

## ORDINANCE NO. 1062

### AN ORDINANCE OF THE CITY OF LOS BANOS AMENDING ARTICLE 16, TITLE 9, CHAPTER 2 OF THE LOS BANOS MUNICIPAL CODE LAND FOR PARKS AND RECREATION

The City Council of the City of Los Banos does ordain as follows:

Section 1. Article 16, Title 9, Chapter 2 of the Los Banos Municipal Code is hereby amended to read as follows:

#### **Sec. 9-2.1601 Authority, general purpose, and definitions.**

This chapter is adopted pursuant to California Government Code Section 66477 and the general police power of the City, for the purpose of executing and implementing the parks and recreation element of the General Plan of the City of Los Banos, adopted by the City in August 1964, and City Council approved revisions. It is the purpose of this article for (1) the acquisition of park land for neighborhood and community parks through dedication of land or payment of fees in lieu thereof and (2) the development of park and recreation facilities by imposition of fees in connection with the development of new dwelling units.

Except where the context otherwise requires, the definitions given in this section govern the construction of this article.

(a) The term "developer" includes every person, firm, or corporation constructing a new dwelling unit, directly or through the services of any employee, agent, independent contractor, or otherwise.

(b) The term "new dwelling unit" includes each structure of permanent character, places in a permanent location, which is planned, designed or used for residential occupancy, including, but not limited to, one-family, two-family, and multi-family dwellings, apartment houses and complexes and mobile home spaces, but not including hotels, motels, and boardinghouses for transient guests.

(c) The term (subdivision) includes any type of construction, land division or improvement of land which provides for dwelling units identified under the provisions of Section 66424 of the California Government Code. "Subdivision" shall also include any increase in the number of mobile home spaces.

(d) The term "city service area" shall refer to the geographical area of beneficial use of one or more parks. The boundaries of said service areas shall be determined by resolution adopted by the City Council.

(e) The term "park service area" shall refer to the geographical area of beneficial use of one park, as determined by the Director of Public Works.

(f) The term "Land value" means fair market value of a buildable acre of land, as determined by the City Council. (§ 1, Ord. 844, eff. May 31, 1991)

(g) Very-low/Low Density.

(h) Medium Density.

(i) High Density.

#### **Sec. 9-2.1602 Requirements.**

At the time of approval of the tentative map, parcel map, or final map, or upon issuance of a building permit, the Director of Public Works shall determine pursuant to Section 9-2.1604 hereof the land required for dedication or in lieu fee payment. As a condition of approval of a final subdivision map or parcel map, or upon issuance of a building permit, the subdivider shall dedicate land, pay a fee in lieu thereof, or both, at the option of the City, for neighborhood and community park or recreational purposes at the time and according to the standards and formula contained in this article. (§ 1, Ord. 844, eff. May 31, 1991)

#### **Sec. 9-2.1603 Park acreage standard.**

It is hereby found and determined that the public interest, convenience, health, welfare, and safety require that 3.83 acres of property for each 1,000 persons residing within this City be devoted to local park and recreational purposes. Said 3.83 acres are

justified by the existing ratio of 3.83 acres of neighborhood and community parks per 1,000 residents in the City, and the current maximum utilization of said acreage by the residents of Los Banos. (§ 1, Ord. 844, eff. May 31, 1991)

**Sec. 9-2.1604 Formula for the dedication of land.**

Where a park or recreation facility has been designated in the Recreation and Park Element of the General Plan of the City, and is to be located in whole or in part within the proposed subdivision for the purpose of serving the immediate and future needs of the residents of the subdivision, the developer shall dedicate land for a local park sufficient in size and topography that bears a reasonable relationship to serve the present and future needs of the residents of the subdivision. The amount of land to be provided shall be determined pursuant to the following formula.

The formula for determining acreage to be dedicated shall be as follows:

$$\text{Average No. of Persons/Unit} \times \frac{\text{park acreage standard}}{1,000 \text{ population}} = \text{minimum acreage dedication/DU}$$

Example for very-low/low density dwelling unit (DU):

$$\frac{3.73 \times 3.83}{1,000} = .0142 \text{ acres/DU}$$

/1 Very-Low/Low Density R-1; Medium Density R-2; High Density R-3.

The following table of population density has been established pursuant to Section 66477 (b) of the Government Code:

**Park Land Dedication Formula Table**

<b>Residential</b>	<b>Population per Household/3</b>	<b>Acreage/DU (3.83 acre std.)</b>
<b>Very-Low/Low Density</b>	<b>3.73</b>	<b>.0142</b>
<b>Medium Density</b>	<b>3.07</b>	<b>.0117</b>
<b>High Density</b>	<b>2.21</b>	<b>.0084</b>

Dedication of the land shall be made in accordance with the procedures contained in Section 9-2.1612 hereof.

For the purpose of this section, the number of new dwelling units shall be based upon the number of parcels indicated on the tentative or parcel map when in an area zoned for one dwelling unit per parcel. When all or part of the subdivision is located in an area zoned for more than one dwelling unit per parcel, the number of proposed dwelling units in the area so zoned shall equal the maximum allowed under that zone, including any applicable density increases. In the case of a condominium project, the number of dwelling units shall be the number of condominium units. The term "new dwelling unit" does not include dwelling units lawfully in place prior to the date on which the parcel or final map is filed.

The developer shall, without credit: (1) provide full street improvements and utility connections including, but not limited to, curbs, gutter, street paving, traffic control devices, street trees, and sidewalks to land which is dedicated pursuant to this section; (2) provide for fencing along the property line of that portion of the subdivision contiguous to the dedicated land; (3) provide improved drainage through the site; and (4) provide other minimal improvements which the City determines to be essential to the acceptance of the land for recreational purposes.

The land to be dedicated and the improvements to be made pursuant to this section shall be reviewed at the tentative map stage in accordance with the criteria set forth in Section 9-2.1610 and approved by the Director of Public Works. (§ 1, Ord. 844 C.S., eff. May 31, 1991)

**Sec. 9-2.1605 Formula for fees in lieu of land dedication.**

(a) General formula. If there is no park or recreation facility designated in the Recreation and Parks Element of the General Plan to be located in whole or in part within the proposed subdivision for the purpose of serving the immediate and future needs of the residents of the subdivision, the developer shall, in lieu of dedicating land, pay a fee equal to the value of that land, prescribed in Section 9-2.1604 and 9-2.1606 hereof and in an amount determined in accordance with the provisions of Section 9-1606 hereof.

However, nothing in this section shall prohibit the dedication and acceptance of land for park and recreation purposes where the developer proposes such dedication voluntarily and the land is approved by the Director of Public Works.

(b) Use of money. The money collected hereunder shall be used only for the purpose of acquiring necessary land and developing new or rehabilitating existing park or recreational facilities reasonably related to serving the subdivision. (§ 1, Ord. 844 C.S., eff. May 31, 1991)

**Sec. 9-2.1606 Amount of fees in lieu of land dedication.**

When a fee is to be paid in lieu of land dedication, the amount of such fee shall be based upon the fair market value determined by the City Council per Section 9-2.1607. The fee shall be determined by the following formula:

$$\text{DUs} \times \frac{\text{Pop}}{\text{DU}} \times \frac{3.83 \text{ acres}}{1,000 \text{ people}} \times \frac{\text{FMV}}{\text{Buildable acre}} = \frac{\text{in-lieu fee}}{\text{in-lieu fee}}$$

where

DUs = Number of dwelling units as defined in Section 9-2.1604

$\frac{\text{Pop}}{\text{DU}}$  = population per dwelling unit as defined in Section 9-2.1604

FMV = fair market value determined by Section 9-2.1607

Buildable Acre = a typical acre of the subdivision, with a slope less than ten (10%) percent, and located in other than an area on which building is excluded because of flooding, easements, or other restrictions.

Fees to be collected pursuant to this section shall be reviewed by the Director of Public Works to ascertain if they comply with the formula set forth above. If compliance is found, then the fees shall be approved by the Director of Public Works. (§ 1, Ord.844 C.S., eff. May 31, 1991)

**Sec. 9-2.1607 Determinations of fair market value.**

The fair market value per buildable acre shall be determined annually by resolution adopted by the City Council. (§ 1, Ord. 844 C.S., eff. May 31, 1991)

**Sec. 9-2.1608 Park development impact fees.**

A fee shall be paid for park development by the developer of each new dwelling unit irrespective of whether the developer is required to dedicate land or pay fees in lieu of land dedication as set forth in Sections 9-2.1604 and 9-2.1605. This fee shall be used to pay for those improvements including, but not limited to, landscaping and installation or recreational facilities which are required by Sections 9-2.1604 and 9-2.1605. The fee shall be established at the rate set forth by City Council Resolution. (§1, Ord. 844 C.S., eff. May 31, 1991, as amended by § 10, Ord. 954, eff. March 3, 2000)

**Sec 9-2.1609 Determinations of park development cost per acre.**

The development cost per acre of park land shall be determined annually by resolution adopted by the City Council (§ 1, Ord. 844 C.S., eff. May 31, 1991)

**Sec. 9-2.1610 Determinations of land or fees.**

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

- (a) The natural features, access, and location of land in the subdivision available for dedication;
- (b) The size and shape of the subdivision and land available for dedication;
- (c) The feasibility of dedication;
- (d) The compatibility of dedication with the Recreation and Parks Element of the General Plan; and
- (e) The location of existing and proposed park sites and trailways. (§ 1, Ord. 844 C.S., eff. May 31, 1991)

**Sec. 9-2.1611 Credit for private open space.**

No credit shall be given for private open space in the subdivision except as hereinafter provided. Where private open space usable for active recreational purposes is provided in a proposed planned development or real estate development as defined in Sections 11003 and 11003.1 of the Business and Professions Code, partial credit, not to exceed forty-five (45%) percent, shall be given against the requirement of and dedication or payment of fees in lieu thereof if the City finds that it is in the public interest to do so and that all the following standards are met:

- (a) Yards, court areas, setbacks, and other open areas required by the zoning and building ordinances and regulations shall not be included in the computation of such private open space; and
- (b) Private park and recreational facilities shall be owned by an owners association composed of all property owners in the subdivision and being an incorporated nonprofit organization capable of dissolution only by a 100% affirmative vote of the membership and approved by the City, operated under recorded land agreements through which each lot owner in the neighborhood is automatically a member, and each lot is subject to a charge for a proportionate share of expenses for maintaining the facilities; and
- (c) Use of the private open space is restricted for park and recreation purposes by recorded covenant which runs the land in favor of the future owners of the property and which cannot be defeated or eliminated without the consent of the City or its successor; and
- (d) The proposed private open space is reasonably adaptable for use for park and recreation purposes, taking into consideration such factors as size, shape, topography, geology, access, and location; and

The open space for which credit is given is a minimum of three acres and provides a minimum of five (5) of the local park basic elements listed as follows, or a combination of such, and other recreation improvements that will meet the specific recreation needs of future residents of the area:

<b>Elements</b>	<b>Acres</b>
1. Children's play apparatus area	.50 to .75
2. Landscape park-like with quiet areas	.50 to 1.00
3. Family picnic area	.25 to .75
4. Game court area	.25 to .50
5. Turf playfield	1.00 to 3.00
6. Swimming pool (forty-two (42') feet by seventy-five (75') feet with adjacent deck and lawn areas)	.25 to .50
7. Recreation center building	.15 to .25

Before credit is given, the Director of Public Works shall make written findings that the above standards are met. (§ 1, Ord. 844 C.S., eff. May 31, 1991)

**Sec. 9-2.1612 Procedure.**

At the time of approval of the tentative map or parcel map, rezoning, or any other discretionary approval of development, the Director of Public Works shall determine, pursuant to Section 9-2.1604 hereof, the land required for dedication. If the Director of Public Works requires in-lieu fee payment by the developer, the Director of Public Works shall set the amount of land upon which the in-lieu fee will be based at the time of final map approval. At the time of filing of final map, the subdivider shall dedicate the land. In-lieu

fees and park development fees shall be paid at the time of final inspection, prior to issuance of a certificate of occupancy. In-lieu fees shall be established using current land values at the time of payment with the formula set forth in Section 9-2.1606. Park development fees shall be established using current park improvement costs at the time of payment with the formula set forth in Section 9-2.1608.

