

DIVISION 4. - PRIVATE ASSOCIATIONS FOR THE COMMON OWNERSHIP OF PARKS, GREENWAYS, CONSERVANCIES, AND OPEN SPACES

Sec. 14.740. - Purpose for privately-owned park and open space.

The preservation and protection of privately-owned park and open space in conjunction with residential development supplement the availability of public park and open space benefitting residents, and provide recreational potential and use of lands which may not be suitable for building purposes.

Sec. 14.741. - Applicability.

This section shall apply to residentially zoned lands intended to be used as permanent parks or open space in conjunction with approved and recorded subdivisions containing 20 or more building lots and at least 20 or more acres of land exclusive of public street dedication.

Sec. 14.742. - Permitted uses.

Non-residential uses of a non-profit cultural or recreational character are permitted to the extent they are intended primarily to serve the residents of the associated subdivision.

Sec. 14.743. - Standards and criteria.

- (a) The private park or open space shall be located with regard to convenience, accessibility, and aesthetics for the residents of the development and with regard to natural features such as topography.
- (b) The private park or open space shall be of a size, location, and character suitable for its purpose, shall be acceptable to the plan commission and council as a private park or open space, shall be at least one acre in area, and shall provide for municipal access for emergency or maintenance duties as necessary.

Sec. 14.744. - Responsibilities of ownership and maintenance of private park and open space areas.

- (a) The park or open space shall be legally reserved for use by all of the residents and/or owners of the subdivision.
- (b)

The park or open space shall be legally improved, maintained, and directed by an established homeowners association or equivalent acceptable to the city and shall be recorded with the plat to ensure perpetual care, responsibility, and purpose of the common open space. The legal instrument, as required, may include, but is not limited to, the following:

- (1) Legally creating an automatic membership, nonprofit homeowners association.
- (2) Placing title to the common property in the homeowners association or giving definite assurance that it automatically will be so placed within a reasonable and definite time.
- (3) Appropriately limiting the uses of the common property.
- (4) Giving each lot owner the right to the use and enjoyment of the common property.
- (5) Placing responsibility for operation and maintenance of the common property, including responsibility for taxes and assessments incurred by the common property, in the homeowners association. If, in the opinion of the council, the common open space is not being maintained in a satisfactory manner, the city shall reserve the right of access to the common open space and shall reserve the right to maintain the common open space. The cost of such maintenance, plus a ten percent collection fee, shall be assessed the members of the homeowners association, and if not paid within the calendar year due, shall constitute a lien on the individual property or properties.
- (6) Placing an association charge on each lot in a manner which will:
 - a. Assure sufficient association funds.
 - b. Provide adequate safeguards for the lot owners against undesirably high charges.
 - c. Give each lot owner voting rights in the association.

DIVISION 5. - PUBLIC SITES, PARKS, GREENWAYS, CONSERVANCIES, AND OPEN SPACES

Sec. 14.745. - Reservation of public sites and open spaces.

In order that adequate open space and sites for public uses and thoroughfares may be properly located and preserved as the community develops, the following provisions are established:

- (a) *Preliminary plat to accommodate planned public spaces.* Whenever a tract to be subdivided includes a proposed street, highway, drainageway, floodplain, parkway, or other public way, or a proposed site for a park, playground, school, or other public use as indicated on the official map or the comprehensive plan, such space shall be suitably incorporated by the developer into the subdivision plat after the proper determination of its necessity by the council and the appropriate body or other public agency involved in the acquisition and/or use of each site.
- (b) *School, park, and playground sites.* Unless appropriate provision for dedication or donation of school, park, or playground sites has been made by the city in a previous action, as in the case of a large-scale development involving multiple land uses, any required school sites, parks, or playgrounds shall be acquired by the school district or the city.
- (c) *Intent regarding minor revisions.* The locations of planned public ways and public sites are designated on the official map or comprehensive plan to varying degrees of precision and accuracy based on the information and tools available at the time. The city acknowledges that as development takes place, minor adjustments to the precise locations of public ways and public sites may be necessary based on construction plans, site conditions, and change over time. Such minor changes can be approved as part of the land division review process, at the discretion of the applicable city department(s), without requiring an amendment to the official map or comprehensive plan. Where such changes are substantial, a revision to the official map and/or comprehensive plan will be required.

Sec. 14.746. - Acquisition of land for public use.

Land may be acquired for public school sites, parks, playgrounds, or other public recreation areas or for other public purposes as provided by law and the following procedures:

- (a) If potential public areas are included within a plat, the commission shall refer the plat to the public body concerned with acquisition for its consideration and report. The commission may propose alternate areas for such acquisition and shall allow the public body concerned 30 days to reply. If affirmative, the

reply of the public body shall include a map showing the boundaries and area of the parcel to be acquired and an estimate of the time required to complete the acquisition.

