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ORDINANCE #2012-05
AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING
CHAPTER XXII (SUBDIVISION)
OF THE ALBANY MUNICIPAL CODE
TO AMEND REGULATIONS FOR
PARKLAND DEDICATION REQUIREMENTS

WHEREAS, the City of Albany has adopted a Subdivision Ordinance in the form of Chapter XXII of the Albany Municipal Code; and

WHEREAS, on October 27, 1987, the Albany City Council enacted Ordinance #87-017 pursuant to the authority granted by the Subdivision Map Act and the general police power of the City 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 dedication of land and/or payment of a fee is required by this section are in accordance with the policies, principles and standards for park and recreation facilities contained in the General Plan; and

WHEREAS, the City Council desires to modify Chapter XXII of the Albany Municipal Code, regarding parkland dedication requirements; and

WHEREAS, pursuant to said desires of the City Council, the Albany Planning and Zoning Commission held a duly noticed public hearing on the proposed changes on June 26, 2012, and

WHEREAS, pursuant to the California Environmental Quality Act, City has determined that the proposed amendment to Subdivision Ordinance herein is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15061(b)(3) (no potential for causing a significant effect on the

1 environment) and 15305 (minor alterations to land use limitations), set forth at 14
2 California Code of Regulations sections 15061(b)(3) and 15305.; and

3
4 **WHEREAS**, following the close of said public hearing the Planning and
5 Zoning Commission performed a detailed review of the draft language for both
6 recommended that the City Council adopt proposed amendments; and

7
8 **WHEREAS**, on July 9, 2012, the Albany City Council held a duly noticed
9 public hearing on options to amend Chapter XXII regarding parkland dedications;
10 and

11
12 **NOW, THEREFORE, THE ALBANY CITY COUNCIL DOES HEREBY**
13 **ORDAIN AS FOLLOWS:**

14
15 **CHAPTER XXII SUBDIVISION**

16
17
18 **22.8 DEDICATIONS AND RESERVATIONS.**

19
20
21 22-8.4 Parkland Dedication.

22
23 a. General. This subsection is enacted pursuant to the authority granted
24 by the Subdivision Map Act and the general police power of the City and is for the
25 purpose of providing such additional park and recreational facilities and open space
26 as appropriate pursuant to the General Plan of the City. The park and recreational
27 facilities for which dedication of land and/or payment of a fee is required by this
28 section are in accordance with the policies, principles and standards for park and
29 recreation facilities contained in the General Plan and the Parks and Recreation
30 General Plan.

1 The following parkland dedication table, based on the above formula, is to be
2 followed:

3	4 Dwelling	5 Average No.	6 Acre
7	8 Type or	9 Persons/	10 Dwelling
11	12 Land Use	13 Dwelling Unit	14 Unit
15	16 Single Family or Mobilehome	17 3.0	18 <u>.009</u>
19	20 Duplex or Multi-family	21 2.1	22 <u>.0063</u>
23	24 <u>Assisted Living Unit</u>	25 <u>1.05</u>	26 <u>.00315</u>

27 **"Assisted living unit" means the living area or unit as defined by California Health**
28 **and Safety Code Section 1771, as may be amended.**

29 For the purposes of this subsection, the number of proposed dwelling units
30 shall be determined as follows: in areas zoned for one (1) dwelling unit per lot or
31 parcel, the number of dwelling units shall equal the number of parcels indicated on
the tentative map. When all or part of the subdivision is located in an area zoned for
multiple dwelling units per parcel, the number of dwelling units in the area so zoned
shall equal the maximum number of dwelling units allowed under that zone. For
residential condominium projects, the number of dwelling units shall equal the
number of condominium units indicated on the tentative map. For planned
development projects, the number of dwelling units shall equal the number of
dwelling units indicated on the approved final development plan. The term "new
dwelling unit" does not include dwelling units lawfully in place prior to the date on
which the tentative map is approved.

1 Lands to be dedicated or reserved for park and/or recreational purposes shall
2 be suitable in the opinion of the Planning Director, the Director of Public Works and
3 Parks and Recreation Superintendent in location, topography, environmental
4 characteristics and development potential as related to the intended use. The primary
5 intent of this subsection shall be construed to provide the land for functional
6 recreation units of local or neighborhood service, including but not limited to: tot
7 lots, play lots, playgrounds, neighborhood parks, playfield, community or district
8 parks and other specialized recreational facilities that may serve the family group and
9 also senior citizen and child care activities. Principal consideration shall be given
10 therefore to lands that offer:

11
12 A variety of recreational potential for all age groups;

13
14 Recreational opportunities within walking distance from residents' homes;

15
16 Possibility for expansion or connection with school grounds;

17
18 Integration with hiking, riding and bicycle trails, natural stream and creek bed
19 reserves, the East Bay Shoreline and other open space;

20
21 Coordination with all other park systems; and

22
23 Access to at least one (1) existing or proposed public street.

