

Chapter 8

DEDICATION OF LAND

Article 1. Park Dedication Code.

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Chapter 8**DEDICATION OF LAND****Article 1. Park Dedication Code.****Section 8-1. Title.**

This article may be cited as the park dedication code.
(1977, Ord. No. 333, art. 2, sec. 1.)

Section 8-2. Definitions.

(a) As used in this article:

- (1) "Approval" means the final approval granted to a proposed subdivision where the actual division of land into smaller parcels is sought, provided that, where construction of a building or buildings is proposed without further subdividing an existing parcel of land, the term "approval" means the issuance of the building permit.
- (2) "Director" means the planning director of the County.
- (3) "District" means the judicial districts of Puna, South Hilo, North Hilo, Hamakua, North Kohala, South Kohala, North Kona, South Kona or Ka'ū, as defined by the department of research and development.
- (4) "Dwelling unit" means a room or rooms connected together, constituting an independent housekeeping unit for a family and containing a single kitchen.
- (5) "Fair market value" means the highest price estimated in terms of money which a property will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which it is adapted and for which it is capable of being used.
- (6) "Hotel" means a building containing sleeping accommodations in six or more rooms for use of persons, on a commercial basis, whether such establishment is called a hotel, inn, motel, motor hotel, motor lodge or otherwise, which rooms do not constitute dwelling units.
- (7) "Lodging unit" means a room or rooms connected together, constituting an independent housekeeping unit for a family, which does not contain any kitchen.
- (8) "Parks and playgrounds" means areas and facilities used for active or passive recreational pursuits.
- (9) "Provide land in perpetuity" means the conveyance of land, improvements, easements, streets and facilities, or any interest therein, to the County for a definite use and purpose, which shall be a perpetual and everlasting easement or dedication in fee simple title or ownership.
- (10) "Resident population" means the official resident population as determined by the County department of research and development. It includes residents temporarily absent, and armed forces personnel and their dependents. It excludes visitors present.
- (11) "Subdivider" means any person who divides land as specified under the definition of subdivision or who constructs a building or group of buildings containing or divided into two or more dwelling units or lodging units.
- (12) "Subdivision" includes:
 - (A) The division of improved or unimproved land into two or more lots, parcels, sites or other divisions of land and for the purpose, whether immediate or future, of sale, lease, rental, transfer of title to, or interest in, any or all such lots, parcels, sites or divisions of land;
 - (B) Resubdivision; and

- (C) A building or group of buildings, other than a hotel or hotels, containing or divided into two or more dwelling units or lodging units. When appropriate to the context, it also refers to the land subdivided.

(1977, Ord. No. 333, art. 2, sec. 2.)

Section 8-3. Applicability.

(a) This article shall apply to:

- (1) Changes in use of buildings from hotel to residential dwelling use;
- (2) Any additional dwelling or lodging units added to an existing building or lot;
- (3) Any dwelling or lodging units of a building constructed in the stead of a building that is demolished, but only to the extent that such units exceed the number of units of the demolished building;
- (4) All subdivisions except those excluded in section 8-4; and
- (5) Where zoning allows, the construction of more than one dwelling unit on a lot.

(1977, Ord. No. 333, art. 3, sec. 1.)

Section 8-4. Exemptions.

(a) This article shall not apply to:

- (1) Subdivision of land in any district where the ratio of acres of public parks and playgrounds within the district and not federally owned, to the resident population within the district is greater than the minimum ratio of five acres of land for parks and playground purposes for each one thousand persons;
- (2) Subdivision of land for which tentative approval has been granted prior to December 27, 1977;
- (3) Subdivisions for a public utility or public facility and which will not be provided with or developed into dwelling units;
- (4) Subdivision of land for industrial or commercial use subdivisions;
- (5) Subdivisions of land into two or more lots only for the purpose of clarifying public records or adjustment of boundaries, provided that no additional lots will be created;
- (6) Subdivision of land into two or more lots for agricultural purposes and which will not be developed under this subdivision application, into dwelling or lodging units. The subdivider desiring such an exception shall file with the director a certified statement therefor, stating fully the grounds for the exception and that the subdivided land shall not be provided with dwelling or lodging units. These conditions shall be duly recorded with the bureau of conveyances and shall run with the land. These conditions may be revoked if the subdivider or landowner agrees to pay a fee pursuant to section 8-8;
- (7) A planned unit development project for which the planning commission has held a public hearing prior to December 27, 1977;
- (8) Subdivisions of buildings, for which a preliminary plan approval has been given in accordance with the provisions of chapter 25, article 2, of the zoning code; and
- (9) Subdivision by any governmental agency or nonprofit organization, or subdivision involving the construction of homes pursuant to chapter 359G, Hawai‘i Revised Statutes.*

(1977, Ord. No. 333, art. 3, sec. 1.)

* **Editor’s Note:** 359G, Hawai‘i Revised Statutes, has been repealed. L1987, C337, section 14.

Section 8-5. Dedication of park land by subdivider.

Every subdivider, prior to final approval of a subdivision by the director, shall:

- (1) Provide land and any required improvements in perpetuity;

- (2) Pay a fee;
- (3) Agree to a combination of providing land and any required improvements in perpetuity and payment of a fee; or
- (4) Provide land and any required improvements for private recreational use, as set forth in this article for the purpose of providing park and playground facilities for occupants or purchasers of lots or units in the subdivision.

(1977, Ord. No. 333, art. 2, sec. 3.)

Section 8-6. Population density requirements.

- (a) In the public interest, convenience, health, welfare and safety, there shall be a minimum ratio of five acres of land for park and playground purposes for each one thousand persons in every district.
- (b) Population density for the purpose of this article shall be:
 - (1) Single-family dwelling units and duplexes = 3.5 persons per dwelling unit; and
 - (2) Multiple-family dwelling units = 2.1 persons per dwelling unit.

(1977, Ord. No. 333, art. 3, secs. 2 and 3.)

Section 8-7. Calculation of land and facilities to be provided.

- (a) Land required to be provided in perpetuity by a subdivider pursuant to this article shall be determined on the following basis:
 - (1) In subdivision of land, the basis for determining the total number of dwelling or lodging units for computation purposes shall be the number of such units permitted by the County in the subdivision as shown on the final subdivision map filed with the County.
 - (2) In building permit applications, the total number of dwelling or lodging units for computation purposes shall be the total number of such units as shown on the building permit application, except as provided by section 8-3.
 - (3) Land Requirement Formula. The land requirement formula shall be as follows:

$$C \times P = \text{Area to be Dedicated Required Land in Acres}$$

Where,

$$C = \frac{5.0 \text{ ac}}{1,000} = \text{Park acres per 1,000 persons per section 8-6(a)}$$

(218 square feet per person)

$$P = \text{Total population within the subdivision per section 8-6(b)}$$

- (b) Any improvements on the land to be provided in perpetuity by the subdivider pursuant to this article shall be determined by the director of parks and recreation, upon conferring with the director of public works, and approved by the director and shall include a minimum of lot grading and grass planting, adequate drainage and comfort station. The director may waive a portion or all of the minimum improvements required, provided that the minimum improvements are available within close proximity of the park and meet other code requirements or deemed impracticable or unnecessary by the director upon consultation with the director of parks and recreation and the director of public works.
- (c) Land and building subdivisions involving six or less lots or units and new units falling under the purview of section 8-3(a)(2) and (5) shall be required to pay fees in the amount of \$150 per lot or unit; provided that:
 - (1) Other terms of payment may be required if the proposed subdivision does not represent the maximum feasible development possible for the subject land as determined by the director; and

- (2) Fees for new dwelling units referred to in section 8-3(a)(5) shall be assessed for all but one dwelling unit at the time of building permit action.

(1977, Ord. No. 333, art. 3, sec. 4; Am. 2001, Ord. No. 01-108, sec. 1.)

Section 8-8. Monetary fee in lieu of dedicating land and improvement.

- (a) Where a monetary fee is required to be paid in lieu of dedicating or providing the land and improvements in perpetuity, the monetary fee shall be a sum equal to the fair market value of the amount of land required by section 8-7(a).
- (b) The fair market value shall be determined as of the time of filing the final subdivision plat or building permit in accordance with the following:
 - (1) The fair market value shall include the value of the subdivided land, including the site improvements and utilities which would have otherwise been installed should the land area for the park be required.
 - (2) The County and the subdivider shall agree on the fair market value of the land. If the County and the subdivider fail to agree on the fair market value of the land, the value shall be fixed and established by majority vote of three land appraisers; one shall be appointed by the subdivider, one appointed by the County, and the third appointed by the mutual agreement of the County and the subdivider. The subdivider and the County shall equally bear the costs of the third appraisal.
- (c) If the area of land which is provided in perpetuity by the subdivider and approved by the director pursuant to section 8-12 is less than the land area required under section 8-7(a), the subdivider shall be required to pay a fee equal to the fair market value as determined in subsection (b) of this section which is the difference between the land area provided in perpetuity and the land area required under section 8-7(a).
- (d) Fees paid pursuant to this section shall be made directly to the director of finance and shall be deposited in a park and recreation fund. Payment may be in a lump sum prior to final approval of the land subdivision or final plan approval for a building subdivision, or fifty percent at the time of preliminary approval of the land subdivision or preliminary plan approval of the building subdivision, and the balance paid prior to final approval of the land subdivision or final plan approval of the building subdivision.

(1977, Ord. No. 333, art. 3, sec. 5.)

Section 8-9. Use of fees.

- (a) All moneys received pursuant to this article shall be used for the acquisition and development of park and recreational facilities to serve the area in which the subdivision is located. Moneys received may be expended on neighborhood or community facilities in reasonable proximity to the subdivision. Where a public park and playground presently serves a subdivision, such fees may be used for the purpose of providing additional facilities for that park or playground. The director of parks and recreation shall determine the various park areas for funding purposes.
- (b) When funds are needed for implementing a plan to provide or develop land and facilities or for preparing site plans such as design and engineering work, the director of parks and recreation shall submit a written request to the director and the mayor for approval. Upon the mayor's approval, the finance director shall be authorized to release moneys from the fund.
- (c) No refunds shall be made for any land and building subdivision which the director had granted final approval, except that credit may be given to subsequent subdivision of the same area.
- (d) All moneys, interests and other forms of earnings resulting from the fee shall thereafter be the property of the County. The interests or earnings accrued from the fee shall be expended in the same manner as the fee itself.

(1977, Ord. No. 333, art. 3, sec. 5.)

Section 8-10. Credit for private recreational areas and improvements.

- (a) Where parks and playgrounds, including improvements, are to be provided in a proposed subdivision, and are to be privately owned and maintained by the future residents of the subdivision, such areas and improvements shall be credited towards the requirements set forth in section 8-7 or the payment of fees in lieu thereof, set forth in sections 8-8 and 8-9.
- (b) The credit shall be subject to the approval of the planning director, upon consultation with the director of parks and recreation, subject to the following requirements:
 - (1) Yards and other open areas required to be maintained by the zoning and building regulations shall not be included in the computation of such private recreational areas and facilities.
 - (2) The size, shape, topography, geology, access, use and location of the site shall be suitable for park and playground purposes.
 - (3) The physical improvements provided for shall meet the needs of the purchasers or occupants of the subdivision, and are in accordance with the policies and standards of the recreational element of the general plan and park master plan.
 - (4) The use of the site shall be restricted for park and playground purposes by recorded covenants which shall run with the land for the use of the purchasers or occupants in the subdivision.
 - (5) There is adequate assurance as determined by the corporation counsel, for perpetual maintenance of such private parks and playgrounds by recorded covenant running with the land which shall include but not necessarily be limited to the following:
 - (A) Obligate the subdividers, purchasers, occupants or association in the subdivision to maintain the private parks and playgrounds in perpetuity; and
 - (B) Empower the County, through the parks and recreation director, to enforce the covenants to maintain the private parks and playgrounds and authorize the performance of maintenance work by the County in the event of failure by the subdivider, purchaser or occupant, to perform such work and permit the subjecting of the land and properties in the subdivision to a lien until the cost of work performed by the County has been reimbursed.
 - (6) The site improvements and physical facilities to be provided and constructed shall be made available to all purchasers or occupants in the subdivision and an agreement and adequate security are filed and accepted by the County to guarantee the construction of the improvements and facilities within a specified time as required by the director prior to final subdivision or plan approval.
 - (7) The type of park improvements in land subdivisions shall be determined by the director of parks and recreation upon conferring with the director of public works, and approved by the director and shall include at a minimum:
 - (A) Lot grading and grass planting;
 - (B) Parking area;
 - (C) Adequate drainage; and
 - (D) Comfort station.The director may waive a portion or all of the minimum improvement required, provided that the improvements are available within close proximity of the park and meet other code requirements or deemed impracticable or unnecessary by the director upon consultation with the director of parks and recreation and director of public works.
 - (8) The minimum type of improvements for building permit subdivisions shall be determined in the same fashion as land subdivisions.
 - (9) Equitable credit by cost estimates of the improvements being provided shall be determined by the director of public works.

