



# City of Fayetteville, Arkansas

113 West Mountain Street  
Fayetteville, AR 72701  
(479) 575-8323

## Legislation Text

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**File #:** 2024-56

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**ADM-2024-0019: Administrative Item (Amend UDC Chapters 166.04, Parkland Dedication): Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.04(B)(4)(I) Parkland Dedication. The proposed code changes would modify the applicability section for Parkland Dedication requirements.**

AN ORDINANCE TO AMEND §166.04(B)(4)(I) PARKLAND DEDICATION OF THE UNIFIED DEVELOPMENT CODE TO MODIFY THE APPLICABILITY SECTION FOR PARKLAND DEDICATION REQUIREMENTS

**WHEREAS**, in 2021, City Council passed a sweeping amendment to the Unified Development Code intended to revamp drainage and development standards, with a secondary objective of incentivizing infill; and

**WHEREAS**, in the intervening period since 2021, staff audited the outcomes of these changes, and has identified several areas that would benefit from revision and clarification; and

**WHEREAS**, an immediate concern is the potential and actual loss of parkland dedication fees-in-lieu on projects not requiring additional site plan review because they are not creating more than 10,000 square feet of new impervious surface.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 166.04(B)(4)(I) of the *Unified Development Code* regarding parkland dedication and enacts a replacement § 166.04(B)(4)(I) as shown in Exhibit A attached to this Ordinance.



**MEETING OF MAY 21, 2024**

**TO:** Mayor Jordan and City Council

**THRU:** Susan Norton, Chief of Staff  
Jonathan Curth, Development Services Director

**FROM:** Jessica Masters, Development Review Manager

**SUBJECT:** **ADM-2024-0019: Administrative Item (Amend UDC Chapters 166.04, Parkland Dedication): Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.04(B)(4)(I) Parkland Dedication. The proposed code changes would modify the applicability section for Parkland Dedication requirements.**

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**RECOMMENDATION:**

City staff and the Planning Commission recommend approval of an amendment to the Unified Development Code amending §166.04(B)(4)(I) Parkland Dedication as described in the attached Exhibit 'A'.

**BACKGROUND:**

In 2021, Fayetteville City Council passed a sweeping amendment to the Unified Development Code intended to revamp drainage and development standards, with a secondary objective of incentivizing infill. Through these changes, the basis for a project to receive an additional site plan review, either through a site improvement plan or a large scale development, was shifted to the amount of proposed imperviousness and the size of the overall site in question. In the intervening period since 2021, staff audited the outcomes of these changes, and has identified several areas that require revision and clarification. While additional ordinance changes are still being considered by the Long-Range Planning Committee of the Planning Commission, an immediate concern was raised given the potential and actual loss of parkland dedication fees-in-lieu.

**DISCUSSION:**

The requirement to dedicate parkland with the development of a residential project was originally adopted by City Council in 1981 (Ordinance 2695) and reaffirmed with the adoption of the Unified Development Code in 1998 (Ordinance 4100). While minor changes have occurred to clarify the ordinance requirements throughout the years, the intention to capture the impact of new residential units on the City's Park system has not changed. Parkland dedication can also be met through the payment of fees-in-lieu of land.

Currently, parkland dedication requirements are specifically tied to project type in ordinance. Since 2021, development project types are dependent upon the amount of added impervious surface and no longer tied to unit counts or use specifically. With this change, staff now recognizes that many residential projects that would have previously been subject to a small site improvement plan, large site improvement plan, or large scale development, and therefore subject to parkland dedication, are no longer classified in this manner. As a result, they may also not be subject to parkland dedication or fees in-lieu. While a number is difficult to confirm, staff estimates that this has potentially resulted in at least \$20,000 worth of fees-in-lieu that have not been collected. Given the larger scale of impending projects for review and possible approval within the next calendar year, staff estimates the potential for closer to \$250,000 in uncollected fees or equivalent parkland dedication based

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on an anticipated number of units.

Staff recommend an amendment to the applicability section that decouples the parkland dedication requirement from a specific project type, and instead ties that parkland dedication requirement to any project that proposes to add one (1) or more residential dwelling unit to a site. Staff finds that this would help absorb the impact of additional residents to Fayetteville on the Parks system and maintain the integrity of the intent of the ordinance as adopted over 40 years ago.

