

These restrictions would terminate upon installation of all improvements required by this title. Water requirements pursuant to the rules and regulations of the department of water supply shall be installed. (Ord. 2217 § 1, 1993: Ord. 1649 § 2, 1987: Ord. 789 § 1 (part), 1974: prior code § 11-1.9(f))

18.16.280 Monuments.

Monuments approved by the director of public works shall be placed and properly coordinated with the state survey triangulation stations at all angle points or points of curvature in streets, and at such intermediate points as shall be required by the director of public works. All lot and block corners shall be properly established and marked with one-half inch round galvanized pipe or equivalent and firmly and permanently set in the ground. (Ord. 789 § 1 (part), 1974: prior code § 11-1.9(h))

18.16.290 Lot side lines.

The side lines of lots shall run at right angles to streets upon which the lots face, or on curved streets they shall be radial to the curve, as far as practicable. (Ord. 789 § 1 (part), 1974: prior code § 11-1.9(e)(4))

18.16.300 Building lines.

A. If building setback lines which differ from the provisions of title 19 or the general plan are established in a subdivision, they shall be shown on the subdivision plat. Provisions for enforcement of such special setback lines shall be included in the deed restrictions; and the county shall not bear the responsibility for enforcement of setback lines other than those established by county ordinance.

B. For any existing structure within a proposed subdivision, building setback lines different from those required by titles 16 and 19 of this code are permitted, provided that the setback nonconformity is caused by the road widening requirements of section 18.16.060 of this code and the existing structure is at least three feet from all lot lines. After final subdivision approval, the setback nonconformity shall be subject to section 19.500.110 of this code. (Ord. 2482 § 1, 1996: Ord. 789 § 1 (part), 1974: prior code § 11-1.9(g))

18.16.310 Utilities.

A. In general, all utilities shall be located within the road right-of-way and shall conform with standards of the "Maui County Utilities Representative Association and Standards" on file with the utility companies and the department of public works and waste management.

B. If in the opinion of the director of public works and waste management, the director of water supply and the utility companies, the most suitable and reasonable location

for any of the utilities, such as sewers, storm drains, water and gas pipes, electric and telephone pole lines and conduits, which are likely to be required within a subdivision, either for the service thereof or for the service of areas in the surrounding territory, do not lie wholly within the street width, the director of public works and waste management may require provisions to be made for the location as mutually agreed with the subdivider of such utilities on routes elsewhere than within said street width. The subdivider shall designate the required area or areas for all such utility locations outside of the street width.

C. Easements or rights-of-way for sewers, storm drains, public utilities (gas, electrical, and communications), and government owned water facilities shall be not less than fifteen feet in width and may be required to be fenced along the perimeter of said easements or rights-of-way and centered on or along rear or side lot lines except for guywire tie-back easements, which shall be five feet wide by twenty feet long along lot lines at change of direction points of easements; except that this width may be modified where the director of public works and waste management or the board of water supply, or public utilities, whichever is appropriate, finds that a greater or lesser width is necessary or satisfactory for the purpose of the use of the area. When required by the director of public works and waste management, easements or rights-of-way for sewer lines and drain lines shall be conveyed to the county and documents shall be delivered to the county council for acceptance. Easements or rights-of-way for water facilities which are under the jurisdiction of the board of water supply shall be delivered to the board of water supply for acceptance.

D. The director shall adopt rules to implement any of the provisions of this section. (Ord. 2369 § 2, 1994: Ord. 789 § 1 (part), 1974: prior code § 11-1.9(i))

18.16.320 Parks and playgrounds.

A. For the purposes of this section, the following definitions shall apply:

"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" shall refer to the issuance of the building permit.

"Council" means the Maui County council.

"County" means the County of Maui of the State of Hawaii.

"Dwelling unit" means a room or rooms connected together, constituting an independent housekeeping unit for a family and containing a single kitchen.

"Lodging unit" means a room or rooms connected together, constituting an independent housekeeping unit for a family which does not contain any kitchen.

"Parks and playgrounds" mean areas used for active or passive recreational pursuits.

"Privately owned parks and playgrounds" mean parks or playgrounds and their facilities which are not provided in perpetuity or dedicated but which are owned and maintained by or on behalf of the ultimate users of the subdivision pursuant to recorded restrictive covenants. Where the privately owned park is a part of the lot or lots on which a building or group of buildings containing or divided into three or more dwelling units or lodging units are constructed, it shall not be required that the private park or playground meet County subdivision standards nor shall the area of the private park or playground be deducted from the area of the lot or lots for purposes of zoning or building requirements.

"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 three or more dwelling units or lodging units.

"Subdivision" means 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 division of land. The term includes resubdivision, and when appropriate to the context, shall relate to the land subdivided. The term also includes a building or group of buildings, other than a hotel, containing or divided into three or more dwelling units or lodging units. The term includes a building or group of buildings converted from hotel to residential use. The term includes dwelling units or lodging units added to a building or group of buildings, other than a hotel, where the total number of units is three or more.

B. Park dedication requirements.

1. The director of parks and recreation shall require each subdivider, as a condition of approval of a subdivision, to:

- a. Provide land in perpetuity or shall dedicate land for park and playground purposes; or
- b. Pay the County a sum of money; or
- c. Provide improvement to a park in the community plan region; or
- d. Provide an equivalent combination thereof, pursuant to subsection C.

2. The land provided or dedicated shall meet the following standards:

- a. Each subdivider shall convey the land to the County by warranty deed free and clear of any liens or

encumbrances; pay for recordation of title to the County; and insure the County's title by providing a standard owner's title insurance policy for the County with coverage in the amount of the fair market value of the property dedicated herein;

b. The land provided or dedicated shall be located in the community plan region in which the proposed subdivision is located, or, subject to council approval by resolution approved by a majority of its members, in the community plan region adjacent to the community plan region in which the proposed subdivision is located, excluding Molokai and Lanai;

c. The land provided or dedicated shall have an area of five hundred square feet for each lot or unit, in excess of three, resulting from the subdivision; and

d. The land provided or dedicated shall be subject to acceptance by council resolution after the subdivider has consulted the director of parks and recreation, the director of public works and waste management, and the director of planning who will submit their recommendations to the council within thirty days of the initial park assessment meeting with subdivider or waive the opportunity to do so.

C. In-lieu payment and/or dedication. In lieu of providing land in perpetuity or dedicating land, the director of parks and recreation shall require the subdivider to:

1. Pay to the County a sum of money equal to the number of square feet required by section 18.16.320.B.2.c multiplied by the square footage assessed valuation of the land being subdivided based on the certified real property tax assessment in effect at the time of final subdivision approval;

2. Combine the payment of money with land to be provided or dedicated, on the basis of five hundred square feet per each lot or unit, in excess of three, resulting from the subdivision; or

3. Provide improvement to parks and playgrounds in the community plan region where the subdivision is located. The value of such improvements shall be at least equal to the sum of money required to be paid pursuant to this section. The estimate for the cost of the improvements provided shall be based upon cost estimates certified by an engineer licensed to practice in the State of Hawaii. For subdivisions which qualify as affordable housing projects, this park assessment fee shall be deferred for either one year from the date of final subdivision approval or until fifty percent of the dwelling units of the affordable housing project are sold or rented, whichever occurs first.

D. The County shall use the money received pursuant to this section for the purpose of providing parks and playgrounds for the use of purchasers or occupants of lots or units in the subdivision. The money received in

connection with a subdivision shall accrue to a park assessment fund, and shall be appropriated in the County budget for parks and playgrounds in the community plan region where the subdivision is located. The estimated amount available for appropriation in each community plan region shall be set forth in the operating budget and capital program proposed by the mayor.

E. A subdivider shall receive a credit of one hundred percent of the area of privately owned and maintained parks and playgrounds if the director of parks and recreation determines that the park or playground fulfills the conditions set forth below:

1. Setbacks and other areas required by law shall not be included in the computation of the credit;

2. The size, shape, topography, geology, access, use, and location of the site shall be suitable for park and playground purposes, as determined after consultation with the director of parks and recreation;

3. The physical improvements provided shall meet the needs of the occupants of the subdivision, as determined after consultation with the director of parks and recreation;

4. Such parks and playgrounds shall not include golf courses, marinas, or other similar uses for which a fee is charged;

5. The subdivider shall improve the site with lot grading, grass planting, automatic irrigation, parking areas, adequate drainage, and comfort stations; provided, that the council may waive any of these requirements if the director of parks and recreation determines that such improvements are available nearby, are impractical, or are unnecessary; provided further, that the director of public works and waste management and the director of parks and recreation shall have an opportunity to submit recommendations to the council;

6. Prior to subdivision approval, the subdivider shall enter into an agreement with the County and shall provide adequate security, to assure that the required improvements and facilities shall be constructed;

7. The use of the site shall be restricted to park and playground purposes by recorded covenants which shall run with the land, and which shall be enforceable by the owners and occupants of the subdivision, and by the County;

8. The perpetual maintenance of the site by the owners and occupants of the subdivision shall be assured by the recorded covenants running with the land, which shall obligate the owners and occupants of the subdivision to maintain the site in perpetuity, and which shall empower the County to enforce the covenants or cause the maintenance to be performed and subject the properties in

the subdivision to a lien until the cost of the maintenance is reimbursed; and

9. Prior to approval of the subdivision, the subdivider shall execute and record a unilateral agreement in favor of the County to assure that such parks and playgrounds shall be privately and adequately maintained in perpetuity, and that the provisions of this section shall be observed.

F. A subdivider shall receive credit for lands dedicated or provided for park and playground purposes before the subdivision approval, if the director of public works and waste management determines that the lands comply with the following requirements:

1. The lands provided or dedicated shall comply with the requirements of this section;

2. The available credit applicable to a subdivision shall be the area of lands dedicated or provided within the appropriate community plan region, reduced by the land area which would have been dedicated or provided if this section were then in effect, and reduced further by the portion of the credit applied to other subdivisions before the subdivision approval;

3. The portion of the available credit applicable to the subdivision shall not exceed fifty percent of the land area required to be provided or dedicated for that subdivision; and

4. The credit shall not be transferable, but may be apportioned among members of a joint venture subdivider by an agreement filed with the central coordinating agency within sixty days of the date the lands were dedicated or provided.

G. Upon the provision of land in perpetuity or the dedication of land by the subdivider as may be required under this section, the County shall thereafter assume the cost of improvements and their maintenance, and the subdivider shall accordingly be relieved from such costs.

H. The following exemptions and exclusions shall apply:

1. Subdivisions by agencies of the federal, State and County governments shall be exempt from this section.

2. Subdivisions of land into three or less residential lots shall be exempt from this section. The land so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels.

3. A lot resulting from a subdivision, the purpose of which is to dedicate the lot to a federal, State, or County government agency, shall be excluded from consideration for the purposes of this section.

4. Subdivisions for nonresidential use shall be exempt from this section.

1. An appeal from a determination by the director of parks and recreation, the director of public works and

waste management and director of planning pursuant to this section shall be heard by the board of variances and appeals in accordance with chapter 91, Hawaii Revised Statutes. Within sixty days after hearing the appeals the board shall affirm, modify or reverse the determination of the relevant director, giving its reasons for its decision and shall report its decision to the council.

J. The central coordinating agency may promulgate rules in accordance with Hawaii Revised Statutes, chapter 91, to clarify and implement this section. (Ord. 2981 § 1, 2001: Ord. 2956 §§ 1, 2, 2001; Ord. 2470 § 1, 1996: Ord. 2442 §§ 1, 2, 1995; Ord. 2375 § 1, 1994; Ord. 2043 § 1, 1991: Ord. 1874 § 1, 1989; Ord. 1686 § 1, 1988; Ord. 1649 § 1, 1987: Ord. 1539 § 1, 1986: Ord. 1487 § 1, 1985: Ord. 789 § 1 (part), 1974: prior code § 11-1.9(j))