

CHAPTER 1180

PARKS, OPEN SPACE, AND RECREATIONAL AMENITIES

CROSS REFERENCES

Parks and Recreation Master Plan

1180.01	Purpose	1180.07	Determination of Fees in Lieu of Land Dedication
1180.02	Parks and Recreation Master Plan	1180.08	Payment of Fees
1180.03	Parks, Public Open Space, and Recreational Amenities Required	1180.09	Development Fund
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1180.01 PURPOSE

- A. Parks, recreational amenities, and public open spaces are generally considered an important part of a healthy community adding to the cultural fabric and quality of life in society and the community. Therefore, the public health, safety and welfare require that as the population of the City increases and changes demographically, more parks and recreational amenities are needed. These amenities provide a more desirable living environment for the residents of new developments, and reduce the demand for comparable amenities developed or acquired at public expense. With respect to such residential subdivision developments property shall be devoted and/or developed for parks, public open spaces, and recreational amenities by, or at the expense of developers. The acquisition and development of such parks, public open spaces, and recreational amenities are necessary to meet the needs of future residents and shall be provided in substantial part by such future residents.¹⁰⁸
- B. Developed open space shall be designed to provide active recreational facilities to serve the residents of the development. Undeveloped open space shall be designed to preserve important site amenities, scenic vistas, and environmentally sensitive areas.

1180.02 PARKS AND RECREATION MASTER PLAN

- A. A community development plan termed, "Kent Parks and Recreation Master Plan" has been adopted by City Council. Such Plan provides a guide for the orderly acquisition and development of parks, public open spaces, and recreational amenities. The Planning Commission shall give primary consideration to the Kent City Parks and Recreation Master Plan and the proposals set forth in such Plan, in determining the requirements placed on any proposed subdivision.
- B. If any portion of any lot proposed for residential development lies within an area designated on the officially adopted Kent Parks and Recreation Master Plan as a neighborhood park or part of the greenway system or bikeway system, the area so designated [not exceeding five (5) percent of the total lot area] shall be included as part of the area set aside to satisfy the requirement of [Section 1180.03](#) (Parks, Public Open Space, and Recreational Amenities Required) of this Chapter. This area shall be dedicated to public use.
- C. If more than five (5) percent the total lot area of a lot proposed for residential development lies within an area designated as provided in **Subsection A** above, the city may attempt to acquire the additional land in either of the following manners:

¹⁰⁸ HISTORY: Ord. 1999-134.

1. Encourage the developer to utilize procedures authorized in [Sections 1180.06](#) (Ownership of Dedication), and to dedicate the common open space thereby created; or
2. Purchase or condemn the land.

1180.03 PARKS, PUBLIC OPEN SPACE, AND RECREATIONAL AMENITIES REQUIRED.

- A. The Planning Commission shall require the dedication of land, parks, playgrounds, open space and/or school sites as specified in [Chapter 1191](#) (Determination of Requirements). Where the adopted Community Development Plans shows the planned location of such public sites, the Planning Commission shall require dedication in conformance with such Plans.
- B. Subject to **Subsection D** hereunder, all residential developments shall provide (through dedication or reservation) parks, public open spaces, and/or recreational amenities in the required form (as described in **Subsection C** determined by the calculation as set forth by [Section 1180.05.C](#) (Amount of Land to be Dedicated).
- C. All proposals submitted thirty (30) days or more after the effective date of this Unified Development Ordinance, or after the adoption of the Parks and Recreation Plan, shall be required to either:
 1. Dedicate a portion of the proposed development for recreational purposes;
 2. Pay a fee in lieu of land dedication; or
 3. Dedicate a portion of land and pay a fee in lieu.
- D. The Planning Commission shall determine the appropriate option and seek the consent of the Parks and Recreation Board. Where no other option exists, the builder on a single lot, be it for a single-family dwelling unit or one multi-unit building, shall follow the formula for fees in lieu of land dedication as set out in [Section 1180.07](#) (Determination of Fees in Lieu of Land Dedication). The lots referred to in this Section are lots that were not part of a subdivision development established after 1971.¹⁰⁹