- (b) Upon receipt of an affirmative report, the commission shall notify the property owner and shall designate on the preliminary and final plats that area proposed to be acquired by the public body. Such area shall also be recommended for placement on the official map.
- (c) The acquisition of land reserved on the preliminary or final plat for acquisition by a public agency shall be instituted by such public agency within 18 months of written notification from the owner of the property that the owner intends to develop it. Such a letter of intent shall be accompanied by a sketch plan of the proposed development and a tentative schedule of development. Failure of the public agency to institute acquisition within the prescribed 18 months shall result in the removal of the "reserved" designation from the property involved and in the freeing of the property for development. "Reserved" designation on the official map shall also be recommended to be removed if the public agency fails to institute acquisition.

Sec. 14.747. - Dedication of land for public use.

- (a) When the final plat of a subdivision has been approved by the appropriate public bodies, and all other required approvals are obtained and the plat is recorded, such approval shall constitute acceptance for the purpose designated on the plat of all lands shown as dedicated to the public, including street dedications, unless a development agreement specifies otherwise. Whenever a preliminary plat includes a proposed dedication of land to public use and the commission and council find that such land is not required or not suitable for public use, the council may either refuse to approve such dedication or require the rearrangement of the proposed subdivision to provide for a more suitable dedication of land for public use.
- (b) In the case of major thoroughfares lying within the plat, the subdivider may dedicate the right-of-way width in excess of that required to directly serve the subdivision and claim credit for the area of such land in the related parkland dedication required under this ordinance.

Sec. 14.748. - Mandatory dedication of parklands or fee in lieu of dedication.

Under the authority granted by § 236.45(6), Wis. Stats., and in order that adequate open space and sites for public uses may be properly located and preserved as the community develops, and in order that the cost of providing the neighborhood park, recreational sites, and open space necessary to serve the additional persons in the subdivision development may be most equitably apportioned on the basis of the additional need created by the development, the following provisions are established for divisions of land within the urban expansion district (or urban reserve district when a land division is permitted by a modification granted by the common council):

- (a) *Applicability.* The provisions of this section shall apply to all residential subdivisions and certified survey maps (CSMs) of both single and multiple-family dwellings, including subsequent replatting of subdivisions and CSMs of both single and multi-family dwellings within the urban expansion district. The provisions shall not apply to:
 - (1) Combination or retracement CSMs.
 - (2) Subdivisions or CSMs within industrial or commercial zoning districts.
- (b) *Requirement.* Before a final plat or other land division under the applicability of this chapter will be approved, the subdivider shall dedicate parklands or pay fees in lieu of dedication as specified below. The amount of parkland dedication or payment required shall bear a rational relationship to the need for parkland resulting from the subdivision and will be proportional to the need.
 - (1) Dedication of parklands.
 - a. In exercising the parkland dedication option, the subdivider shall provide and dedicate to the public adequate land within the City limits to provide for a recreational area to meet the needs of the subdivision in a location feasible and compatible with the comprehensive plan and the official map.
 - b. The proposed dedication shall be reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access, and location. On this basis, the City has the sole discretion to approve or deny the proposed dedication.

- c. The department of parks, recreation, and forestry will determine the proportionate need being met by the dedication based on an accepted service standard for parklands and park facilities.
- (2) Payment of fees in lieu of dedication (parkland development fees) shall be required where parkland dedication is not feasible or compatible with the comprehensive plan or official map, or where the payment of fees in lieu of dedication is preferred at the discretion of the city.
 - a. In exercising the payment of fees in lieu of dedication option, the subdivider shall provide cash payment of parkland development fees for the acquisition or initial improvement of land for public parks.
 - b. Improvement of land for public parks includes grading, landscaping, installation of utilities, construction of sidewalks, installation of playground equipment, and construction or installation of restroom facilities in accordance with § 236.45(6), Wis. Stats.
 - c. Amount: The standard parkland development fee shall be set per residential dwelling unit in accordance with the current park, recreation, and forestry fee and charges schedule.
 - d. Review: The parkland development fee shall be reviewed by the park Committee and the City Council at least every two years.
 - e. Proceeds of such payments shall be deposited in a separate nonlapsing city account and shall be used only for acquisition or initial improvement of land for public parks with priority given to lands within one mile of the boundary of the subdivision.
- (3) Combination of dedication and payment of fees in lieu of dedication. Where approved by the department of parks, recreation, and forestry, a combination of parkland dedication and payment of fees in lieu of dedication may be used to meet the need generated by the land division for parkland acquisition and initial improvement of parklands.

(c)

Reservation of potential sites. In addition to the requirements for the dedication of parklands or the payment of fees in lieu of dedication, reservation of public sites may also be required under the provisions found in sections 14.745 through 14.747 and may be cause for the reduction of parkland dedication requirements or parkland development fees.

(d) *Credit for private open space.* When private open space for park and recreational purposes is provided in a proposed subdivision and such space is to be privately owned and maintained by the future residents of the subdivision, partial credit not to exceed 50 percent may be given against the requirement of land dedication or payment of fees in lieu thereof if the common council 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 building ordinances and regulations 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 written agreement, conveyance, or restrictions.
- (3) That the use of the private open space is restricted for park and recreational purposes by recorded covenant which runs with the land in favor of the future owners of property and which cannot be defeated or eliminated without the 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.

Secs. 14.749—14.799. - Reserved.