



Item: Ordinance 3130 – An Ordinance Amending Title 17, Chapter 68 of the Official Code of the City of Great Falls Pertaining to Procedures and Standards for Park Land Dedication or Payment In-Lieu Thereof

From: Craig Raymond, Director of Planning and Community Development

Initiated By: Planning and Community Development

Presented By: Craig Raymond, Director of Planning and Community Development

Action Requested: Accept Ordinance 3130 on first reading and set a public hearing for April 21, 2015.

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission and accept Ordinance 3130 on first reading and set a public hearing for April 21, 2015.”

2. Mayor calls for a second, discussion, public comment, and calls the vote.

Background: Impending residential subdivisions on the northwest side of Great Falls will require the City to implement 76-3-621, MCA, which requires park land dedications or the payment of a fee in-lieu of dedication on a relatively large scale. The statute sets a standard: 11% of the site is to be dedicated for parks from subdivisions that are at urban densities or, in lieu of that, the City may accept a cash payment equal to 11% of the value of the un-subdivided, unimproved land. The statute also sets two general standards the city must observe if it wants to accept the dedication of park land or cash in-lieu of dedication.

First, 76-3-621(5)(b)(i), MCA requires that any money that is collected in-lieu of a land dedication be used to provide recreational or open space within a reasonable proximity of the subdivision from which the dedication is required.

The legislature does not define “reasonable proximity” because, second, 76-3-621(5)(b)(ii), MCA requires the adoption of a parks plan that would provide a local definition. This requirement is reinforced by 76-3-621(8)(b), MCA, which requires regulations specifying the circumstances under which park land dedications or fees in-lieu will be accepted.

Taking the second point, first, Great Falls does not have the required regulations, nor does the City have a current parks plan. The last parks plan was adopted in 1995 and did not consider the areas that are now proposed for subdivision on the northwest side of the city. The 2013 growth policy calls for an update of the parks and recreation plan (see Policy Soc1.2.2, page 132) and for adequate access to parks throughout the city (see policy Soc1 2.6, page 132), but offers no guidance for park land dedication.

That guidance, including a definition of “reasonable proximity” will be offered by the proposed ordinance until a new parks plan can be prepared. The draft language speaks for itself, but some explanation is offered here.

Montana law and common sense both require that land dedications or payments in-lieu of dedication be used to provide neighborhood parks that serve the subdivisions from which the land or money come. Great Falls already has many neighborhood parks that can be used as examples of what should be provided. As the accompanying map shows, one of these parks (or a school playground) is within walking distance of most homes. The existing neighborhood parks range from less than three acres in size (Carter, Memorial) up to about seven (Pinski). They include basic features like play structures, basketball courts, picnic tables, and open play space. A neighborhood park may be larger where it also serves as a site for a water reservoir, fire station, or similar facility. Neighborhood parks may (and in many cases, should) also incorporate open space that is not developed for recreation, but serves other functions, like storm water management.

What is a reasonable proximity? Professional planners understand this to mean that a proposed neighborhood park will be within a reasonable walking distance of most of the homes it serves and which are indirectly paying for the land or cash dedicated. A reasonable walking distance is considered to be about 10 minutes. That translates to a maximum of a half-mile and is sometimes taken as being only a quarter-mile. The proposed ordinance uses 3/8 of a mile (1,980 feet) as a guideline, but incorporates some flexibility.

What other guidelines must neighborhood parks meet? Adoption of Ordinance 3130 would establish reasonable standards for the minimum area, shape, and suitability for development of neighborhood parks. Following those standards will ensure that the City does not accept land that is not actually useful as a park.

Neighborhood park maintenance fees. Great Falls’ Land Development Code requires improvement agreements for large subdivisions. Such an agreement could provide that all lots created pay an annual charge for neighborhood park maintenance. Implementing such a charge would allow the Parks and Recreation Department to maintain dedicated lands without further stretching its current budget. The proposed ordinance does not institute a neighborhood park maintenance charge. It simply authorizes staff to propose such a charge in an improvement agreement that would have to be adopted by the City Commission as part of its approval of a subdivision.

Concurrences: The Great Falls Parks and Recreation Board recommended that the City Commission adopt Ordinance 3130 at its February 9, 2015 meeting. Minutes of that meeting are attached.

Fiscal Impact: The proposed amendments have no fiscal impact per se. They bring the City into compliance with State law and authorize staff to propose neighborhood park maintenance fees that could have a positive impact on the City's ability to maintain neighborhood parks serving new residential developments. Any such fee will have to be approved by the City Commission as part of its review of a development agreement. What is important to note from a fiscal planning perspective, however, is that adoption of this ordinance is essentially an interim measure. The City needs to budget for the preparation of a new parks, recreation, and open space plan.

Attachments/Exhibits:

Proposed Ordinance 3130

City of Great Falls 3/8 Mile Park Buffer Map

Minutes of the February 9, 2015 Parks and Recreation Board

ORDINANCE 3130

AN ORDINANCE AMENDING TITLE 17, CHAPTER 68 OF THE OFFICIAL CODE OF THE CITY GREAT FALLS (OCCGF) PERTAINING TO PROCEDURES AND STANDARDS FOR PARK LAND DEDICATION OR PAYMENT IN-LIEU THEREOF

* * * * *

WHEREAS, Mont. Code Ann. 76-3-621 requires those subdividers creating residential subdivisions to dedicate land for a park or, alternatively, to make an equivalent cash payment to support the development, acquisition, or maintenance of parks, recreation areas or open space; and

WHEREAS, Mont. Code Ann. 76-3-621 requires local governments to adopt regulations governing park land dedication or payments in-lieu of dedication; and

WHEREAS, the City of Great Falls wishes to ensure that adequate parks exist within a reasonable walking distance of most new dwellings, as they do for most existing dwellings.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

Section 1. That Title 17, Chapter 68 of the OCCGF be amended as depicted in Exhibit "A" attached hereto, which removes any language indicated by a strike-out and adds language which is bolded;

Section 2. This ordinance shall be in full force and effect thirty (30) days after second reading and final adoption by the City Commission.

APPROVED by the City Commission on first reading March 17, 2014.

ADOPTED by the City Commission of the City of Great Falls, Montana on second reading April 21, 2015.

Michael J. Winters, Mayor

ATTEST:

Lisa Kunz, City Clerk

(Seal of the City)

APPROVED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney

State of Montana)
County of Cascade : ss
City of Great Falls)

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that I did post, as required by law and as prescribed and directed by the City Commission, Ordinance 3130 in three places within the limits of said City to-wit:

On the Bulletin Board, first floor, Civic Center Building;
On the Bulletin Board, first floor, Cascade County Court House;
On the Bulletin Board, Great Falls Public Library

(Seal of the City)

Lisa Kunz, City Clerk

Chapter 68 TIMING OF IMPROVEMENTS, IMPROVEMENT AGREEMENTS, AND DEDICATIONS

Sections:

[17.68.010 Legislative findings.](#)

[17.68.020 Purpose.](#)

[17.68.030 Timing of improvements.](#)

[17.68.040 Improvement agreements.](#)

[17.68.050 Dedication of improvements.](#)

[17.68.060 Dedication of land.](#)

[17.68.070 Dedication of parks: process.](#)

[17.68.080 Dedication of parks: standards.](#)

[17.68.090 Calculation of fees in-lieu of park dedication.](#)

[17.68.100 Neighborhood park maintenance charges.](#)

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17.68.070 Dedication of parks: process.

Residential subdivisions, which for the purposes of this section also include mixed-use subdivisions and planned unit developments that will include both residential and nonresidential uses, must comply with the park dedication requirements established by Mont. Code Ann. 76-3-621. Compliance shall be determined using the following process.

- A. **Pre-Application.** All pre-applications for residential subdivisions shall show one or more proposed neighborhood parks that meet the standards established here; indicate that the applicant prefers to make a cash payment in-lieu of the dedication of park land; or show, in writing, how the application is exempt for any of the reasons listed in Mont. Code Ann. 76-3-621(6).
- B. **Pre-Application Review.** The Director of Planning and Community Development or his designee will review the pre-application and suggest any changes to the proposed park dedication that are needed before an application is filed. The review will be based on the requirements of Mont. Code Ann. 76-3-621; the standards adopted in 17.68.080 of this article; the City's parks plan; and the growth policy.
- C. **Planning Board Review.** In preparing its recommendation to the City Commission on an application for a residential subdivision, the Planning Advisory Board shall include a specific determination of whether or not the proposed residential subdivision complies with the requirements of Mont. Code Ann. 76-3-621; the standards adopted in 17.68.080; and the City's parks plan.
- D. **City Commission Review.** In deciding whether or not to approve an application for a residential subdivision, the City Commission shall make a specific determination of whether or not the proposed residential subdivision complies with the requirements of Mont. Code Ann. 76-3-621; the standards adopted in 17.68.080; and the City's parks plan.
- E. **Improvement Agreement.** Where an improvement agreement is required for a residential subdivision, the draft improvement agreement presented to the Planning Advisory Board and the City Commission shall include the language necessary to provide for the

Exhibit "A"

dedication of the proposed park or parks (dedication may, at the City's discretion, be phased); for the payment of the fee in-lieu of dedication; or for the recording of the documents needed to demonstrate that the proposed subdivision is exempt, as provided by Mont. Code Ann. 76-3-621(6).

- F. **Enforcement.** No Certificate of Occupancy for any structure in a residential subdivision shall be issued until a final plat bearing a certificate of park dedication has been recorded with the Cascade County Clerk and Recorder; a payment in lieu of park dedication has been received; the documents demonstrating that the subdivision is eligible for an exemption have been recorded with the Cascade County Clerk and Recorder; or an improvement agreement providing for the phased dedication of one or more parks or phased payments in-lieu of park dedication has been executed and recorded with the Cascade County Clerk and Recorder.

(Ord. No. 3130, 4-21-2015)

17.68.080 Dedication of parks: standards.

- A. **Basic Dedication Requirement.** As provided in Mont. Code Ann. 76-3-621(1), the park dedication requirement is:

- i. 11% of the area proposed to be divided into residential parcels of $\frac{1}{2}$ acre or less;
- ii. 7.5% of the area proposed to be divided into residential parcels that are larger than $\frac{1}{2}$ acre, but smaller than 1 acre;
- iii. 5% of the area proposed to be divided into residential parcels that are larger than 1 acre, but smaller than 3 acres;
- iv. 2.5% of area proposed to be divided into residential parcels that are larger than 3 acres, but 5 acres or smaller; or
- v. Where acceptable to the City, a cash payment of the value of the un-subdivided, unimproved land that would, otherwise, be dedicated in one or more parks. The calculation of payments in-lieu of the dedication of park land is described in 17.68.090.
- vi. There is no park dedication requirement for subdivisions that create parcels that are larger than 5 acres.
- vii. For mixed-use subdivisions or planned unit developments that will include both residential and nonresidential uses, only the land that is to be developed for residential use will be used as a basis for the calculation of the area to be dedicated.

- B. **Exceptions to the Basic Dedication Requirement.** Mont. Code Ann. 76-3-621(6) offers exceptions to the park dedication requirement.

- i. **Private Parks.** An applicant may propose to provide one or more privately developed and maintained parks that include at least as much land as would be dedicated in accord with 17.68.080.A. An applicant who wishes to use this exception must present a detailed plan for the development and use of the private park or parks, including the phasing of park development, if that is proposed, as well as a proposed mechanism for maintenance of the private parks in the long run. The applicant shall also provide a security sufficient for

Exhibit "A"

the completion of the private park or parks as if they were public improvements.

- ii. **Open Space.** The second exception is where the applicant provides for the permanent protection of open space resources on at least as much land as would be dedicated through the gift of a conservation easement or land fee simple to an accredited land trust or to a public agency charged with the management of such resources.
 - iii. **At Another Location.** Mont. Code Ann. 76-3-621(6) also makes it possible for an applicant to propose to provide the required park space at another location, outside the proposed residential subdivision. This will be acceptable to the City only if the park proposed outside the proposed residential subdivision complies with the standards adopted in this section and is consistent with the City's parks plan.
- C. Distance from Another Park.** A park land dedication generally will not be accepted where it is within 3/8 mile (1,980 feet) of an existing or future (already dedicated, but not developed) neighborhood park or a community or regional park that serves neighborhood park functions. Exceptions to this rule may be permitted where the dedication will add land or provide trail access to an existing park, consistent with the City's parks plan.
- D. Distance from Homes Served.** A proposed park should be within 3/8 mile of the majority of the homes it is intended to serve. It is recognized, however, that the terrain and existing land use patterns may make meeting this standard a challenge for some proposed subdivisions. If no suitable site is available within 1,980 feet, the Planning Advisory Board may recommend and the City Commission may accept a site that is within a half-mile (2,640 feet) of the majority of the homes it is intended to serve.
- E. Accessibility.** Proposed neighborhood parks must be accessible to the homes they are intended to serve by a generally continuous system of sidewalks and/or trails that do not cross arterial streets at grade. They must also have safe, adequate access via public streets along which on-street parking is permitted. This standard shall not be read to mean that a proposed neighborhood park must have street frontage on all sides.
- F. Minimum Area.** The minimum area of a proposed neighborhood park should be three (3) acres. The Planning Advisory Board may recommend and the City Commission may accept exceptions to this rule where a smaller area can be added to an existing park or will provide a trail right-of-way or another significant recreational or open space asset, and the remainder of the applicant's park land dedication obligation, if any, will be fulfilled by a payment in-lieu of dedication.
- G. Useful Shape.** While linear park and open space areas serve many useful functions, any land offered for dedication must include areas that are suitable for and large enough for the installation of typical neighborhood park facilities including playgrounds, basketball or multi-sport courts, picnic areas or shelters, and areas for informal field games like soccer or softball.
- H. Suitable Lands.** Lands offered for dedication must contain areas that are suitable for the construction or installation of typical neighborhood park facilities. This means lands that have a slope of less than four (4) percent and soils that do not impose severe limitations on the development of picnic areas or playgrounds, as shown in the *Soil Survey of Cascade County Area, Montana* issued by the US Department of Agriculture, Soil Conservation Service in January 1982.
- I. Open Space Lands.** If sufficient land suitable for the development of typical neighborhood park facilities is provided, dedicated parks may also include open space lands that are not

Exhibit "A"

as suitable for park development, but provide community services like flood control, storm water treatment, microclimate modification, urban wildlife habitat, and/or aesthetic enjoyment.

(Ord. No. 3130, 4-21-2015)

17.68.090 Calculation of fees in-lieu of park dedication.

As established in 17.68.080(A)(v), the City may accept cash payments in-lieu of the dedication of park land. The amount of the payment required will depend on the value of the land, which may be determined using either of the two methods described below.

- A. **Appraisal.** The applicant may submit a current, which for this purpose means made within the past year, appraisal of the un-subdivided, unimproved land proposed for subdivision to serve as a basis for the calculation of fees to be paid in lieu of park land dedication. Such appraisals shall be prepared by an appraiser who is licensed and certified to practice in the State of Montana pursuant to Mont. Code Ann. 37-54-101, et seq.
- B. **Formula.** The City Commission may, by resolution, adopt a standard formula for payments to be made in-lieu of the dedication of park land. If adopted, applicants may choose to base their payment in-lieu on this formula rather than submitting an appraisal. The adopted formula shall be reviewed and, if necessary, revised to reflect current land values at least every three years.
- C. **Use.** The Fiscal Services Department will establish procedures by which payments accepted in-lieu of dedications are tracked and it can be shown that those payments have been expended in compliance with the requirements of this code and Mont. Code Ann. 76-3-621.

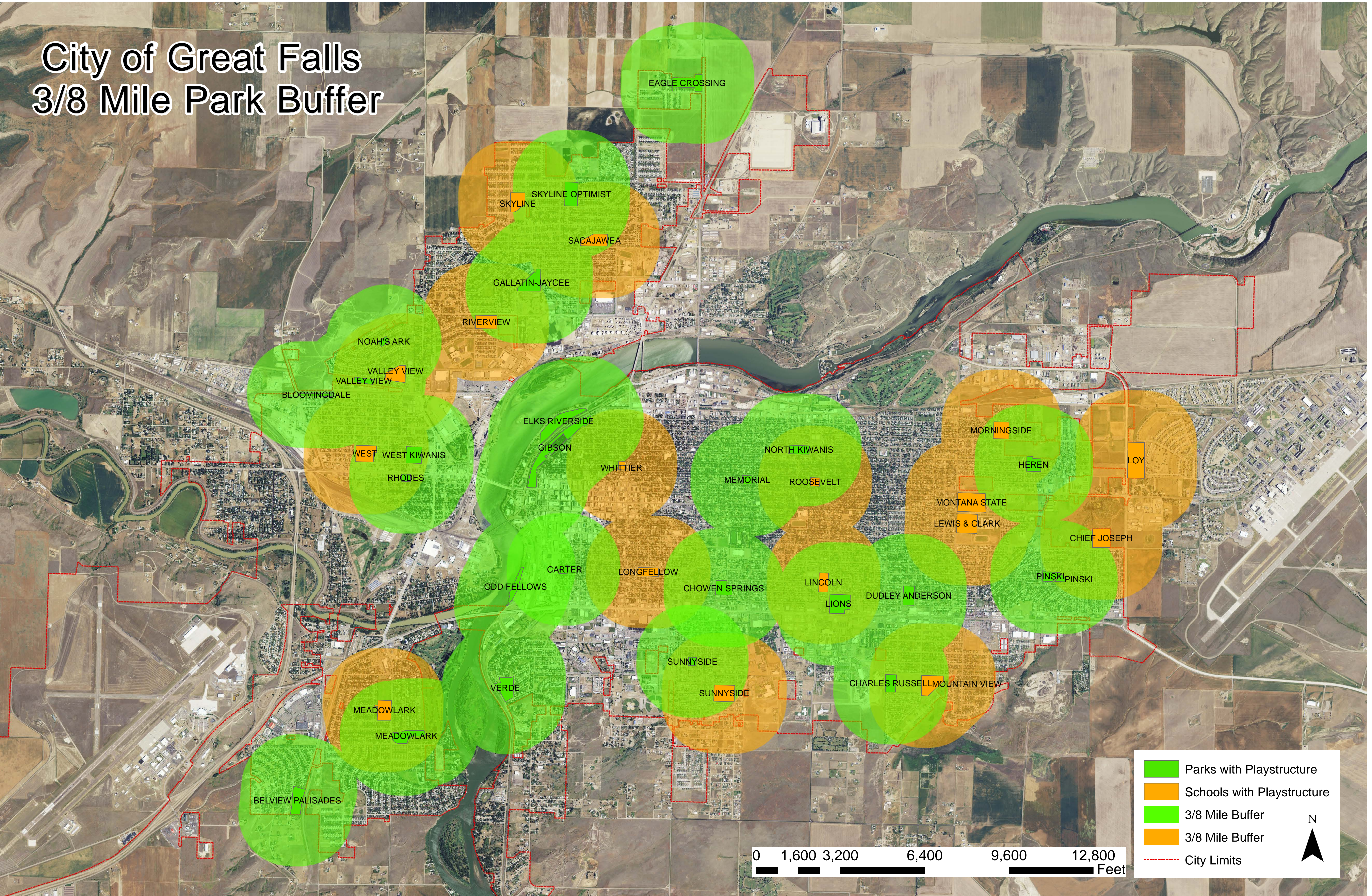
(Ord. No. 3130, 4-21-2015)

17.68.100 Neighborhood park maintenance charges.

Improvement agreements for residential subdivisions, including mixed-use subdivisions and planned unit developments that will include residential uses may establish a reasonable neighborhood park maintenance charge on all residential parcels, including all residential condominium units, created. Lots used for attached dwellings that remain in one ownership will pay the required charge for each dwelling unit permitted on that lot.

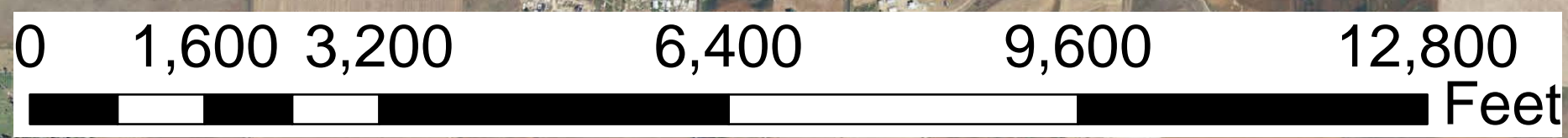
(Ord. No. 3130, 4-21-2015)

City of Great Falls 3/8 Mile Park Buffer



- Parks with Playstructure
- Schools with Playstructure
- 3/8 Mile Buffer
- 3/8 Mile Buffer
- City Limits

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**Park & Recreation Board Meeting
Monday, February 9, 2015
Minutes**

Members Present: June Sprout, Patrick Carroll, Russell Motschenbacher, Charlie Bruckner,
Members Absent: Shirley Davis, William Ramsey, Lynn Oatman

Board motioned to approve minutes as written. Motion seconded and carried.

DIRECTOR'S REPORT

- Working on the summer guide and getting registration options on-line. This will be a positive move forward for staff and residents.
- Met with MDT on Sun River Connector trail.
- Getting ready for budget process.
- Directors and Commissioners will meet during a retreat March 11th.

OLD BUSINESS

Park Dedication Ordinance

Ordinance 3130 better clarifies park land dedication and cash payments in-lieu of the dedication of park land;

- All board members received a copy to review. Staff has met with Fiscal, Planning and the City Attorney to review. Everyone is in favor of the proposed changes/additions. Montana's other major cities have the required regulations.
- Provides for process of dedication of parks
- Sets the standards for park dedication; provisions for cash in-lieu of the dedication of park land
- Provision for calculation of fees in lieu of parkland (including appraisal that would provide formula based on market analysis) also a procedure by Park and Recreation on tracking the funds.
- Allows for a park maintenance fee to be assessed to the properties.

Patrick spoke on the problems he sees on how parks are dedicated and/or cash in lieu of formula. We should have the right to propose stricter standards on park land dedication and cash in-lieu of payments should be assessed as residential lots, not unimproved land. Even though we are self governing, we cannot override the state code. Further discussion on the agreement, Board feels we should get more cash in-lieu of.

Board motioned to recommend the Planning Advisory Board recommend the City Commission adopt Ordinance 3130. Motion was seconded and carried.

Westside Orchard Gardens

Presentation - cancelled

MISCELLANEOUS REPORTS/ANNOUNCEMENTS

Staff

Todd Seymanski, City Forester

- With the high winds and temperatures we may have some damage to trees come spring. Already seeing pine and juniper damage from November.
- Trimming trees

Lonnie Dalke, Park Maintenance

- Working on maintenance projects.
- Accident at Broadwater/Overlook where someone knocked out an electrical box, sign and a tree.
- Accident by Boy Scouts leased building at Wadsworth Park where someone went through gate.
- Sewer Line issue on the back side of Gibson Pond, it has been repaired.
- New play structure for Dudley Anderson, will install this spring and should take approximately 4 weeks to complete.

Patty Rearden

- Westbank park project will go to Planning Board and if recommended will go to the City Commission on March 3rd.
 - Presentation to NHC 3 this week and NHC 2 in March.
- Golf Courses - removing the Russian Olives on the back nine at Anaconda Hills, this has been a two year process and is now completed.

Board

Russ - why and who put the speed limit signs at JC park?

- Patty said public works did it per request from City Mayor
- 15mph on one side of park only - is it enforceable and why 15mph when schools are 25mph?

With no further business, meeting adjourned at 3:40pm