

ORDINANCE NO. 19-

AN ORDINANCE OF THE CITY OF HAYWARD AMENDING CHAPTER 10,
ARTICLE 16 OF THE HAYWARD MUNICIPAL CODE REGARDING OBLIGATIONS
FOR PARKS AND RECREATION FOR PROPERTY DEVELOPERS

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 10, Article 16 of the Hayward Municipal Code is amended to read in full as follows:

ARTICLE 16 - PROPERTY DEVELOPERS—OBLIGATIONS FOR PARKS AND RECREATION

SEC. 10-16.00 - AUTHORITY.

This article is enacted pursuant to the authority granted to municipal corporations by the Subdivision Map Act of the State of California, specifically section 66477 of the Government Code of the State of California, and pursuant to the authority in the field of municipal affairs granted to the City by its Charter and by the Constitution of the State of California.

SEC. 10-16.01 - PURPOSE.

In order to provide for the general health and welfare, the City Council has found and determined that it is in the public interest to require all residential subdivisions and all other development of land in the City for residential and industrial purposes to pay impact fees to provide for park and recreational facilities serving the City.

SEC. 10-16.10 - REQUIREMENTS.

As a condition of approval of a tentative subdivision map, parcel map, use permit, planned development, site plan review, or building permit, for residential or industrial purposes (which are hereinafter referred to as development plan), requirements shall be determined for the subdivider, developer, or owner of the land to pay an impact fee.

Development comprised of an industrial use(s), as defined by HMC Sec. 10-1.1603, within an industrial zoning district (HMC Sec. 10-1.1600) shall be subject to park impact fees. Non-industrial uses located within an industrial zoning district and industrial uses located within non-industrial zoning districts shall not be subject to park impact fees.

Provided that the number of bedrooms in each dwelling unit, the number of lots in a residential subdivision, or the gross floor area in an industrial development is not increased, required fees shall be levied only once on said individual dwelling unit, lot, or industrial development. SEC. 10-16.11 - EXEMPTION FROM REQUIREMENTS.

The following development(s) shall be exempt from the provisions of this article:

- (a) Housing for the elderly or disabled, when the development is either owned by a public agency or leased to a public agency for a period of at least twenty (20) years, and when the development complies with the definition of housing for the elderly or disabled as defined by the U. S. Department of Housing and Urban Development;
- (b) Rental housing owned by a private non-profit corporation with rents on all units which remain affordable, for a period of at least thirty (30) years, to households with incomes of no more than one hundred twenty (120) percent of area median income, adjusted for household size, as defined by the State of California Department of Housing and Community Development. Developers of such housing shall record against the property an Affordable Housing Agreement per HMC Sec. 10-17.515 and Section 10-17.525 that is approved by the City and enter into a regulatory agreement with the City to be approved by the City Council, which shall guarantee the term of affordability;
- (c) Ownership housing developed by a public agency or private non-profit housing developer with all units affordable in perpetuity to ~~first-time homebuyers~~ households with incomes of no more than one hundred twenty (120) percent of area median income, adjusted for household size, as defined by the State of California Department of Housing and Community Development. Developers of such housing shall record against the property an Affordable Housing Agreement per HMC Sec. 10-17.515 and Section 10-17.525 that is approved by the City and enter into a regulatory agreement with the City to be approved by the City Council, which shall guarantee the term of affordability. Owners within such ownership developments shall be required to provide a right of first refusal to the City or its designee to purchase the units upon resale;
- (d) Convalescent hospitals, nursing homes, and rest homes (as defined in Chapter 10, Article 1 of the Hayward Municipal Code), or similar residential or community care facilities, which provide personal care, supervision or regular medical services and require licensing by the State Department of Health Services or Social Services. When a project consists of a combination of independent living and residential or community care dwelling units, the number of units that are intended for independent adults shall be subject to park impact fees; and
- (e) All non-residential development, except for industrial development, which is not exempt.

SEC. 10-16.15 - PLAN.

The park and recreational facilities for which dedication of land and/or payment of the fee are hereby required shall be in accordance with the principles and standards for local parks and recreation areas as established in the General Plan of the City (hereinafter called Plan), which contains the City's park and recreation policies and standards.

SEC. 10-16.20 - PARK IMPACT FEES.

- (a) Amount of Fee. Park impact fees may be established by resolution of the City Council. Any such fees shall be part of the City's Master Fee Schedule. The fees shall not exceed the cost to the City of mitigating the impact of such development on park and recreational facilities in the City. To the extent that the fee applies to subdivisions, it shall not exceed the limits for five acres per 1,000 population under Section 66477 of the Government Code. Developments shall be subject to the impact fee schedule in effect at the time a building permit is issued for the project. If a project is developed in phases, each phase shall be subject to the fee schedule in effect at the time of building permit issuance for that phase.