1180.04 DETERMINATION OF REQUIREMENTS¹¹⁰

- A. Review. During the preliminary discussion phase, the developer should gain information concerning requirements of the Planning Commission regarding dedication of land, fee in lieu of payments or a combination of both.
 1. If the developer proposes to dedicate land for parks, recreation and open spaces, such land proposed to be dedicated shall be indicated on the Preliminary Site Plan or Preliminary Development Plan.
 2. If the developer proposes to pay a fee in lieu of land dedication, such information shall be submitted to the Planning Commission as part of the Preliminary Site Plan or Preliminary Development Plan.
 3. The Planning Commission shall review the proposal of the developer concerning either dedication of land, payment of a fee in lieu of land dedication, or both. The criteria used to determine whether the developer shall dedicate land, pay a fee in lieu of land dedication, or both, shall be as follows:
 - a. The Planning Commission decision shall attempt to facilitate the objectives outlined in the "Kent City Parks and Recreation Master Plan."

¹⁰⁹ HISTORY: Ord. 2000-54. Passed 7-5-00

¹¹⁰ HISTORY: Ord. 2000-54. Passed 7-5-00

- b. The Planning Commission shall also consider the advice of various recommendations from members of the Community Development Department, the Development Engineer, the Director of Parks, and Recreation and the City Manager.
- B. Determination by Planning Commission. On the basis of the review of a proposal, the Planning Commission shall determine whether a dedication of land, a payment of fee in lieu of land dedication, or a combination of both shall be required.
- C. Reclamation. If the Planning Commission approves dedication of land, and in the opinion of the Planning Commission that land will be adversely affected by the operations of the developer, the Planning Commission may require that the developer submit a plan, approved by the Development Engineer, for reclamation of such land to a state suitable for recreational use.
 - 1. If such reclamation plan is acceptable, the developer shall implement and complete such plan within a reasonable time period as prescribed by the Planning Commission.
 - 2. A performance bond of one hundred ten (110) percent of the estimated cost of such reclamation shall be posted by the developer with the Development Engineer.
- D. Land Dedication and Fee in Lieu. If the developer opts to only partially fulfill the requirements of this Chapter through the dedication of park land, open space, and/or recreational amenities, and the Planning Commission approves such action, the minimum fee requirements applicable to such development shall be reduced by a proportionate percentage amount determined by comparing the actual amount of land dedicated as public land to the total land dedication requirement.

1180.05 DETERMINATION OF REQUIRED LAND DEDICATION

- A. The total population of any development shall be determined by a summation of all population factors for each proposed dwelling unit in the subdivision, development, or lot split.
 - 1. The population factor for each dwelling shall be as follows:

<u>Dwelling Type</u>	<u>Population Factor</u>
Single-family	3.6 per unit
Two Family/ Multifamily	2.6 per unit

- 2. Total population shall be determined by multiplying the population per unit by the total number of units proposed.
- B. Exceptions to Standards.¹¹¹ The Planning Commission may permit minor deviations from open space standards when it determines that the objectives underlying these standards can be met without strict adherence to them; and/or because of peculiarities in the tract of land or facilities proposed, it would be unreasonable to require strict adherence to these standards percent (10%) reduction of the required usable open space for any given project. The Planning Commission may modify the requirements of this Section when the developer can show to the satisfaction of the Planning Commission that:
 - 1. The development will house a population per household substantially lower than those established in [Subsection A.1](#) hereof;

¹¹¹ HISTORY: Ord. 1992-02. Passed 1-15-92

2. The unique or special characteristics of the development which justify modification of the requirements can be reasonably expected to continue for the life of the project.
- C. Amount of Land to Be Dedicated. The amount of land to be dedicated by a subdivider, builder or developer shall be determined in accordance with the following formula:

Acres of land for dedication = total population x .01 (See Subsection A)
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- D. Minimum dedication. If the amount of land required for dedication is less than three acres, and that area could not be added to an adjoining, continuous existing park, open space, or recreational area, no such dedication of land shall be deemed acceptable by the Planning Commission. In this situation, the requirements shall be fulfilled only by payment of a fee in lieu of land dedication.
- E. To provide an appropriate mix of recreation facilities that fulfill community needs and are responsive to community conditions, the following park classifications are established for varying scales of dedicated properties:
1. Pocket Parks - An area between two thousand five hundred (2,500) square feet and one (1) acre in size should be used to address limited, isolated or unique recreations needs, such as a landscaped public use area in a commercial area, a play area adjacent to the downtown shopping district, picnic areas, arbors, and sitting areas. Such parks are typically located less than one-quarter (0.25) mile from a residential setting. Accessibility by way of interconnecting trails, sidewalks, or low-volume residential streets increases use opportunities and is therefore strongly encouraged.
 2. Neighborhood Parks - An area of five (5) to ten (10) acres which serves as the recreational and social focus of a neighborhood, should typically be designed to include play structures and informal, non-programmed playfield or open space. These parks are typically located one-quarter (0.25) to one-half (½) mile from a residential setting uninterrupted by nonresidential roads and other physical barriers. Such parks should be accessible throughout its service area by way of interconnecting trails, sidewalks, or low-volume residential streets and ideally should be connected to other park system components. Such parks should also exhibit some innate aesthetic qualities appropriate for both active and passive recreational uses. "Left-over" parcels of land that are undesirable for development should be avoided as they are generally undesirable for park development as well.
 3. Community Park - An area usually between thirty (30) and ninety (90) acres should be used to meet broader purposes than neighborhood parks focusing on community-based recreation needs and heavily programmed athletic fields and associated facilities, as well as preserving unique landscapes and open spaces. Such parks are typically located one-half (½) mile to three (3) miles from a residential setting or neighborhood.
 4. Park Connector/ Greenway System - Multipurpose trails located within greenways, parks, and natural resource areas that enable focus on the natural environment or enable safe pedestrian, bicycle, or equestrian travel to and from parks and around the community.
- F. An area designated as required open space in residential subdivisions and mixed use developments may be:
1. Incorporated as a part of the park and open space system of the City;
 2. Preserved in its natural state;
 3. Utilized as a buffer area to separate a development from surrounding properties;

4. Leased and utilized for agricultural use (excluding all livestock, with the exception of use as a grazing pasture for horses or cattle) when authorized in a conservation easement or in an Association's covenants and restrictions;
 5. Utilized in part as wet or dry stormwater management ponds or basins, provided that easements are provided to enable the maintenance of these facilities, and that such features are designed to be a recreational amenity.
 6. Used as an active recreation areas. These active recreation areas shall be located in areas with the least impact on natural amenities and wildlife habitats, of a useable size and shape for the intended purpose.
- G. Access. Land that is to be designated as required open space shall be designed as connected and/or contiguous open space system and all adjacent residential properties shall have access to this open space for the use and/or enjoyment of residents (or general public) of the proposed development. Public maintenance and emergency access shall be provided by direct frontage of the dedicated land on a public street. Such frontage shall be of sufficient width to allow for maintenance and emergency vehicle access, or an easement of sufficient width to allow such access shall be provided. The Planning Commission shall determine adequacy based on site and project design characteristics. The area shall be at least twenty (20) feet from all first story dwelling unit windows.
- H. Preservation of Natural Beauty. Natural features of scenic beauty which, if preserved, will add attractiveness and value to the dedicated land shall be preserved in the dedication of open space and parks and recreation areas, and should be given primary focus and consideration in site design. If the Planning Commission determines that a proposed parcel of dedicated land is of unique natural beauty or of environmental or historical value, the requirements regarding shape, topography or grade may be waived. Site characteristics of natural significance which may offer aesthetic or ecological value (for example, a riparian corridor, stands of old trees or wetlands) may substitute for traditional usable open space; the application of this guideline is subject to the judgment of the Planning Commission.
- I. Topography. Steep slopes, streams, lakes, other watercourses, and flood plains may constitute a maximum of thirty (30) percent of the dedicated land, and a minimum of seventy (70) percent of the land required for dedication shall be suitable for dry ground recreational use. Slopes over fifteen percent (15%) may account for only ten percent (10%) of usable open space requirements.
- J. Grade. Seventy (70) percent of the land suitable for dry ground recreational use shall not exceed three (3) percent grade and the remaining dry-ground shall not exceed five (5) percent grade.
- K. Unity. Dedicated land must form a single parcel, unless the Planning Commission determines that, it would be in the best public interest, for the dedication to consist of a few large pieces connected by a trail, path, or walkway. Every attempt should be made to match open spaces and/or recreational land with similar land on adjoining lots or subdivisions, and existing parkland or open space
- L. Composition: Utility, drainage, or other easements that are typically required as part of a development shall not count toward the provision of open space. Areas that specifically shall not be considered as required open space include, but are not limited to:
1. Private roads and public-road rights-of-way;
 2. Public or private parking areas, access ways, and driveways;
 3. Required setbacks between buildings, parking areas, and project boundaries;
 4. Required setbacks between buildings and streets;
 5. Required minimum spacing between buildings and parking areas;

6. Private yards;
7. Land that is subject to preexisting conservation easements or similar limitations on development;
8. *Recreational Facilities*. The Planning Commission may determine that certain recreational facilities can substitute as open space.
9. *Water Body Surfaces* . Up to twenty (20) percent of detention or retention ponds may substitute for usable open space, and up to sixty (60) percent of natural ponds may substitute. The Planning Commission has the ability to determine that retention basins may account for more than twenty (20) percent if the basin design potentially offers some recreational utility.
10. *Balconies and Decks* . Fifty percent (50%) of the area of balconies at least four (4) feet six (6) inches wide, decks at least ten (10) feet wide, and roof areas which are improved for and suitable as recreational areas may be counted as usable open space.
11. *Obscuring Fences and Walls*. Side and rear yards abutting lot lines which have obscuring fences or walls at least five (5) feet high between the open spaces and adjacent property lines may also be counted as usable open space.

1180.06 OWNERSHIP OF DEDICATION

- A. The type of ownership of land dedicated or provided for parkland, open space, or recreational purposes shall be selected by the developer, subject to the approval of the Planning Commission. Type of ownership may include, but is not limited to, the following:
 1. A legally established home-owner's association;
 2. The City of Kent, subject to acceptance by the City Council;
 3. Other public jurisdictions or agencies, subject to their acceptance;
 4. Quasi-public organizations, subject to their acceptance; or
 5. Shared, undivided interest by all property owners in the subdivision.
- B. Subject to permanent restrictions as set forth herein, required open space may be owned by an Association, the City, a Land Trust or other conservation organization recognized by the City of Kent, or by a similar entity. Required open space may be held by the individual members of a condominium association as tenants-in-common or may be held in common ownership by a homeowner's association, community association, or other similar legal entity. The City's Law Director shall determine, based on documents submitted with the development plan, that the association's bylaws or code of regulations specifies the following requirements:
 1. The homeowners' association must be established before lots are sold;
 2. Membership in the association must be mandatory for all purchasers of lots in the development or units in the condominium.
 3. The association must be responsible for maintenance, control, and insurance coverage for all common areas, including required open space.
 4. The open space restrictions must be permanent;

5. The association must be responsible for liability insurance, local taxes, and the maintenance of recreational and other facilities;
 6. Homeowners must pay their pro rata share of the association's costs, and the assessment levied by the association can become a lien on the property if allowed in the master deed establishing the homeowners' association; and
 7. The association must be able to adjust the assessment to meet changed needs.
- C. The proper legal documents necessary for the transfer or dedication of land as open space shall be prepared by the owner or developer of the tract of land, and approved by the City Council.
- D. All required dedicated open space shall be restricted from further subdivision or development by deed restriction, conservation easement, or other agreement in a form acceptable to the City.
1. Conservation Easements. With the permission of the City, the owner of the required open space may, in accordance with the provisions of **ORC §5301.67 - .70**, grant or transfer a conservation easement to any entity described in **ORC §5301.68**, provided that the entity and the provisions of the conservation easements are acceptable to the City. When a deed restriction is proposed as the method of restricting further subdivision of land designated as open space, the City shall be named as a party to such deed restrictions with approval authority over any changes thereto. The conveyance must contain appropriate provision for assignment of the conservation easement to another entity authorized to hold conservation easements under **ORC §5301.68**, in the event that the original grantee becomes unwilling or unable to ensure compliance with the provisions of the conservation easement.

1180.07 DETERMINATION OF FEES IN LIEU OF LAND DEDICATION

- A. If the Planning Commission determines that a developer must pay a fee in lieu of land dedication and there is more than one (1) lot involved, then the amount of such fee shall be determined by the following formula:

Fee in Lieu of Land Dedication

<p>Amount of land which would otherwise be required to be dedicated. (See Section 1180.05.C)</p>
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X

<p>Fair market value per acre (see Subsection C)</p>

- B. Total of Land and Payment. Excluding the required park development fee, the total of any payment made by a developer in land and fees in lieu of dedication of land shall be no greater than the fair market value of the amount of land required to be dedicated pursuant to [Section 1180.05.C](#) (Amount of Land to be Dedicated).
- C. For purposes of this Chapter, fair market value shall be determined as follows:
1. Fair market value shall be determined as of the time of filing the Site Plan or Final Development Plat with the Planning Commission. Fair market value of the acreage of a lot shall be determined at the time a building permit is issued to the builder whose lots are not under the jurisdiction of the Planning Commission.

2. Fair market value shall equal the average value per acre of all residential land platted in the development in its raw, undeveloped state at the filing the final plat or final development plat , determined by application of one of the following procedures:
 - a. By agreement between the developer and the Planning Commission; or
 - b. In the event the developer and the City of Kent cannot agree, then by determination of the City on the basis of assessed value for property tax purposes of all land in the development to be platted, modified to equal market value in accordance with current assessment practices, and divided by the total number of acres within the development; or
 - c. In the event the developer objects to the valuation method set forth herein, then by a qualified independent appraiser approved by the Planning Commission and the developer. The cost of such appraiser shall be paid for by the developer; or
 - d. In the event the developer objects to all of the foregoing methods of valuation, then by a three-member board of appraisers, one (1) of whom shall be appointed by the Planning Commission, one (1) of whom shall be appointed by the developer, and one (1) of whom shall be selected by the other two (2) appraisers so appointed. A majority decision of such board shall be final. The cost of such appraisers shall be paid for by the developer.

- D. In the event the developer is building a single-family dwelling or a single multifamily unit dwelling on a single lot, then the amount the developer must pay in fees in lieu of land dedication shall be determined pursuant to the following formula and definition:

1. The formula for a single-family dwelling lot shall be:

Fee in lieu of dedication = 3.6 persons X \$50
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2. The formula for a two-family or a multifamily dwelling shall be:

Fee in lieu of dedication = 2.6 persons X number of units X \$50
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1180.08 PAYMENT OF FEES

- A. The fees set forth herein [Section 1180.07](#) (Determination of Fees in Lieu of Land Dedication) shall be due and payable upon the issuance of a building permit by the City for the construction of any such dwelling unit or development as set forth above; provided, however, that there shall be a refund of such fees in the event the building permit is not used for such construction.
- B. The fee shall be placed into the City's Parks and Recreation Development Fund as set forth hereunder in [Section 1180.09](#) (Development Fund).
- C. Exemptions. Payment of the park fee pursuant to the preceding Sections shall be waived if one or more of the following can be proven:

