

ORDINANCE NO. 4829
STA No. 2020-02

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING APPENDIX B OF THE MESQUITE CITY CODE, THE MESQUITE SUBDIVISION ORDINANCE, AS AMENDED, BY REPEALING ARTICLE VI IN ITS ENTIRETY AND ADDING A NEW ARTICLE VI TO ESTABLISH A PARK LAND DEDICATION ORDINANCE; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE NOT TO EXCEED \$2,000.00 FOR EACH OFFENSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council of the City of Mesquite, Texas (“**City Council**”), to protect the public health, safety and welfare and the City Council may do so by enacting reasonable regulations for such purposes; and

WHEREAS, the City of Mesquite, Texas (“**City**”), is a home-rule municipality acting under its charter adopted and amended by the electorate pursuant to the Texas Constitution, Article XI, § 5, and the Local Government Code Chapter 9; and

WHEREAS, a home-rule municipality has full power of local self-government, pursuant to Texas Local Government Code § 51.072(a); and

WHEREAS, a home-rule municipality has general enforcement authority and may enforce each rule, ordinance, or police regulation of the municipality and may punish a violation of a rule, ordinance, or police regulation pursuant to Texas Local Government Code § 54.001, as amended and pursuant to Mesquite City Code, Chapter 1, § 1-6; and

WHEREAS, a home-rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants, pursuant to Texas Local Government Code § 54.004, as amended; and

WHEREAS, after a public hearing on the matter, a home-rule municipality may adopt rules governing plats and subdivisions of land within the municipality’s jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality, pursuant to Texas Local Government Code § 212.002; and

WHEREAS, the City shall have the power to enact and enforce ordinances necessary to protect health, life and property and to prevent and summarily abate and remove all nuisances, and to preserve and enforce good government and order and security of the City and its inhabitants, pursuant to Mesquite City Charter, Article III, § 2; and

WHEREAS, parks (a) provide intrinsic environmental, aesthetic, and recreation benefits to the City, its citizens and visitors to the City, (b) promote and improve physical and psychological health, (c) enhance quality of life and property values, (d) serve as tools for

revitalization and attracting residents and businesses to the City, (e) form an ecological framework for environmental and economic sustainability, and (f) provide, promote and protect the public health, safety and welfare of the citizens of the City, and have numerous additional benefits; and

WHEREAS, there is a reasonable connection between the City's increasing population arising from subdivision development and redevelopment, and increased park and recreation needs in the City resulting from such development and redevelopment; and

WHEREAS, on October 26, 2020, the Planning and Zoning Commission voted to recommend approval of proposed amendments to the Mesquite Subdivision Ordinance; and

WHEREAS, the City Council did give public notice and did hold a public hearing regarding the proposed amendments, and the City Council is of the opinion the amendments are designed to accomplish the legitimate goals stated herein and in the amendments and are substantially related to the health, safety and general welfare of the City and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. The findings contained in the preamble of this ordinance are determined to be true and correct and are hereby adopted as part of this ordinance.

SECTION 2. Appendix B of the Mesquite City Code, the Mesquite Subdivision Ordinance, as amended, is hereby amended by deleting Article VI, "Public Sites and Open Spaces," in its entirety and adding a new Article VI, attached hereto as Exhibit A, incorporated herein by reference and made a part thereof, to establish a park land dedication ordinance, and in all other respects said Code and Mesquite Subdivision Ordinance to remain in full force and effect.

SECTION 3. That all ordinances, or portions thereof, of the City of Mesquite in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed; otherwise, they shall remain in full force and effect.

SECTION 4. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 5. That any person (as defined in Chapter 1, Section 1-2 of the Code of the City of Mesquite, Texas, as amended) violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed Two Thousand (\$2,000.00) Dollars for each offense, provided, however, if the maximum penalty provided for by this ordinance for an offense is greater than the maximum penalty provided for the same offense under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense shall be the maximum penalty provided by the laws of the State of Texas. Each day or portion of a day any violation of this ordinance continues shall constitute a separate offense. In addition to and cumulative of all other penalties and enforcement, the City shall have the right seek such relief as

provided by the statutes of the State of Texas including, but not limited to, Texas Local Government Code § 212.018, and as otherwise provided in the Mesquite City Code and Appendix B, the Mesquite Subdivision Ordinance.

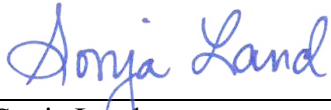
SECTION 6. That this ordinance shall take effect and be in force from and after five days after publication.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 16th day of November 2020.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

ARTICLE VI. CONVEYANCE OF LAND FOR PARKS**A. Purpose.**

This article is adopted to ensure that adequate parks are provided to meet the additional and proportional needs created by and reasonably attributable to new development.

B. Scope.

- (1) The provisions of this article shall apply to all new residential or hotel/motel development within the City on or after the effective date of this article.
- (2) This article does not apply to activities involving the replacement, reconstruction, remodeling, rehabilitation or other improvements to an existing residential structure or hotel, or to the rebuilding of a damaged structure or to permits required for accessory uses, unless such activity results in a change in the type or increase in the number of dwelling units or guest rooms.
- (3) The provisions of this article shall not be construed to limit the power of the City to utilize other methods authorized under state law or pursuant to other City powers to accomplish the purposes set forth herein, either in substitution or in conjunction with this article. Guidelines may be developed by resolution, ordinance or otherwise to implement and administer this article.

C. Exemptions.

The provisions of this article shall not apply to the following:

- (1) A replat that does not increase the number of single-family or duplex residential lots; or
- (2) From this article by application of Texas Local Government Code Chapter 245.

D. General requirements.

- (1) *Conveyance or payment of money required.* The owner of any property to which this article applies, shall convey land for park purposes or make a payment of money in lieu of land, or a combination of both, to the City at the time of subdivision for single family and duplex residential development or at time of issuance of a building permit for multi-family or hotel development, in accordance with the provisions of this chapter.
- (2) *Proposed number of dwelling units to be submitted.* All plats, replats, site plans or proposed improvements of land for new residential development required to be submitted to the City shall indicate the number of proposed dwelling units to be constructed or placed within the development on such plat, replat or site plan. All site plans for hotels shall indicate the number of guest rooms on the site plan.

- (3) *Determination of requirements.* In reviewing any plat or site plan for a new residential development or hotel, dedication of land for park purposes as provided herein shall be required, provided that an applicant for the development may request payment of fee in lieu of all or a portion of the dedication. If such request is made, the City Council upon recommendation of the City Manager shall make a determination of whether a conveyance of land, payment of money in lieu of land or a combination of both shall be made to meet the requirements of this article.
- (4) *Factors considered.* In making a determination of whether money in lieu of land shall be made to meet, in whole or in part, the requirements of this article, the City Council shall determine what would be in the best interest of the City, based upon relevant factors which may include, but not be limited to, the following:
- (a) Whether the proposed land to be conveyed for park purposes would be suitable as a public park;
 - (b) Recommendations of the Parks Master Plan and Comprehensive Plan for the area in which the development is located;
 - (c) Whether there is sufficient existing public or private park land in the area of the proposed development; and
 - (d) Whether the park needs of the area where the proposed development is located would be best served by expanding or upgrading existing parks.
- (5) *Suitability of proposed conveyance of land for park purposes.* A proposed conveyance of land to meet the requirements of this article shall generally be considered unsuitable for park purposes if it has one or more of the following characteristics:
- (a) If more than 20 percent of the proposed park site is located within the 100-year floodplain, as shown on the latest flood insurance rate map. The City may accept land that is composed of more than 20 percent floodplain if it is determined in the best interest of the City;
 - (b) The proposed park site dedication is less than three acres, unless the proposed dedication is located in such a manner in which it could be combined with other dedications to create a park of adequate size; or
 - (c) It does not or would not front an improved public street or would not be readily accessible, in whole or in part, to the public.
- (6) *Combination of land and payment of money.* The City Council may, when in the best interest of the City, require a combination of the conveyance of land and the payment of money in lieu of land to meet the requirements of this article.

E. Conveyance of land requirements.

When a conveyance of land shall be required, in whole or in part, to meet the requirements of this article, the following provisions shall apply:

- (1) *Amount.* Any required conveyance of land for residential development shall be in an amount proportionally equal to one acre per 55 residential units, or portion thereof, for all proposed residential development. Any required conveyance of land for hotel development shall be in an amount proportionally equal to one acre per 70 guest rooms, or portion thereof.
- (2) *Changes to existing subdivision or site plan.* If any subdivision or site plan change results in an increase in the number of dwelling units allowed on a platted lot or within a subdivision, the developer shall pay the difference as a fee in lieu of land dedicated to be paid prior to the filing of the replat or the issuance of a building permit.
- (3) *Manner and method.* Plats of subdivisions required to be submitted for approval by the City shall show thereon a fee simple conveyance to the City of the land required by this article for park purposes as a condition to approval of such plat by the City. The City may further require the conveyance of the park property by general warranty deed. As a condition to acceptance of the plat or deed by the City, the subdivider shall provide the City with an owner's title policy of insurance in an amount equal to the value of the land conveyed. The value shall be determined by the land value as found on the latest tax appraisal by the Dallas County or Kaufman County Central Appraisal District, as applicable.
- (4) *Credit for private recreation facilities.* Where private recreation facilities are built for the residents for the subdivision or development, a credit may be granted by the Director of Planning and Development Services. The value of these private recreation facilities shall be determined by the City Manager but shall not exceed 50 percent credit unless approved by the City Council.
- (5) *Location.* The land required to be conveyed may be located inside or outside the boundaries of the development, as long as the land is located within one-quarter mile of the development.
- (6) *Improvements to be made.* The person required to convey land shall be responsible for, and pay the costs of, providing convenient access by improved streets, sidewalks and adequate drainage improvements so that the site is suitable for the purpose intended, and shall provide water, sewer and electrical utilities to the property in accordance with the procedures applicable to other public improvements as specified in the Engineering Design Manual. However, the City Council may waive, in whole or part, such required improvements where an amount of land in excess of the requirements of this article is conveyed, the value of which is equal to or greater than the cost of the improvements being waived.

F. Fee in lieu of land.

Where the City Council determines that a payment of money in lieu of land dedication, in whole or in part, shall be made, the following provisions shall apply:

- (1) *Amount required to be paid.* Any payment of money required to be paid by this article shall be based on the value of the land to be determined by the average value of land in the Park Service Area. The average value of land in each Park Service Area shall be determined by the certified tax role as of January 1 of each year as determined by the applicable central appraisal district. The average land value within the Park Service Area shall be applied to the amount of land that would otherwise be required to be dedicated for the development.
- (2) *Time of payment.*
 - (a) *Single-family and duplex residential.* One-half of the required payment shall be made prior to the filing of the plat for single family and duplex residential developments. The remaining half shall be evenly divided by the number of dwellings in the development and each proportional share paid prior to the issuance of each building permit.
 - (b) *Multifamily residential and hotels.* Prior to the issuance of building permits for multi-family and hotel developments.
- (3) *Park land dedication fund.* All cash payments paid to the City in accordance with this article shall be deposited in a separate park land dedication fund. A separate park land dedication fund shall be established for each Park Service Area. The City shall account for all such payments with reference to each development for which the payment is made.
- (4) *Use of funds.* Any payments made to the park land dedication fund shall be used solely for the acquisition, development, expansion or upgrading of City parks located within the same Park Service Area where the proposed development for which payment was made is located, or to reimburse the City for prior acquisition and development of such park facilities.
- (5) *Right to refund.* If all or part of the payments made for a development are not expended for the purposes authorized herein within 10 years of the date that 95 percent of all certificates of occupancy or final inspections have been issued for the completed development of the property for which the payments were made, the person or entity who made such payments shall be entitled to a refund on all unexpended funds if a request for a refund in writing has been made within one year of entitlement. If no such timely request is made, the right to a refund of the unexpended funds shall be considered waived.

G. Withholding of permits and utilities.

Permits and services to be withheld. No building permits shall be issued for, and no permanent utility services shall be provided to, any land within any development to which this article applies until the required conveyance of land or payment of money in lieu of land is made to the City in accordance with this article.

H. Park service areas.

Park service areas established. Park service areas are hereby established as shown on the Park Service Area map as illustrated in this section. Service area boundaries may be amended from time to time by ordinance.

I. Waiver of article requirements by City Council.

The City Council may waive the requirements of this article upon a finding by the City Council that said waiver is clearly in the best interest of the City.

Park Service Area Map