For residential units built before February 19, 2020, no additional park fees will be applied for an addition to the unit. For all other residential units, additions that add one or more bedrooms shall be assessed a park impact fee equal to the number of bedrooms being added, according to the City's Master Fee Schedule in effect at the time of building permit issuance. For example, a one-bedroom addition would be subject to the 1-bedroom park impact fee, while a two-bedroom addition would be subject to the 2-bedroom fee.

Additions to industrial development shall be assessed based on additional gross floor area.

- (b) Reduction in Fees. Park impact fees for the following project types and dwelling units shall be reduced 50 percent below the applicable fees set in the City's Master Fee Schedule:
1. Rental housing owned by a for-profit corporation with rents which on the average remain affordable, for a period of at least thirty (30) years, to households with incomes of no more than one hundred twenty (120) percent of area median income, adjusted for household size, as defined by the State of California Department of Housing and Community Development. Developers of such housing shall record against the property an Affordable Housing Agreement per HMC Sec. 10-17.515 and Section 10-17.525 that is approved by the City and enter into a regulatory agreement with the City to be approved by the City Council, which shall guarantee the term of affordability.

2. Ownership housing developed by a private developer which is affordable in perpetuity to **first-time homebuyers households** with incomes of no more than one hundred twenty (120) percent of area median income, adjusted for household size, as defined by the State of California Department of Housing and Community Development. Developers of such housing shall record against the property an Affordable Housing Agreement per HMC Sec. 10-17.515 and Section 10-17.525 that is approved by the City and enter into a regulatory agreement with the City to be approved by the City Council, which shall guarantee the term of affordability. Owners within such ownership developments shall be required to provide a right of first refusal to the City or its designee to purchase the units upon resale.
3. On-site affordable units, as defined and required by the Hayward Affordable Housing Ordinance, [Chapter 10, Article 17](#) of the Hayward Municipal Code.
 - (c) Payment of Impact Fees. Fees shall be paid to the City prior to the date of the final inspection or the date the certificate of occupancy is issued for the development, whichever occurs first. Where occupancy of a development is phased, fees shall be paid on a pro rata basis for each dwelling unit prior to final inspection or issuance of a certificate of occupancy for said unit, whichever occurs first.
 - (d) Use of Impact Fees. The fees collected hereunder, including accrued interest, 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 City.
 - (e) Disposition of Fees. Fees determined pursuant to this article shall be paid to the City and deposited into a special park and recreation trust fund, or successor fund.
 - (f) Commitment of Fees. Collected fees shall be committed by the City Council for a specific park or recreational project to serve residents of the development within five (5) years after payment of such fees or within five (5) years after the issuance of building permits on one-half of the dwelling units created by the development, whichever occurs later.

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

SEC. 10-16.21 – CREDIT FOR DEDICATION OF LAND.

Subject to the limitations set forth below, the City may allow the dedication of land as partial or full credit towards park impact fee obligations in accordance with the following provisions:

- (a) Procedures. At the time of filing a development plan for approval, the subdivider or developer shall, as a part of such filing, indicate a preference to either pay the required park impact fees, dedicate land for park or recreation purposes, or do a combination of both in accordance with the standards of this section. If the subdivider or developer prefers to dedicate land, the area shall be designated on the proposed development plan.

Residential subdivisions or developments containing fifty (50) dwelling units or less: only the payment of an impact fee shall be required; however, as credit toward the fee otherwise required in such cases, the subdivider or developer and the City, with consultation with Hayward Area Recreation and Park District, may mutually agree on land dedication or a combination of land dedication and impact fees.

Residential subdivisions or developments containing more than fifty (50) dwelling units: the City agency or officer responsible for final approval shall determine at the time of approval of the development plan whether to require dedication of land, payment of an impact fee, or a combination of both. Prior to approval, the project shall be referred to the Hayward Area Recreation and Park District for a recommendation.

- (b) Formula for Credit for Land Dedication. The amount of credit received for land dedication shall be determined at the time a development plan is submitted for City approval. The formula for determining the amount of credit to be received is based on the probable occupancy level of each type of housing unit and shall be as follows:

ASSUMED PERSONS PER DWELLING UNIT	
Number of Bedrooms in Dwelling Unit	Assumed Persons
0 Bedrooms	0.78
1 Bedroom	1.22
2 Bedroom	2.21
3 Bedroom	3.85
4+ Bedroom	5.36

Formula for land dedication:

$$\begin{array}{r} \text{Total Assumed} \\ \text{Persons} \end{array} \times \begin{array}{r} \text{Estimated Level of} \\ \text{Service to be Funded} \\ \text{by Growth} \end{array} = \begin{array}{r} \text{Total Land to} \\ \text{be Dedicated} \end{array}$$

1. Refer to HMC Sec. 10-1.3500 for definitions of “dwelling unit” and “bedroom.” The number of dwelling units subject to impact fees shall equal the number of proposed dwelling units minus the number of existing dwelling units on the property.
 2. The estimated level of service to be funded by growth is calculated by dividing the estimated park acres to be funded by growth by the estimated growth in residential population.
 3. The total land to be dedicated must be at least one acre in size. If the above calculation results in a smaller amount of land, payment of applicable park impact fees will be required.
- (c) Determination of the Suitability of Parkland. If land is to be dedicated, the designation of the location and configuration thereof shall be at the sole option of the City. In determining the suitability of the land to be dedicated for park and recreational purposes, the City shall consider the following factors with consultation with the Hayward Area Recreation and Park District:
1. The topography, soils, soil stability, storm drainage, existing flora, access, location, and general utility of the land in the development available for dedication;
 2. The size and shape of development and land available for dedication;
 3. The location of the land in relation to the surrounding street system, existing park and recreational facilities, and the surrounding residential population;
 4. Local recreational facilities to be privately owned and maintained by future residents of the development; and
 5. Conformance of the land offered for dedication with the park and recreation policies and strategies established in the plan.
- (d) Public Improvements. In the event that the area to be dedicated is or will in the future be bounded or abutted by public street frontage, the developer shall, without credit, provide public improvements including, but not limited to, curbs, gutters, storm drains, lights, sidewalks, matching pavement, property line fencing, and street trees to City standards. However, in lieu of installation of such improvements, the City may determine, at the time of approval of the tentative subdivision map or development plan, that the subdivider or developer shall pay a fee equal to the cost of said improvements as a condition of the said map or plan. Costs of public works improvements shall be determined by the City. Payment of such fees shall occur prior to the date of

final inspection or the date the first certificate of occupancy is issued for the development, whichever occurs first.

- (e) Liens, Charges, and Encumbrances. When land is to be dedicated, it shall be dedicated free and clear of all liens, charges, and encumbrances, except and subject to the following provisions:
1. Where land is to be dedicated as a condition of approval of a tentative subdivision map, parcel map or other land division map, it shall be dedicated in accordance with provisions in the Subdivision Map Act of the State of California and in ordinances and regulations for land division of the City, and it may be dedicated subject to such interests as are permitted by said laws.
 2. Where land is to be dedicated as a condition of approval of a planned development, use permit, site plan review, building permit, or other development plan not involving a land division, it shall be dedicated prior to issuance of a building permit for the development plan, unless otherwise agreed upon by the City. Land shall be dedicated by a duly executed and acknowledged appropriate conveyance capable of being recorded, and it may be dedicated subject to such interests as are permitted by said laws referred to above in this section.
- (f) Developer Provided Park and Recreation Improvements. The value of park and recreation improvements provided by the developer to the dedicated land shall be credited against the fees required by this ordinance, excluding improvements required under Sec. 10-16.21(d) and 10-16.23. The City Council reserves the right to approve such improvements prior to agreeing to accept the dedication of land and to require an impact fee, additional land, or a combination thereof, should the improvements be unacceptable.

SEC. 10-16.22 - CREDIT FOR PRIVATE RECREATION IMPROVEMENTS.

Where a private park and recreational area is provided in a development and such space is to be privately owned and maintained by the owners of the development, partial credit may be allowed against the total park impact fees required under this article if the City finds that it is in the public interest to do so. To receive a credit, qualifying private park and recreational areas shall equal at least twenty-five percent (25%) of the total parkland dedication calculation for the development [HMC Sec. 10-16.21(b)] or 2400 square feet, whichever is the greater amount. The amount of credit may be based on the percentage of the required parkland that is provided through private park and recreational areas but shall not exceed seventy-five percent (75%) of the land dedication requirement or in-lieu fee. All of the following standards or regulations shall be complied with to receive a credit:

- (a) Private yards, setbacks, parking areas, and other open areas required under the City's zoning and building ordinances and regulations shall not be included in computing the amount of park and recreational areas available for credit.

- (b) Private park and recreation areas shall be conveniently accessible to all residents and the public, and, as much as possible, shall consist of one contiguous area.
- (c) Where private park and recreational areas will be owned by a homeowners' association, ownership and maintenance of such areas shall be adequately provided for by recorded written agreement, covenant, or restrictions, through which each owner within the development is automatically a member of the association and is subject to a proportionate share of maintenance expenses.
- (d) Developments with credit received for private park and recreational areas shall have a covenant recorded which shall run with the land that: (1) restricts such areas from being altered or eliminated without the prior consent of the City, (2) requires such areas to be maintained in an attractive, usable, and safe condition at all times, and (3) requires the land to be publicly accessible. The covenant shall also stipulate that, if the City Manager determines that a violation of any of the above requirements has occurred, the current owner(s) shall be subject, at the City's option, to either the payment of park impact fees based on the amount of credit originally received for the development or any other remedy available at law or equity including but not limited to injunctive relief for specific performance. The amount of impact fees shall be according to the fee schedule in effect at the time the violation is determined to have occurred.

For residential subdivisions, the covenant for private park and recreational land and improvements shall be submitted to the City prior to approval of the final subdivision map or parcel map and shall be recorded contemporaneously with such final documents.

For all other developments, the covenant shall be submitted to the City for review and approval and then recorded with the County prior to issuance of a building permit for said developments.

- (e) Private park and recreational areas shall be reasonably adaptable for their intended purpose, taking into consideration such factors as size, shape, topography, geology, sun exposure, safety, and security.
- (f) Facilities for private park and recreational areas shall be in substantial accordance with the provisions of the plan.
- (g) Facilities shall exhibit quality workmanship and design shall be constructed with durable materials and shall conform to standards required for public park facilities.
- (h) All turf and planting areas offered for credit shall be completely irrigated by automatic irrigation systems.

Private park and recreational areas shall contain at least two of the local park elements listed below, with the exception that a swimming pool shall be determined to provide the two required park elements:

Criteria List	
Recreational/Park Facility	Minimum Required Area per Facility
1. Children's play apparatus area shall comply with federal public playground safety guidelines	1,200 sq. ft.
2. Courtyard with decorative paving and seating (exclusive of general circulation areas and not exceeding 3 percent slope)	1,200 sq. ft.
3. Family picnic area and park-like areas with associated facilities (exclusive of general circulation areas and not exceeding 10 percent slope)	2,400 sq. ft.
4. Game court area	2,500 sq. ft.
5. Turf playfield	10,800 sq. ft.
6. Swimming pool(s) (800 square feet minimum water surface area per pool together with adjacent deck and/or lawn area twice that of the pool)	2,400 sq. ft.
7. Recreation center buildings (excluding offices, hallways, restrooms, and utility rooms)	1,200 sq. ft.
8. Linear parks and trails	1,000 linear feet
9. Other facilities the City deems appropriate for private park and recreation purposes	As determined by the City with consultation with HARD
<p><i>Note: Any offsets for park/recreational facilities must meet the minimum standards as set forth in this table unless the Director of Development Services in consultation with the Hayward Area Recreation and Park District waives the minimum based on an articulable community benefit.</i></p>	

SEC. 10-16.23 - ACCESS TO PARKLAND.

Land to receive credit toward park impact fee obligations which is without frontage on a dedicated street shall, at the sole option of the City, be provided by the subdivider, developer, or owner with any necessary easements for public access to such land, together with such street improvements as may be necessary for the residents of the development or members of the public to gain access to such land. Credit shall not be available for such easements or improvements.

SEC. 10-16.24 - REDETERMINATION OF REQUIRED LAND DEDICATION.

Upon the renewal, extension, or modification by the City of a tentative subdivision map, parcel map, or any other development plan or permit, the City shall redetermine, based on the provisions of this article as then applicable, such new or additional requirements of impact fees or land dedication as pertinent to the development.

SEC. 10-16.30 - COMMENCEMENT OF DEVELOPMENT.

The City shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park and recreational facilities to serve the City. Said time schedule may be a part of the Capital Improvement Program approved by the City Council or be a part of any other expression of policy by the City Council. Partial responsibility for said schedule may also be transferred to the Hayward Area Park and Recreation District for dedicated land which has been conveyed to the District for development and maintenance responsibility.

SEC. 10-16.40 - ALTERNATE AGENCY FOR DEVELOPMENT AND MAINTENANCE.

At its option, the City Council may name Hayward Area Recreation and Park District, a public district of the State of California, to be responsible for the acquisition and development of parklands acquired as a result of this article in accordance with the policies and strategies for parks and recreation areas, as set forth in the plan. Any impact fees collected as a result of this article may also be transferred to said district, provided such monies are kept in a separate trust account and are used in accordance with the aforementioned plan.

SEC. 10-16.50 - DEVELOPMENTS SUBJECT TO ARTICLE.

Subject to the following, this article shall to the maximum extent permitted by law, supersede Hayward Municipal Code Chapter 10, Article 16 as it previously existed. However, this article shall not affect the validity of any rights and obligations created pursuant to such prior article, and all such rights and obligations shall continue in full force and effect. Tentative map, parcel map, and the planning permit applications for a residential development that are approved prior to the operative date of this article shall be subject to the prior Chapter 10, Article 16.

SEC. 10-16.60 - OPERATIVE DATE.

The operative date of this article shall be thirty (30) days following its date of adoption.

Section 2. If any section, subsection, paragraph, or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid, or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 3. This Ordinance shall become effective February 20, 2020.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ____ day of _____, 2019, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ____ day of _____, 2019, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Mayor of the City of Hayward

DATE: _____

ATTEST:

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward