

# Chapter 1214: Park Dedication

## **1214.01 PURPOSE AND FINDINGS (REVISED 1212.01)**

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- (a) The purpose of this chapter is to ensure that adequate open space and parkland is provided to serve the recreational needs of the City's residents.
- (b) It is hereby found and determined that the public health, safety and general welfare require at least .0294 acres of property per dwelling unit be devoted to active or passive recreation, and the same is hereby established as the parkland standard for the City. It is further found and determined that the development of new housing creates the need for additional parkland and capital improvements to provide the opportunity for active and passive recreation.
- (c) It is the policy of the City that .0294 acres of parkland should be reserved for each new dwelling unit in the City, and that all new residential developments, mixed use development with residential components, and subdivisions should contribute to the maintenance of the parkland standard.

## **1214.02 APPLICABILITY (NEW)**

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This chapter shall apply to all new subdivisions and any new development that includes residential dwellings after the effective date of this code.

## **1214.03 ESTABLISHMENT OF THE PARK IMPACT FEE (REVISED 1212.03)**

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- (a) The applicant shall pay to the City a park impact fee in the sum of 500 dollars for each new dwelling unit.
- (b) The park impact fee will be collected at the time final plat approval is requested for a subdivision or prior to issuance of a certificate of zoning compliance for all dwelling units that are not part of a subdivision.
- (c) The fee shall be based on the total number of dwelling units contained in the application.
- (d) In no case shall more dwelling units be constructed than the number approved and the number for which the park impact fee has been paid.

## **1214.04 FUND (EXISTING 1212.04)**

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All park impact fees collected shall be deposited in a separate and distinct Parkland Acquisition and Capitalization Fund, which is hereby created.

## **1214.05 USE OF FUNDS (EXISTING 1212.05)**

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All park impact fees collected shall be used solely for the acquisition and capital improvement of parkland within or adjacent to the City. No fees shall be used for any other purpose, including maintenance, operation, or the replacement of any existing capital improvements in existing parkland, or the maintenance and operation of any parkland.

## **1214.06 CREDITS (REVISED 1212.06)**

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### **(a) Credit through Public Parkland Dedication**

- (1)** The City may accept a donation of land in lieu of the payment of the park impact fee, or some portion of the fee. The applicant shall include the proposal for the donation of land in lieu of all or part of the park impact fee at or before the time final plat approval is requested.
- (2)** The City shall not be required to accept any or all land for public dedication.
- (3)** The Planning Commission shall have the authority to determine whether the proposed donation of land is suitable for use as parkland based on factors which reasonably affect its use as parkland, including, but not limited to the:
  - A.** Location;
  - B.** Size;
  - C.** Accessibility;
  - D.** Topography; and
  - E.** Proposed improvements.
- (4)** Undevelopable or unbuildable land will not be eligible for credit under this section.
- (5)** If accepted, the donated property should be dedicated to the City by the final plat or deeded to the City by general warranty deed.
- (6)** Up to 100 percent of the park impact fee may be credited through public parkland dedication based on the value of the dedicated land (See Section [1214.06\(c\)](#) for determination of value.). If the value of the land dedicated is less than 100 percent of the required park impact fee, the remaining fee shall be paid in accordance with this chapter.

### **(b) Credit for Private Open Space**

- (1)** The City may consider allowing a credit for the creation of private open space in the event that an applicant provides such space for park purposes. For the purposes of this section, the private open space shall be privately owned and maintained by the future residents of the subdivision or development.
- (2)** In the event that the Planning Commission determines that such private open space adequately fulfills a portion of the park needs of the proposed subdivision or development, the market value of such areas, as determined in this chapter, shall be credited against the park impact fee required in this chapter.
- (3)** The Planning Commission shall have the authority to determine whether the proposed private open space qualifies as credit toward the park impact fee. The Planning Commission may take into consideration the factors established in Section [1214.06\(a\)\(3\)](#) when considering whether the private open space should be used as a credit toward the required park impact fee.
- (4)** The following areas shall not be counted towards private open space:

- A. Private and public roads, and associated rights-of-way;
  - B. Public or private parking spaces, access ways, and driveways related to any residential use;
  - C. Required minimum spacing between buildings and required yard setbacks;
  - D. Vehicular use areas;
  - E. Land that is subject to pre-existing conservation easements or other similar protected open spaces;
  - F. Above-ground buildings, pipes, apparatus, and other equipment for community or individual use, septic or sewage disposal systems;
  - G. Substations, public utility easements;
  - H. Dry stormwater detention basins or facilities; and
  - I. Leftover land that has no value for development and is not a natural resource (e.g., river or stream corridor, large forest stand, wetlands) that contributes to the quality of the overall project.
- (5) The use of the private open space is restricted for park purposes by recorded covenants that run with the land in favor of the future owners of property within the subdivision or development, and which cannot by their terms be defeated or eliminated without the consent of the Planning Commission.
- (6) All private open space utilized as a credit under this chapter must be permanently protected by means as established in Section [1214.07](#).
- (7) Up to 50 percent of the park impact fee may be credited through the creation of private open space based on the value of the open space created (See Section [1214.06\(c\)](#) for determination of value.). If the value of the land dedicated is less than 50 percent of the required park impact fee, the remaining fee shall be paid in accordance with this chapter.