1. The lot to be developed is a recorded lot within an existing subdivision or allotment which had, as part of this Unified Development Ordinance, satisfied the park land dedication or park fee payment requirements.
 2. The lot to be developed was not part of a recorded subdivision or allotment but has satisfied this Unified Development Ordinance regarding park land dedication or park fee payment requirements.
 3. The project is a result of reconstruction due to fire, flood, wind, or other natural disaster.
 4. The project is a conversion of single or two-family dwelling(s) or boarding/rooming house with four or less individuals per dwelling residing therein.
 5. The lot in question was created during a period of time when the lot was not a part of the City.
- D. In the event that City records do not reflect **Subsections C.1 and C.2** hereof, the burden of proof shall be on the property owner/developer.

1180.09 DEVELOPMENT FUND

- A. There is hereby created a Parks and Recreation Development Fund. There shall be paid into the Parks and Recreation Development Fund such funds set forth and collected as indicated in [Section 1180.08](#) (Payment of Fees).
- B. The City shall provide a matching amount equal to the amount of fees collected or that would have been paid if the developer had not contributed real property to the City in lieu of fees. This matching amount shall be appropriated from the General Fund, or other municipal funds other than those collected under the terms of [Section 1180.08](#) (Payment of Fees). Expenditures made by the City from funds other than those collected under the terms of [Section 1180.08](#) (Payment of Fees) shall be considered to be a matching amount if expended for any of the purpose listed in **Subsection C**. The Director of Budget and Finance shall keep an accurate record of all matching amounts and expenditures considered being a matching amount to ensure that the proper match occurs.
- C. All sums collected pursuant to this Chapter shall be used as allocated by the City Council solely for common open space, public parks, playgrounds and recreational purposes, indicated in the following list:
 1. Purchase of land and interest in land for both passive and active recreational purposes;
 2. Development of public parks and buildings for use thereon;
 3. Acquisition and development of other varieties of public open space for both passive and active recreational purposes;
 4. Acquisition and development of bicycle trails, riding trails, and other types of trails or public walkways for recreational use; and
 5. Acquisition and development of recreational amenities and constructed or acquired after the passage of this Ordinance.

1180.10 ADJUSTMENT TO OPEN SPACE AND RECREATION REQUIREMENTS

- A. The requirements set forth in this Article concerning the amount, size, location, and nature of parks, public open space, and recreational amenities to be provided in connection with subdivisions and developments are established by City Council as standards that presumptively will result in the provision of that amount of recreational amenities an/or open space that is consistent with officially adopted Community Development Plans. Notwithstanding any provision of these regulations to the contrary, the Planning Commission may, in cases of an unusual or exceptional nature, the underlying objectives of this Article may be achieved even though the standards are not adhered to with mathematical precision ,and may allow for adjustments in the park land dedication and fee-in-lieu regulations and requirements as established herein. Therefore, the Planning Commission is authorized to permit minor adjustments when it has been determined that:
 - 1. the character of the particular subdivision or development and the open space and recreational demand generated by and associated with it sufficiently justify adjustments,
 - 2. that the objectives underlying these standards can be met without strict adherence to them; and
 - 3. because of peculiarities in the developer's tract of land or the facilities proposed it would be unreasonable to require strict adherence to these standards.
- B. Whenever the permit-issuing authority permits some deviation from the standards set forth in this Article pursuant to **Subsection A**, the official record of such an action taken on the development application shall contain a statement of the reasons for allowing the deviation.

1180.11 PROHIBITION

- A. No building permit for the construction of any development as described in this Chapter shall be issued unless and until the fees as required by this Chapter are paid.
- B. Any person who violates this Chapter shall be fined not more than five hundred dollars (\$500), or imprisoned not more than thirty days, or both.