

From: [Burnham, Nicolle](#)
To: [Downtown West Project](#)
Subject: FW: Google in Mountain View
Date: Saturday, April 24, 2021 11:48:23 AM
Attachments: [POPOS 2020Nov Alexandria Virginia Publicly accessible open space DRAFT DEFINITIONS - 12.09.2020.pdf](#)
[Mountain View Park Credits Muni Code 2020.docx](#)

From: Jean Dresden [REDACTED]
Sent: Wednesday, March 24, 2021 1:37 PM
To: Burnham, Nicolle <nicolle.burnham@sanjoseca.gov>
Subject: Re: Google in Mountain View

[External Email]

Attached is Mountain View's code. Google will be in North Bayshore where PAPOS are allowed and can get some credit depending on quality of space/usability/recreation components. Google's downtown SJ shopping mall would not qualify.

POPAs are as permanent as the contract that is written.
Covenants are more restrictive and linked to the DEED. So it is more difficult to remove.

Some easements/covenants have multiple partners so all three (or more) partners must agree.

All easements can be vacated by Council action. Some easements have expiration dates such as "ceases upon demolition of building". Google could vacate an easement by cheating on the easement rules and no one complains—then it can be removed by court action. (13% private use creeps up to 25% and the City doesn't complain, BOOM!, Google gets to cancel the easement. This suggest easement must be monitored). As I have had it explained to me, putting the 13% restriction in the development agreement is not the same as putting it in the easement contract. Easements can be written in SO many ways.

I've looked at many PAPOS/POPOS definitions/rules. 100% accessibility is a requirement for parkland credit. Attached is Alexandria Virginia working notes as they update their ordinance. It is a worthwhile skim. Many of the same issues here. Definition of open space (not sidewalks! not required open space like creek beds).

Every community-based park advocate leader I've spoken with worries about POPOS and do not want cities to become dependent on them since they do not think they will last any longer than the life of the project. 30-40 years in Center City, 80 years in more suburban environment. Limited evidence because the formal concept of POPOS is relatively new and projects are just now starting

to redevelop.

—Jean

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> On Mar 23, 2021, at 10:21 AM, Burnham, Nicolle <nicolle.burnham@sanjoseca.gov> wrote:

>

> POPA's for park credit is interesting. I'm told that most communities do this. It makes me wonder if the POPA's are somehow permanent. Or do most communities accept parks as transitory land use?

>

> -----Original Message-----

> From: Jean Dresden [REDACTED]

> Sent: Tuesday, March 23, 2021 9:34 AM

> To: Burnham, Nicolle <nicolle.burnham@sanjoseca.gov>

> Subject: Google in Mountain View

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> [External Email]

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> Thought you would be interested in Google's new Mountain View project—and what it takes to get council approval there.

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Publicly Accessible Open Space (PAOS)

11/30/2020

Major Themes from October 28 Open Space Steering Committee Discussion

- Four major themes that came out of the Open Space Steering Committee meeting:
Access/perception of public accessibility, useable open space, quality of open space, and purpose.

Draft Definition Considerations for Publicly Accessible Open Space

1. Space that is made available for public use for the purposes of outdoor recreation and leisure, cultural arts, and the protection of environmental, cultural, and historic resources, and which is intended to enhance the health and well-being of the community.
2. Land that has been reserved for the purpose of formal and informal sport and recreation, preservation of natural environments, and/or provision of green space.
3. Space that supports recreation and leisure, natural resources, casual use, historic and cultural resources and is either publicly owned or has guaranteed public access – including parks, plazas, trails, streets, and recreation facilities. (Arlington)

Current Open Space Definition (Zoning Ordinance)

According to section 2-180 of the Zoning Ordinance, open and usable space is that portion of a lot at ground level which is:

- (A) Eight feet or more in width;
- (B) Unoccupied by principal or accessory buildings;
- (C) Unobstructed by other than recreational facilities; and
- (D) Not used in whole or in part as roads, alleys, emergency vehicle easement areas, driveways, maneuvering aisles or off-street parking or loading berths.

The purpose of open and usable space is to provide areas of trees, shrubs, lawns, pathways, and other natural and man-made amenities which function for the use and enjoyment of residents, visitors and other persons.

- Currently: A technical definition in which everything that is not a building or road may be considered 'open space'

Purpose of Publicly Accessible Open Space

- Public open space is intended to promote an appropriate balance between the built environment, public parks and other open spaces intended for respite from urban development, and to protect natural features and preserve the character of the City. (Rockville)
- The City finds that public parks and common open space controls congestion; promotes health and the general welfare; provides adequate light and air; promotes the conservation of natural resources and natural hazard areas; prevents environmental pollution; avoids undue concentration of population; and facilitates the adequate provision of recreation and parks. (City of Frederick)
- Publicly Accessible Open Space serves to increase the City's diverse portfolio of open spaces; to protect and enhance its cultural history; to conserve it's natural resources; and to create vibrant and useable spaces; in order to support a more healthy, livable and sustainable City.

Publicly Accessible Open Space should:

- Be a meaningful place to the community
- Be multi-functional and adaptable
- Provide diversity and inclusion
- Encourage social interaction
- Promote health and well being
- Provide equity and accessibility
- Embody environmental sustainability
- Ensure financial sustainability

Characteristics of Publicly Accessible Open Space

- **Accessible** - Areas of a lot that are made accessible to the public every day, year-round, during daylight hours, and that are maintained by the property owner. (Providence, Rhode Island)
 - Entry into the publicly accessible open space is generally unimpeded and/or has ease of physical access to encourage use

- Publicly accessible open space must be with few exceptions available for use and enjoyment by the general public in perpetuity
- Accessibility may afford scenic views for public enjoyment
- Provides a balance between the built and natural environment. Open spaces shall be designed to provide relief from urban development through natural features or recreational opportunities.
- Useable
 - Provides parks, plazas, active spaces, trails, informal spaces
 - Allows for flexible uses/diversity of use
 - May have accessory structures to support it's intended function (ie. amphitheatre, restrooms, boardwalk, picnic shelter)
 - May have potable water, electrical power, plumbing to support human activities
- Meets community needs and context
 - Context appropriate and meets community needs for recreation, social and cultural activity
- Safety
 - Space that is safe and protects safety of users
 - Encourages use of spaces (we are addressing safety because it affects use)

Ownership/Protection Measures?

- Public ownership; owned by a government or other public body. Land may be zoned as Public Open Space (POS)
- Private ownership with recorded public access easement guaranteeing access
- Conservation easements with public access clauses
- PAOS sites would count towards the City's Open Space Master Plan acreage

What is not counted as Publicly Accessible Open Space?

- Bodies of water
- Roadways
- More than 50% of parking lots and other accessory uses
- Parking lot islands
- Enclosed structures
- Sidewalks by themselves (ie. along roads)? (currently not counted towards Open Space Master Plan acreage)

Four Major Themes from October 28 Open Space Steering Committee

Access/Perception of Public Accessibility

- Hard to tell if it is privately owned or publicly owned
- Define accessibility – anybody, anywhere, at any time can access
- Urban areas include having access to space (less about the space)
- Can access land in some meaningful way, whether we are standing in it or not
- Useable open space
- If I can see it and go to it, then it is accessible
- Desire for it to be ground level – essential for its interpretation of being accessible
- Unless one entire side provides access to the open space
- “not enclosed within a building” – unless it is a direct accessory use like a public restroom that actually directly increases the POS’ accessibility
- “reasonable access”
- Access to the periphery could count as accessible
- Desire for access to nature, water and water sources, cultural and historic activities/elements

Useable Open Space

- Diversity of use – getting more at the quality – can use space for more than on use
- City’s open space portfolio needs to include diversity and diversity of use – and evaluate it geographically
- “not enclosed within a building” – unless it is a direct accessory use like a public restroom that actually directly increases the POS’ accessibility
- Desire for access to nature, water and water sources, cultural and historic activities/elements

Quality of Open Space

- Open space design guidelines
- Provide guidance for quality
- Aspirational – not necessarily requirements
- Better articulate wants to a developer

Purpose

- Charles County – it is not open space if it has to be open space anyway – wetlands
- What we are trying to do with open space – we are trying to protect it, expand it, value it
 - Gives us direction of where we are going
- Value of passiveness is the openness and the value of active space is the programming
- Definitions in active voice – most helpful
- Purpose: Environmental benefits

Mountain View Park Credits
Google is in North Bayshore area. PAPOS described.

Underneath Section 41.11 is how they compute, density formula and fair market value.

SEC. 41.11. - Credit.

[SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD \(DOCX\) OF SECTIONEMAIL SECTION](#)

a.

Private open space. Where private open space is provided in a proposed residential development, a maximum credit of fifty (50) percent of the value of the land devoted to private open space that is eligible for credit may be given against the requirement of land dedication or fees in lieu thereof required by this chapter, if the following standards are met and it is in the public interest to do so.

1.

Standards.

(a)

Yards, court areas, setbacks, decorative landscape areas required with residential site design and other open areas required to be maintained by a precise plan, zoning and building ordinances and regulations shall not be included in the computation of such private open space.

(b)

The private open space shall be devoted to active recreational uses, as defined below, and shall be wholly or partially owned and maintained by the future residents of the development. The private ownership and maintenance of the open space shall be restricted for said use by recorded written agreement, conveyance or restrictions subject to the review and approval of the city attorney.

(c)

The space shall be reasonably adapted for use for recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location, and the developer must propose and agree to design and construct the necessary recreational and park facilities and improvements associated with each element of the private open space set forth below; said facilities and improvements shall be constructed prior to the issuance of an occupancy certificate for the units that are receiving the credit.

(d)

Facilities proposed for the open space shall be in substantial compliance with the provisions of the open space section of the environmental chapter of the general plan.

(e)

The open space must contain at least four (4) of the following seven (7) elements:

(i)

Turfed play field. The play field shall be a single unit of land which is generally level and free of physical barriers which would inhibit group play activities;

(ii)

Children's play apparatus area;

(iii)

Landscaped, park-like quiet area;

(iv)

Family picnic area;

(v)

Game court area;

(vi)

Swimming pool;

(vii)

Recreation center buildings and grounds.

The combined minimum acreage for a facility is one (1.0) acre and shall be a single, contiguous unit of land.

(f)

The shape and location of the open space shall provide the greatest utility possible to the greatest number of residents of the development for which credit is sought. If limited access recreation areas are proposed, their credit value can only be applied against the park fee obligation generated by those residents with access to the said recreation area.

(g)

Irregularly shaped pieces of property of less than optimum utility or burdened by topographic considerations that render them unsuitable for active recreational uses shall not be eligible for credit.

b.

North Bayshore Precise Plan Area and publicly accessible private open space. Where publicly accessible private open space is provided in a proposed residential or mixed-use residential development within the North Bayshore Precise Plan Area, a maximum credit of seventy-five (75) percent of the value of the land devoted to publicly accessible private open space that is eligible for credit may be given against the requirement of land dedication or fees in lieu thereof required by this chapter, if the following standards are met and it is in the public interest to do so.

1.

Standards.

(a)

The publicly accessible private open space shall be devoted to active and passive recreational uses, as defined below, and shall be wholly or partially owned and maintained by the owner (in the case of a rental development) or homeowner association (in the case of an ownership development) of the development.

(b)

The right of the public to access and utilize the open space shall be recorded against the property either by an easement, covenant or restrictions subject to the review and approval of the city attorney, and such right shall run with the land in perpetuity.

(c)

Improvements associated with any of the elements of the publicly accessible private open space set forth above shall be constructed prior to the issuance of a certificate of occupancy for the units that are receiving the credit and shall be in substantial compliance with the provisions of the parks, open space and community facilities chapter of the general plan.

(d)

The publicly accessible open space must contain at least three (3) of the following five (5) elements:

(i)

Turfed play field. The play field shall be a single unit of land which is generally level and free of physical barriers which would inhibit group play activities;

(ii)

Landscaped, park-like quiet area;

(iii)

Family picnic area;

(iv)

Game court area; and

(v)

Children's playground or play structure.

(e)

The size of the publicly accessible open space shall be a minimum of one (1) acre and shall be a single, contiguous unit of land.

(f)

The shape and location of the open space for which credit is sought shall provide the greatest utility and accessibility possible to the greatest number of residents of the development and the public.

(g)

Irregularly shaped pieces of property of less than optimum utility, accessibility or burdened by topographic considerations that render them unsuitable for active recreational uses shall not be eligible for credit.

(h)

The publicly accessible open space complies with the city's guidelines for restroom buildings in city parks.

(i)

The publicly accessible open space includes signage that is visible from the public right-of-way and is approved by the community services department.

(j)

The open space shall be publicly accessible during the city's park hours.

(k)

The local school strategy will be a factor considered when determining any credit.

2.

Alternate proposals. As an alternative to the publicly accessible private open space credit standards listed in subsection b.1., developers of residential and mixed-use residential developments within the North Bayshore Precise Plan Area may submit a request for a credit for providing publicly accessible open space and elements other than those listed in subsection b.1. Such requests may be granted at the sole discretion of the city council, if the city council makes a finding that such alternative will further the goal of providing publicly accessible private open space in the North Bayshore Precise Plan Area and the request provides benefits equal to or greater than the criteria in subsection b.1.

- (Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15)
- **SEC. 41.5. - Land requirement.**

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In accordance with the open space section of the environmental management chapter of the Mountain View general plan, it is hereby found and determined that the city currently provides park and recreational facilities to its residents at a ratio in excess of the three (3) acres per thousand standard set forth in state law. The public interest, convenience, health, welfare and safety require that three (3) acres of property for each one thousand (1,000) persons residing within the city be devoted to public park and recreational facilities.

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15)

- **SEC. 41.6. - Density formula.**

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In calculating dedication and in-lieu fee requirements under this chapter, the following table, derived from the density assumptions of the general plan, shall apply:

EXPAND

Table 41.6 DENSITY FORMULA			
DWELLING DENSITY	DWELLING UNITS PER ACRE	DENSITY OF PERSONS PER DWELLING UNIT	ACREAGE REQUIREMENT PER DWELLING UNIT WITHIN SUBDIVISION
Low	1—6	2.7	.0081
Medium-Low	7—12	2.3	.0069
Medium	13—25	2.0	.0060
Medium-High and High	26+	2.0	.0060
Mobile Homes	7—14	1.5	.0045

Table 41.6 DENSITY FORMULA			
DWELLING DENSITY	DWELLING UNITS PER ACRE	DENSITY OF PERSONS PER DWELLING UNIT	ACREAGE REQUIREMENT PER DWELLING UNIT WITHIN SUBDIVISION
Companion Unit	-	-	.0016

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15; Ord. No. 10.16, § 1, 6/14/16.)

- **SEC. 41.7. - Procedure.**

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The public works director, zoning administrator, subdivision committee or city council, as appropriate, shall, upon approving a residential development or subdivision map, determine the conditions necessary to comply with the requirements for **park** land dedication or **fees** in lieu thereof as set forth in this chapter, and said conditions shall be attached as conditions of approval. The establishment of said conditions for projects other than a subdivision map shall comply with Government Code Section 66001.

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15)

- **SEC. 41.8. - Calculation of fair market value.**

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At the time of submission of a completed application for a building permit or the filing of a final subdivision map for approval, whichever applies, the city shall, in those cases where a **fee** in lieu of dedication is required either in whole or in part, determine the fair market value of the land in the proposed residential development, and this determination shall be used in calculating the **fee** to be paid. If the developer objects to the fair market value, the city, at developer's expense, shall obtain an appraisal of the property by a qualified independent real estate appraiser, agreed to by the city and the developer, and the value established by said appraiser using standard recognized appraisal techniques to establish fair market value will be accepted as the fair market value of the land in the proposed development. Alternatively, the city and the developer may agree as to the fair market value.

(Ord. No. 4.97, 3/25/97; Ord. No. 7.15, § 1, 10/13/15)

