

ORDINANCE NO. 20111215-096

AN ORDINANCE AMENDING CITY CODE CHAPTERS 25-1 AND 25-2 RELATING TO REQUIREMENTS FOR OPEN SPACE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 25-1-21 (*Definitions*) is amended to amend the definition of “open space,” to add a new definition of “Private Personal Open Space,” and to renumber the remaining definitions accordingly:

~~[(70)]~~(81) PRIVATE COMMON OPEN SPACE means ~~[an]~~ a privately-owned outdoor or unenclosed area, located on the ground or on a roof, balcony, deck, porch, or terrace, designed and accessible for outdoor living, recreation, pedestrian access, or landscaping, [excluding parking facilities, driveways, utility, and service areas] and intended for use by the residents, employees, and/or visitors to a development.

(82) PRIVATE PERSONAL OPEN SPACE means a privately-owned outdoor or unenclosed area, located on the ground or on a roof, balcony, deck, porch, or terrace, designed and accessible for outdoor living, recreation, pedestrian access, or landscaping, and intended for use solely by the individual residents of a condominium or multifamily dwelling unit.

PART 2. City Code Chapter 25-2 (*Zoning*) is amended to repeal Section 25-2-514 (*Open Space Standards*) and Subsection (C) of Sections 25-2-560 (*Multifamily Residence Limited Density (MF-1) District Regulations*), 25-2-561 (*Multifamily Residence Low Density (MF-2) District Regulations*), 25-2-562 (*Multifamily Residence Medium Density (MF-3) District Regulations*), 25-2-563 (*Multifamily Residence Moderate-high Density (MF-4) and Multifamily Residence High Density (MF-5) District Regulations*), and 25-2-564 (*Multifamily Residence Highest Density (MF-6) District Regulations*).

PART 3. City Code Section 25-2-776 (*Condominium Residential Use*) is amended to add new subsections (F) and (G) to read:

(F) A condominium use with 10 or more dwelling units in a building constructed after the effective date of this ordinance must comply with the open space requirements in Chapter 25-2, Subchapter E, Section 2.7 (*Private Common Open Space and Pedestrian Amenities*) except as provided by this subsection.

(1) Compliance with the open space requirements in Chapter 25-2, Subchapter E, Section 2.7 (*Private Common Open Space and Pedestrian Amenities*) is not required if the development is:

- (a) located in:
 - (i) the University Neighborhood Overlay and the applicant elects to comply with Subchapter C, Article 3, Division 9 (*University Neighborhood Overlay District*) of this chapter; or
 - (ii) the central business district (CBD); or
 - (iii) the downtown mixed use (DMU) district; or
 - (b) certified under a local, state, or federal affordable housing program and located within ¼ mile safe pedestrian travel distance of an existing and developed public park or multi-use trail, measured from the boundary of the site to the nearest public entrance of the park or multi-use trail.
- (2) In evaluating safe pedestrian travel distances under Paragraph (1)(b), consideration shall be given to factors affecting the suitability of the area for pedestrian travel, including physical or topographic barriers, traffic volumes, pedestrian crosswalks, and accessible routes compliant with the Americans with Disabilities Act.
- (G) A condominium use with less than 10 dwelling units must provide private personal open space in accordance with the requirements of this subsection.
- (1) The open space must be a minimum of five percent of the gross site area of the property.
 - (2) An area of private personal open space at ground level must contain at least 100 square feet and may not be less than ten feet across in each direction.
 - (3) An area of private personal open space above ground level must contain at least 50 square feet and may not be less than five feet across in each direction.
 - (4) The requirements of this subsection do not apply to a condominium use located within development that meets the requirements in Subsection F(1) of this section.

PART 4. City Code Section 25-2-780 (*Conservation Multifamily Residential Use*) is repealed and a new Section 25-2-780 is added to read:

25-2-780 MULTIFAMILY RESIDENTIAL USE

- (A) A multifamily use with 10 or more dwelling units in a building constructed after the effective date of this ordinance must comply with the open space requirements of Chapter 25-2, Subchapter E, Section 2.7 (*Private Common Open Space and Pedestrian Amenities*) except as provided by this subsection.
- (1) Compliance with the open space requirements in Chapter 25-2, Subchapter E, Section 2.7 (*Private Common Open Space and Pedestrian Amenities*) is not required if the development is:
- (a) located in:
 - (i) the University Neighborhood Overlay and the applicant elects to comply with Subchapter C, Article 3, Division 9 (*University Neighborhood Overlay District*) of this chapter; or
 - (ii) the central business district (CBD); or
 - (iii) the downtown mixed use (DMU) district; or
 - (b) certified under a local, state, or federal affordable housing program and located within $\frac{1}{4}$ mile safe pedestrian travel distance of an existing and developed public park or multi-use trail, measured from the boundary of the site to the nearest public entrance of the park or multi-use trail.
- (2) In evaluating safe pedestrian travel distances under Paragraph (1)(b), consideration shall be given to factors affecting the suitability of the area for pedestrian travel, including physical or topographic barriers, traffic volumes, pedestrian crosswalks, and accessible routes compliant with the Americans with Disabilities Act.
- (B) A multifamily use with less than 10 dwelling units must provide private personal open space in accordance with the requirements of this subsection.
- (1) The open space must be a minimum of five percent of the gross site area of the property.
- (2) An area of private personal open space at ground level must contain at least 100 square feet and may not be less than 10 feet across in each direction.

- (3) An area of private personal open space above ground level must contain at least 50 square feet and may not be less than five feet across in each direction.
- (4) The requirements of this subsection do not apply to a multifamily use located within a development that meets the requirements in Subsection A(1) of this section.

PART 5. City Code Chapter 25-2, Subchapter E (*Design Standards and Mixed Use*) is amended to amend Sections 2.7.2 (*Applicability*) and 2.7.3 (*Standards*) to read:

2.7.2. Applicability. The following table summarizes the applicability of this section:

Standard	Applies if the Principal Street Is:	Applies to the following:
2.7 Private Common Open Space and Pedestrian Amenities	All roadway types	All site plans [five two acres in size or larger, and all multifamily and condominium uses except as provided in 25-2-776 and 25-2-780.

2.7.3 Standards.

A. Amenity Required. All development subject to this section shall devote a minimum of [~~two~~ five percent of the [~~net~~ gross site area to one or more of the following types of private common open space or pedestrian amenities:

- 1. A natural and [~~undisturbed~~ undeveloped private common open space, for use of the residents, employees, and visitors to the development.
- 2. A landscape area other than one required by Subchapter C, Article 9 (*Landscaping*), provided such landscaped area has a minimum depth and width of ~~40~~ 20 feet and a minimum total area of 650 square feet. The area shall include pedestrian amenities.~~[amenities to support these places as gathering areas].~~
- 3. A [~~playground,~~] patio[;] or plaza with outdoor seating areas, provided the [~~playground,~~] patio[;] or plaza has a minimum depth and width of [~~ten~~] 20 feet and a minimum total area of [~~300~~] 650 square feet. The area shall include pedestrian amenities including fully or partially shaded spaces with flexible or permanent seating to support these places as gathering areas.

4. A play area with amenities or equipment suitable for children under nine years of age, provided the play area has a minimum depth and width of 20 feet and a minimum total area of 650 square feet. Play areas shall comply with the most current Consumer Product Safety Commission guidelines for playgrounds as well as ASTM International standards as applicable and shall have impediments between the activity area and any nearby vehicular drives or parking areas to minimize the opportunities for young children to wander into traffic. Such impediments may include berms, fencing, landscaping or other barriers as appropriate to the site and which meet safety standards. Play areas shall include partially-shaded areas with flexible or permanent seating for adult supervision. A project which chooses this option may reduce the total amount of open space required by 10 percent.
5. Spaces that provide educational, historic, or cultural features, or sensory experiences, such as culinary, therapeutic or sculptural gardens; soundscapes, and interactive water features.
6. Swimming pools, wading pools, or splash pads.
7. Water quality and storm water detention ponds designed as an amenity and approved by the Director.
8. A multi-use trail proposed in the City of Austin Trails Master Plan, Austin Parks and Recreation Long-Range Plan, Sidewalk Master Plan, or Bicycle Plan.
9. Basketball, tennis, volleyball, or other sport courts or playing fields.
10. A combination of the above-listed amenities. (See Figure 44.)

~~[Developments with primarily residential uses are encouraged to comply with this requirement by setting aside private common open space, while developments with a mix of uses or primarily non-residential uses are encouraged to comply by providing one or more of the other listed amenities.]~~

B. Location Criteria. To the maximum extent feasible, where significant natural and scenic resource assets exist on a property, the developer shall give priority to their preservation as private common open space. In reviewing the proposed location of private common open space areas, the Director shall use all applicable plans, maps, and reports to determine whether significant resources exist on a proposed site that should be protected, with priority being given to the following areas (which are not listed in a particular order):

1. Wetlands, native prairies or meadows;
2. Flood hazard areas;

3. Lakes, rivers, and stream/riparian corridors;
4. Tree preservation areas; and
5. Karst areas[-];
6. Cultural or historically significant structures, landscapes, features, and/or places; and
7. Agricultural lands used for cultivation of local produce.

Where private common open space areas, trails, parks, or other public spaces exist or are proposed in the City of Austin Trails Master Plan, Austin Parks and Recreation Long-Range Plan, Sidewalk Master Plan, or Bicycle Plan within or adjacent to the tract to be subdivided or developed, the private common open space or pedestrian amenity shall, to the maximum extent feasible, be located to adjoin, extend, and enlarge the presently existing or proposed trail, park, or other open area land. Public access easements may be required in order to guarantee public access to these facilities.

C. Areas Not Credited. Lands within the following areas shall not be counted towards private common open space or pedestrian amenities required by this section:

1. [~~Private yards~~] Open space in a required street yard;
2. Public or private streets or rights of way;
3. [~~Parking areas and driveways for dwellings~~] Off-street parking, loading areas, driveways, and service areas; and
4. Water quality and storm water detention ponds, unless designed as an accessible amenity and approved by the Director.

D. Design Criteria. Land set aside for private common open space or pedestrian amenities pursuant to this section shall meet the following design criteria, as relevant:

1. Common open space areas shall be located so as to be readily accessible and useable by residents or visitors in various locations of the development, unless the lands are sensitive natural resources and access should be restricted.
2. [~~The lands~~] Open space areas shall be compact and contiguous unless the land shall be open space is used as a continuation of an existing trail, or specific or unique topographic features that are adjacent or adjoining require a different configuration. An example of such topographic features would be the provision of a trail or private open area along a riparian corridor.
3. [~~Where private common open space areas, trails, parks, or other public spaces exist adjacent to the tract to be subdivided or developed, the private~~

~~common open space or pedestrian amenity shall, to the maximum extent feasible, be located to adjoin, extend, and enlarge the presently existing trail, park, or other open area land.]~~ The surface of a required open space must be suitable for outdoor activities. A surface must consist of lawn, garden, flagstone, wood planking, concrete, or other serviceable, dust free material. Asphalt or similar surfacing may be used for designated recreation areas such as multi-purpose trails, tennis courts, and basketball courts. Decomposed granite may be used if approved by the Director and if accessibility requirements are met. A combination of different materials is encouraged.

4. Except as provided in this subsection, not more than 30 percent of the required open space may be located on a roof, balcony, or other area above ground level. In determining the amount of open space on a roof, an area occupied by a vent, mechanical equipment or structure that does not enhance the usability of the space is excluded.
5. Up to 50 percent of the required private common open space may be located on a roof, balcony, or other area above ground level if at least 50 percent of the open space above ground level is designed as a Vegetated or Green Roof. For the purpose of this section, a Vegetated or Green Roof is an assembly or system, over an occupied space, that supports an area of planted bed(s), built up on a waterproofed surface at any level that is contained separately from the natural ground by a human-made structure. A Vegetated or Green Roof must comply with the performance standards adopted by rule.
6. Private common open space on a roof, balcony, or other area above ground level must be screened from the view of adjacent property that is in an urban residence (SF-5) or more restrictive zoning district, in accordance with the standards in Section 25-2-1066 (*Screening Requirements*).
7. A project which allows public access during normal business hours to a private common open space above ground level may reduce the total amount of open space required by 10 percent.
8. This subsection provides for the covering of a required open space.
 - (a.) Not more than 50 percent of ground level open space may be covered by a fixed manmade obstruction, including a roof, balcony, or building projection. Roof gardens and sculptural elements that are accessible to the public are not be considered manmade obstructions.
 - (b.) Open space above ground level may be covered, but must have at least one exterior side open and unobstructed, except for railings or balustrades.

9. In VMU and V zoning districts, streetscape improvements within the public right-of-way may be included in the calculation of open space except for the area within the Clear Zone as defined in this Subchapter. This provision does not apply to streetscape projects for which the City participates in the cost of the improvements or which are required to be constructed as a condition of CURE zoning.

E. Maintenance. All private common open space or pedestrian amenity areas shall be permanently maintained by the owners of the development.

F. Fee In Lieu.

1. Instead of providing private common open space or pedestrian amenities as required in this section, the developer of a property located within the urban roadways boundary (as defined in Article 5 of this Subchapter) may request approval to deposit with the city a nonrefundable cash payment[, based on a formula established by the council] to be used for the acquisition or improvement of open space that will serve residents of the development.

2. The criteria for approving payment of a fee and the formula for calculating the fee amount shall be adopted by the city council, with a recommendation from the Director.

3. The Director shall review a [the] request for payment of a fee based on the adopted criteria and accept or deny the request no later than 15 days following its receipt.

PART 6. This ordinance takes effect on December 26, 2011.

PASSED AND APPROVED

December 15, 2011 §
§
§ Lee Leffingwell
Lee Leffingwell
Mayor

APPROVED: Karen M. Kennard
Karen M. Kennard
City Attorney

ATTEST: Shirley A. Gentry
Shirley A. Gentry
City Clerk