

## CHAPTER 9 SUBDIVISION REGULATIONS

### **Part 6: Fees, Dedications and Performance Guarantees**

#### **Sec. 13-9-70 General Park and Public Land Dedication Requirements.**

- (a) **Dedication Requirement.** In order that adequate open spaces and sites for public uses may be properly located and reserved and in order that the cost of providing public areas, such as but not limited to, parks, recreation areas and public schools may be equitably apportioned on the basis of additional need created by the subdivision development, each subdivider shall be required to dedicate land or fees in lieu of land for park or other public uses.
- (b) **General Design.** In the design of a subdivision, land division, planned unit development or development project, provision shall be made for suitable sites of adequate area for schools, parks, playgrounds, open spaces, drainage-ways and other public purposes. Such sites are to be shown on the Preliminary Plat and Final Plat, and shall comply with the City Master Plan or component of said Plan. Consideration shall be given to the preservation of scenic and historic sites, stands of trees, marshes, lakes, ponds, streams, watercourses, watersheds, ravines and woodlands, prairie and wetlands, and plant and animal communities.

#### **Sec. 13-9-71 Land Dedication.**

- (a) **Dedication Calculation.**
  - (1) Whenever a proposed playground, park or public recreation area designated in the Comprehensive Plan, Comprehensive Plan Component or on the Official Map is embraced, all or in part, in a tract of land to be subdivided, these proposed public lands shall be made part of the plat and shall be dedicated to the public by the sub-divider at the rate of one (1) acre for each forty (40) proposed dwelling units, but said dedication shall not be less than two (2) acres.
  - (2) If no playground, park or other public recreation area has been proposed as of the date of the application of a sub-divider, the City may condition approval of the Final Plat or Certified Survey Map on the dedication of land for public facilities, so long as said dedication is rationally related to a need for the land dedication, easement, or other public improvement resulting from the subdivision.
- (b) **Unknown Number of Dwelling Units.** Where the plat does not specify the number of dwelling units to be constructed, the land dedication shall be based upon the maximum number of units permitted by the City Zoning Chapter and this Chapter.
- (c) **Deeded to the City.** Land dedicated for public purposes shall be deeded to the City at the time the Final Plat is approved.
- (d) **Access to Dedicated Land.** All dedicated land shall have frontage on a public street and shall have unrestricted public access.
- (e) **Utility Extensions.** The subdivider shall install or provide for installation of water and sanitary sewer lines to the property line of all dedicated land, where such services are to be provided to the adjacent properties.

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### **Sec. 13-9-72 Reservation of Additional Land.**

When public parks and sites for other public areas as shown on the Master Plan or Master Plan component lie within the proposed area for development and are greater in area than required by Section 13-9-71, the owner shall reserve for acquisition by the City, through agreement, purchase or condemnation, the remaining greater public area for a period of one (1) year of Final Plat approval unless extended by mutual agreement.

### **Sec. 13-9-73 Development of Park Area.**

- (a) **When parklands are dedicated**, the subdivider is required to:
- (1) Properly grade and contour for proper drainage;
  - (2) Provide surface contour suitable for anticipated use of area; and
  - (3) Cover areas to be seeded with a minimum of six (6) inches of quality topsoil, seed as specified by the City Engineer, fertilized with 16-6-6 at a rate of seven (7) pounds per one thousand (1,000) square feet, and mulched. The topsoil furnished for the park site shall consist of the natural loam, silt loam, silty clay loam or clay loam humus bearing soils adapted to the sustenance of plant life, and such topsoil shall be neither excessively acid nor excessively alkaline. Fine grading and seeding must occur within one (1) year following issuance of the first building permit within that land division unless otherwise authorized by the City Engineer. The improved area shall not be deemed officially accepted until a uniform grass cover to a two (2) inch height has been established. It shall be the responsibility of the subdivider to maintain the area until the City accepts the dedication.
  - (4) The developer and dedicator of parkland shall be responsible for the cost and installation of all public sidewalks abutting dedicated parkland.
- (b) A neighborhood park area shall be provided by the subdivider with a standard residential water service unless located directly adjacent to a fire hydrant. A community park area shall be provided by the developer with a minimum six (6) inch water service or at least one (1) fire hydrant, and at least one (1) four (4) inch sanitary sewer lateral, all located at the street property line. The Common Council may require certification of compliance by City officials. The cost of such report shall be paid by the subdivider.
- (c) Development of parklands is to be completed as soon as twenty percent (20%) of the planned lots in the subdivision are sold or developed, as determined by the Common Council.
- (d) If the subdivider fails to satisfy the requirements of this Section, the Common Council may contract said completion and bill such costs to the subdivider, following written notice to the subdivider of noncompliance. Failure to pay such costs may result in the immediate withholding of all building permits until such costs are paid.