Open space covenants for private park or recreation facilities shall be submitted to the City prior to approval of the final subdivision map or parcel map and shall be recorded contemporaneously with the final subdivision map.

The land to be dedicated and/or in-lieu and park development fees to be paid, shall be subject to the latest adopted ordinances, resolutions, policies, and fees adopted by the City Council and in effect at the time of the final map review and approval. (§ 1, Ord. 844 C.S., eff. May 31, 1991, revised, corrected in Reprint No. 36)

#### **Sec. 9-2.1613          Disposition of fees.**

Fees determined pursuant to Section 9-2.1606 and 9-2.1608 shall be paid to the City Finance Director and shall be deposited into the subdivision park trust fund, or its successor. Money in said fund, including accrued interest, shall be expended solely for acquisition, development, or rehabilitation of park land or improvements related thereto.

Collected fees shall be appropriated by the local agency to which the land or fees are conveyed or paid for a specific project to serve residents of the subdivision in a budgetary year within five (5) years upon receipt of payments or within five (5) years after the issuance of building permits on one-half (1/2) of the lots created by the subdivision, whichever occurs later.

If such fees are not so committed, these fees shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots in the subdivision.

The City Finance Director shall report to the City at least annually on income, expenditures, and status of the subdivision park trust fund. (§ 1, Ord. 844 C.S., eff. May 31, 1991)

#### **Sec. 9-2.1614          Exemptions.**

Subdivisions containing less than five (5) parcels and not used for residential purposes shall be exempted from the requirements of this article; provided, however, that a condition shall be placed on the approval of such parcel map that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels the fee may be required to be paid by the owner of each such parcel as condition to the issuance of such permit.

The provisions of this article do not apply to commercial or industrial subdivision; nor do they apply to condominium projects or stock cooperatives which consist of the subdivision of air space in an existing apartment building which is more than five (5) years old when no new dwelling units are added. (§ 1, Ord. 844 C.S., eff. May 31, 1991)

#### **Sec. 9-2.1615          Developer-provided park and recreation improvements.**

After the Planning Commission determines that land is required for dedication and/or in-lieu fee payment by the developers the developer may apply to the Public Works Department for permission to construct specified park and recreation improvements on the land of said developer required for dedication or on other land within the same city service area to be developed as a park. If the Public Works Department grants the developer permission for construction of specified parks and recreation improvements on said land, said Department shall fix the dollar value of the parks and recreation improvements prior to construction. The agreed dollar value of park and recreation improvements provided by the developer shall be credited against the fees required by this article, provided the improvements are constructed per the approved plans by the Department. (§ 1, Ord. 844 C.S., eff. May 31, 1991)

#### **Sec. 9-2.1616          Schedule for the use of land or fees.**

The Public Works Department shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve residents of the subdivision. (§ 1, Ord. 844 C.S., eff. May 31, 1991)

**Sec. 9-2.1617 Access.**

All land offered for dedication for local park or recreational purposes shall have access to at least one existing or proposed public street. This requirement may be waived by the City if the City determines that public street access is unnecessary for maintenance of the park area or use thereof by residents. (§ 1, Ord. 844 C.S., eff. May 31, 1991)

**Sec. 9-2.1618 Sale of dedicated land.**

If during the ensuing time between dedication of land for park purposes and commencements of first-stage development, circumstances arise which indicate that another site would be more suitable for local park or recreational purposes serving the subdivision and the neighborhood (such as receipt of a gift of additional park land or a change in school location), the land may be sold upon the approval of the City with the resultant funds being used for the purchase of a more suitable site. (§ 1, Ord. 844 C.S., eff. May 31, 1991)

Section 2. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Sousa and seconded by Council Member Faria on the 7<sup>th</sup> day of November, 2007.

Passed on the 19<sup>th</sup> day of November, 2007, by the following vote:

AYES: Council Members Brooks, Faria, Sousa, Villalta, Mayor Jones  
NOES : None  
ABSENT: None

APPROVED:

/s/ Tommy Jones  
Tommy Jones, Mayor

ATTEST:

/s/ Lucille L. Mallonee  
Lucille L. Mallonee, City Clerk