At the April 18th agenda session for the Planning Commission's April 22nd meeting, the City Attorney's office issued a memo expressing concerns with staff's original language. Text changes were proposed to ensure that the applicability section adequately covered both the development of additional residential lots, and the development of additional residential dwelling units to lots that have already been created. In the interim, staff and the City Attorney's office met and modified the text to incorporate their concerns. The attachments reflect the modified version of the ordinance.

At the April 22, 2024 Planning Commission meeting, Commissioners unanimously voted to forward the proposed ordinance changes to the City Council with a recommendation of approval. Commissioner Madden made the motion, which was seconded by Commissioner Werner. Commissioners asked for clarification regarding the changes that occurred to the proposed ordinance between agenda session and the meeting itself, specifically with regards to the interpretation of the word "development." Staff clarified that the language was written to be broad enough that staff could make a reasonable interpretation of the applicability. One Commissioner also asked whether accessory dwelling units would be subject to parkland dedication fees, and staff clarified that current interpretation of existing ordinance suggests that ADUs do not contribute parkland dedication and anticipated that the interpretation would remain the same with the proposed changes. No members of the public spoke at the meeting. One member of the public provided a written comment prior to the meeting, which is included in the attached report.

**BUDGET/STAFF IMPACT:**

N/A

**ATTACHMENTS:** SRF (#3), Exhibit A - Proposed Ordinance (#4), Strikethrough Changes (#5), Planning Commission Staff Report (#6)

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**TO:** Fayetteville Planning Commission

**FROM:** Jessie Masters, Development Review Manager

**MEETING DATE:** April 22, 2024 **Updated with results from April 22, 2024 PC Meeting**

**SUBJECT:** **ADM-2024-0019: Administrative Item (Amend UDC Chapters 166.04, Parkland Dedication):** Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.04(B)(4)(I) Parkland Dedication. The proposed code changes would modify the applicability section for Parkland Dedication requirements.

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**RECOMMENDATION:**

Staff recommend forwarding **ADM-2024-0019** to the City Council with a recommendation of approval.

**RECOMMENDED MOTION:**

*"I move to forward **ADM-2024-0019** to the City Council with a recommendation of approval."*

**APRIL 18, 2024 AGENDA SESSION:**

At the agenda session prior to this meeting, the City Attorney's office issued a memo with some concerns and proposed text changes to ensure that the applicability section adequately covered both the development of additional residential lots, and the development of additional residential dwelling units to lots that have already been created. In the interim, staff and the City Attorney's office met and modified the text to incorporate their concerns. The attachments reflect the modified version of the ordinance.

**BACKGROUND:**

In 2021, Fayetteville City Council passed a sweeping amendment to the Unified Development Code intended to revamp drainage and development standards, with a secondary objective on incentivizing infill. Through these changes, the requirement for a project to receive an additional site plan review, either through a site improvement plan or a large scale development, was shifted solely to a basis on the addition of 10,000 sq. ft. of impervious surface to a property, and the size of the overall site in question. In the intervening period since 2021, staff have audited the outcomes of these changes, and have identified several areas that require revision and clarification. While additional ordinance changes are still being considered by the Long-Range Planning Committee and the Planning Commission, an immediate concern was raised given the potential and actual loss of parkland dedication fees-in-lieu.

**DISCUSSION:**

The requirement to dedicate parkland with the development of a residential project was originally adopted by City Council in 1981 (Ordinance 2695) and was ultimately reaffirmed with the adoption of the Unified Development Code in 1998 (Ordinance 4100). Minor changes have also occurred to clarify the ordinance requirements throughout the years, though the intention to capture impact of new residential units on the City's Park system has not changed. Parkland dedication can also be met through the payment of fees-in-lieu of land.

Currently, parkland dedication requirements are specifically tied to project type in ordinance. Since 2021, development project types are dependent upon the amount of added impervious surface, and no longer tied to unit counts or use specifically. With this change, staff recognizes that many residential projects that would have previously been subject to a small site improvement plan, large site improvement plan, or large scale development are no longer classified in this manner, which can have the unexpected result of lost parkland dedication fees-in-lieu. While an associated number is difficult to track, staff estimates that this has potentially resulted in at least \$20,000 worth of fees-in-lieu that have not been collected. Given the larger scale of impending projects for review and possible approval within the next calendar year, staff estimates the potential for closer to \$250,000 in uncollected fees based on an anticipated number of units.

Staff recommend an amendment to the applicability section that decouples the parkland dedication requirement from a specific project type, and instead ties that parkland dedication requirement to any project that proposes to add one (1) or more residential dwelling unit to a site. Staff finds that this would help absorb the impact of additional residents to Fayetteville on the Parks system and maintain the integrity of the intent of the ordinance as adopted over 40 years ago.

**RECOMMENDATION: Staff recommend forwarding ADM-2024-0019 to City Council with a recommendation of approval.**

<b>PLANNING COMMISSION ACTION:</b>		Required	<u>YES</u>
Date: <u>April 22, 2024</u>	<input type="checkbox"/> Tabled	<input checked="" type="checkbox"/> Forwarded	<input type="checkbox"/> Denied
Motion: <b>Madden</b>		with a recommendation of approval.	
Second: <b>Werner</b>			
Vote: <b>9-0-0</b>			

**BUDGET/STAFF IMPACT:**

None

**Attachments:**

- UDC §166.04(B)(4)(I) – Parkland dedication - Current Regulations
  - Proposed Ordinance, Clean
    - §166.04(B)(4)(I) – Parkland dedication
  - Proposed Ordinance, Strike-through
    - §166.04(B)(4)(I) – Parkland dedication
  - City Attorney Memo
- Public comment**

**166.04 Required Infrastructure Improvements — Development In City Limits**

...

- (B) *Minimum Improvements by Application Type.* The property owner/developer shall be responsible for constructing the following minimum improvements.

...

- (4) *Preliminary/Final/Concurrent Plat; Large Scale Development; Large or Small Site Improvement Plan.*

..

- (I) *Parkland Dedication.*

- (i) *Applicability.* The requirements of this subsection shall apply to residential lot splits, subdivisions, large scale developments, planned zoning districts, large scale site improvement plans, and small scale site improvement plans; provided that these requirements shall not apply to a lot split or subdivision that does not create one (1) or more vacant lots on which a residential structure could be erected pursuant to the Unified Development Code.

- (ii) *Residential Development.*

- (a) *Dedication or Fee-in-Lieu.* When a proposed residential development does not provide an area or areas for a public park based on the Fayetteville Parks and Recreation Plan, the developer shall be required to make a reasonable dedication of land for public park facilities, or to make a reasonable equivalent contribution in lieu of dedication of land, such contribution to be used for the acquisition and development of park land that serves the subdivision or development.
- (b) *Parks and Recreation Advisory Board.* Prior to the submittal of a preliminary plat, large scale development plan, or large site improvement plan the developer shall submit to the Parks and Recreation Advisory Board a concept plat or plan.
- (c) *Planning Commission.* The developer and the Parks and Recreation Advisory Board shall make a joint recommendation to the Planning Commission as to the land dedication or contribution in lieu of dedication. In the event that they are unable to agree, the developer and advisory board shall make separate recommendations to the Planning Commission who shall determine the issue.
- (d) *Decision.* If the developer proposes to dedicate land for a public park after consultation with the Parks and Recreation Advisory Board which the Planning Commission determines is suitable for park purposes, the proposed dedication shall be accepted. Upon consent and consultation with the developer and the Parks and Recreation Advisory Board, a developer may dedicate a portion of the required park land dedication and make a contribution of money in lieu of land dedication for the remaining park land dedication requirement. With consent of the Parks and Recreation Advisory Board, this monetary contribution may be used to develop the park land in the development or elsewhere within the quadrant consistent with the Fayetteville Parks and Recreation Plan.
- (e) *Approval.* The Planning Commission's decision must be incorporated into the developer's preliminary plat, large scale development, or large site improvement plan prior to plat or plan approval.
- (f) *Dedication Ratios.* Land shall be dedicated at a ratio of 0.023 acres of land for each single-family dwelling unit and 0.020 acres of land for each multi-family dwelling unit.
- (g) *Fee-in-Lieu formulas.* A contribution in lieu of land dedication shall be made according to the following formula:

\$1,089.00 for each single-family unit.

\$952.00 for each multi-family unit based upon actual density.

UDC 166.04(B)(4) – CURRENT REGULATIONS

The Parks and Recreation Department shall review the contribution formula every two (2) years and make recommendations to the City Council following such review.

- (h) *Dedication in Excess.* If a developer wishes to dedicate park land which exceeds the requirement of this subsection, the developer shall make a written request to the Planning Commission who may grant the developer a credit equivalent to said excess. Said credit shall be applied toward the developer's obligation under this subsection for any subsequent development located in the same park quadrant.
- (iii) *Timing of Dedication and/or Contribution.* All dedications of land must be made before the city signs the final plat, or issuance of building permits for a large scale development or large site improvement plan. A final plat shall not be released for recordation until the deed for a land dedication is received. Deeded land is dedicated public park land and not subject to any right of reversion or refund. A cash contribution in lieu of required land development shall be payable before the city signing the final plat, or issuance of building permits for a large scale development or large site improvement plan. With the approval of the planning commission a developer may pay such contribution in three (3) equal installments to be paid in full within one (1) year of final plat approval. If a developer makes a cash contribution in lieu of land dedication, the developer shall be entitled to a pro rata refund, together with the accrued interest therefrom, in the event actual density is less than the density used as the basis for the developer's contribution; provided, no refund shall be made unless application therefore is made in writing to the Zoning and Development Administrator within one (1) year from the date of final plat approval. In the event actual density is more than the density used as the basis for a dedication of land or case contribution the developer must make an additional land dedication or contribution in lieu of dedication.
- (iv) *Zoning Requirements.* Lots created for the purpose of park land dedication shall not be required to meet the standards for lot size, bulk and area within any zoning district. Lots created for the purpose of park land dedication to serve the residents of the surrounding area shall not be subject to POA/HOA dues or other fees established for maintenance or other purposes within the neighborhood.
- (v) *Fee-in-Lieu Allocation.* All parkland fees received under this subsection shall be deposited in an interest bearing account. This money together with its earned interest shall be expended within five (5) calendar years of the last date of the calendar year in which it was received for the acquisition and/or development of parkland that services the subdivision or development for which the contribution in lieu of dedication was made. If this money has not been expended within the allowed period, the unexpended money together with any of its remaining earned interest shall be refunded to the present owner of the property that was the subject of the new development and against which the parkland fee was assessed and collected.

...

(Code 1965, App. C., Art. III, §A(2), (3); Ord. No. 1979, 2-5-74; Ord. No. 2353, 7-5-77; Ord. No. 2755, 9-1-81; Code 1991, §§159.31, 159.32; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4263, 8-1-00; Ord. No. 4660, 12-21-04; Ord. No. 5152, 7-15-08; Ord. No. 5271, 9-1-09; Ord. No. 5296, 12-15-09; Ord. No. 5374, 12-21-10; Ord. No. 5523, 9-4-12; Ord. No. 5570, 03-05-13; Ord. No. 6116, §1, 11-20-18; Ord. No. 6166, §§1, 2, 4-2-19; Ord. No. 6195, §1, 6-4-19; Ord. No. 6350, §3(Exh. B), 8-18-20; Ord. No. 6426, §1, 4-6-21; Ord. No. 6446, §8(Exh. C), 6-15-21)

**166.04 Required Infrastructure Improvements — Development In City Limits**

...

- (B) *Minimum Improvements by Application Type.* The property owner/developer shall be responsible for constructing the following minimum improvements.

...

- (4) *Preliminary/Final/Concurrent Plat; Large Scale Development; Large or Small Site Improvement Plan.*

..