(1977, Ord. No. 333, art. 3, sec. 6; Am. 2001, Ord. No. 01-108, sec. 1.)

Section 8-11. Credit for existing parks and playgrounds.

Where lands for parks and playgrounds and their improvements were provided in perpetuity or kept in private ownership with a maintenance agreement acceptable to the corporation counsel prior to December 27, 1977, such land, including physical facilities, shall be credited toward the park land/facilities which would otherwise be required under section 8-7; provided that such area and facilities shall satisfy the provisions of section 8-12(b)(3), (4), and (5).

(1977, Ord. No. 333, art. 3, sec. 7.)

Section 8-12. Option of land dedication or payment of fee; determination by County.

- (a) The option to provide land in perpetuity, pay a fee or a combination thereof, or to provide private recreational areas, shall be determined as follows:
- (1) The owner of the property shall file a preliminary subdivision map or building plan, and indicate the owner's intentions to:
 - (A) Provide land in perpetuity for recreational purposes;
 - (B) Pay a fee;
 - (C) Agree to a combination of provision of land in perpetuity and payment of fee; or
 - (D) Provide private recreational areas.

If the owner of the property intends to provide land in perpetuity, the owner shall designate the area thereof on the preliminary subdivision plat or building plans as submitted.
 - (2) Prior to preliminary approval of a land subdivision or preliminary plan approval of a building subdivision, upon concurrence by the director of parks and recreation, the director shall determine whether to require a provision of land in perpetuity, payment of a fee, a combination of dedication or provision of land in perpetuity and payment of fee, or provide private recreational areas. The director shall also determine the location of the area to be provided in perpetuity at the time of preliminary subdivision or preliminary plan approval.
 - (A) Prior to granting of preliminary subdivision or plan approval by the director, the council, pursuant to section 13-12 of the Charter, shall review and act on the area proposed to be dedicated for park and its proposed improvements. Acceptance shall be effective no earlier than receipt of final subdivision or final plan approval by the director.
 - (B) If the council declines the offer, the director shall require an alternative method of assessment in accordance with sections 8-8, 8-9, and 8-10.
- (b) Whether the council accepts land and any required improvements for dedication and County maintenance shall be determined by consideration of the following:
- (1) Proximity to existing County or State parks and relationship to proposed general planned parks or park master plan.
 - (2) Conformity to the policies and standards of the recreation, open space, natural beauty, historic sites or natural resource and shoreline elements of the general plan and recreational master plan.
 - (3) Suitability of the size, shape, topography, geology, access, use and location of the site for park and playground purposes.
 - (4) The kinds of park improvements available or to be constructed or installed.
 - (5) Feasibility for the County to improve and maintain such land and any improvements thereon.
- (c) The required site improvements and physical facilities shall be made available at the time of final subdivision approval or prior to the issuance of occupancy permit in the case of building subdivisions. The completion of required improvement may be reasonably deferred, provided, that an agreement and adequate surety bond guaranteeing their construction are filed and accepted by the County.

- (d) Upon acceptance of the land and the improvements by the council, the County shall thereafter assume the cost of future improvements and maintenance of the entire area and facilities, except those private parks and playgrounds accepted under the provisions of section 8-10.
(1977, Ord. No. 333, art. 3, sec. 8.)

Section 8-13. Appeals.

- (a) Action of the director taken pursuant to this article may, within thirty days after the action is taken, be appealed in writing to the board of appeals.
- (b) The appeal shall be accompanied by a filing fee of \$100.
- (c) The appeal shall set forth the basis of the appeal and shall specifically detail the manner in which it is alleged the director's action was based on an erroneous finding of a material fact, or that the director had acted in an arbitrary or capricious manner, or had manifestly abused the director's discretion.
- (d) The board of appeals, upon receipt of such appeal, shall set the matter for a hearing. The hearing shall be conducted according to the Hawai'i Administrative Procedure Act.
- (e) Within sixty days after the filing of the appeal, the board of appeals shall affirm, modify or reverse the action of the director.
(1977, Ord. No. 333, art. 4, sec. 1.)