

ORDINANCE NO. 012605-B

**AN ORDINANCE AMENDING ORDINANCE NO. 122000-A, AS AMENDED, PROVIDING FOR AN AMENDMENT TO THE SUBDIVISION REGULATIONS OF THE CITY OF NIEDERWALD RELATED TO PARKLAND DEDICATION REQUIREMENTS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Niederwald desires to amend Ordinance No. 122000-A, as previously amended, in accordance with and as authorized by Chapter 212 of the Texas Local Government Code; Now Therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIEDERWALD, TEXAS:**

**I.**

That Section 12.O of Ordinance No. 122000-A is hereby amended to read as follows:

**O. Parks.**

**1. Dedication of Public Park Land Required.** It shall be required that a subdivider of any subdivision (except for public uses such as schools, public buildings, churches, etc.) within the City's territorial jurisdiction set aside and dedicate to the public sufficient and suitable lands for the purpose of public park land or make an in-lieu financial contribution for the acquisition of such park land and/or improvements and amenities in accordance with the provisions of this Ordinance.

All plats receiving Final Plat approval based on this Ordinance shall conform to the requirements of this section.

The Council and subdivider may negotiate the combination of public park land dedication and/or payment of fees-in-lieu of required park land to satisfy the provisions of this Ordinance.

In the event the subdivider offers to dedicate land for a public park classification that is defined in the City's Master Plan, that meets the design standards of this Ordinance, and that is three (3) or more acres in size, the City shall be obligated to accept the park land dedication; provided that the Council may waive this requirement, or may designate a different tract or parcel to be dedicated.

Where a subdivider proposes to pay an in-lieu-fee as provided for in this Section, the Council may accept such payment as satisfying the park land dedication requirements of this Ordinance, except that the City reserves the right to require the dedication of land for public park purposes in accordance with this Section when one (1) or more acres of land would be required to satisfy the park land dedication requirements of this Ordinance.

**2. Formula for Calculating Area of Park Land.** The acreage of park land to be contributed prior to final approval by the Council of any residential subdivision shall be equal to one (1) acre for each one hundred (100) new dwelling units projected to occupy the fully developed subdivision, or 5% of the total project area, whichever is greater.

The acreage of park land to be contributed prior to final approval by the Council of any non-residential subdivision shall be equal to 5% of the total project area.

**3. Fee Payment In-lieu of Park Land Dedication.** When the amount of land required to be contributed is less than three (3) acres, the Council may require the subdivider to pay a fee-in-lieu of park land dedication.

In the case of a residential subdivision, where the payment of a fee-in-lieu of park land dedication is required by or acceptable to the Council as provided for in this Ordinance, such fee shall be in an amount equal to two hundred fifty dollars (\$250.00) per new dwelling unit projected to occupy the fully developed subdivision.

In the case of a non-residential subdivision, where the payment of a fee-in-lieu of park land dedication is required by or acceptable to the Council as provided for in this Ordinance, such fee shall be in an amount equal to five percent (5%) of the raw land value of the land comprising the non-residential subdivision. The land value shall be established by an appraisal obtained from a State of Texas licenses appraiser. The expense incurred in obtaining the appraiser shall be paid for by the subdivider.

The subdivider shall tender and pay over to the City said fee-in-lieu of park land dedication at the time the Final Plat is approved by the City. No plat shall be approved for recordation until said fee is paid to the City in full.

**4. Subdivision Changes.** In the event a subdivider obtains City approval to deviate from the approved Preliminary Plat thereby increasing the number of dwelling units projected, or where the use of property is changed from a non-residential use to a residential use, the owner or subdivider shall be obligated to provide additional land or fee and provide the park land or amenities required for the additional dwellings prior to the City approving the Final Plat for recordation.

**5. Final Platting of a Portion of an Approved Preliminary Plat.** Whenever a subdivider applies for approval of a Final Plat which contains only a portion of the land encompassed in the approved Preliminary Plat, the subdivider's park land contribution shall be based on the ultimate number of dwelling units or land acreage (non-residential

subdivision) shown on the approved Preliminary Plat, and shall be satisfied prior to City approval of the first Final Plat.

**6. Design Standards for Park Land.** Any land to be dedicated as park land shall be reasonably located near the geographic center of the development, adaptable for use as a public park and recreation facility as defined by the Master Plan, and designed and located so as to satisfy the following general requirements:

The dedicated land should form a single parcel or tract of land at least three (3) acres in size unless it is determined that a smaller tract would be in the public interest, or that additional contiguous land will be reasonably available for dedication to or purchase by the City.