**(c) Determination of Fair Market Value**

- (1) Credit for park impact fees, as allowed in this section, shall be based on fair market value of the land to be dedicated or protected as private open space.
- (2) Fair market value shall equal the average value per acre of all land in each subdivision or development in its raw, undeveloped state, as determined at the time an application is submitted for a final plat or certificate of zoning compliance, whichever is applicable.
- (3) The credit to be considered shall be calculated by determining the amount of acreage proposed for public parkland dedication or private open space, as established in this chapter, to the tenth of an acre, and multiplying that by the per-acre fair market value.
- (4) The fair market value shall be determined by agreement between the applicant and the City of Middletown, which may include appraisal by a qualified appraiser approved by the City.

- (5) If the applicant objects to the fair market value determination provided for in (4) above, fair market value shall be determined by a three member board of appraisers, one of whom shall be appointed by the City, one of whom shall be appointed by the applicant, and one of which shall be selected by the two appraisers so appointed. The decision of a majority of such board shall be final. Each party shall pay the costs and expenses of the appraiser appointed by them, and the parties shall share equally the costs and expenses of the appraiser appointed by the other appraisers.

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**1214.07 PROTECTION OF PRIVATE OPEN SPACE (NEW)**

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- (a) Any further subdivision of the private open space for uses other than those prescribed in this chapter, the approved certificate, or the approved plat shall be prohibited.
- (b) In all cases, the long term control and protection of the open space shall be accomplished through the use of a conservation easement.
- (c) **Conservation Easements**
- (1) At the time when an applicant records the plat for the approved subdivision, a conservation easement shall be placed on all lands and private waters used to satisfy the private open space requirement.
- (2) For development that does not require a plat, the applicant shall be required to record the conservation easement before a certificate of occupancy is issued.
- (3) The conservation easement shall:
- A. Run with the land, regardless of ownership;
  - B. Provide for protection of the land in perpetuity;
  - C. Be granted and deeded to the City, Butler or Warren County, State, park district, a City approved land trust, or other qualified organization approved by the Planning Commission;
  - D. Shall not, in any way, imply the right of public access or any other right or duty not expressly established by the terms of the easement.
- (4) While the City, Butler or Warren County, State, park district, City approved land trust, or other qualified organization may hold the conservation easement, the property itself shall still be owned by the original property owner, the applicant, or a homeowners' or property owners' association. If it is to be owned by an association, the association's documents shall be recorded with the subdivision plat or prior to issuance of the certificate of occupancy. A copy shall be submitted to the Development Code Administrator to be maintained as part of the City's records.

- (5) The conservation easement shall include information on how the property will be maintained by the applicant or owner and shall also state that failure to maintain the property in accordance with the conservation easement agreements shall be considered a violation of this code. In addition, the holder of the easement may pursue any remedy provided by law or equity, including, but not limited to, the remedies in Section 5301.70 of the Ohio Revised Code.

**(d) Homeowners' Associations or Property Owners' Associations**

- (1) A homeowners' association or property owners' association shall be established to permanently maintain all open space and common areas if such areas are not transferred and accepted by the City, Butler or Warren County, State, park district, City approved land trust, or other qualified organization.
- (2) All homeowners' association or property owners' association agreements shall be submitted to the Development Code Administrator as part of the subdivision or certificate of zoning compliance application, whichever is applicable. No set of proposed covenants, articles of incorporation, or bylaws of a homeowner's association or property owners' association shall permit the abrogation of any duties set forth in this section.
- (3) All homeowners' associations or property owners' associations shall guarantee the maintenance of all open space and common areas within the boundaries of the development through the deed restrictions or covenants.
- (4) Membership in the association shall be mandatory for all purchasers of lots in the subdivision or development.
- (5) The association shall be responsible for maintenance, control, and insurance of all common areas, including required open space.
- (6) In the event that the homeowners' association or property owners' association no longer maintains the common areas and open space in a neat and orderly manner, or if the homeowners' association or property owners' association goes defunct, the City may take over maintenance and assess a fee to cover the costs of such maintenance. The fee shall be assessed to each of the benefitting property owners within the subdivision or development.

**1214.08 PROHIBITION (EXISTING 1212.07)**

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- (a) No plat will receive the final approval of Planning Commission, and no further approvals for certificates or permits will be considered until the fee provided for in this chapter is paid.
- (b) Nothing contained in this ordinance shall relieve or be interpreted as relieving any person, firm or corporation from complying with all other ordinances, law, rules, regulations of the City or any other governmental agency when they are now in force or hereafter enacted, regulating or governing the construction of residential structures in the City.