

**COMMISSION RESOLUTION NO. 4784**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA, ESTABLISHING THE CRITERIA FOR EVALUATION OF REQUESTS FOR USE OF CASH-IN-LIEU OF PARKLAND DEDICATION PER ARTICLE 38.27, BMC.**

**WHEREAS**, Section 76-3-621, MCA requires all new subdivisions to be evaluated for dedication of parkland according to certain standards; and

**WHEREAS**, Section 76-2-304, MCA includes provisions of parks as part of the purposes for municipal zoning but does not give specific criteria; and

**WHEREAS**, the City has adopted Article 38.27, BMC to enact parkland dedication and development requirements and one of those provisions is the option to make a payment to the City instead of granting land; and

**WHEREAS**, the City has prioritized the acquisition of land rather than payments but also recognizes that under some circumstances it is in the best interest of the City and the developer to accept a payment in-lieu; and

**WHEREAS**, the City recognizes that it can receive value in-lieu of land as cash or by means of privately constructed improvements within a public park; and

**WHEREAS**, therefore it is necessary to establish criteria to enable the equitable evaluation of park dedication to determine whether land dedication, cash donation or improvements is most suitable.

**NOW, THEREFORE, BE IT RESOLVED** by the City Commission of the City of Bozeman, Montana:

**Section 1**

Review Factors. The City Commission through the adoption of the City's long range plan for parks has established a preference for acquisition of land as mitigation for the park and recreational impacts of development. The City also recognizes that in some circumstances an alternative may be to the mutual benefit of the City and the developer. This resolution establishes the factors to be considered by the review authority in evaluating the appropriateness of accepting cash payment or improvements in-lieu of dedication of parkland.

In reviewing any application for development where mitigation of park and recreational impacts is required, the review authority must consider the following factors in determining whether to accept a request to allow payment of cash-in-lieu or to authorize the construction of improvements-in-lieu:

- The City's preference for acquisition of real property for parks.
- The desirability and suitability of land within or proposed by the development for parks and playgrounds based on size, topography, shape, water supply, location or other circumstances.
- Proximity of the development to existing parks and recreational facilities.
- Type, function of and facilities included within nearby park(s) (i.e., pocket park, special use park, neighborhood park, community park, etc.).
- The level of service (as defined in the adopted city-wide park master plan) provided by nearby park(s).
- Correspondence with the City's adopted city-wide park master plan.

- Whether the proposal provides an opportunity for partnerships, or whether grant funds are currently available.
- Whether the developer or future property owners are required to participate in the costs of maintenance of nearby park or recreational facilities.
- Long term availability of city funds for maintenance of the proposed facilities.
- Requirements established pursuant to 38.27.020 and 38.27.030, BMC regarding residential density.
- The expressed preference of the developer.

The application of these factors is done on a case by case basis, and no single factor is determinative. The determination to accept cash-in-lieu is a discretionary act which will be weighed in the overall balance of public goods associated with review of land development.

## **Section 2**

Definitions. In addition to the terms and phrases defined in Chapter 38, BMC, the following terms or phrases are defined for use in this resolution:

- A. Cash-in-lieu means value given to the city in money, goods, or constructed improvements for the purpose of meeting a development's obligation to comply with mitigation of recreational impact requirements of Section 38.27.020.A, BMC.
- B. Improvements-in-lieu means constructed improvements and/or installed goods beyond those minimum improvements required by Section 38.27.080, BMC within a public park. Improvements-in-lieu may be accepted by the city as a form of cash-in-lieu to meet the required provision of mitigation of recreational impacts required by Article 38.27, BMC.
- C. Infill means either the intensification of development or redevelopment on a site which was previously developed for urban use (greater than 1 dwelling per acre), or the initial development of vacant property located within the City which have been developed for over 30 years.
- D. Park is defined in 38.42.2230, BMC.

### Section 3

Guidance for application of factors. The following is a list of examples which may weigh in favor of accepting cash-in-lieu of parks. It is provided for informational purposes only as guidance for developers deciding whether to propose cash-in-lieu.

*When Cash-In-Lieu will always be accepted:*

- Development is located within the B-3 zoning district.
- Section 38.27.020.A requires payment of cash-in-lieu

*Favorable Circumstances for Acceptance of Cash-in-Lieu:*

- The proposed cash-in-lieu is consistent with the density requirements of Section 38.27.020.A, BMC.
- The development will participate in the maintenance of parks which will serve the development for which cash-in-lieu is provided.
- The proposed development is unable to meet the park development standards, e.g. frontage or accessibility.
- Area to be dedicated is less than 5,300 sq ft.
- The development cannot readily add land to an existing park or extend a trail network.
- The travel distance from the nearest point of the development to the nearest point of two or more existing neighborhood, community, or regional parks is within 0.25 miles of the development site or a single neighborhood, community, or regional park is within 300 feet of the development site.
- The development is mixed use and located within a commercial or industrial zoning area.
- The development is located on an infill site.

- The site is within area adequately served according to the adopted city-wide park master plan or the proposed park does not correspond with needs determined by the adopted city-wide park master plan.
- The non-park open space required by Section 38.27.020.E, BMC provides structures for active recreation by residents of the development.
- Property is not suitable for parkland due to environmental factors, natural resource constraints, or hazards.
- The acceptance of cash-in-lieu enables accomplishment of other City priorities such as infill, enhancement of existing parks to better serve the dedicating development and other users.
- The expressed preference of the developer.

#### **Section 4**

Improvements-in-lieu. After it has been determined that land dedication is less desirable than cash-in-lieu for a specific location, and if the developer proposes to install infrastructure rather than provide cash, the review authority must determine whether receipt of money is preferred over the installation of improvements to a park. Depending upon the facts of a given application, the use of improvements-in-lieu of park land may or may not be approved by the review authority.

#### *Factors for Consideration of Improvements-in-Lieu*

- Proposed improvements:
  - are consistent with the master plan for the park where the improvements are proposed,
  - are included in the city's most recently adopted city-wide park master plan, or
  - are included on the capital improvements program for the Parks and Recreation Department.

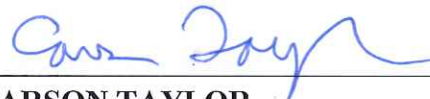
In addition, the proposed improvements must:

- be consistent with the city's approved specifications for park equipment and improvements; and
- exceed the minimum requirements of Section 38.27.080, BMC.
- The value of the proposed improvements is equal to or exceeds the value of cash-in-lieu due but which is not proposed to be paid in money.
- The proposed location of the improvements will serve the residents of the development according to the service radii established by the City's adopted city-wide park master plan.
- All work conforms or will conform to the procedures of Article 39.39, BMC, regarding installation of improvements.
- All work conforms or will conform to the City's adopted standards and specifications.

**Section 5**

The effective date of this Resolution is April 11, 2017.

**PASSED AND APPROVED** by the City Commission of the City of Bozeman, Montana, at a regular session thereof held on the 10<sup>th</sup> day of April, 2017.

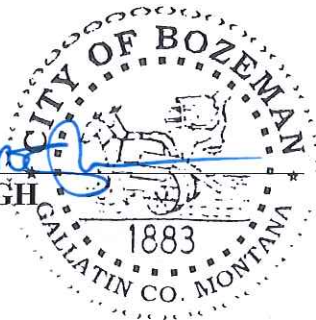


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APPROVED AS TO FORM:



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