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**Sec. 13-9-74 Required Agreement Providing for Proper Installation of Improvements; Surety.**

- (a) **Contract.** Prior to installation of any required improvements and prior to approval of the Final Plat, the subdivider shall enter into a written contract with the City requiring the subdivider to furnish and construct said improvements at his sole cost and in accordance with plans and specifications and usual contract conditions, which shall include provision for inspection of construction details by the City Engineer. The contract form shall be provided by the City and may provide for a phasing of public improvements construction, providing such phasing is approved by the City Council. The City reserves the right to control the phasing through limits, sequence and/or additional surety so as to provide for continuity of streets, sewers, water mains and other necessary public improvements within and between the phases.
- (b) **Financial Guarantees.**  
The City may require 25% of the total cost of improvements with an additional \$100.00 per manhole and catch basin in the form of an irrevocable letter of credit, bond, certificate of deposit, or certified check. For development having improvements requiring an improvement guarantee, over \$1,000,000 as verified by the City Engineer, the Plan Commission may, upon written request by the developer and approval of the City Engineer, make a recommendation to the Common Council permitting a reduced improvement guarantee requirement per the following condition to be applied as part of the approval of any plat and/or developers agreement: The developer shall provide the City with an irrevocable letter of credit, bond, certificate of deposit, or certified check equal to 10% of the total cost of warranted improvements as approved by the City Engineer and in addition, a copy of the contract or contracts with all contractors installing said improvements requiring a minimum 10% warranty bond, by contractor, for said improvements. The Common Council shall have the right to review and accept or decline the form of financial guarantee as it determines necessary to meet the obligation of the developer under this Section 13-9-74(b).
- (c) **Waiver of Special Assessment Notice and Hearing.** The subdivider shall file with said Contract, subject to the approval of the City Attorney, a waiver of special assessment notices and hearings such that the subdivider, his heirs and assigns (including purchasers of property from the subdivider), waive notice and hearing for and authorize the assessment for any and all of the required public improvements in phases of the land division intended for future development in accordance with Sec. 66.60(18), Wis. Stats.
- (d) **Improvement Guarantee.** The subdivider shall include in said Contract a written guarantee which provides for maintenance, repair, replacement by the developer of said public improvements which fail to meet performance or operating standards required by the City under this Chapter. If, within three (3) years [five (5) years on manhole and catch basin settlement] after the date of final acceptance of any public improvement by the Common Council (or such longer period of time as may be prescribed by laws or regulations or by the terms of any special guarantee required by the terms of said contract as may be necessary due to the phasing of the construction of public

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improvements), any work on any public improvement is found to be defective, the subdivider shall remove it and replace it with non-defective work in accordance with written instructions given by the City Engineer. If the subdivider does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the City may cause the removal and replacement of said defective work and charge all direct, indirect and consequential costs of such removal and replacement to the developer.

### Sec. 13-9-75 Administrative Fees.

- (a) **General.** The subdivider shall pay the City all fees as hereinafter required and at the times specified before being entitled to recording of a Plat or Certified Survey Map.
- (b) **Engineering Fee.** The subdivider shall pay a fee equal to the actual cost to the City for all engineering work incurred by the City in connection with the plat or certified survey map, including inspections required by the City. The subdivider shall pay a fee equal to the actual cost to the City for such engineering work and inspection as the Common Council and/or City Engineer deems necessary to assure that the construction of the required improvements is in compliance with the plans, specifications and ordinances of the City or any other governmental authority. Engineering work shall include the preparation of construction plans, standard specifications and administration of the engineering work.
- (c) **Administrative Fee.** The subdivider shall pay a fee to the City equal to the cost of any legal, administrative or fiscal work, which may be undertaken by the City in connection with the Plat or Certified Survey Map.
- (d) **Objecting Agency Review Fees.** The subdivider shall transmit all fees required for state agency review to the City Clerk at the time of application. Said review fees shall be retransmitted to the proper state review agency by the City Clerk. Said fees shall be applicable, where appropriate, to review fees required by the Wisconsin Department of Development, Wisconsin Department of Transportation, Wisconsin Department of Industry, Labor and Human Relations and the Wisconsin Department of Natural Resources.
- (e) **Public Site Fee.** If the subdivision does not contain lands to be dedicated as required in this Chapter, the City Clerk shall require a fee pursuant to Section 13-9-77 for the acquisition and development of public sites to serve the future inhabitants of the proposed subdivision.

### Sec. 13-9-76 Subdivision/Development Fees.

- (a) **Certified Survey.** The subdivider shall pay an application fee as set forth on the City of Onalaska Fee Schedule, for each certified survey. The fee shall be paid at the time of application..
- (b) **Aerial Topography Map Fee.** In areas in which the City has undertaken aerial topography, the subdivider may request copies of aerial topography, fee for such copies shall be as set forth on the City of Onalaska Fee Schedule.

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(c) **Preliminary Plat Review Fee.**

- (1) The subdivider shall pay a fee as set forth on the City of Onalaska Fee Schedule for each dwelling unit within the Preliminary Plat or Certified Survey Map to the City Clerk at the time of first application for approval of any Preliminary Plats or Certified Survey Maps to assist in defraying the cost of review.

(d) **Final Plat Review Fee.**

- (1) The subdivider shall pay a fee as set forth on the City of Onalaska Fee Schedule for each dwelling unit within the Final Plat to the City Clerk at the time of first application for Final Plat approval of said plat to assist in defraying the cost of review.

### Sec. 13-9-77 Park Development Fees

- (a) **Introduction and Purpose.** Pursuant to the authority of Section 236.45, Wis. Stats., the local development fees enabling legislation, the purpose of this Section is to establish the mechanism for the imposition of park development fees to finance the capital costs of acquiring, establishing, upgrading, expanding, and constructing public park facilities which are necessary to accommodate future growth and land development. This Section is intended to assure that new development bears a proportionate share of the cost of capital expenditures necessary to provide public park facilities within the City of Onalaska and its service areas, as they are required to serve the needs arising out of land development.

(b) **Definitions.**

- (1) **Capital Costs** means the cost to construct, expand or improve public park facilities, including the cost of land, and including legal, engineering and design costs to construct, expand or improve public park facilities, except that not more than ten percent (10%) of capital costs may consist of legal, engineering and design costs unless the City can demonstrate that its legal, engineering and design costs which relate directly to the public park improvement for which the impact fees were imposed exceed ten percent (10%) of capital costs.
- (2) **Developer** means a person or entity that constructs, subdivides or creates a development or redevelopment.

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- (3) **Park Development Fees** means cash contributions, contributions of land or interest in land or any other items of value that are imposed on a developer under this section.
- (4) **Public Parks Needs Assessment.** New public facilities or improvements or expansions of existing public facilities as relate to parks that are required because of land development for which impact fees will be imposed are those which are identified in this section and in parks needs assessment report prepared prior to the adoption of this section and any amendments hereto. The parks facility needs report that forms the basis of any development fees imposed by the City by this Ordinance shall be kept on file in the office of the City Clerk. The parks facilities needs assessment report shall remain on file in the office of the City Clerk for the entire period during which development fees arising out of a specific report and this section are collected prior to expenditure, and such report shall, after expenditure of all development fees, be maintained as a public record for such time period as required by law.
- (5) **Development or Redevelopment** shall mean the construction or modification of improvements to improved or unimproved real property that creates additional residential dwelling units or that results in new or expanded nonresidential uses, the use of any principal structure or land, or any other activity that requires issuance of a building permit or creates a need for new, expanded or improved public park facilities within the City of Onalaska or its service area.
- (6) **Mixed Use Development** shall mean the use of land involving both residential and nonresidential development.
- (7) **Public Park Facilities** means parks, playgrounds and land for athletic fields. The term “public park facilities” does not include facilities owned by a school district.
- (8) **Nonresidential Development** shall mean any use of land for primarily industrial or commercial purposes, or which does not fall within the definition of residential development.
- (9) **Residential Development** shall mean use of land for the creation of new residential dwelling units for the primary purpose of housing accommodations.
- (10) **Service Area** means a geographic area delineated by the Common Council for which the City provides public facilities.
- (11) **Service Standard** means a certain quantity or quality of public facilities relative to a certain number of persons, parcels of land or other appropriate measure, as specified by the City.

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- (12) **Service Units** means residential or nonresidential development that benefits from the City's Park system.

### (c) **Park Development Fee Revenue Administration.**

- (1) Revenues from park development fees shall be placed in one (1) or more segregated, interest bearing accounts and shall be accounted for separately from other City general and utility funds. Park development fee revenues and interest earned thereon may be expended only for capital costs for which the impact fees were imposed.
- (2) Park development fee revenues imposed and collected but not used shall be refunded on a prorated proportional basis, as determined by the Common Council, to the current record owner or owners of the property with respect to which the development fees were imposed.

- (d) **Use of Park Development Fees.** Funds collected from park development fees shall be used solely for the purpose of paying the proportionate costs of providing public facilities for parks that become necessary due to land development. These costs may include the costs of debt service on bonds or similar debt instruments when the debt has been incurred for the purpose of proceeding with designated public facilities projects prior to the collection of all anticipated impact fees for that project.

### (e) **Payment of Park Development Fees**

- (1) All required park development fees are hereby imposed on all developments, redevelopments, rezoning and land divisions within the City of Onalaska or any development subarea thereof. Park development fees shall be calculated at the time of plat, zoning approval, or the annexation of undeveloped properties.
- (2) In the case of all undeveloped property, fees shall be paid within fourteen (14) days of the issuance of the first building or occupancy permit.
- (3) Annexations:
  - a. Any property or parcel of undeveloped land annexed by the City of Onalaska is subject to the payment of park development fees under the conditions set forth in this Section. Undeveloped properties annexed are benefited by the availability of City parks.
- (4) If any portion of the park development fees are not timely paid, all building and occupancy permits shall be suspended until such time as the park development fees are paid in full.

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### (f) Appeals

- (1) The developer or property owner upon whom a park development fee is imposed may contest the amount, collection or use of a development fee as specified herein. An appeal to contest the amount, collection or use of a development fee may be commenced within thirty (30) days of application for a rezoning, subdivisions or a building permit. An appeal to contest the use of a development fee shall be commenced not later than thirty (30) days prior to the award of any public contract for expenditure of the fee revenues.
- (2) It shall be a condition precedent to the commencement of such an appeal that the park development fee from which the developer or property owner appeals shall be paid as and when the fee becomes due and payable, and upon default in making any such payment, such appeal may be dismissed.
- (3) the appellant shall pay a filing fee of Two Hundred Dollars (\$200.00) at the time of filing of the appeal.
- (4) An appeal is commenced by filing a written complaint with the City Clerk. The complaint shall specify the impact fee amount or collection objected to and the basis for the objection. The appeal shall be scheduled for a public hearing before the Planning Commission at a regular meeting. The Planning Commission shall take evidence and testimony on the matter, including reports from City staff and consultants, and shall make its recommendation to the Common Council based upon the standards set forth in Sec. 66.0617, Wis. Stats.
- (5) The Common Council shall consider the appeal, review the record made before the Planning Commission and the recommendation of the Planning Commission and decide the appeal, based upon the standards for impact fees in Sec. 66.0617, Wis. Stats. If the Common Council determines that the appeal has merit, it shall determine appropriate remedies. The remedies may include: reallocation of the proceeds of the challenged impact fee to accomplish the purposes for which the fee was collected, refunding the development fee in full or in part; whether interest collected by the City thereon shall be returned; granting the appellant the opportunity to make the development fee payments in installments; or such other remedies as it deems appropriate by the City in a particular case. The decision of the Common Council is final.

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(g) **Fees.**

(1) **Residential = \$922.21 per unit.**

(2) **commercial = \$638.47/acre**

(a) Low cost housing. As provided by Sec. 66.0617(7) Wis. Stats., the Common Council may, on a case by case basis, provide for an exemption from or a reduction in the amount of the park development fees. However, no amount of park fees may be shifted to any other development in the land development in which the lowcost housing is located or to any other land development in the City.

(h) **Park Development Fees When Land is Dedicated Pursuant to Section 13-9-71.**

(1) The basis for the imposition of park development fees in conjunction with land dedication is the facilities needs assessment report and its attachments, “Parks Needs Assessment” which is on file in the office of the City clerk.

(2) The park development fees are based on a number of anticipated service units to determine impact on the City’s Park System. A residential unit is assumed to be equivalent to an average residential household with 2.6 people per household as provided in the Comprehensive Plan. The service unit assessment utilizes a park needs ratio to determine the fee based on national standards for parkland per capita.

(3) The property owner/developer shall be charged a park development fee when dedicating land pursuant Section 13-9-77 of the City of Onalaska Subdivision Code based on the following:

**FORMULA** Capital cost (\$18,936.81) per acre x Quantity of Needed Improvement (79.4 acres) = full anticipated cost of future parks (\$1,503,582.70) divided by the Number of Anticipated Service Units (2,878) = \$522.44 unit minus the percentage of anticipated grant dollars (14.15%) = **\$448.52 per unit.**

(4) The park development fee shall be payable by the property owner or developer within fourteen (14) days after the first building or occupancy permit is issued for the property.

(i) **Severability.** If any, section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portions shall be deemed separate, distinct and independent provisions, and such holding shall not affect the validity of the remaining portions thereof.

**Sec. 13-9-78 through Sec. 13-9-89**

**Reserved for Future Use.**

