

# Title 07

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Open Space Standards



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## OPEN SPACE STANDARDS

### SECTION 1107.01 PURPOSE

This section addresses the character and design of those portions of development that are not occupied by platted lots or streets and that are reserved for open space, public parks and greenways. The purpose of this section is to:

- A. Establish the standards and criteria under which portions of land associated with development shall be set in reserve and dedicate land to the City for the purposes of development as private open space, public parks, greenways or other recreational spaces for public health and welfare; and
- B. Establish minimum ownership and maintenance standards for homeowner and property owner associations related to private formal and informal open space areas associated with development.

### SECTION 1107.02 APPLICABILITY

- A. This chapter shall apply to all types of development after the effective date of this code.
- B. The Zoning Administrator shall not grant a zoning certificate approval for any building or structure shown in a subdivision or development subject to the provisions of this chapter unless the open space allocated to that phase have been conveyed under one of the options established in this chapter.

### SECTION 1107.03 OPEN SPACE REQUIREMENT

- A. Amount of Open Space Required  
The minimum amount of open space that must be established for certain types of developments shall be as specified by the zoning and overlay district development standards.
  - (1) The percentage of open space shall be based on the gross site area of the proposed project, including all rights-of-way.
  - (2) The following areas shall not be counted toward compliance with open space requirements:
    - i. Private and public roads and associated rights-of-way;
    - ii. Public or private parking spaces, access ways, driveways and other vehicular use areas;
    - iii. Required minimum spacing between buildings;
    - iv. Required yard setbacks; except when part of a large contiguous open space and accessible with a bike or pedestrian path, and with the approval of the Zoning Administrator and/or PZC;

- v. Above-ground buildings, pipes, apparatus and other equipment for community or individual use, septic or sewage disposal systems;
- vi. Public utility substations;
- vii. Public utility easements shall not make up more than 50% of the required open space;
- viii. Golf courses shall not make up more than 50% of the required open space;
- ix. Leftover land that has no value for development and is not a natural resource (e.g., river or stream corridor, large forest stand, wetland) that contributes to the quality of the overall project, as determined by the PZC or Zoning Administrator, as may be applicable based on the review procedure.

#### B. Permitted Uses in Open Spaces

The following uses may be permitted in required open space:

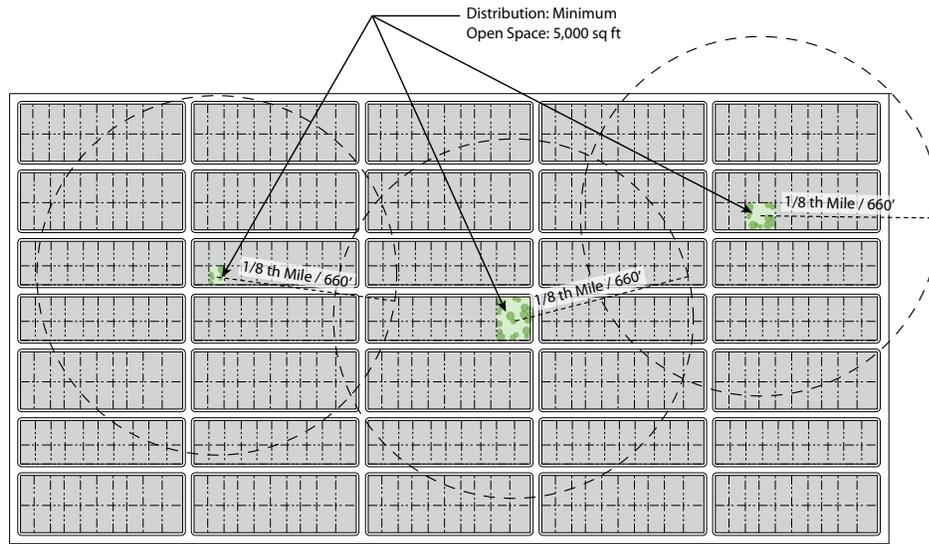
- (1) Areas preserved in their natural state as wetlands, woodlands, lakes or ponds, historic lands, environmentally sensitive areas or similar conservation-oriented areas.
- (2) Bike, walking, and multi-use paths, nature trails.
- (3) Community gardens as defined by this code.
- (4) Outdoor active or passive recreational uses for the use and/or enjoyment of the residents of the proposed development. Any restricted open space intended to be devoted to recreational activities shall be of a usable size and shape for the intended purposes as determined by the PZC. Where deemed appropriate by the PZC, recreation areas shall be provided with sufficient parking and appropriate access.
- (5) Utilized for the raising of crops when authorized in a conservation easement or in the association's covenants and restrictions.
- (6) Community social and cultural uses, such as plazas, pocket parks, sitting areas, amphitheaters, and accessory structures.
- (7) Any other similar uses approved by the PZC or Zoning Administrator during the applicable review procedure.
- (8) Stormwater management including ponds, wetlands, dry detention basins, and bioretention/ rain gardens with native planting, provided that the open spaces and stormwater features are accessible and designed as an aesthetic amenity to the community. Accessible shall mean that the feature is bordered by a substantial open space area, park, playground, pathway or reasonable means of access for enjoyment of all owners, visitors or others.
  - i. Retention basins, ponds, wetlands, dry detention basins, or water features may count toward fulfilling the requirement, however not more than 50% of the water surface area or wetland delineated boundary may be counted.

#### C. Design Standards for Open Spaces

Land reserved as open space shall comply with the following standards:

- (1) All areas of open space shall be accessible to residents or users of the development by providing at least 50 feet of frontage on a public street.
- (2) All areas of the open space shall have a minimum width of 25 feet.
  - i. Narrow segments of open space serving as connections between areas, such as for walking trails or bike paths between lots, shall provide a delineated edge to indicate public common open space from private lots.

- ii. Delineation can be provided with a fence, planting beds, hedge, mounding or masonry walls. Walls and fences shall not exceed 4 feet in height and shall be of materials that are architecturally appropriate to the location.
- (3) The open space shall be located and designed as follows, or otherwise to the satisfaction of the PZC:
  - i. Open Space shall be sufficiently aggregated to create large areas of planned open space.
  - ii. Aggregated open spaces shall also be distributed throughout the development so that open space is located within 1/8th mile (660 ft) of every dwelling unit.



*Open space minimum distribution.*

- (a) Proximity to open space shall be determined by offsetting the perimeter boundary of the proposed open space by the minimum required distance. Pedestrian access to the open space within this proximity area shall be provided so that each unit is within an approximate 5 minute walk to the open space.
- (b) For the purposes of distribution throughout the neighborhood, the minimum area for open spaces shall be 5,000 square feet.
- (c) Open spaces shall be programmed with usable pedestrian amenities, such as but not limited to: seating areas, playgrounds, ornamental planting, walks or paths, decks, gazebos, pavilions, overlooks, fountains, sculptures.
- (4) The open space shall conserve significant topographic and landscape natural features to the extent practicable.
- (5) Any area within the open space that is disturbed during construction or otherwise not preserved in its natural state, shall be landscaped with vegetation that is compatible with the natural characteristics of the site.
- (6) All open space required by this chapter, including any recreational facilities proposed to be constructed in such space, shall be clearly shown on all approved plans.

- (7) Where open areas, trails, parks or other open space resources are planned or exist adjacent to development, the open space shall, to the maximum extent practicable, be located to adjoin, extend and enlarge the presently existing trail, park, or other open area land.

D. Provision of Open Space in Multi-Phase Developments

- (1) Development proposed in phases shall be considered as a single development for the purposes of applying the open space standards required in this chapter.
- (2) The open space for the entire project shall be reviewed and approved as part of the preliminary plat process.
- (3) Development shall not be phased solely as a method to avoid the minimum open space standards in this chapter.
- (4) Each phase shall contain enough open space that they can comply with the minimum open space requirements as a stand-alone phase or, if combined with previously developed phases, can, as a whole, comply with the minimum open space requirements. At any point, the applicant may fulfill the open space requirements prior to completion of the development or subdivision, provided the aggregation and distribution requirements are met.

## **SECTION 1107.04 FEE IN LIEU OF PROVIDING PHYSICAL OPEN SPACE**

As an alternative to dedicating land per this section, and only with the approval of the PZC, the Developer may pay a fee-in-lieu of the Dedication.

- A. Criteria: A useable parcel of land does not exist in the subject Subdivision or for some other reason, land dedication is inappropriate or infeasible; or
- (1) The City with authority in the Subdivision recommends the payment of a fee-in-lieu of land dedication.
  - (2) The fee-in-lieu of land dedication amount shall be determined as follows:
    - i.  $(\text{Fee-in-lieu of}) = (\text{Land area that would otherwise be required to be provided as determined by this Code}) \times (\text{Fair Market Value})$ .
    - ii. Fair Market Value shall equal the average value per acre of all land in the proposed Subdivision in its raw undeveloped state. If the land is being rezoned as part of its application to the Planning and Zoning Commission, the land shall be appraised using a post-rezoning per acre value. Value shall be determined by one of the following procedures:
      - (a) The current per acre land transaction price of the Subdivision property as recorded or as stated in the Option to Purchase Agreement, provided the land transaction or Agreement is less than two (2) years old at the time of Final Plat filing for the first phase of the Subdivision, or
      - (b) The current per acre land value as determined by a professional appraiser holding a MAI designation from the Appraisal Institute who is acceptable to the City and whose services are paid for by the Developer. If an appraisal is to be done as part of calculating the Fair Market Value; then this appraisal shall be submitted at the time of Preliminary Plan review by the Developers.
    - iii. If the City disagrees with the per acre appraised value provided by the appraiser, the City shall have the right to engage one or more additional MAI designated appraisers, at its cost, to provide one or

more additional appraisals. Should the developer disagree with the value placed on such parcel by the appraiser, the Developer shall have the right to engage additional MAI designated appraisers at its cost to provide additional appraisals. The City may at its option accept as payment the average per acre value of appraisals obtained by the City and the Developer.

- iv. The per acre amount to be paid by the Developer as a fee-in-lieu of parkland dedication shall be documented in the zoning ordinance or resolution for the Development.

B. Parks and Recreation Fund.

- (1) A fee-in-lieu of a land dedication shall be paid to the City prior to the issuance of any building permit. The fee in-lieu of land dedication monies shall be deposited in a special fund administered by the City Director of Finance entitled “Parks and Recreation Fund.”
- (2) Such “Parks and Recreation Fund” monies shall be used only for the acquisition or development of public land for parks, playgrounds, trails, greenways, nature preserves, recreational facilities, open space or for the retirement of debt incurred for such purposes.
- (3) Prohibition. No Final Plat shall be signed by the City and recorded by the Developer unless and until a deed for conveyance of a park, recreation or open space reserve has been reviewed and approved by the City legal counsel or in the case of a fee-in-lieu of dedication, the fee payment has been fully deposited into the Parks and Recreation Fund account.
- (4) The City shall plan to expend all or part of the funds, no later than issuance of the occupancy permit for the last residential unit developed, for the acquisition, development and improvement of park and recreational facilities of the City parks nearest to the subdivision or development that the funds are meant to benefit, or within a further distance if such parkland and/or recreational facility will benefit the development and is planned for use by, and is likely to be used by, the residents thereof, as determined by the Director of Public Service or designee.

## **SECTION 1107.05 OWNERSHIP OF OPEN SPACE**

- A. Provisions for Ownership. The PZC will review the form of ownership being proposed for any permanently protected Open Space, or Common Areas (including areas reserved for designated public use). The type of ownership may include:
  - (1) Dedicated to a public entity, subject to the entity’s acceptance;
  - (2) Owned jointly or in common by the owners with an Owners’ Association;
  - (3) Owned by a quasi-public organization, such as a non-profit land trust.
- B. The first priority of the open space requirement is to provide for a community wide network of parks, open spaces, greenways, or other recreational areas. As such, all open space required by this chapter shall first be offered to the City for potential public land dedication.
- C. Such offer for public land dedication shall be made during the applicable review procedure with the PZC.
- D. The City shall consider any recommendation from PZC regarding the proposed land and shall make a decision on whether to accept any land offered for dedication. City Council shall not be required to accept any land offered for dedication.

- E. Where the City chooses not to accept the open space for public dedication, the developer shall retain the open space as private open space, protected in perpetuity in accordance with this Chapter.
  - (1) Land within the development site that is subject to pre-existing conservation easements or other similar protected open spaces shall be permitted to count toward the required open space, provided that the open space is not credited toward any other existing or proposed development.

## **SECTION 1107.06 PROTECTION OF OPEN SPACES**

- A. Any further subdivision of the open space for uses other than those prescribed in this chapter and the approved development plan or subdivision plat shall be prohibited.
- B. Prohibition of Further Subdivision of Restricted Open Space.  
At the time of application for final plat approval or for a zoning certificate where no plat is required, the applicant shall submit appropriate covenants, bylaws, conservation easements and/or deed restrictions to be reviewed and approved by the City Law Department and shall be filed with the Final Plat and recorded with the County ensuring that:
  - (1) The Open Space, park or other public purpose area will not be further subdivided in the future;
  - (2) The use of the Open Space, park or other public purpose land will continue in perpetuity for the purpose specified;
  - (3) Appropriate provisions will be made for the maintenance, repair and liability of the Open Space, park or other public purpose area;
  - (4) Common undeveloped Open Space or park land shall not be turned into a commercial enterprise admitting the general public for a fee;
  - (5) Homeowners in the development shall have adequate access to the Open Space, park or other public purpose land.

## **SECTION 1107.07 MAINTENANCE BY OWNERS' ASSOCIATIONS**

- A. A homeowners' association or property owners' association shall be established to permanently maintain all open space and common areas if such areas are not transferred and accepted by the City, or a City approved entity such as the following: County, State, park district, land trust, or other qualified organization.
- B. All homeowners' association or property owners' association agreements shall be submitted to the Zoning Administrator as part of the development plan review, subdivision application review, or zoning certificate review, whichever is applicable. No set of proposed covenants, articles of incorporation or bylaws of a homeowner's association or property owners' association shall permit the abrogation of any duties set forth in this section.
  - (1) All homeowners' associations or property owners' associations shall guarantee the maintenance of all open space and common areas within the boundaries of the development through the deed restrictions or covenants.
  - (2) Membership in the association shall be mandatory for all purchasers of lots in the development.
  - (3) The association shall be responsible for maintenance, control and insurance of all common areas, including required open space.

- (4) The association shall not authorize its dissolution or the sale, transfer or other disposal of any open space or common area without:
  - i. An affirmative vote of 75 percent of its members;
  - ii. Establishing a successor entity to take over said property pursuant to this code; and
  - iii. The approval of the City Council.
- C. Whenever the association adopts an amendment to any approved agreements that pertain to maintenance obligations or access to common areas, the revisions shall be provided to the Zoning Administrator for confirmation that the amendment is in compliance with all applicable standards of this code and any conditions of approval that applied to the original development or subdivision.
- D. The association shall convey to the City and other appropriate governmental bodies, after proper notice, the right to enter to any common area for emergency purposes or in the event of nonperformance of maintenance or improvements affecting the public health, safety and welfare. Such governments shall have the right, after proper notice, to make improvements and perform maintenance functions. In addition, the City shall have the right to proceed against the Association for reimbursements of said costs, including the right to file liens against individual condominium units, houses, and vacant building lots. In the event that the homeowners' association or property owners' association no longer maintains the common areas and open space in a neat and orderly manner, or if the homeowners' association or property owners' association goes defunct, the City may take over maintenance and assess a fee to cover the costs of such maintenance. The fee shall be assessed to all property owners within the subdivision.