides or causes to be divided real property into a subdivision.

“Subdivision” shall mean the same as defined in Section 66424 of the California Government Code.

“Subdivision map” shall mean any map filed pursuant to any proceedings for subdivision as defined in Chapter 28 and this chapter.”

Section 3. Chapter 41, Section 41.3 of the Mountain View City Code is hereby amended to read as follows:

“SEC. 41.3. - Requirement for single-lot development projects.

As a condition of approval to construct any new single-family dwelling, duplex dwelling, multiple dwelling, apartment building, mobile home, townhouse and other dwelling unit other than a subdivision (hereinafter referred to as “residential

development” in this chapter), the owner and/or developer shall dedicate land, pay a fee or both at the option of the city, for park or recreational purposes. The terms “single-family dwelling, duplex dwelling, apartment, mobile home, townhouse and other dwelling unit” shall be as defined in Chapter 36 of this code. Said land dedication or fee payment, or both if required, shall be a condition precedent to the issuance of any required building, electrical, plumbing or mechanical permit for new residential development, except as otherwise provided in Government Code Section 66007(a) and (b), and in the event of deferred fee payment, the owner and/or developer shall enter into a recordable agreement pursuant to Government Code Section 66007(c) and subject to the approval of the city.

a. **Dedications of sites.** Where a park or recreational facility has been designated in the open space section of the environmental management chapter of the general plan, a precise plan or the park and open space plan of the city, and the park or facility is to be located in whole or in part within a proposed residential development, to serve immediate and future needs of residents of the residential development, the owner and/or developer may be required to dedicate land for park and recreational facilities sufficient in size to serve the residents of the residential development. The park land to be dedicated shall conform to locations and standards set forth in the general plan, a precise plan, if applicable, and the park and open space plan of the city. The slope, topography and geology of the site, as well as its surroundings, must be suitable for the intended park or recreation purpose. The amount of land to be provided shall be determined pursuant to the standards set forth in Sec. 41.5 through 41.9 of this chapter establishing the formula for land dedication or for payment of fees in lieu thereof. Any land offered for dedication to the city that creates new parcels or alters existing property lines shall comply with the subdivision regulations required in Chapter 28 of this code.

b. If park land is dedicated in accordance with this section, the development standards for a project, as set forth in Chapter 36 of the city code or an adopted precise plan, shall be calculated to include the dedicated park land for floor area, lot size and density.

c. **Fees in lieu of land dedication.** If there is no public park or recreational facility designated or required in whole or in part within the proposed residential development, which meets the requirements set forth herein, the owner and/or developer shall be required to pay a fee in lieu of land dedication equal to the value of the land as determined by Sec. 41.5 through 41.9 of this chapter.

A fee in lieu of land dedication hereunder shall be required when:

1. An applicant is developing land on which no park is shown or proposed in the general plan, a precise plan or the park and open space plan; or

2. Dedication is impossible, impractical or undesirable as determined by the public works director, zoning administrator or city council as appropriate; or

3. The proposed residential development contains fifty (50) or fewer units.

d. **Dedication and fees required.** In certain residential developments in excess of fifty (50) units, a combination of land dedication and fee payments may be required. These shall be residential developments in which:

1. Only a portion of the land to be developed is proposed in the general plan, a precise plan or park and open space plan as the location for a park or recreational facility, in which case that land, or a portion thereof within the residential development, shall be dedicated for park purposes, and a fee shall then be required in lieu of any additional land that would have been required to be dedicated under this chapter; or

2. A major part of the park or recreation site falling within the residential development has already been required, and only a small portion of the land is needed from the applicant to complete the park or recreation site, in which case, the land needed shall be required for dedication, and a fee shall then be required in lieu of the additional land that would have been required to be dedicated under this chapter.

e. **Use of and basis for in-lieu fees.** The fees collected pursuant to this chapter are to be used only for the purpose of providing park or recreational facilities to serve the residential development from which fees are collected in accordance with the service area requirements as shown in Table 41.3 of this chapter. Fees so collected shall be used to purchase land, buy equipment, construct improvements or rehabilitate a proposed or existing mini-park, neighborhood park, community park, recreational facility, Stevens Creek Trail, community gardening facility or combination thereof serving said residential development. The fee so required shall be based on the fair market value of the land that otherwise would have been required for dedication.

Table 41.3 PARK SERVICE AREA AND SIZE		
PARK TYPE	SERVICE AREA	DESIRABLE SIZE
Mini-Park	1 mile	Up to 1 acre
Neighborhood Park	1 mile	1 to 5 acres
Community Park and/or Recreational Facility	Entire city	>5 acres
Stevens Creek Trail	Entire city	N/A"

Section 4. Chapter 41, Section 41.4 of the Mountain View City Code is hereby amended to read as follows:

“SEC. 41.4. – Requirements for residential subdivisions.

As a condition of approval of any final subdivision map, the subdivider shall dedicate land, pay a fee in lieu thereof, or both, at the option of the city, for park or recreational purposes according to the following standards:

a. **Dedication of sites.** Where a park or recreational facility has been designated in the parks and recreation section of the open space section of the environmental management chapter of the general plan, a precise plan or the park and open space plan of the city, and the park or facility is 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 subdivider shall be required to dedicate land for park and recreational facilities sufficient in size to serve the residents of the subdivision area. The park land to be so dedicated shall conform to locations and standards set forth in the general plan, a precise plan, if applicable, and the park and open space plan of the city. The slope, topography and geology of the site, as well as its surroundings, must be suitable for the intended park or recreation purpose. The amount of land to be provided shall be determined pursuant to the standards set forth in Sec. 41.5 through 41.9 of this chapter establishing the formula for land dedication or for payment of fees in lieu thereof.

b. If park land is dedicated in accordance with this section, the development standards for a project, as set forth in Chapter 36 of the city code or an adopted precise plan or master plan, shall be calculated to include the dedicated park land for floor area, lot size and density.

c. **Fees in lieu of land dedication.** If there is no park or recreational facility designated or required in whole or in part within a proposed subdivision which meets the requirements set forth herein, the subdivider shall be required to pay a fee in lieu of land dedication equal to the value of the land as determined by Sec. 41.5 through 41.9 of this chapter.

A fee in lieu of land dedication hereunder shall be required when:

1. A subdivider is subdividing land on which no park is shown or proposed in the general plan, a precise plan or the park and open space plan; or
2. When dedication is impossible, impractical or undesirable as determined by the subdivision committee or city council as appropriate; or
3. When the proposed subdivision contains fifty (50) parcels of land or less.

d. **Dedication and fees required.** In certain subdivisions in excess of fifty (50) parcels of land, a combination of land dedication and fee payment may be required. These shall be subdivisions in which:

1. Only a portion of the land to be subdivided is proposed in the general plan, a precise plan, or the park and open space plan as the location for a park or recreational facility, in which case that land, or a portion thereof within the subdivision, shall be dedicated for park purposes, and a fee shall then be required in lieu of any additional land that would have been required to be dedicated under this chapter; or
2. A major part of the park or recreation site falling within the subdivision has already been acquired, and only a small portion of land is needed from the subdivider to complete the park or recreation site, in which case the land needed shall be required for dedication, and a fee shall then be required in lieu of the additional land that would have been required to be dedicated under this chapter.

e. **Use of and basis for in-lieu fees.** The fees collected pursuant to this chapter are to be used only for the purpose of providing park or recreational facilities to serve the subdivision from which fees are collected in accordance with the service area requirements as shown in Table 41.3. Fees so collected shall be used to purchase land, buy equipment, construct improvements or rehabilitate a proposed or existing mini-park, community park, neighborhood park, recreational facility, Stevens Creek Trail, community gardening facility or combination thereof serving said subdivision. The fee so required shall be based on the fair market value of the land that otherwise would have been required for dedication.”

Section 5. Chapter 41, Section 41.5 of the Mountain View City Code is hereby amended to read as follows:

“SEC. 41.5. – Land requirement.

In accordance with the open space section of the environmental management chapter of the Mountain View general plan, it is hereby found and determined that the city currently provides park and recreational facilities to its residents at a ratio in excess of the three (3) acres per one thousand (1,000) standard set forth in state law. The public interest, convenience, health, welfare and safety require that three (3) acres of property for each one thousand (1,000) persons residing within the city be devoted to public parks and recreational facilities.”

Section 6. Chapter 41, Section 41.6 of the Mountain View City Code is hereby amended to read as follows:

“SEC. 41.6. – Density formula.

In calculating dedication and in-lieu fee requirements under this chapter, the following table, derived from the density assumptions of the general plan, shall apply:

Table 41.6 DENSITY FORMULA			
DWELLING DENSITY	DWELLING UNITS PER ACRE	DENSITY OF PERSONS PER DWELLING UNIT	ACREAGE REQUIREMENT PER DWELLING UNIT WITHIN SUBDIVISION
Low	1 – 6	2.7	.0081
Medium-Low	7 – 12	2.3	.0069
Medium	13 – 25	2.0	.0060
Medium-High and High	26+	2.0	.0060
Mobile Homes	7 – 14	<u>1.5</u>	.0045”

Section 7. Chapter 41, Section 41.8 of the Mountain View City Code is hereby amended to read as follows:

“SEC. 41.8. – Calculation of fair market value.

a. An appraiser shall determine the fair market value ranges for an acre of land in Mountain View, which shall be adopted by resolution of the city council for each density listed in Table 41.6.

b. The city shall determine the park land dedication requirement within the adopted range of fair market values for the applicable density of the project at the time a formal application for a residential development is submitted. Nothing shall preclude the city from recalculating the park land dedication requirement based on modifications to the application or any preexisting site or development conditions.

c. If a residential development application is resubmitted with modifications that results in a change in the project’s dwelling density category per Table 41.6, then the park land dedication requirement shall be revised based upon the fair market value ranges in effect at the time of application resubmittal.

d. If the developer objects to the fair market value, the city, at developer's expense, shall obtain an appraisal of the property by a qualified independent real estate appraiser, agreed to by the city and the developer, and the value established by said appraiser using standard recognized appraisal techniques to establish fair market value will be accepted as the fair market value of the land in the proposed development. ”

Section 8. Chapter 41, Section 41.11 of the Mountain View City Code is hereby amended to read as follows:

“SEC. 41.11. – Credit.

a. **Privately owned/publicly accessible (POPA) open space credit.**

1. **Credit amount.** Privately owned/publicly accessible (POPA) open space proposed in a residential or mixed-use residential development that meets the eligibility requirements set forth herein may receive a credit up to seventy-five (75) percent of the value of the land devoted to the POPA open space against the land dedication or fees in-lieu thereof required by this chapter.

2. **Eligibility criteria.** To be eligible for POPA open space credit, the POPA open space must meet either the General Requirements set forth in subsection (a) or the Alternate Proposal requirements set forth in subsection (b).

(a) **General requirements.**

(i) A minimum size of 0.4 acre or, if the residential development is located within a precise plan or master plan with identified open space, the minimum size of the identified open space in the precise plan or master plan.

(ii) The space shall conform with the provisions of the parks, open space and community facilities chapter of the general plan and provisions of the parks and open space plan.

(iii) The POPA open space shall be located with frontage of a public street(s) or with a prominent and highly visible entrance and, in all cases, have minimum dimensions of one hundred (100) feet on all sides.

(iv) The POPA open space complies with the city's guidelines for hydration stations and restroom buildings in city parks.

(v) The POPA open space will include a sign(s) with notification of the area as public open space and posted hours, name and contact information for maintenance. The sign shall be reviewed and approved through a sign permit pursuant to Chapter 36 of the city code.

(vi) **Required elements.** The entirety of the POPA open space shall consist of any combination of elements, but not less than one (1) element, meeting the minimum requirements as defined in Table 41.11. The selected elements must be supported by the required analyses as set forth in subsection d.2.(b), Process.

TABLE 41.11 OPEN SPACE CREDIT ELEMENTS	
Element	Minimum Requirements
Open, usable field	Must be level, with proper irrigation and water amenities to support active field recreation. Minimum total area of 0.3 acre with a minimum dimension of 60' on all sides of the element.
Dog park	Have separate areas for large dogs and small dogs. Adequate amenities such as bag dispensers and dog-friendly hydration stations. Minimum total area of 0.25 acre for the dog park with a minimum dimension of 60' on all sides of the element.

Game courts	Must contain at least one (1) full game court that meets the standards of the professional association for the type of activity proposed.
Playgrounds	Must have at least two (2) structures (climbable apparatus): one for tots (ages 2 to 5) and one for youth (ages 5 to 12) populations.
Picnic area	Must be able to sit at least fifteen (15) individuals and have one (1) barbecue for every two (2) tables. Must be distinguishable from other elements in the open space.
Exercise area	Must be able to support ten (10) people using equipment at the same time and include ADA-accessible equipment.
Park trail	<p>Must be a designated, multi-use, Class 1 Trail as listed in the <i>Caltrans Highway Design Manual – Bikeway Designations</i> for the entire length of the proposed trail. The trail must provide a clear and direct path, with appropriate signage, through the project site, connecting any of the following:</p> <ul style="list-style-type: none"> • Existing or planned public facilities (e.g., public buildings, transit stops and centers, schools, parks, etc.). • Expand, or allow for future expansion of, the existing city park trail network (e.g., Stevens Creek, Permanente Creek, Whisman T.O.D., Hetch Hetchy, and Bay Trails). Provides more than a public trailhead or crossing. • A new connection that expands an identified network in the city's bicycle transportation and pedestrian master plans to a major public facility or major public street, or significantly reduces the time or length of travel by providing an alternative connection from an identified network in the adopted bicycle transportation and pedestrian master plans.

Maintained natural habitat space	<ul style="list-style-type: none"> • The element must be planted (existing or new) to provide an estimated 65 (sixty-five) percent to seventy-five (75) percent tree canopy coverage within five (5) years of construction completion. • All foliage and plants should be California native species or approved by the Forestry and Roadways Manager. • Area must provide seating for a minimum of ten people. • Area shall be landscaped and maintained to be traversed by all population demographics. • If applicable, include informational or educational signage about native landscape and plants within the element.
Alternate element	<ul style="list-style-type: none"> • An applicant may submit a request to include one (1) alternate element in the POPA open space not listed in this Table 41.11. • Must similarly serve the public as the elements set forth in this Table 41.11.

(vii) **Exclusion from credit.**

1. Yards, court areas, setbacks, decorative landscape areas, bike and pedestrian paths, and other open areas required with residential site design by a precise plan, master plan or zoning code shall be excluded from the credit computation of POPA open space.

2. Irregularly shaped land with limited utility, accessibility or topographic conditions that are unsuitable for elements described in Table 41.11 shall not be eligible for credit.

(b) **Alternate proposals.** An alternate proposal is a unique, high-quality open space proposal that may not otherwise be achieved through the General Requirements in subsection (a).

An applicant may be eligible for a POPA open space credit if greater than one (1) acre of single, contiguous land is provided and the POPA open space:

(i) Serves a diverse park user population; and

(ii) Provides design benefits greater than the General Requirements set forth in subsection (a).

3. **Term and maintenance.** All POPA open spaces shall be maintained as set forth in this section.

(a) The POPA open space shall be publicly accessible during the operating hours of city parks.

(b) The POPA open space shall be wholly owned and maintained by the property owner(s), homeowner association(s) or some combination thereof of the residential development awarded the credit.

(c) The right of the public to access and use the open space shall be recorded against the property by an easement, covenant or restrictions subject to review and approval by the city attorney, and such right shall run with the land in perpetuity.

(d) The property owner shall enter into an agreement with the city in conjunction with, or as part of, the easement, covenant or restrictions to identify maintenance responsibilities, procedures for future modifications or upgrades to the POPA open space and violation and/or penalties for noncompliance subject to review and approval by the city attorney. The agreement shall indemnify the city for use of the POPA open space by the public.

(e) Any future redevelopment of a project site granted a POPA open space credit shall submit a formal development application and be required to provide the minimum acreage of the POPA open space as originally credited. The POPA open space shall be subject to compliance with the requirements of this chapter in place at the time of application submission.

b. **Historic resource.** Where a historic resource is preserved or rehabilitated as part of a residential development, a credit may be given against the requirement of land dedication or fees in lieu thereof due on the residential development, required by this chapter, up to a maximum of fifty (50) percent of the value of the land dedication or fees in lieu thereof required by this chapter. This section may also apply to the relocation of a historic resource provided it is preserved or rehabilitated in conjunction with the relocation. The developer, as part of the application for a credit, shall file an application for a historic preservation permit pursuant to Sec. 36.54.45 *et seq.* Credit may be awarded pursuant to subsections d. and e. of this section when it is in the public interest to do so.

c. **Affordable housing.** Because affordable housing is an important community need, the affordable housing units included in new development projects shall not be included in the total number of dwelling units used to calculate the park land dedication requirement set forth in Sec 41.5 through 41.9. This exemption shall not

include affordable housing units in otherwise market-rate developments provided pursuant to density bonus law (under state law and as set forth in Chapter 36, Article XVI, Division 8 of the city code).

d. **Process.**

1. To request a credit pursuant to this section, the applicant shall submit a written request specifying the credit being at time of a formal development application submittal, which shall include a description of how the request meets the credit requirements in this Chapter. Each request for a credit shall also include the information required under subsections (2), (3) or (4) as applicable.

2. For the POPA open space credit, the applicant shall also submit the following with a formal development application:

(a) Dimensional site, design and landscaping plans that detail the proposed POPA open space and elements; and

(b) **Analyses.**

(i) A demographic analysis of the area within one (1) mile of the proposed POPA open space (measured from the project site boundary), including the target demographics of the new residential development.

(ii) An analysis of the elements at the closest public parks and/or POPA open spaces within one (1) mile of the project site, up to a maximum of five (5) parks and/or POPA open spaces.

3. For the historic resource credit, the applicant shall also submit with a formal development application an itemized cost estimate of planned rehabilitation or relocation costs for the historic resource.

4. For the affordable housing credit, the applicant shall also submit with a formal development application the number of affordable units within the residential development as defined in Sec. 41.2.

e. **Approval.**

1. POPA open space and historic resource credits may be awarded by the city council with written findings that the applicable requirements are met.

2. The affordable housing credit may be awarded when the public works director, community development director, community services director, subdivision committee or city council, as appropriate to the development application, makes written findings that the applicable requirements are met.”

Section 9. The provisions of this ordinance shall be effective as of July 1, 2021. Formal applications for development submitted on or after the effective date of July 1, 2021 shall be subject to the provisions of this ordinance.

Section 10. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 11. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 12. This ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly).

The foregoing ordinance was regularly introduced at the Regular Meeting of the City Council of the City of Mountain View, duly held on the 9th day of March 2021, and thereafter adopted at the Regular Meeting of said Council, duly held on the 13th day of April 2021, by the following roll call vote:

AYES: Councilmembers Abe-Koga, Hicks, Lieber, Matichak, Showalter, Vice Mayor Ramirez, and Mayor Kamei

NOES: None

ABSENT: None

NOT VOTING: None

ATTEST:

APPROVED:

SILVIA VONDERLINDEN
INTERIM CITY CLERK

ELLEN KAMEI
MAYOR

Date of Attestation: _____

I do hereby certify that the foregoing ordinance was passed and adopted by the City Council of the City of Mountain View at a Regular Meeting held on the 13th day of April 2021, by the foregoing vote, and was published in the *San Jose Post Record* by reference on the 9th day of April 2021, and posted in three prominent places in said City.

Interim City Clerk
City of Mountain View