

ARTICLE V. - PARK LAND

Sec. 118-57. - Purpose.

The purpose of this article is to provide adequate recreational areas and amenities in the form of neighborhood parks as a function of subdivision development in the city and to make the park land dedication and park development fee requirements an integral part of the review and approval of residential developments, whether the developments consist of new construction on previously vacant land or rebuilding and redeveloping existing residential areas.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

Sec. 118-58. - Applicability.

- (a) This article applies to all residential development within the city's corporate boundaries and within its extraterritorial jurisdiction.
- (b) This article also does not apply to activities involving the remodeling, rehabilitation or other improvements to an existing residential structure, or to the rebuilding of a damaged structure, or to permits required for accessory uses, unless such activity results in a new dwelling.
- (c) The park fee shall not be imposed on any residential development for which a completed application for a subdivision master plan had been received and accepted by the city on or before the effective date of this article.
- (d) Neighborhood parks are those parks that provide a variety of outdoor, recreational facilities and within convenient distances from a majority of the residences to be served by such parks, the standards for which are set forth in exhibit C to this article.
- (e) The park planning areas established by the city parks and recreation department and shown in exhibit A attached hereto, shall be *prima facie* evidence that any park located therein is within a convenient distance from the majority of residences to be served thereby. The cost of the neighborhood parks should be borne by the ultimate residential property owners who, by reason of the proximity of their property to such parks, shall be the primary beneficiaries of such parks.
- (f) For purposes of this article, property is "served by" park facilities when funds collected for such facilities have been spent for facilities identified in the park master plan and park improvements plan, within ten years from the date of collection within the benefit area in which the property is located.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

Sec. 118-59. - Park land dedication.

- (a) The city has adopted by council action the New Braunfels Parks, Recreation and Open Spaces Master Plan, which provides planning policy and guidance for the development of a municipal park and recreation system for the city. The plan has assessed the need for park land and park improvements to serve the citizens of the city. The plan has assessed the impact on the park and recreation system by new individual dwelling units. Park land dedication requirements and park development fee assessments are based upon the mathematical formulas and allocations set forth within this article. A summary table of the dedication and cost requirements is set forth in park land dedication table attached hereto and incorporated herein for all purposes as exhibit B to this article.
- (b) When developing residential properties, the owner or developer shall be responsible for a fee simple dedication of park land at a ratio of one-one hundredth fiftieth (1/150) of an acre or 290.4 square feet of land for each proposed dwelling unit. A "dwelling unit" shall mean each individual residence, including each individual residential unit in a multi-family residential structure or manufactured home park, designed or intended for habitation by a single family. Hereinafter, all

references to "the developer" shall mean both the owner and the developer jointly and severally, where the owner and developer are not the same party.

- (c) Any proposed plat submitted to the city for approval shall show the area required to be dedicated under this section. All land dedicated according to this ordinance will be dedicated by warranty deed.
- (d) Each corner of the park land dedication shall have an iron rod or pin set, in accordance with other lot corners in the subdivision. In the absence of a plat, the location of iron rods or pins set for corners shall be identified on a recordable land survey completed by a land surveyor registered in the state, provided to the city by the developer, and approved by the city as to form and substance.
- (e) The owner or developer shall meet with the director of parks and recreation or his/her designee (hereinafter referred to the "director") to ensure compliance with the requirements in this section prior to platting. An application for plat approval shall not be approved unless it is accompanied by written review comments from the director.
- (f) The city council and the city parks and recreation department generally consider that development of an area less than five acres for neighborhood park purposes may be inefficient for public maintenance. Therefore, if fewer than five acres are proposed as park land dedication, the director shall have the option to:
 - (1) Accept the land dedication;
 - (2) Require the developer to pay the applicable cash in lieu of land amount as provided in section 118-61; or
 - (3) Reject the land dedication and grant credit for a private park as provided in section 118-63.
- (g) The director, prior to plat submittal, will define the optimum location of the required park land dedication based upon the proposed park being located adjacent to current or future park land and based on the city's parks, recreation and open space master plan. If there is not an opportunity for the proposed park land dedication to be adjacent to current or future park land, then the director and the developer will work together to define an optimum location for the park land dedication. If an optimum location cannot be determined, then the director shall accept the cash in lieu of land option as outlined in section 118-61.
- (h) In the case of a multi-phase development, if the developer dedicates all the park land required by this ordinance in the first or early phase(s) of the development, no additional park land dedication will be required in later phases unless additional lots that are not shown in the original plat are included in the later phases of the development.
- (i) Unless approved by the director, no construction materials shall be disposed of or deposited within the dedicated park land by the developer or its contractors, subcontractors, employees, or agents, at any time while the subdivision is being built. If materials are deposited or disposed of within the park, the developer shall remove such materials within 72 hours of written notice by the city. If the developer fails to remove the materials after notice, the city may do so at the developer's expense and no building permits shall be issued for the subdivision(s) until that debt is paid to the city by the developer.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

