BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

Amend Article VI, **Section F. Parks, Open Space, School Sites, and Natural Features** of Land Subdivision Regulations of Appendix "A" of the Code of Ordinances by deleting it in its entirety and relettering subsequent section.

Amend Article 5, **Section 10. Management and maintenance of common open space and recreational facilities**, of the City of Dover Zoning Ordinance by deleting it in its entirety and by creating a new Section 10 to read as follows:

Section 10. Open Space, Recreation, and Other Public Facilities

The City of Dover shall require the reservation of open space, recreation, and other public facilities in accordance with the provisions of this section as a condition of approval for all one family dwelling, two family dwelling and multiple dwelling residential developments requiring conditional use approval, site development plan approval, or land subdivision approval by the City of Dover Planning Commission.

10.1 Recreation Areas

10.11 Purpose. The purpose of this section is to ensure that active recreation areas are provided as an integral design element within residential developments and that such facilities are of an adequate scale in relation to the size of the residential development and which provide residents with a variety of active recreational pursuits.

10.12 Dedication required. The commission shall require the dedication or reservation of recreation areas, and the subsequent construction of recreation facilities of a character, extent, and location suitable to the needs created by a development for recreation facilities as defined and in accordance with the design guidelines set forth.

10.13 Definition. The following are illustrative of the types of recreation areas and subsequent facilities that shall be deemed to serve active recreational needs and therefore to count toward satisfaction of the recreation area requirements of this section: tennis courts, handball courts, racquetball courts, swimming pools, saunas and exercise rooms, meeting or activity rooms within clubhouses, baseball and soccer fields, basketball courts, volleyball courts, swings, slides and play apparatus, and developed walking, jogging or biking trails.

10.14 Recreation Area Review

10.141. Presubmission Conference. Prior to the submission of a development plan, the applicant or his representative shall meet in person with the City Manager or his appointee and the city planner to receive early advice and consultation on the proposed development and the proposed recreation facilities including the size, type, and layout.

10.142. Review with Parks and Recreation Committee. Upon receipt of the submitted development plan the City Manager or his appointee shall consult with the City Council Parks and Recreation Committee.

10.143. Report to Planning Commission. Upon consultation with the Committee the City Manager or his designee shall submit to the Planning Commission through the Development Advisory Committee a report detailing the recommendations as to the active recreation facilities to be recommended and there location, related parking areas, and proposed landscaping.

10.15 Design Guidelines.

10.151. Accessible. Recreation areas shall be accessible within the development and arranged in a manner which affords reasonable access to all residents within the development. When warranted recreation areas can be dispersed throughout the development provided that each remote location is accessible.

10.152. Pedestrian oriented. Recreation areas shall be pedestrian oriented and designed with linkages to existing and planned public walkways and with other existing or planned recreation areas.

10.153. Age oriented. The nature and scope of planned recreation areas shall reflect an awareness of, and sensitivity toward the anticipated age groups that would reside within the proposed development.

10.154. Parking. Designs consider the need for parking facilities associated with recreation areas.

10.155. Walking, jogging and biking trails. Recreation trails shall only be counted toward the recreation area requirement when constructed as an accessory to a central recreation facilities. The developed trail shall be the only area counted toward the area requirement.

10.156. Setbacks. No structure, equipment or game court surface required under this section shall be located nearer than 30 Feet to any lot line of a lot to be used for residential purposes, nor nearer than 25 Feet from any right-of-way line.

10.157. Landscaping. Such uses shall be landscaped in accordance with the provisions of Article 5, Section 15 and where warranted, visual screening of parking areas, game courts, playground areas and other features as necessary to preserve and protect the interests of adjoining residential properties may be required.

10.158. Area. The minimum area of a remote recreation area shall be 2000 Square Feet.

10.16 Area required. All residential developments shall provide recreational areas in a size equal to 275 Square feet per dwelling unit or one half (0.50) acre of land whichever is greater. In no case shall the commission require that more than ten (10) percent of the gross area of the development be so dedicated or reserved when the gross area is greater than 5 acres.

10.17. Cash in lieu of recreation area construction

10.171. Determination of suitability for Cash donation. If the commission determines that the construction of recreation areas is not practical due to close proximity to existing available recreation facilities or infeasible due to natural characteristics of the land or will not benefit the residents of the development, the commission shall require a full or partial cash in lieu of areas donation to be made by the developer in lieu of a full or partial dedication of land.

10.172. Separate Recreation Account. The cash donation shall be deposited in a separate account to be used for parks, playgrounds or recreational purposes.

10.173. Amount of Cash Donation. The cash donation shall be equivalent to the appraised value of land area required in Section 10.16. The land area value shall be based on the appraisal prepared for the developer to secure construction financing. This submitted appraisal shall be a copy of the original supplied to the lending institution, with that institution identified, and shall conform in all ways to the Uniform Standards of Professional Appraisal practice and be performed by an appropriately qualified certified appraiser. If an appraisal prepared for construction financing is not available then the developer shall have an appraisal done in accordance with the procedures set forth in Section 10.174.

10.174. Appeal of Appraised Value. If the city does not accept the land value established by the appraisal detailed in Section 10.173, the city may, at the developer's expense, require another appraisal be performed. This appraisal will be let on a bid basis between at least three appropriately qualified, certified appraisers selected by the city. The appraiser(s) who prepared the original appraisal in Section 10.173 cannot be a party to this appeal appraisal.

10.175. Payment of Cash Donation. Fifty percent (50%) cash donation provided under this section shall be collected prior to issuing the first building permit for the development, and the remaining fifty percent (50%) shall be collected prior to issuing permits for the final 50% of the dwelling units.

10.2 Open Space

10.21 Purpose. The purpose of this section is to preserve areas of open space within residential developments which are designed to provide buffer spaces between developing areas, to preserve existing natural and historic features and to establish a network of open spaces within the built environment to provide a balance between developed and undeveloped lands, wildlife habitat conservation, the preservation of scenic view corridors, and to provide residents opportunities to engage in passive recreation activities.

10.22 Dedication required. The commission shall require the dedication of open space for the purpose of buffering, landscaping, and preservation of natural features which add value to the residential development and to the surrounding community.

10.23 Definition. Open space shall include land or an area of water, or combination of land and water within a development site, and designed and available for the use and enjoyment of residents of the development, not including, off street parking, areas set aside for public facilities and right-of-ways, and areas to be preserved as wetlands as required. The following are illustrative of the types of open space areas that shall be deemed to serve buffering and preservation of natural features to count toward satisfaction of the open space requirements of this section: Mature forests and groves, hedge rows, water courses, historic landmarks and resources, landscaped buffers and berming designed to promote privacy, open landscaped areas suitable for being used and enjoyed for purposes of informal and unstructured recreation and relaxation, storm water detention ponds when suitably designed to emulate natural features by incorporating irregular shapes, gradual slopes (no greater than 1:4) and appropriate landscape plantings, and irreplaceable environmental assets with value that have been adequately documented.

10.24 Design Guidelines.

10.241. Width. Land areas shall be at least 20 Feet in width.

10.242. Clearing. Selective clearing of natural vegetation may be permitted to form trails and clearings within woodland areas in accordance with the provisions of Article 5, Section 16 (Tree Planting and Preservation).

10.242. Linked. Open spaces shall attempt to be contiguous and designed with linkages to existing and planned public walkways and with other existing or planned recreation areas.

10.25 Area required. In no case shall the commission require that more than five (5) percent of the gross area of the development be so dedicated or reserved.

10.3 Public Facilities

10.31 Purpose. The purpose of this section is to afford the city the opportunity to reserve lands within developing areas which represent important and strategic locations for the distribution of essential public goods and services.

10.32 Dedication Optional. Where public facilities are shown or proposed in the city comprehensive plan, or in any other plan or study accepted by the city council or other public body and are located in whole or in part in a proposed subdivision or site plan, the commission may require the dedication or reservation of the area required in lieu of the requirements of Section 10.1.

10.33 Definition. The following are illustrative of the types of public facilities that may be considered for reservation or dedication by this section: schools, utility service lines, future road right-of-ways (other than those planned to serve the proposed development), public buildings, parks, public trails, and recreation facilities.

10.34 Area required. In no case shall the commission require that more than five (5) percent of the gross area of the development be dedicated for the public facility. Area dedications shall only be allow when the facility is to be dedicated to the City of Dover for facilities to be operated by the city.

10.35 Reservation. Any areas required by any other public bodies or any remaining areas beyond the 5% dedicated to the city under Section 10.34 may be set aside by the commission for a period of one year to allow the proper authority to purchase the area. Upon failure of the proper authorities the opportunity to purchase such site within one (1) year after the date of the final approval of the project, the developer, upon application to the commission and approval of such application, shall be relieved of the responsibility of reserving such land for public purposes.

Section 10.4 Management and maintenance of common open space and recreational areas.

10.41 Management and maintenance required. There shall be provisions which insure that the common open space land and all public facilities not dedicated to the City of Dover shall continue as such and be properly maintained. These provisions shall be in a form acceptable to the City of Dover. The developer shall either (a) retain ownership and responsibility for maintenance of such open land; or (b) provide for and establish one or more organizations for the ownership and maintenance of all common open space. In the case of (b) above each organization shall be a non-profit homeowners corporation, unless the developer demonstrates that a community open space trust is a more appropriate form of organization.

10.42 Homeowner Association Requirements. If a homeowners' association or open space trust is formed, it shall be governed according to the following:

10.421. Membership mandatory. Membership in the organization is mandatory for all purchasers of homes therein and their successors. The members of the organization shall share equitably the costs of maintaining and developing common open space and recreation areas, in accordance with procedures established by them.

10.422. Responsibilities. The organization shall be responsible for maintenance, insurance and taxes on common open space, recreation areas, recreation facilities and other public facilities including but not limited to roads, gutters, sidewalks, curbs, drainage systems, water distribution systems, and sewer-facilities not dedicated to the City of Dover.

10.5 Exemption to recreation area and open space dedication.

10.51 Exemptions for Small Developments.

10.511. Residential developments with less than 5 acres of land and less than 10 dwelling units. These developments shall be exempt from the land requirements set forth in Sections 10.1 and 10.2, but shall require a full cash donation to be made by the developer in lieu of a dedication of land.

10.512. Residential developments with less than 5 acres of land and less than 20 dwelling units. These developments may be exempt from the one half (1/2) acre minimum requirement for recreation areas, but may be required to provide a lesser amount as recommended by the Parks and Recreation Committee. The commission shall require a full or partial cash donation in lieu of a full or partial dedication of land.

10.513. Residential phases. Phases or sections within developments that are commonly owned or commonly proposed for development shall not be considered as individual residential developments qualified for exemptions under this section.

10.52 Amount of Cash Donation. This cash donation shall be equivalent to ten (10%) of the appraised value of gross land area. The land area value shall be based on the appraisal prepared for the developer to secure construction financing. This submitted appraisal shall be a copy of the original supplied to the lending institution, with that institution identified, and shall conform in all ways to the Uniform Standard of Professional Appraisal practice and be performed by a appropriately qualified certified appraiser. If an appraisal prepared for construction financing is not available then the developer shall have an appraisal done in accordance with the procedures set forth in Section 10.174.

10.53 Separate Recreation Account. The cash donation shall be deposited in a separate account to be used for parks, playgrounds or recreational purposes.

10.54 Appeal of appraised value. If the city does not accept the land value established by the appraisal detailed in Section 10.52, the city may, at the developer's expense, require another appraisal be performed. This appraisal will be let on a bid basis between at least three qualified, certified, and licensed appraisers selected by the city. The appraiser(s) who prepared the original appraisal in Section 10.52 cannot be a party to this appeal appraisal.

10.55. Payment of Cash Donation. Fifty percent (50%) cash donation provided under this section shall be collected prior to issuing the first building permit for the development, and the remaining fifty percent (50%) shall be collected prior to issuing permits for the final 50% of the dwelling units.

10.6 Construction Phasing

The recreation and open space areas shall be completed in a proportion equal to or greater than the proportion of residential dwelling units completed, except that 100% of the recreation and opens spaces areas shall be completed prior to issuing building permits for the final 20% of the dwelling units proposed. Building Permits shall not be issued for dwelling units unless the requirements of this section are met.

PROPOSED ORDINANCE AMENDMENT
ART. 5, SEC. 10 - Open Space, Recreation, and Other Public Facilities

10.7 Council Approval

Prior to acceptance by the planning commission, all areas planned for public dedication, or cash donations provided under this section must be submitted to, and approved by the Parks and Recreation Committee of the City of Dover, and shall be subject to final review and approval by City Council.

SYNOPSIS

This ordinance amendment deletes current open space requirements in the Subdivision Regulations and Zoning ordinance and reconstitutes them with several new provisions to create a unified Recreation, Open Space, and Public Facilities section in the zoning ordinance. The major changes are: 1) Requires the creation of open space and recreation areas for all residential developments, not just subdivisions as previously required. 2) Recognizes and requires the creation of two types of open space: active recreation areas and passive open space for buffering and preservation of natural features. 3) Requires that active recreation areas include the construction of recreation facilities; not simply the reservation of land. 4) The amount of recreation area required is based on the number of dwelling units multiplied by 275 S.F and not a simple reservation of a 10% of land as previously required; it is therefore density sensitive. 5) Open space for buffering and natural area preservation is still based on a percentage (5%) basis. 6) Greater emphasis on maintenance and ownership by homeowner associations and developers, instead of the city. 7) Provides specific definitions and guidelines for the development of open space and recreation facilities.

Revised February 8, 1995