24
25 e. Formula for Fees in Lieu of Land Dedication.

26
27 1. General Formula. If there is no park or recreational facility designated
28 in the General Plan or in the Parks and Recreation Plan to be located in whole or in
29 part within the proposed subdivision to serve the immediate and future needs of the
30 residents of the subdivision, the subdivider shall, in the City's discretion, either
31 dedicate land in the amount provided in this subsection or pay a fee in lieu of

1 dedication equal to the value of the land prescribed for dedication in paragraph d in
2 an amount determined in accordance with the provisions of paragraph g.

3
4 2. Fees in Lieu of Land, Fifty (50) Parcels or Less. Except as provided in
5 paragraph i, if the proposed subdivision contains fifty (50) parcels or less and has no
6 park or recreational facility, the subdivider shall pay a fee equal to the land value of
7 the portion of the park or recreational facilities required to serve the needs of the
8 residents of the proposed subdivision as prescribed in paragraph d and in an amount
9 determined in accordance with the provisions of paragraph g.

10
11 Notwithstanding the above, in the case of a condominium project, stock
12 cooperative, or community apartment, if the proposed subdivision contains more than
13 fifty (50) dwelling units, although the actual number of parcels may be less than fifty
14 (50), the provisions of paragraph f shall apply.

15
16 3. Use of Money. The money collected shall be used, in accordance with
17 the schedule developed pursuant to paragraph k, for the purpose of developing new or
18 rehabilitating existing neighborhood or community park or recreational facilities
19 reasonably related to serving the subdivision including the purchase of necessary land
20 and/or improvement of such land for park and recreational purposes. The money
21 shall be committed within five (5) years after payment thereof or the issuance of
22 building permits on one-half (1/2) of the lots created by the subdivision, whichever
23 occurs later. If the money is not committed, it shall be distributed and paid to the
24 then record owners of the subdivision in the same proportion that the size of their lot
25 bears to the total area of all lots in the subdivision.

26
27 f. Criteria for Requiring Both Dedication and Fee. If the proposed
28 subdivision contains more than fifty (50) parcels, or, in the case of a condominium
29 project, stock cooperative or community apartment, if the proposed subdivision
30 contains more than fifty (50) dwelling units although the actual number of parcels

1 may be less than fifty (50), the subdivider shall both dedicate land and pay a fee in
2 lieu of dedication in accordance with the following:

3
4 1. When only a portion of the land to be subdivided is proposed in the
5 General Plan as the site for a local park or recreational facility, such portion shall be
6 dedicated for local park purposes and a fee computed pursuant to the provisions of
7 paragraph e, shall be paid for any additional land that would have been required to be
8 dedicated pursuant to paragraph d.

9
10 2. When a major part of the local park or recreational site has already
11 been acquired by the City and only a small portion of land is needed from the
12 subdivision to complete the site, such portion shall be dedicated, and a fee, computed
13 according to paragraph e above, shall be paid in an amount equal to the value of the
14 land which would otherwise have been required to be dedicated according to
15 paragraph d. The fee shall be used for the improvement of other neighborhood or
16 community parks and recreational facilities reasonably related to serving the
17 subdivision.

18
19 g. Amount of Fee in Lieu of Parkland Dedication. When a fee is required
20 to be paid in lieu of parkland dedication, the amount of the fee shall be based upon
21 the estimated fair market value of the land being subdivided and the estimated fair
22 market value of the land which would otherwise be required to be dedicated
23 according to paragraph d.

24
25 The fair market value shall be as determined by the City at the time of final
26 map or parcel map approval. If the subdivider objects to the fair market value
27 determination, the subdivider may request the City to obtain an appraisal of the
28 property by a qualified real estate appraiser mutually agreed upon by the City and the
29 subdivider, which appraisal will be considered by the City in determining the fair
30 market value. All costs required to obtain such appraisal shall be borne by the
31 subdivider.

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For purposes of determining fair market value pursuant to this paragraph, the City and any appraiser shall consider, among other factors:

1. Conditions of approval of the tentative map;
2. The General Plan and zoning requirements for the area;
3. The location and site characteristics of the property; and
4. Off-site and on-site improvements facilitating use of the property.

h. Determination of Land or Fee. Whether the City accepts land dedication, or elects to require the payment of a fee in lieu of, or a combination of both, shall be determined by consideration of the following:

1. Policies, standards and principles for park and recreation facilities in the General Plan and in the Parks and Recreation 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;
5. Compatibility of dedication with the General Plan;
6. Availability of previously acquired park property.