Public access to public park land delineated on a Preliminary Plat shall be ensured by provision of at least fifty (50) feet of street frontage, in a manner satisfactory to the City. Likewise, adequate space for public parking should also be considered.

At the time the land abutting the delineated areas is developed, the subdivider of such abutting land shall construct streets along all abutting street frontage, and shall provide water and wastewater utilities to the boundary of one (1) side of the delineated area to meet minimum requirements of this Ordinance.

The land to be dedicated to meet the requirements of this Ordinance should be suitable for public parks and recreation activities. In that regard, fifty percent (50%) of the dedicated land area should not exceed five percent (5%) grade. The City's Master Plan shall be considered when evaluating land proposals for dedication.

Any disturbed park land shall be restored and the soil stabilized by vegetative cover by the subdivider.

Areas within the regulatory one hundred (100) year flood plain may be utilized to partially meet the parkland dedication requirements. Areas in the one hundred (100) year flood plain may constitute up to fifty percent (50%) of the requirement of land dedication; provided that credit may not be obtained for such land that is also dedicated for another public purpose.

Areas within a school site may be utilized to partially meet the parkland dedication requirements upon approval from the Planning and Zoning Commission, City Council, and the school district. Areas in a school site may constitute up to fifty percent (50%) of the requirement of land dedication; provided that credit may not be obtained for such land that is also dedicated for another public purpose.

The location of park land may be required at the edge of a subdivision so that additional land may be added at such time as adjacent land is subdivided or acquired for public use. Otherwise a centralized location is preferred.

City staff and consultants shall make recommendations based upon the park land design standards and the provisions contained herein, concerning the amount and location of park land, credit for private park land and/or facilities, credit for land in the one hundred (100) year flood plain, and fees-in-lieu of park land dedication.

All park areas and playground equipment shall be in accordance with the U.S Consumer Products Safety Commission, Publication 325, as currently amended.

**7. Neighborhood Park Land Credit.** Where park areas and recreational facilities are to be provided in a proposed residential subdivision, and where such areas and facilities are to be privately owned and maintained by the future residents of the subdivision, these areas and facilities shall satisfy the requirements of park land dedication if the following standards are met:

That the private ownership and maintenance of such areas and facilities are adequately provided for by recorded written agreement, conveyance, or restrictions.

That the use of such areas and facilities are restricted for park and recreational purposes by a 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 Council.

That such areas and facilities are reasonably similar to what would be required to meet public park and recreational needs, taking into consideration such factors as size, shape, topography, geology, access, and location.

That such areas and facilities for which credit is given shall include improvements for the basic needs of a local park. These improvements shall include one (1) or more children's play areas, picnic areas, game court areas, turf play fields, swimming pools, recreational buildings, trails (sidewalks, walkways or bike trails), and landscaped sitting areas.

**8. Park Fund Established.** A separate fund to be entitled "Park Fund" shall be and is hereby created and the money paid by subdividers at Final Plat approval in-lieu of the dedication of land and interest thereon, shall be held in said fund to be used solely and exclusively for the purpose of purchasing and/or equipping public park and recreational land. Such fund shall be invested or held in an interest bearing account and all earnings and interest shall accrue to the Park Fund.

At such time as the City Council, based upon the recommendations of the Commission and/or City staff determines that there are sufficient funds derived from a certain area in the Park Fund to purchase usable park land, the Council shall cause negotiations to be undertaken to purchase the site by mutual agreement or by condemnation proceedings. In making such determination for the purchase of said site, the conditions of this Ordinance shall be taken into consideration.

The principal and interest deposited and kept in the Park Fund shall be used solely for the purpose of purchasing and/or equipping or improving land for public park and recreation uses, and shall never be used for maintaining or operating public park facilities, or for any other purpose.

**9. Method of Dedication.** Land accepted for dedication under the requirements of this Ordinance shall be conveyed by either of the following methods:

By dedication within the plat to be filed for record in Official County Records.

By warranty deed transferring the property in fee simple to the City.

In any event, land must be free and clear of any mortgages or liens at the time of such dedication or conveyance.

## II.

That should any of the various clauses, sentences, paragraphs, sections or parts of this Ordinance be held for any reason invalid, unconstitutional, or unenforceable as applied to a subdivision or a particular property, building, or structure therein, the same shall not be construed to affect any other valid portion of this Ordinance; but all valid portions hereof shall remain in full force and effect.

## III.

All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

## IV.

That this Ordinance shall become effective upon its passage and publication as required by law.

READ, PASSED AND APPROVED this 26<sup>th</sup> day of January, 2005.

Shirley Whisenant

HON. SHIRLEY WHISENANT, MAYOR

ATTEST:

Angie Schube

CITY SECRETARY