- (I) *Parkland Dedication.*

- (i) *Applicability.* The requirements of this subsection shall apply to development that creates one (1) or more additional lots upon which residential dwelling units may be constructed and to development on an existing lot to create one (1) or more additional residential dwelling units.
- (ii) *Residential Development.*
- (a) *Dedication or Fee-in-Lieu.* When a proposed residential development does not provide an area or areas for a public park based on the most recent Fayetteville Park and Recreation System Master Plan, the developer shall be required to make a reasonable dedication of land for public park facilities, or to make a reasonable equivalent contribution in lieu of dedication of land, such contribution to be used for the acquisition and development of park land that serves the subdivision or development.
- (b) *Parks, Natural Resources and Cultural Affairs Advisory Board.* Prior to the submittal of a preliminary plat, large scale development plan, or large site improvement plan the developer shall submit to the Parks, Natural Resources and Cultural Affairs Advisory Board a conceptual development plan. If land dedication is being requested by the developer, a small site improvement plan shall also be submitted to the Parks, Natural Resources and Cultural Affairs Advisory Board.
- (c) *Planning Commission.* The developer and the Parks, Natural Resources and Cultural Affairs Advisory Board shall make a joint recommendation to the Planning Commission as to the land dedication or contribution in lieu of dedication for a preliminary plat or large scale development. With the agreement of the Parks, Natural Resources and Cultural Affairs Advisory Board and developer, dedication or fee-in-lieu associated with small or large site improvement plans subject to administrative approval shall be accepted as a condition of approval. In the event that they are unable to agree, the developer and advisory board shall make separate recommendations to the Planning Commission who shall determine the issue.
- (d) *Decision.* If the developer proposes to dedicate land for a public park after consultation with the Parks, Natural Resources and Cultural Affairs Advisory Board which the Planning Commission determines is suitable for park purposes, the proposed dedication shall be accepted. Upon consent and consultation with the developer and the Parks, Natural Resources and Cultural Affairs Advisory Board, a developer may dedicate a portion of the required park land dedication and make a contribution of money in lieu of land dedication for the remaining park land dedication requirement. This monetary contribution may be used to develop the park land in the development or elsewhere within the quadrant consistent with the most recent Fayetteville Park and Recreation System Master Plan.
- (e) *Approval.* The Planning Commission's decision must be incorporated into the developer's preliminary plat or large scale development. Dedication or fee-in-lieu associated with small or large site improvement plans or other plans subject to administrative approval must also be incorporated into the developer's final approval.



UDC 166.04(B)(4) – PROPOSED CHANGES (CLEAN)

(f) *Dedication Ratios.* Land shall be dedicated at a ratio of 0.023 acres of land for each single-family dwelling unit and 0.020 acres of land for each multi-family dwelling unit.

(g) *Fee-in-Lieu formulas.* A contribution in lieu of land dedication shall be made according to the following formula:

\$1,089.00 for each single-family unit.

\$952.00 for each multi-family unit.

The Parks, Natural Resources and Cultural Affairs Department shall review the contribution formula every two (2) years and make recommendations to the City Council following such review.

(h) *Dedication in Excess.* If a developer wishes to dedicate park land which exceeds the requirement of this subsection, the developer shall make a written request to the Planning Commission who may grant the developer a credit equivalent to said excess. Said credit shall be applied toward the developer's obligation under this subsection for any subsequent development located in the same park quadrant.

(iii) *Timing of Dedication and/or Contribution.* All dedications of land must be made before the city signs the final plat or issues building permits for developments that create one (1) or more additional residential dwelling unit. A final plat shall not be released for recordation until the deed for a land dedication is received. Deeded land is dedicated public park land and not subject to any right of reversion or refund. A cash contribution in lieu of required land dedication shall be payable before the city signs the final plat, or issues building permits for a development that creates one (1) or more additional residential dwelling units. With the approval of the Planning Commission a developer may pay such contribution in three (3) equal installments to be paid in full within one (1) year of final plat approval. If a developer makes a cash contribution in lieu of land dedication, the developer shall be entitled to a pro rata refund, together with the accrued interest therefrom, in the event actual density is less than the density used as the basis for the developer's contribution; provided, no refund shall be made unless application therefore is made in writing to the Zoning and Development Administrator within one (1) year from the date of final plat approval. In the event actual density is more than the density used as the basis for a dedication of land or case contribution the developer must make an additional land dedication or contribution in lieu of dedication.

(iv) *Zoning Requirements.* Lots created for the purpose of park land dedication shall not be required to meet the standards for lot size, bulk and area within any zoning district. Lots created for the purpose of park land dedication to serve the residents of the surrounding area shall not be subject to POA/HOA dues or other fees established for maintenance or other purposes within the neighborhood.

