CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 04/22/03
AGENDA ITEM 9B
WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Park Dedication In-Lieu Ordinance

At the April 15 City Council meeting, adoption of the ordinance pertaining to park in lieu fees was continued at the request of Councilmember Matt Jimenez. At the same time, staff was instructed to contact the Hayward Area and Recreation Park District to ascertain its position with regard to adjusting the fees at once, or over a three-year period. According to HARD, while it would prefer to have the increase take effect at once, the phased approach is also acceptable.

Should the Council be interested in having the new fees take effect over three years, it is necessary to introduce a new ordinance. In this regard, attached is the original ordinance for you consideration.

Jesús Armas
City Manager

DRAFT

ORDINANCE NO. 03-___

ORDINANCE REVISING ARTICLE 16 OF CHAPTER 10 OF THE HAYWARD MUNICIPAL CODE FOR THE PARK DEDICATION IN-LIEU FEES

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

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

"ARTICLE 16

PROPERTY DEVELOPERS -
OBLIGATIONS FOR PARKS AND RECREATION

Section	Subject Matter
10-16.00	AUTHORITY
10-16.01	PURPOSE
10-16.10	REQUIREMENTS
10-16.11	EXEMPTIONS FROM REQUIREMENTS
10-16.15	PLAN
10-16.20	STANDARDS FOR LAND DEDICATION
10-16.21	FORMULA FOR LAND DEDICATION
10-16.25	PUBLIC IMPROVEMENTS
10-16.30	FEES IN LIEU OF LAND DEDICATION
10-16.31	DETERMINATION OF DEDICATION OF LAND AND/OR PAYMENT OF IN-LIEU FEES
10-16.32	CREDIT FOR PRIVATE RECREATION IMPROVEMENTS
10-16.45	LAND DEDICATION
10-16.46	ACCESS TO PARK LAND

10-16.47	DEVELOPER PROVIDED PARK AND RECREATION IMPROVEMENTS
10-16.48	REDETERMINATION OF REQUIRED LAND DEDICATION
10-16.50	COMMENCEMENT OF DEVELOPMENT
10-16.60	ALTERNATE AGENCY FOR DEVELOPMENT AND MAINTENANCE
10-16.70	DEVELOPMENTS SUBJECT TO ARTICLE
10-16.80	OPERATIVE DATE

ARTICLE 16

PROPERTY DEVELOPERS - OBLIGATIONS FOR PARKS AND RECREATION

(Added by Ord. No. 74-020 C.S., adopted July 2, 1974 and amended by Ord. 89-003 C.S., adopted February 7, 1989)
(Article Renumbered by Ord. 99-14, adopted September 7, 1999)

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 subdivisions and all other development of land in the City for residential purposes to set aside land and/or pay in-lieu fees to provide for park and recreational facilities serving the area being subdivided or developed.

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 purposes (which are hereinafter referred to as development plan), requirements shall be determined for the subdivider, developer, or owner of the land to dedicate land, pay a fee in lieu thereof, or do a combination of both, at the option of the City subject to the limitations set forth in Sec. 10-16.31(a), for park and recreational purposes in accordance with provisions of this article. Provided that the number of dwelling units or lots is not increased, required dedication and/or fees shall be levied only once on said individual dwelling unit or lot.

SEC. 10-16.11 EXEMPTION FROM REQUIREMENTS. The following development shall be exempt from the provisions of this article:
(As amended by Ord. 91-17, adopted July 23, 1991)

(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 which on the average remain affordable, for a period of at least thirty (30) years, to households with incomes of no more than sixty (60) 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 rental housing shall 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 which is affordable to first-time homebuyers with incomes of no more than ninety-five (95) percent of area median income, adjusted for household size,

as defined by the State of California Department of Housing and Community Development. 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) Commercial and industrial subdivisions;

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 Policies Plan of the City (hereinafter called Plan), which contains the City's park and recreation policies and standards.

SEC. 10-16.20 STANDARD FOR LAND DEDICATION. In accordance with the Plan, it is hereby found and determined that the public interest, convenience, health, welfare, and safety require 5.0 acres of property (exclusive of street areas abutting or providing access to said property and exclusive of any land made available by a school district) for each 1,000 persons residing within the City be devoted to local park and recreational purposes, and that such land shall be dedicated to the City as a condition of development.

SEC. 10-16.21 FORMULA FOR LAND DEDICATION.

(a) The amount of parkland required for dedication shall be determined at the time a development plan is submitted for City approval. The formula for determining the amount of land to be dedicated is based on the probable occupancy level of each density or type of housing unit and shall be as follows:

LAND DEDICATION SCHEDULE

Type of Dwelling	Assumed Persons Per Dwelling Unit	Area of Park Land Required Per Dwelling Unit
Single Family Detached	3.43	748 sq. ft.
Single Family Attached	3.27	713 sq. ft.
Multi-Family	2.77	604 sq. ft.

(b) A dwelling unit shall mean one or more rooms with a kitchen, arranged, designed, used, or intended to be used exclusively for living and sleeping purposes by one family or household as an independent housekeeping unit. The number of dwelling units shall be indicated on the development plan for the property or, in the case of a single-family subdivision, the number of residential lots indicated on the tentative map or parcel map. The number of dwelling units subject to land dedication or in-lieu fees shall equal the number of proposed dwelling units minus the number of existing dwelling

units on the property.

(c) Single Family Detached Dwelling shall mean a detached building containing only one dwelling unit.

(d) Single Family Attached Dwelling shall mean any building, group of buildings, or portion thereof which includes two or more dwelling units, and which are intended as for sale units and are usually governed by a Homeowners Association (HOA) with Covenants, Codes and Restrictions (CC&Rs). This includes condominium and townhouse dwelling projects.

(e) Multi Family Dwelling shall mean any building, group of buildings, or portion thereof which includes two or more dwelling units, and which are intended as rental or lease units. Multi Family Dwelling shall include second units, such as "granny flats" and "in-law units" and senior housing projects established for independent elderly adults that do not require daily care and supervision, as well as assisted living facilities where the residents are able to enjoy local parklands or participate in senior-oriented park facilities or centers.

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, shall not be subject to park dedication requirements.

But, 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 dedication requirements.

SEC. 10-16.25 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.

SEC. 10-16.30 FEES IN LIEU OF LAND DEDICATION.
(As amended by Ord. No. 91-17, adopted July 23, 1991)
(As amended by Ord. No. 03- , adopted)

(a) Amount of Fee. When the City determines that fees

are to be paid in-lieu of land dedication, such fees shall be in accordance with the following schedule:

In Lieu Fee Schedule

Type of Dwelling	Minimum In-Lieu Fee Per Dwelling Unit 7/1/03	7/1/04	7/1/05
Single Family Detached	$6,000	$9,000	$12,000
Single Family Attached	$5,800	$8,600	$11,400
Multi-Family	$4,750	$7,200	$9,650

(b) Periodic Adjustment of In-Lieu Fees. The in-lieu fee schedule shall be updated annually with new fees taking effect on July 1 of each year. The fees shall be based on current land values as determined by the Planning Director. The number of persons per household shall also be re-assessed as necessary based on the latest census figures. Developments shall be subject to the in-lieu fee schedule in effect at the time a building permit is issued for the project.

(c) Payment of In-Lieu 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 prorata basis for each dwelling unit prior to final inspection or issuance of a certificate of occupancy for said unit, whichever occurs first.
The City may require the payment of fees at an earlier date when the City determines that the fees will be collected for park and recreational improvements or parkland acquisition for which an account has been established and funds have been authorized by the City, and for which a schedule or plan has been adopted that proposes construction or acquisition to occur prior to the date of final inspection or issuance of the certificate of occupancy. Under such circumstances, the City may require payment at the time of building permit issuance or final or

parcel map approval.

(d) Use of In-lieu 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 development.

(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.

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. 10-16.31 DETERMINATION OF DEDICATION OF LAND AND/OR PAYMENT OF IN-LIEU FEES. Subject to the limitation set forth below, the City shall exercise its option to require the dedication of land or impose a requirement for the payment of fees in-lieu thereof, or a combination of both 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 dedicate land for park or recreation purposes, pay an in-lieu fee, 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.

Subdivisions or other developments containing fifty (50) dwelling units or less: only the payment of an in-lieu fee shall be required; however, in lieu of 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 in-lieu fees.

Subdivisions or other 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 in-lieu 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. When land dedication is proposed and the approving body is other than the Planning Commission, the proposed dedication shall also be forwarded to the Planning Commission for concurrence and a finding of plan conformance.

(b) 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 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.

(5) Conformance of the land offered for dedication with the park and recreation policies and strategies established in the plan.

SEC. 10-16.32 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 land dedication and/or in-lieu 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 park land dedication requirement for the development 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 fifty percent (50%) 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 centrally located within the development, shall be conveniently accessible to all residents, 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, and (2) requires such areas to be maintained in an attractive, usable, and safe condition at all times. 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 dedication in-lieu 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 in-lieu fees shall be according to the fee schedule in effect at the time the violation is determined to have occurred.

For 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) 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,	1,200 sq.ft.

and utility rooms)	
8. Other facilities the City deems appropriate for private park and recreation purposes, including rooftop recreation areas.	As determined by the City, with consultation with HARD

(All turf and planting areas offered for credit shall be completely irrigated by automatic irrigation systems.)

SEC. 10-16.45 LAND DEDICATION. 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:

(a) 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.

(b) 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.

SEC. 10-16.46 ACCESS TO PARK LAND. Land to be dedicated for park purposes 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 to gain access to such land. Credit shall not be available for such easements or improvements.

SEC. 10-16.47 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 or dedication of land required by this ordinance, excluding improvements required under Sec. 10-16.25 and 10-16.46. The City Council reserves the right to approve such improvements prior to agreeing to accept the dedication of land and to require in-lieu fee, additional land, or a combination thereof, should the improvements be unacceptable.

SEC. 10-16.48 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 land dedication or fees in lieu thereof as pertinent to the development.

SEC. 10-16.50 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 residents of the development or subdivision. 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 Recreation District for dedicated land which has been conveyed to the District for development and maintenance responsibility.

SEC. 10-16.60 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 park lands 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 in-lieu 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. 10-16.70 DEVELOPMENTS SUBJECT TO ARTICLE. Subject to the following, this article shall to the maximum extent permitted by law supercede 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 filed prior to or within thirty (30) days after the operative date of this article shall be subject to the prior Chapter 10, Article 16. 'Filing' shall refer to the date such application has been determined or deemed complete by theCity.

SEC. 10-16.80 OPERATIVE DATE. The operative date of this article shall be thirty (30) days following its date of adoption."

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. Effective Date. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the____ day of_____, 2003, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the_____ day of _____, 2003, 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