

ORDINANCE NO. 878-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA, CALIFORNIA REPEALING CHAPTER 19 OF THE PACIFICA MUNICIPAL CODE AND REPLACING IT WITH CHAPTER 19 (PARK FACILITIES IMPACT FEE); REPEALING SECTION 10-1.803 (PARK LAND DEDICATION) OF THE PACIFICA MUNICIPAL CODE AND REPLACING IT WITH SECTION 10-1.803 (PARK LAND DEDICATION) TO ESTABLISH UPDATED IMPACT FEES AND QUIMBY ACT DEDICATION REQUIREMENTS AND IN LIEU FEES IMPOSED ON NEW DEVELOPMENT IN THE CITY OF PACIFICA.

WHEREAS, the City of Pacifica's Municipal Code contains outdated provisions regarding the City's Park Facilities Impact Fee and Quimby Act dedication requirements and in lieu fees; and

WHEREAS, the Mitigation Fee Act, contained in Government Code 66000 et seq., permits the City to impose development impact fees on new development for the purposes of funding the public facilities necessary to serve that new development; and

WHEREAS, the City's current Park Facilities Impact Fee requirements are contained in Chapter 19, "Park Facilities Impact Fee," of Title 8 "Building Regulations," of the Pacifica Municipal Code; and

WHEREAS, the City desires to continue to impose a Park Facilities Impact Fee on new non-subdivision, residential development to fund the costs associated with constructing and expanding park and recreation facilities and to update the fee to bring it in line with current City objectives; and

WHEREAS, the City Council desires to amend the City's existing ordinance regarding the Park Facilities Impact Fee to ensure that the Park Facilities Impact Fee ordinance is consistent with state law; and

WHEREAS California Government Code section 66477 (the "Quimby Act") allows legislative bodies of cities to require the dedication of land or to impose a requirement of the payment of fees in lieu thereof, or a combination of both, or park or recreation purposes as a condition of approval of a tentative or parcel map; and

WHEREAS, the City's current parkland dedication requirements are contained in Section 10-1.803, "Parkland Dedication," of Article 8, "Dedication and Reservations," of Chapter 1, "Subdivisions," of Title 10 "Subdivisions and Dedications," of the Pacifica Municipal Code; and

WHEREAS, the City Council desires to amend the City's existing ordinance regarding the dedication of parkland and the payment of in-lieu fees to ensure that the Parkland Dedication ordinance is consistent with state law; and

WHEREAS, at its meeting on April 25, 2022, after duly publishing all required notices, the City Council held a public hearing as part of a regularly scheduled meeting to consider the ordinance.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFICA, CALIFORNIA, does hereby ordain as follows:

Section 1. Chapter 19 (Park Facilities Impact Fee) is hereby repealed and replaced as set forth in Attachment 1, attached hereto, and incorporated herein by reference.

Section 2. Section 10-1.803 (Parkland Dedication) is hereby repealed and replaced as set forth in Attachment 2, attached hereto, and incorporated herein by reference.

Section 3. **Validity.** The above recitations are true and correct.

Section 4. **Findings.** The City Council finds that the proposed amendments to the Pacifica Municipal Code are necessary and reasonable to implement the goals and objectives of the City's General Plan and are permitted by California state law.

Section 5. **Environmental review.** The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA"). This action is not a project within the meaning of the CEQA Guidelines Section 15378 and 15061(b)(3) as it has no potential for physical effects on the environment because it involves an adoption of certain fees and/or charges imposed by the City, does not commit the City to any specific project, and said fees and/or charges are applicable to future development projects and/or activities, each of which future projects and/or activities will be fully evaluated in full compliance with CEQA when sufficient physical details regarding said projects and/or activities are available to permit meaningful CEQA review (see CEQA Guidelines, Section 15004(b)(1)). Pursuant to CEQA Guidelines section 15378(b)(4), the creation of government funding mechanisms which do not involve any commitment to any specific project which may cause significant effect on the environment, is not defined as a "project" under CEQA. Therefore, approval of the fees and/or charges is not a "project" for purposes of CEQA, pursuant to CEQA Guidelines, Section 15378(b)(4); and, even if considered a "project" under CEQA, is exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that approval of the fees and/or charges may have a significant effect on the environment.

Section 6. **Actions to effectuate and codification.** The City Manager is hereby authorized and directed to take other actions on behalf of City, which are not expressly and specifically reserved for the City Council, to implement and effectuate this ordinance. The City Clerk is directed to codify this ordinance in a manner which best reflects the legislative intent of the City Council in enacting this ordinance. The City Clerk is directed to resolve any numbering conflicts accordingly.

Section 7. **Severability.** Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, such declaration shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 8. **Effective date.** This ordinance shall be in full force and effective no less than thirty (30) days after its adoption, and shall be published or posted as required by law.

Section 9. **Publication.** The City Clerk is hereby ordered and directed to certify the passage

of this Ordinance by the City Council of the City of Pacifica, California and cause the same to be published in accordance with State law.

PASSED AND ADOPTED this 9th day of May, 2022, by the following vote:

AYES, Councilmembers: Beckmeyer, Bier, Bigstycck, O'Neill, Vaterlaus.

NOES, Councilmembers: n/a

ABSENT, Councilmembers: n/a

ABSTAIN, Councilmembers: n/a



Mary Bier (May 20, 2022 11:31 PDT)

Mary Bier, Mayor

ATTEST:



Sarah Coffey, City Clerk

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

Attachment 1

Chapter 19

Park Facilities Impact Fee

Chapter 19. – Park Facilities Impact Fee

Sec. 8-19.01. - Authority and purpose.

This chapter is enacted pursuant to Section 66000 et seq. of the California Government Code (“the “Mitigation Fee Act”) and the general police powers of the City. This chapter is enacted for the purpose of providing land and/or funds for such additional parks, recreational facilities, and open space as may be deemed appropriate pursuant to the General Plan, Local Coastal Program, Coastal Land Use Plan, and zoning laws of the City. This chapter is also enacted to require the dedication of such funds and/or lands to offset the impact on the need for parks, recreational facilities, and open space created by new residential development which does not require a tentative subdivision or parcel map pursuant to Title 10 of this Code.

Sec. 8-19.02. - Definitions.

The definitions set forth in this section govern the construction of this chapter:

1. "Manufactured or mobile home" means and includes each manufactured or mobile home located in a mobile home park on a temporary, semi-permanent or permanent basis.
2. "Person" or "Developer" means and includes every person, firm or corporation constructing new single-family residences, manufactured and mobile homes, residential dwelling units directly or through the services of an employee, agent or independent contractor.
3. "Residential dwelling unit" means each unit of an apartment, duplex, multiple-dwelling structure or dwelling group or condominium.
4. "Bedroom" means any room in a residential dwelling unit used for sleeping, for the purposes of this chapter meaning any room added to a residential dwelling unit that includes a bedroom, or has provision for such inclusion.

Sec. 8-19.03. - Fee imposition.

Except as otherwise provided in this chapter, each person developing nonsubdivision residential development projects shall pay a Park Facilities Impact Fee in an amount established by resolution of the city council in accordance with a nexus study that demonstrates the reasonable relationship between the fee's use and the type of development project on which the fee will be imposed and demonstrates the reasonable relationship between the need for park facilities and the type of development projects on which the fee will be imposed.

Sec. 8-19.04. - Exemptions.

The following types of development shall not be required to pay a Park Facilities Impact Fee:

- a) Alterations, renovations or expansion of an existing residential building or structure where no new bedrooms are created.
- b) Replacement of existing dwelling units on the same lot resulting in no net increase of bedrooms.
- c) The replacement of a destroyed or partially destroyed or damaged building or structure where no additional bedrooms are created.
- d) Nonresidential development.

Sec. 8-19.05. - Determination of required fees.

- a) Every person constructing any new single-family residence, residential dwelling unit or manufactured mobile home within the City, or any addition or modification to such that includes the addition of one or more bedrooms, shall pay the Park Facilities Impact Fee established by resolution of the City Council, unless the development of such residence, unit, home, addition or modification requires a tentative subdivision or parcel map pursuant to Title 10 of this Code, in which case Section 10-1.803 shall be applicable.
- b) The Park Facilities Impact Fee may be modified automatically on an annual basis in accordance with the change in the Engineering News Record ("ENR") construction cost index for the San Francisco area.

Sec. 8-19.06. – Payment of fees

- a) The fees required by this chapter shall be paid at the time the city issues a building permit for each development project, unless the developer of a nonsubdivision residential development enters into an agreement with the city to pay the fees at the time the certificate of occupancy is issued, pursuant to Government Code Section 66007(c). An agreement to defer payment until the issuance of a certificate of occupancy must be executed and recorded before the city will issue a building permit for the development project.
- b) If new development changes or intensifies the existing use on the project site, thereby requiring the payment of a new or additional Park Facilities Impact Fee, the fee amount associated with the existing use on the project site shall be credited against the new total fee due, as determined by the public works director; provided, however, that in no event shall the city refund the fees previously paid.

Sec. 8-19.07. - Park Facilities Impact fee fund and accounting.

- a) All of the funds collected pursuant to this chapter shall be deposited in the Park Development Fund currently being maintained by the City and shall be used solely for the acquisition, improvement and expansion of public parks, playground and recreational facilities in accordance with the provisions of the open space and recreation element of

the General Plan of the City. Any interest accrued by the account shall be used solely for the purpose of funding park facilities.

- b) Park Facilities Impact Fee Accounting. The city shall maintain accounts and prepare reports in accordance with California Government Code Section 66001 et seq.

Sec. 8-19.08. – In Lieu of Fees

In lieu of fees the City may accept, in its sole discretion, the donation of land or the development of parks to satisfy all or part of the development fees established by this chapter.

Sec. 8.19.09. – Fee adjustments.

Any person subject to a fee required by this chapter may apply to the public works director for a reduction, adjustment or waiver of that fee based upon the absence of a reasonable relationship between the impact of that applicant’s residential development project on park facilities in the city and the amount of the fee charged.

- a) *Application.* An applicant shall file a written request to adjust fees with the public works director not later than 10 days after the city notifies the developer of the amount of the fee to be charged. Additional time, as determined by the public works director, will be allowed when significant additional information is required of the developer. The application shall provide evidence illustrating that the payment of the fee authorized by this chapter and imposed by implementing resolution bears no reasonable relationship or nexus with the impact of the development on the need for park facilities within the city and shall state in detail the factual basis for the request for reduction, adjustment or waiver. If an applicant desires to receive a building permit prior to the completion of the appeal process, the applicant shall deposit the fee being appealed with the application. Such fee or portion thereof will be refunded if the appeal is successful.
- b) *Decision of the Public Works Director.* The public works director shall issue a decision on the application within 30 days after the application is filed with the public works department. The public works director’s decision shall state his or her determination regarding the amount of the Park Facilities Impact Fee that may reasonably be imposed on the new development and include a brief description of the basis for the director’s decision.
- c) *Appeal of the Decision of the Public Works Director.* Decisions of the public works director may be appealed to the city manager. Appeals must be filed within 10 days of the public works director’s decision. The city manager shall review the application and evidence presented to the public works director and issue a decision within 15 days. The decision of the city manager is final and may be appealed or protested pursuant to Government Code Section 66020.

Sec. 8-19.09. – Fee refunds.

Upon application, fees collected by the city pursuant to this chapter shall be refunded under the following circumstances:

- a) Fees collected pursuant to this chapter are erroneously or illegally collected.
- b) The building permit expires, and no extension has been granted, for the development project upon which fees were imposed pursuant to this chapter. An application for refund

pursuant to this subsection (B) shall be filed with the community development director no later than 90 days after expiration of the building permit. The amount of refund shall be reduced by an amount to cover the cost to the city for processing the refund.