Sec. 118-60. - Park land dedication acceptance criteria.

- (a) Land dedicated for a park or recreational area shall be of such size, dimensions, topography, and general character as is reasonably required by the city for the type of use necessary to meet the demand and need of future residents. Recreational needs for which land is dedicated may include but not be limited to multipurpose trails, open space buffer areas, active recreation for team or individual sports, playground, picnic area, and similar uses.

- (b) Rare, unique, endangered, historic or other significant natural areas will be given a high priority for dedication pursuant to this article. Areas that provide an opportunity for linkages between parks or that preserve the natural character of the surrounding environment may be required by the city to be included in the park land dedication.
- (c) The city shall not accept land dedication pursuant to this ordinance if it is subject to one or more of the following disqualifications unless individually and expressly approved by the director:
 - (1) Land within floodplain and floodway designated areas, unless such land dedication contains an open area as part of the total park land dedication property that is topographically suitable for the installation of the park amenities as defined in exhibit C for neighborhood parks.
 - (2) Park land dedication sites which do not have ready access to at least 200 feet of street frontage. Preferable land will provide a 200-foot by 200-foot corner site at the intersection of two internal subdivision streets.
 - (3) Park land dedication sites abutted by private properties on more than two-thirds of the total boundary dimension of such site.
 - (4) Areas encumbered by overhead utility lines or easements of any type which might limit the opportunity for park and recreation development.
- (d) The location of park land may be required at the edge of a subdivision so that additional land may be added at such time as adjacent land is subdivided or acquired for public use. Otherwise a central location is preferred.
- (e) The city will not accept park land dedication sites encumbered by hazardous and or municipal waste materials or dump sites.
- (f) The developer shall be responsible for certain minimum utilities as listed below at a location acceptable to the director of public works or designee. The director of public works or designee will be required to approve such location in writing prior to final approval and release of fiscal requirements of said subdivision. These requirements do not include New Braunfels Utilities connection.
 - (1) A three-quarter-inch metered water supply located 12 feet behind the curb.
 - (2) A six-inch sewer stub ten feet behind the curb.
- (g) Any disturbed park land shall be restored and the soil stabilized by vegetative cover by the developer.
- (h) The dedicated park land shall not exceed a 20 percent grade on more than 50 percent of the land.
- (i) If a developer proposes to dedicate land for park development purposes pursuant to the terms, conditions and requirements of this article, he or she shall permit the director to make an onsite inspection of the property for the purposes of determining site suitability and identification of any visual hazards or impediments to park development and use. If the property owner has any form of environmental assessment on the tract, a copy of that assessment shall be provided to the director. The director may initiate and/or require the developer to initiate specific environmental studies or assessments if the visual inspection of the site gives rise to the belief that an environmental problem may exist on the site. The director may require the employment of those consultants necessary to evaluate any environmental issues relating to the site providing that the director makes such determination in good faith. If an environmental hazard is identified on the site, the developer must remove the hazard prior to its acceptance into the park and recreation system of the city.
- (j) The intentions of this article are not to discourage the creation of parks and amenities in subdivisions that will be maintained by homeowners associations.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

Sec. 118-61. - Cash in lieu of land.

- (a) An owner or developer responsible for park land dedication under this article may be required, at the director's option, to meet the dedication requirements in whole or in part by a cash payment in lieu of land in the amount set forth below. Such payment in lieu of land dedication shall be made prior to filing the plat for record or prior to the issuance of a building permit where a plat is not required. All funds collected pursuant to this section shall be used solely for the acquisition of park land in the park planning area in which the subdivision or development is located.
- (b) In instances where land is required to be dedicated, the director shall have the right to reject the park land dedication and require a cash payment in lieu of land in the amount set forth below, if the director determines that:
 - (1) The park land dedication site is such a small area that it is inefficient to maintain; or
 - (2) Sufficient park area is already in the public domain for the park planning area where the proposed development is located, and the recreation needs of the citizens will be better served by expanding or improving existing parks in said park planning area.
 - (3) Development projects within the extraterritorial jurisdiction of the city are subject to the park land dedication requirements set forth within this article; however, the difficulty faced by the city in maintaining property outside the corporate limits of the city may result in the application of a fee in lieu of the land dedication requirement.
- (c) The cash payment in lieu of land dedication shall be met by the payment of a fee set from time to time by city ordinance sufficient to acquire neighborhood park land. Unless and until changed by city ordinance, the cash payment shall be computed on the basis of \$100.00 per dwelling unit within the proposed subdivision.
- (d) A cash payment in lieu of land dedication, as set forth in this section, does not relieve the owner or developer of the obligation to pay the park development fee set forth in section 118-62. The cash payment in lieu of land dedication is in addition to the required park development fee.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

Sec. 118-62. - Park development fee.

- (a) In addition to the required dedication of land, as set forth above and based upon the study referenced in this article, the developer or his successor shall pay a park development fee to the city as a condition to final plat approval. Developments in the extraterritorial jurisdiction shall pay the park development fee prior to the recording of the final plat at the county. The park development fee shall be set from time to time by city ordinance and shall be sufficient to provide for the development of amenities and improvements on dedicated neighborhood park land in the park quadrant in which the subdivision or development is located. Unless and until changed by city ordinance, the park development fee shall be calculated on the basis of \$500.00 per dwelling unit in the subdivision.
- (b) In lieu of payment of the required park development fee, the developer, with approval of the director, may have the option to construct the neighborhood park improvements. All public park improvements shall meet the minimum requirements set forth in the New Braunfels Parks, Recreation and Master Plan or amendment thereof. All development plans and specifications for the construction of said park improvements shall meet the minimum design and construction standards as provided by the city parks and recreation department, be sealed by a landscape architect registered in the state and be reviewed and approved by the director prior to construction. The developer shall financially guarantee the construction of such park improvements by providing performance and payment bonds, an irrevocable letter of credit, or other similar security that is deemed acceptable by the director prior to the recording of the plat for the subdivision. Performance and payment bonds shall name the city as dual obligee and shall cover 100 percent of the estimated construction cost of such park improvements as shown in a construction contract executed by the developer. The developer shall be required to provide a two-year maintenance bond that is equal in amount to 100 percent of the construction cost of said park improvements and a manufacturer's letter stating the main play

structure and safety surface was installed in accordance with the manufacturer's installation requirements. The developer shall also provide a copy of the application and subsequent inspection report prepared by the state department of licensing and regulation or their contracted reviewer for compliance with the Architectural Barriers Act, codified as Vernon's Ann. Civ. St. art. 9102. All park improvements may be inspected by the city while construction is in progress. Once the park improvements are constructed, and after the director has accepted such improvements, the developer shall deed and convey such improvements to the city free and clear of any lien or other encumbrances.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

Sec. 118-63. - Credit against park land dedication.

(a) Where a substantial private park and recreational area is provided in a proposed residential subdivision and such area is to be privately owned and maintained by the future residents of the subdivision, partial credit may be given to the developer, not to exceed 50 percent of the total acreage requirements for land dedication if the city finds that it is in the public interest to do so and that all the following standards are met:

- (1) That yards, court areas, setbacks and other open areas required to be maintained by the zoning and subdivision rules and regulations ordinances shall not be included in the computation of such private open space;
- (2) That the private ownership and maintenance of the open space is adequately provided for by recorded agreement, covenants or restrictions;
- (3) That the use of the private open space is restricted for park and recreation purposes by recorded covenant, which runs with the land in favor or future owners of the property and which cannot be defeated or eliminated without the written consent of the city or its successors;
- (4) That the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location;
- (5) That facilities proposed for the private open space are in substantial accordance with the provisions of the comprehensive plan, parks and recreation plan and other adopted plans of city; and
- (6) That the private open space for which credit is given is a minimum of two acres and provides a minimum of four of the local park elements listed below, or a combination of such and other recreational improvements that will meet the specific recreation park needs of the future residents of the area:

Criteria List	Credit Acres
Children's play apparatus area	.50
Landscape park-like and quiet areas	.50
Walk/hike/bike trail	.50
Family picnic area	.25

Game court area	.25
Turf playfield	.50
Swimming pool (42' x 75') [with adjacent deck and lawn areas]	.50
Recreation center building	.25
Recreation community gardening	.15

Before credit is given, the city shall make written findings that the above standards are met.