(v) *Fee-in-Lieu Allocation.* All parkland fees received under this subsection shall be deposited in an interest bearing account. This money together with its earned interest shall be expended within five (5) calendar years of the last date of the calendar year in which it was received for the acquisition and/or development of parkland that services the subdivision or development for which the contribution in lieu of dedication was made. If this money has not been expended within the allowed period, the unexpended money together with any of its remaining earned interest shall be refunded to the present owner of the property that was the subject of the new development and against which the parkland fee was assessed and collected.

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(Code 1965, App. C., Art. III, §A(2), (3); Ord. No. 1979, 2-5-74; Ord. No. 2353, 7-5-77; Ord. No. 2755, 9-1-81; Code 1991, §§159.31, 159.32; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4263, 8-1-00; Ord. No. 4660, 12-21-04; Ord. No. 5152, 7-15-08; Ord. No. 5271, 9-1-09; Ord. No. 5296, 12-15-09; Ord. No. 5374, 12-21-10; Ord. No. 5523, 9-4-12; Ord. No. 5570, 03-05-13; Ord. No. 6116, §1, 11-20-18; Ord. No. 6166, §§1, 2, 4-2-19; Ord. No. 6195, §1, 6-4-19; Ord. No. 6350, §3(Exh. B), 8-18-20; Ord. No. 6426, §1, 4-6-21; Ord. No. 6446, §8(Exh. C), 6-15-21)

**166.04 Required Infrastructure Improvements — Development In City Limits**

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- (B) *Minimum Improvements by Application Type.* The property owner/developer shall be responsible for constructing the following minimum improvements.

...

- (4) *Preliminary/Final/Concurrent Plat; Large Scale Development; Large or Small Site Improvement Plan.*

..

- (I) *Parkland Dedication.*

- (i) *Applicability.* The requirements of this subsection shall apply to development that creates one (1) or more additional lots upon which residential dwelling units may be constructed and to development on an existing lot to create one (1) or more additional residential dwelling units, residential lot splits, subdivisions, large scale developments, planned zoning districts, large scale site improvement plans, and small scale site improvement plans; provided that these requirements shall not apply to a lot split or subdivision that does not create one (1) or more vacant lots on which a residential structure could be erected pursuant to the Unified Development Code.

- (ii) *Residential Development.*

- (a) *Dedication or Fee-in-Lieu.* When a proposed residential development does not provide an area or areas for a public park based on the Fayetteville Parks and Recreation Plan, most recent Fayetteville Park and Recreation System Master Plan, the developer shall be required to make a reasonable dedication of land for public park facilities, or to make a reasonable equivalent contribution in lieu of dedication of land, such contribution to be used for the acquisition and development of park land that serves the subdivision or development.
- (b) Parks, Natural Resources and Cultural Affairs Advisory Board, Parks and Recreation Advisory Board. Prior to the submittal of a preliminary plat, large scale development plan, or large site improvement plan the developer shall submit to the Parks, Natural Resources and Cultural Affairs Advisory Board Parks and Recreation Advisory Board a concept plat or conceptual development plan. If land dedication is being requested by the developer, a small site improvement plan shall also be submitted to the Parks, Natural Resources and Cultural Affairs Advisory Board.
- (c) *Planning Commission.* The developer and the Parks and Recreation Advisory Board Parks, Natural Resources and Cultural Affairs Advisory Board shall make a joint recommendation to the Planning Commission as to the land dedication or contribution in lieu of dedication for a preliminary plat or large scale development. In the event that they are unable to agree, the developer and advisory board shall make separate recommendations to the Planning Commission who shall determine the issue. With the agreement of the Parks, Natural Resources and Cultural Affairs Advisory Board and developer, dedication or fee-in-lieu associated with small or large site improvement plans subject to administrative approval shall be accepted as a condition of approval. In the event that they are unable to agree, the developer and advisory board shall make separate recommendations to the Planning Commission who shall determine the issue.
- (d) *Decision.* If the developer proposes to dedicate land for a public park after consultation with the Parks and Recreation Advisory Board Parks, Natural Resources and Cultural Affairs Advisory Board which the Planning Commission determines is suitable for park purposes, the proposed dedication shall be accepted. Upon consent and consultation with the developer and the Parks, Natural Resources and Cultural Affairs Advisory Board Parks and Recreation Advisory Board, a developer may dedicate a portion of the required park land dedication and make a contribution of money in lieu of land dedication for the remaining park land dedication requirement. With consent of the Parks and

UDC 166.04(B)(4) – PROPOSED CHANGES (STRIKETHROUGH)

~~Recreation Advisory Board, t~~This monetary contribution may be used to develop the park land in the development or elsewhere within the quadrant consistent with the ~~Fayetteville Parks and Recreation Plan~~ most recent Fayetteville Park and Recreation System Master Plan.

- (e) *Approval.* The Planning Commission's decision must be incorporated into the developer's preliminary plat or, large scale development, or large site improvement plan prior to plat or plan approval. ~~Dedication or fee-in-lieu associated with small or large site improvement plans or other plans subject to administrative approval must also be incorporated into the developer's final approval.~~
- (f) *Dedication Ratios.* Land shall be dedicated at a ratio of 0.023 acres of land for each single-family dwelling unit and 0.020 acres of land for each multi-family dwelling unit.
- (g) *Fee-in-Lieu formulas.* A contribution in lieu of land dedication shall be made according to the following formula:

\$1,089.00 for each single-family unit.

\$952.00 for each multi-family unit ~~based upon actual density.~~

The Parks, ~~Natural Resources and Cultural Affairs~~ ~~and Recreation~~ Department shall review the contribution formula every two (2) years and make recommendations to the City Council following such review.

- (h) *Dedication in Excess.* If a developer wishes to dedicate park land which exceeds the requirement of this subsection, the developer shall make a written request to the Planning Commission who may grant the developer a credit equivalent to said excess. Said credit shall be applied toward the developer's obligation under this subsection for any subsequent development located in the same park quadrant.
- (iii) *Timing of Dedication and/or Contribution.* All dedications of land must be made before the city signs the final plat, ~~or issuance issues of building permits for developments that create one (1) or more additional residential dwelling unit, for a large scale development or large site improvement plan.~~ A final plat shall not be released for recordation until the deed for a land dedication is received. Deeded land is dedicated public park land and not subject to any right of reversion or refund. A cash contribution in lieu of required land ~~dedication development~~ shall be payable before the city ~~signing signs~~ the final plat, ~~or issuance issues of building permits for a large scale development or large site improvement plan, development that creates one (1) or more additional residential dwelling units.~~ With the approval of the ~~planning~~ Planning Commission-Commission a developer may pay such contribution in three (3) equal installments to be paid in full within one (1) year of final plat approval. If a developer makes a cash contribution in lieu of land dedication, the developer shall be entitled to a pro rata refund, together with the accrued interest therefrom, in the event actual density is less than the density used as the basis for the developer's contribution; provided, no refund shall be made unless application therefore is made in writing to the Zoning and Development Administrator within one (1) year from the date of final plat approval. In the event actual density is more than the density used as the basis for a dedication of land or case contribution the developer must make an additional land dedication or contribution in lieu of dedication.
  - (iv) *Zoning Requirements.* Lots created for the purpose of park land dedication shall not be required to meet the standards for lot size, bulk and area within any zoning district. Lots created for the purpose of park land dedication to serve the residents of the surrounding area shall not be subject to POA/HOA dues or other fees established for maintenance or other purposes within the neighborhood.
  - (v) *Fee-in-Lieu Allocation.* All parkland fees received under this subsection shall be deposited in an interest bearing account. This money together with its earned interest shall be expended within five (5) calendar years of the last date of the calendar year in which it was received for the acquisition and/or development of parkland that services the subdivision or development for which the contribution in lieu of dedication was made. If this money has not been expended within the allowed period, the unexpended money together with any of its

UDC 166.04(B)(4) – PROPOSED CHANGES (STRIKETHROUGH)

remaining earned interest shall be refunded to the present owner of the property that was the subject of the new development and against which the parkland fee was assessed and collected.

...

(Code 1965, App. C., Art. III, §A(2), (3); Ord. No. 1979, 2-5-74; Ord. No. 2353, 7-5-77; Ord. No. 2755, 9-1-81; Code 1991, §§159.31, 159.32; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4263, 8-1-00; Ord. No. 4660, 12-21-04; Ord. No. 5152, 7-15-08; Ord. No. 5271, 9-1-09; Ord. No. 5296, 12-15-09; Ord. No. 5374, 12-21-10; Ord. No. 5523, 9-4-12; Ord. No. 5570, 03-05-13; Ord. No. 6116, §1, 11-20-18; Ord. No. 6166, §§1, 2, 4-2-19; Ord. No. 6195, §1, 6-4-19; Ord. No. 6350, §3(Exh. B), 8-18-20; Ord. No. 6426, §1, 4-6-21; Ord. No. 6446, §8(Exh. C), 6-15-21)



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



Kit Williams  
*City Attorney*

Blake Pennington  
*Senior Assistant City Attorney*

Hannah Hungate  
*Assistant City Attorney*

Stacy Barnes  
*Paralegal*

TO: **Jesse Masters**, Development Review Manager

CC: **Jonathan Curth**, Development Services Director  
**Blake Pennington**, Senior Assistant City Attorney

FROM: **Kit Williams**, City Attorney

DATE: **April 18, 2024**

RE: **Proposed Change To Parkland Dedication Requirement**

I do not think you understood my concern that after decades requiring developers being assessed parkland fees for the number of new residential lots they were creating for these developments, you now place the parkland fee on the home builder. Your proposal states:

“Applicability: The requirements of this subsection shall apply to development that creates one (1) or more additional residential **dwelling units**.”

So a developer establishes a large new subdivision by final plat. This subsection places no requirement for any parkland assessment on the developer who has yet to build any “additional residential dwelling units.” Homebuilders purchase lots in the platted subdivision and build houses (a/k/a residential dwelling units) and thus must pay park fees for each house. Is that your intention?

The remainder of the proposed code makes little sense because it is not the developer who is necessarily creating additional residential building lots, but the builder who builds “additional residential dwelling units” to which “the requirements of this subsection shall apply to.” If you do not want to make this major change to allow developers to pass the costs of parkland fees directly to home builders, I suggest the following wording for the applicability subsection:

“The requirements of this subsection shall apply to development that creates one (1) or more additional lots upon which residential dwelling units may be constructed and to development of an existing lot to create one (1) or more additional residential dwelling units.”

I would also add “small site improvement plan” to the listed developments in (b).

Also I would add to (b) the following to handle the fees vs. dedication of land issue for large and small site improvement plans (which I believe you do not wish to refer to the Planning Commission, but decide administratively by the Planning Department):

“The Planning Department shall consider the developer’s and Advisory Board’s recommendations concerning potential parkland dedication as opposed to fees in lieu of dedication and shall accept the proposed parkland dedication of property if such property is suitable for park purposes.”

In (e) *Approval*, please add small site improvement plan to the sentence for large site improvement plans.

Please remove the not needed “of” in (iii) between “issues” and “building permits.” However, I disagree with most of your changes to (iii) which are somewhat confusing. I would be happy to work with you to make this subsection more clear, but I need to get this memo to you before trying to work in that subsection.

-----Original Message-----

From: Thomas Brown <dog13gregg@aol.com>

Sent: Sunday, April 21, 2024 6:39 PM

To: Garlock, Jimm <jimm.garlock@fayetteville-ar.gov>; Brink, Andrew <andrew.brink@fayetteville-ar.gov>; Payne, Brad <brad.payne@fayetteville-ar.gov>; Gulley, Fred <fred.gulley@fayetteville-ar.gov>; McGetrick, Mary <mary.mcgetrick@fayetteville-ar.gov>; Madden, Mary <mary.madden@fayetteville-ar.gov>; Cabe, Matthew <matthew.cabe@fayetteville-ar.gov>; Castin, Nick <nick.castin@fayetteville-ar.gov>; Werner, Nick <nick.werner@fayetteville-ar.gov>

Cc: Masters, Jessica <jmasters@fayetteville-ar.gov>; CityClerk <cityclerk@fayetteville-ar.gov>

Subject: ADM-2024-0019: Administrative Item (Amend UDC Chapters 166.04, Parkland Dedication):

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Planning Commissioners,  
Please forward ADM-2024-0019 to the City Council with a recommendation of approval.

Thomas Brown