Attachment 2**Sec.10-1.803****Park land Dedications****Sec.10-1.803. – Park land Dedications**

- a) *General.* This section is enacted pursuant to the authority granted by the Subdivision Map Act and the general police powers of the City and is for the purpose of providing such additional park and recreational facilities and open space as appropriate pursuant to the General Plan of the City. The park and recreational facilities for which the dedication of land and/or payment of a fee is required by this article are in accordance with the policies, principles, and standards for park and recreation facilities contained in the General Plan and Local Coastal Plan.
- b) *Requirements.* As a condition of the approval of a final subdivision map or parcel 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 at the time and according to the standards and formula contained in this article. The land dedicated or the fees paid, or both, shall be used for community and neighborhood parks and facilities in such a manner that the locations of such parks and facilities bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the development generating such dedication or fees, or both.
- c) *Standards and formula for the dedication of land.* Where a park or recreational facility has been designated in the General Plan, and is to be located in whole or in part within the proposed subdivision, and is reasonably related to serving the present and future needs of the residents of the subdivision, the subdivider shall dedicate land for park and recreation facilities sufficient in size and topography to meet such purpose. The amount of land to be provided shall be determined pursuant to the following standards and formula: the formula for determining the amount of acreage to be dedicated is based on the General Plan standards and shall be two (2) acres per 100 dwelling units (two hundredths (.02) acre per unit). The dedication of land shall not exceed the proportionate amount necessary to provide three acres of park area per 1,000 persons residing in the subdivision, unless the amount of existing neighborhood and community park area exceeds that limit, in which case, the city council may adopt a higher amount, not to exceed five acres per 1,000 persons residing in the subdivision. This acreage shall be in net acres and shall not include any public rights-of-way within or adjacent to the proposed park site pursuant to Government Code Section 66477(a)(2).
- d) *Formula for fees in lieu of land dedication.*
 1. General formula. If there is no park or recreational facility designated in the 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 subdivider, in the City's discretion, shall either dedicate land in the amount provided in subsection (d) of this section or pay a fee in lieu of dedication equal to the value of the land prescribed for dedication in said subsection (d) and in an amount determined in accordance with the provisions of subsection (g) of this section.
 2. Fees in lieu of land: Fifty parcels or less. If the proposed subdivision contains fifty (50) parcels or less and has no park facility, the subdivider shall pay a fee equal to the land value of the portion of the park or recreational facilities required to serve the

needs of the residents of the proposed subdivision as prescribed in subsection (d) of this section and in an amount determined in accordance with the provisions of subsection (g) of this section.

3. Use of money. The money collected shall be used for the purpose of developing new or rehabilitating existing neighborhood or community parks or recreational facilities reasonably related to serving the subdivision, including the purchase of necessary land or the improvement of such land for park and recreational purposes. The money shall be committed within five (5) years after payment or the issuance of building permits on one-half ($\frac{1}{2}$) 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 lots bears to the total area of all lots in the subdivision.
- e) *Criteria for requiring both dedications and fees.* In subdivisions of over fifty (50) lots, the subdivider 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 subsection (g) of this section shall be paid for any additional land which would have been required to be dedicated pursuant to subsection (d) of this section.
 2. When a major part of the local park or recreational site has already been acquired by the City, and only a small portion of land is needed from the subdivision to complete the site, the remaining portion shall be dedicated, and a fee, computed according to subsection (g) of this section, shall be paid in an amount equal to the value of the land which would otherwise have been required to be dedicated according to subsection (d) of this section. The fee shall be used for the improvement of the existing park and recreational facility or for the improvement of other neighborhood or community parks and recreational facilities reasonably related to serving the subdivision.
- f) *Amount of fees in lieu of park land dedications.* When a fee is required to be paid in lieu of park land dedication, the amount of the fee shall be as set forth in a resolution adopted by the City Council.
- g) *Determination of land or fee.* Whether the City accepts the land dedication, or elects to require the payment of a fee in lieu of, or a combination of both, shall be determined by the consideration of the following:
1. The policies, standards, and principles for park and recreation facilities in the General Plan and Local Coastal Plan;
 2. The topography, geology, access, and location of land in the subdivision available for dedication;
 3. The size and shape of the subdivision and the land available for dedication;
 4. The feasibility of dedication;
 5. The compatibility of dedication with the General Plan and Local Coastal Plan; and
 6. The availability of previously acquired park property.

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

- h) *Credit for Park Improvements.* If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located

thereon shall be a credit against the payment of fees or dedication of land required by this section pursuant to Government Code Section 66477(a)(9).

- i) *Credit for private recreation or open space.* Common interest developments, as defined in Section 4100 of the Civil Code, shall be eligible to receive a credit, as determined by the city council, against the amount of land required to be dedicated or the amount of the fee imposed for the value of private open space within the development which is usable for recreational purposes. All other residential, subdivision developments may apply for a credit for private recreation or open space, which shall be provided in the City's sole discretion.

- j) *Procedure.*
 - 1. At the time of the approval of the tentative subdivision map or parcel map, the Planning Commission shall determine, after a report and recommendation from the Parks, Beaches, and Recreation Commission, whether land is to be dedicated or in-lieu fees are to be paid by the subdivider or any combination of land and fees.
 - 2. The Planning Commission may approve, modify, or disapprove the recommendation of the Parks, Beaches, and Recreation Commission; provided, however, any modification of the proposed recommended condition not previously considered by the Parks, Beaches, and Recreation Commission shall first be referred back to the Parks, Beaches, and Recreation Commission for a report and further recommendation. The Parks, Beaches, and Recreation Commission shall report back to the Planning Commission within thirty (30) days. After the receipt of the report, or after thirty (30) days have passed, the Planning Commission may adopt the condition.
 - 3. The recommendation of the Parks, Beaches, and Recreation Commission shall include the following:
 - i. The amount of land required; or
 - ii. That a fee be charged in lieu of land; or
 - iii. That a combination of land and a fee be required; and/or
 - iv. That a stated amount of credit be given for private recreation facilities or unique natural and special features and the like; and
 - v. The location of the park land and, where appropriate, the siting and conceptual design of the park facilities appurtenant thereto to be dedicated or used in lieu of fees; and
 - vi. The approximate time when the development of the park or recreation facility shall commence.
 - 4. At the time of the recording of the final subdivision map, the subdivider shall dedicate the land and/or pay the fees as determined by the City. At the discretion of the City, fees may be paid prior to the issuance of any building permit for any structure in the subdivision.
 - 5. Open space covenants for private park or recreational facilities shall be submitted to the City prior to the approval of the final subdivision map and, if approved, shall be recorded concurrently with the final subdivision map.

- k) *Parkland Dedication in Lieu Fee Fund.* The revenues from fees collected by the city in lieu of land dedication shall be deposited in a segregated land in lieu fee fund for park or recreational purposes, pursuant to Government Code Section 66477(a)(3).
- l) *Commencement of development.* At the time of the approval of the final subdivision or parcel map, the City shall specify when the development of the park or recreational facilities shall be commenced.
- m) *Not Applicable to Certain Subdivisions.* The provisions of this section do not apply to:
 - 1. Subdivisions containing less than five parcels and not used for residential purposes. However, the city shall place the following condition on the parcel map:

If, within four years, a building permit is requested for construction of a residential structure on one or more of the parcels, the owner of each such parcel is required to pay a parkland dedication in lieu fee in the amount set forth by City Council resolution before the permit is issued.
 - 2. Commercial or industrial subdivisions or condominium projects or stock cooperatives that 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.