- (b) Credits requested pursuant to this article will only be given for amenities that meet the minimum design and construction standards as set forth by the city parks and recreation department.
- (c) A developer of a subdivision who dedicates more than the required park land requirements for that specific subdivision may receive credits for future park land dedication requirements for other subdivision developments that he may undertake at a future date in the same quadrant.
- (d) A developer of a subdivision may dedicate park land that is not within the boundaries of his development and receive park land dedication credits for that subdivision. The proposed park land dedication must be approved by the director prior to the filing of the plat. The proposed park land dedication property must be in the same park planning area as the proposed subdivision, within a reasonable distance of existing or developing residential neighborhoods and meet the park land dedication criteria outlined in section 118-59.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

Sec. 118-64. - Park development fund and right to refund.

- (a) All funds collected pursuant to this ordinance shall be deposited in the city park development fund and used solely for the acquisition or leasing of park land and the development, improvement, or upgrades of new and existing parks. All expenditures shall be administered in accordance with the current purchasing requirements of the city. Funds shall not be used for the operation and maintenance of parks.
- (b) The city shall account for all sums paid into the park development fund. Any monies paid into said fund must be expended by the city within ten years from the date that all the land for a neighborhood park for the subdivision has been acquired and when the subdivision(s) adjacent to that park land has been 75 percent built out. If not expended within the ten-year period, the current owners of the property shall, on the last day of such period, be entitled to a refund of the remaining fees. Said owners must submit to the city a written request for the refund within one year of the date of entitlement or the right to receive the refund will be deemed waived and the funds shall remain as property of the city and be used for the general purpose of park land acquisition, design and development as expressed in this ordinance.

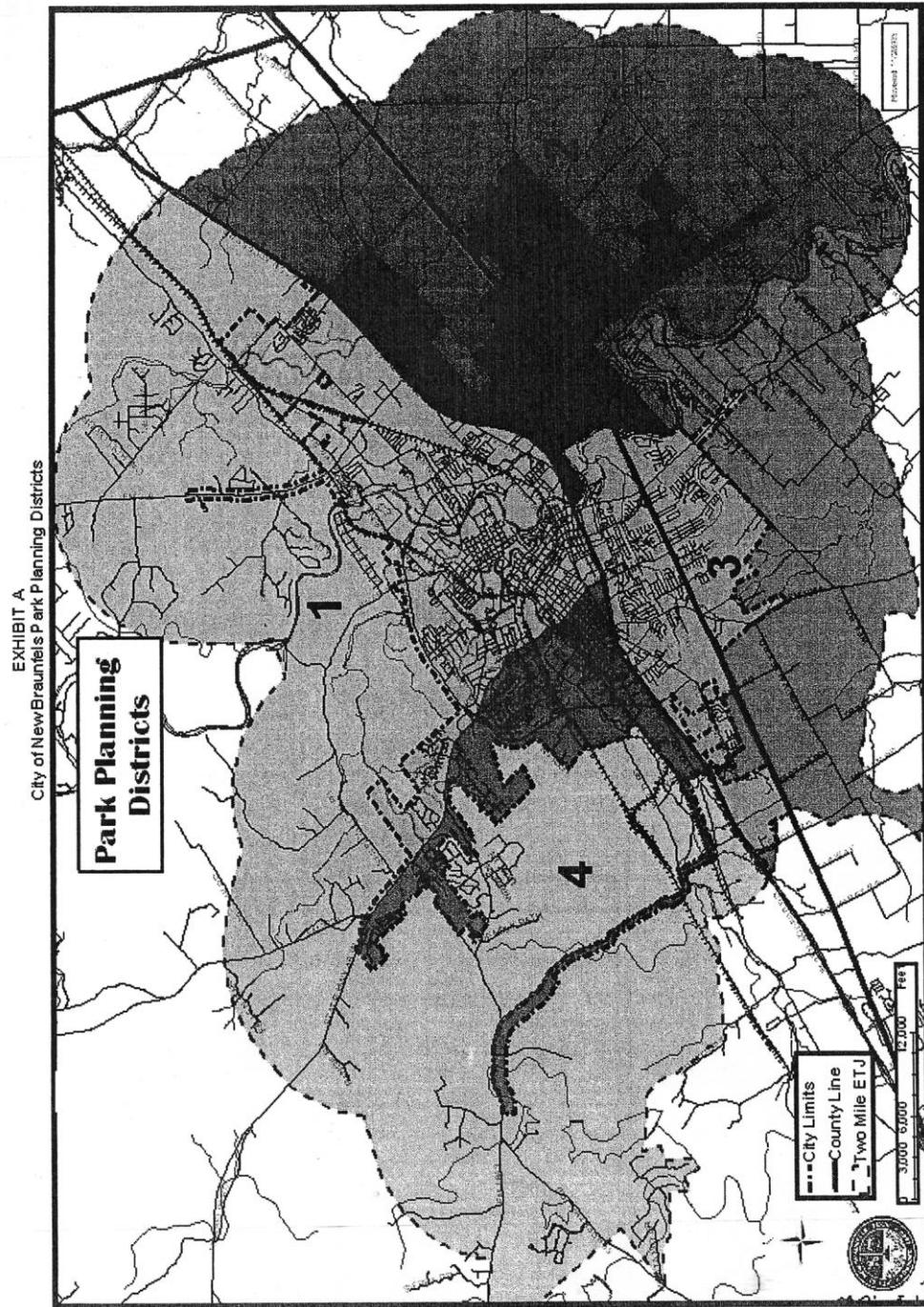
(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

Sec. 118-65. - Approval and appeal process.

- (a) The director shall be responsible for the review and approval of all park land dedication and park development fees submitted in accordance with the requirements of this article.
- (b) Any decision made by the director may only be appealed to the city parks and recreation advisory board and must be appealed within ten working days of the director's decision.
- (c) The director may defer the approval of park land dedication or park development fees to the city parks and recreation advisory for any reason.
- (d) Variances from the requirement of this article may be appealed to the city parks and recreation advisory board.
- (e) Any decision made by the city parks and recreation advisory board may only be appealed in writing through the city manager to the city council.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

Exhibit A. - City park planning districts.



City park planning districts

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

Exhibit B. - Fee calculation methodology.

Park Land Level of Service in 2001 Citywide Parks Master Plan

Neighborhood Parks — 2.5 Acres per 1000 population

Part 1 — Land Requirements

Neighborhood Parks and Linear Parks — 2.5 Acres per 1000 population

1000/2.5 acres = 1 acre of neighborhood/linear park per every 400 residents of New Braunfels

Average household size in New Braunfels per 2000 Census — 2.60 residents per household 400 residents per acre of neighborhood park and linear park/2.60 persons per household = 153 dwelling units per acre of parkland required

Round to 150 dwelling units per acre of parkland required

Part 1A — Park Acquisition Cost (to determine fee in lieu of land)

Assumption that 1 acre of land costs \$15,000 to purchase (in area that is being developed, not large agricultural tracts)

$\$15,000/150 \text{ dwelling units} = \$100 \text{ per Dwelling unit}$

Part 2 — Park Development Costs (to determine fee for development)

Recommended size of neighborhood parks in New Braunfels	-	5 acres minimum
Development cost per neighborhood park (5 to 10 acre size)	-	\$500,000
Cost per acre of development	-	\$50,000 to \$100,000
Average per acre cost is \$75,000 per acre		

$\$75,000/150 \text{ dwelling units} = \$500 \text{ per dwelling unit}$

Total Dedication Fee (with fee in lieu of land and Park Development fee) Fee in lieu of land (\$100) + Park Development fee (\$500) = \$600

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

Exhibit C. - City parks and recreation department neighborhood parks guidelines.

General Description.

Neighborhood parks are the basic unit of the park system. Neighborhood parks serve as the recreational and social focus of the neighborhood. Amenities center on informal active and passive recreation.

Location Criteria.

Neighborhood parks are located $\frac{1}{4}$ to $\frac{1}{2}$ mile from residences. This distance should be uninterrupted by non-residential road and other physical barriers.

Size Criteria.

Neighborhood parks are generally 5—10 acres in size.

Typical Features.

Generally, neighborhood park features include play structures, court games, informal playing fields or open space, tennis courts, volleyball courts, shuffleboard, horseshoe pits, trails, and picnic area. Activities should generally accommodate 50% active and 50% passive.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)