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

3
4 i. Credit for Private Recreation or Open Space. Where a substantial
5 private park and recreational area is provided in a proposed subdivision and the space
6 is to be privately owned and maintained by the future residents of the subdivision as
7 permanent open space, partial credit, may be given against the requirement of land
8 dedication or payment of fees in lieu of, if the Park and Recreation Commission finds
9 that is in the public interest to do so and that all the following standards are met:

10
11 1. That yards, court areas, setbacks and other open areas required to be
12 maintained by the zoning and building ordinances and regulations shall not be
13 included in the computation of the private open space;

14
15 2. That the private ownership and maintenance of the open space is
16 adequately provided for by recorded written agreement, conveyance or restrictions;

17
18 3. That the use of the private open space is restricted for park and
19 recreational purposes by recorded covenant, which runs with the land in favor of the
20 future owners of property and which cannot be defeated or eliminated without the
21 consent of the City or its successor;

22
23 4. That the proposed private open space is reasonably adaptable for use
24 for park and recreational purposes, taking into consideration such factors such as size,
25 shape, topography, geology, access and location;

26
27 5. That facilities proposed for the open space are in substantial
28 accordance with the provisions of the General Plan and the Parks and Recreation
29 Plan.

30

1 Before credit is given, the Park and Recreation Commission shall make
2 written finding that the above standards are met.

3
4 j. Procedure.

5
6 1. At the time of the approval or conditional approval of the subdivision
7 map or parcel map, the Planning and Zoning Commission shall determine after a
8 report and recommendation from the Park and Recreation Commission, whether land
9 is to be dedicated or in lieu fees are to be paid by the subdivider or any combination
10 of land and fees.

11
12 2. The Planning and Zoning Commission may approve, modify, or
13 disapprove the recommendation of the Park and Recreation Commission; provided,
14 however, any modification of the proposed recommended condition not previously
15 considered by the Park and Recreation Commission shall first be referred back to the
16 Park and Recreation Commission for a report and further recommendation. The Park
17 and Recreation Commission shall report back to the Planning and Zoning
18 Commission within thirty (30) days. After the receipt of the report, or after thirty
19 (30) days have passed, the Planning and Zoning Commission may adopt the
20 condition.

21
22 3. The recommendation of the Park and Recreation Commission shall
23 include the following:

24
25 (a) The amount of land required; or

26
27 (b) That a fee be charged in lieu of land; or

28
29 (c) That a combination of land and a fee be required; and/or
30

1 (d) That a stated amount of credit be given for private recreation facilities
2 or unique natural and special features and the like; and

3
4 (e) The location of the parkland and, where appropriate, the siting and
5 conceptual design of the park facilities appurtenant thereto, to be dedicated or used in
6 lieu of fees; and

7
8 (f) The approximate time when the development of the park or recreation
9 facility shall commence.

10
11 4. At the time of the recording of the final subdivision map, the
12 subdivider shall dedicate the land and/or pay the fees as determined by the City. At
13 the discretion of the City, fees may be paid prior to issuance of any building permit
14 for any structure in the subdivision.

15
16 5. Open space covenants, conditions and restrictions for private park or
17 recreational facilities shall be submitted to the City prior to approval of the final or
18 parcel subdivision map and, if approved, shall be recorded concurrently with the final
19 or parcel subdivision map. **If private park or recreational facilities are to be**
20 **owned and maintained by a public agency or non-profit organization, and the**
21 **public agency or non-profit organization has policies or procedures that**
22 **preclude the recordation of such covenants, conditions and restrictions, the**
23 **public agency or non-profit organization shall be required to enter into a**
24 **binding agreement with the City of Albany in a form acceptable to the City**
25 **Attorney.**

26
27 k. Schedule of Use. At the time of the approval of the final map or parcel
28 map, the City shall develop a schedule specifying how, when and where it will use
29 the land or fees or both to develop or rehabilitate park or recreational facilities to
30 serve the residents of the subdivision.

31

1 1. Not Applicable to Certain Subdivisions. The provisions of this
2 subsection shall not apply to the following:

3
4 1. Subdivision containing four (4) or less parcels and not used for
5 residential purposes. However, a condition may be placed on the approval of such
6 parcel map that if a building permit is requested for construction of a residential
7 structure or structures on one (1) or more of the parcels within four (4) years, the fee
8 pursuant to this subsection may be required to be paid by the owner of such parcel as
9 a condition to the issuance of such permit.

10
11 2. Commercial or industrial subdivisions.

12
13 3. Condominium projects or stock cooperatives which consist of the
14 subdivision of airspace in an existing apartment building which is more than five (5)
15 years old when no new dwelling units are added.

16 (Ord. #87-017, A8, §31.804)

17
18
19 **Section 5. Severability.**

20
21 If any section, subsection, sentence, clause or phrase of this ordinance is for
22 any reason held to be invalid, such decision shall not affect the validity of the
23 remaining portions of the ordinance, and each section, subsection, sentence, clause or
24 phrase thereof, irrespective of the fact that any one or more sections, subsections,
25 sentences, clauses or phrases be declared invalid.

26
27 **Section 6: Publication and Effective Date.**

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29 This ordinance shall be posted at three public places within the City of Albany
30 and shall become effective thirty days after the date of its posting.

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PASSED AND ADOPTED by the City Council of the City of Albany at its meeting on the ___ day of ____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor