

ORDINANCE NO. _____

**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 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 Highest Density (MF-6) 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*) unless the development is:

- (1) located in 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
- (2) certified under a local, state, or federal affordable housing program and:
- (a) located within ¼ mile safe-walking 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; or
 - (b) approved under a density bonus or incentive program, if the director determines that requiring the development to comply with the open space requirements would negatively impact affordability.
- (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 equivalent to 5 percent of the net 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(2) 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*) unless the development is:

- (1) located in the University Neighborhood Overlay and complies with Subchapter C, Article 3, Division 9 (*University Neighborhood Overlay District*) of this chapter; or
- (2) certified under a local, state, or federal affordable housing program and:
- (a) located within ¼ mile safe-walking 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; or
 - (b) approved under a density bonus or incentive program, if the director determines that requiring the development to comply with the open space requirements would negatively impact affordability.
- (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 equivalent to 5 percent of the net 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 development that meets the requirements in Subsection A(2) 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, <u>and all multifamily and condominium uses except as</u>

1
2 **2.7.3 Standards.**

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

- 6 1. A natural and ~~[undisturbed]~~ undeveloped private common open space, for
7 use of the residents, employees, and visitors to the development.
- 8 2. A landscape area other than one required by Subchapter C, Article 9
9 (*Landscaping*), provided such landscaped area has a minimum depth and
10 width of ~~40~~ 20 feet and a minimum total area of 650 square feet. The area
11 shall include pedestrian amenities.~~[amenities to support these places as~~
12 ~~gathering areas]~~.
- 13 3. A ~~[playground,]~~ patio~~[-]~~ or plaza with outdoor seating areas, provided the
14 ~~[playground,]~~ patio~~[-]~~ or plaza has a minimum depth and width of ~~[ten]~~ 20
15 feet and a minimum total area of ~~[300]~~ 650 square feet. The area shall
16 include pedestrian amenities including fully or partially shaded spaces with
17 flexible or permanent seating to support these places as gathering areas.
- 18 4. A play area with amenities or equipment suitable for children under nine
19 years of age, provided the play area has a minimum depth and width of 20
20 feet and a minimum total area of 650 square feet. Play areas shall comply
21 with the most current Consumer Product Safety Commission guidelines for
22 playgrounds as well as ASTM International standards as applicable and shall
23 have impediments between the activity area and any nearby vehicular drives
24 or parking areas to minimize the opportunities for young children to wander
25 into traffic. Such impediments may include berms, fencing, landscaping or
26 other barriers as appropriate to the site and which meet safety standards.
27 Play areas shall include partially-shaded areas with flexible or permanent
28 seating for adult supervision. A project which chooses this option may
29 reduce the total amount of open space required by 10 percent.
- 30 5. Spaces that provide educational, historic, or cultural features, or sensory
31 experiences, such as culinary, therapeutic or sculptural gardens;
32 soundscapes, and interactive water features.
- 33 6. Swimming pools, wading pools, or splash pads.

- 1 7. Water quality and storm water detention ponds designed as an amenity and
2 approved by the Director.
- 3 8. A multi-use trail proposed in the City of Austin Trails Master Plan, Austin
4 Parks and Recreation Long-Range Plan, Sidewalk Master Plan, or Bicycle
5 Plan.
- 6 9. Basketball, tennis, volleyball, or other sport courts or playing fields.
- 7 10. A combination of the above-listed amenities. (See Figure 44.)

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

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

- 19 1. Wetlands, native prairies or meadows;
- 20 2. Flood hazard areas;
- 21 3. Lakes, rivers, and stream/riparian corridors;
- 22 4. Tree preservation areas; ~~and~~
- 23 5. Karst areas~~[-];~~
- 24 6. Cultural or historically significant structures, landscapes, features, and/or
25 places; and
- 26 7. Agricultural lands used for cultivation of local produce.

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

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

- 3 1. ~~[Private yards]~~ Open space in a required street yard;
- 4 2. Public or private streets or rights of way, except as provided in (D)(5);
- 5 3. ~~[Parking areas and driveways for dwellings]~~ Off-street parking, loading
6 areas, driveways, and service areas; and
- 7 4. Water quality and storm water detention ponds, unless designed as an
8 accessible amenity and approved by the Director.

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

- 11 1. Common open space areas shall be located so as to be readily accessible and
12 useable by residents or visitors in various locations of the development,
13 unless the lands are sensitive natural resources and access should be
14 restricted.
- 15 2. ~~[The lands]~~ Open space areas shall be compact and contiguous unless the
16 ~~land shall be open space is~~ used as a continuation of an existing trail, or
17 specific or unique topographic features that are adjacent or adjoining require
18 a different configuration. An example of such topographic features would
19 be the provision of a trail or private open area along a riparian corridor.
- 20 3. ~~[Where private common open space areas, trails, parks, or other public~~
21 ~~spaces exist adjacent to the tract to be subdivided or developed, the private~~
22 ~~common open space or pedestrian amenity shall, to the maximum extent~~
23 ~~feasible, be located to adjoin, extend, and enlarge the presently existing trail,~~
24 ~~park, or other open area land.]~~ The surface of a required open space must be
25 suitable for outdoor activities. A surface must consist of lawn, garden,
26 flagstone, wood planking, concrete, or other serviceable, dust free material.
27 Asphalt or similar surfacing may be used for designated recreation areas
28 such as multi-purpose trails, tennis courts, and basketball courts.
29 Decomposed granite may be used if approved by the Director and if
30 accessibility requirements are met. A combination of different materials is
31 encouraged.
- 32 4. Except in the CBD, DMU, VMU, and V zoning districts, not more than 30
33 percent of the required open space may be located on a roof, balcony, or
34 other area above ground level. In determining the amount of open space on a
35 roof, an area occupied by a vent, mechanical equipment or structure that
36 does not enhance the usability of the space is excluded.

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

7 6. This subsection provides for the covering of a required open space.

8 (a.) Not more than 50 percent of ground level open space may be covered
9 by a fixed manmade obstruction, including a roof, balcony, or
10 building projection. Roof gardens and sculptural elements that are
11 accessible to the public will not be considered manmade obstructions.

12 (b.) Open space above ground level may be covered, but must have at
13 least one exterior side open and unobstructed, except for railings or
14 balustrades.

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

17 **F. Fee In Lieu.** Instead of providing private common open space or pedestrian
18 amenities as required in this section, the developer of a property located within the urban
19 roadways boundary (as defined in Article 5 of this Subchapter) may request approval to
20 deposit with the city a nonrefundable cash payment, based on a formula established by
21 ~~[the council]~~ rule. The Director shall review the request and accept or deny the request
22 based on established criteria no later than 15 days following its receipt. The Director may
23 approve payment of the fee upon determining that provision of on-site open space is
24 impractical or unreasonable due to physical characteristics or the site or undue financial
25 hardship.

26
27 **PART 6.** This ordinance takes effect on _____, 2011.
28
29

PASSED AND APPROVED

§
§
§

_____, 2011

Lee Leffingwell
Mayor

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk