

7.2 – Usable Open Space Ord.

Section 15-196. - Usable open space.

- (a) Except as provided in subsection (c), all residential subdivisions containing 31 or more single-family or duplex houses, or multifamily developments containing ten or more dwelling units, or planned unit developments shall be developed so that a minimum of five percent of the total area of the development remains as usable open space. For purposes of this article, the term "development" refers to the entire development developed out of a single tract or contiguous multiple tracts under common ownership regardless of whether the development is constructed in phases or stages.
- (b) For purposes of this section, usable open space means an area that:
 - (1) Is not encumbered with any substantial structure;
 - (2) Is not devoted to use as a street (including right-of-way), parking area, or sidewalk;
 - (3) Is left in its natural or undisturbed state if wooded (as of the date development began), or is properly planted and landscaped with the objective of creating a wooded area or other area that is consistent with the objectives set forth in subparagraph (4) of this section;
 - (4) Is protected with a conservation easement to ensure the preservation and maintenance of such open space in perpetuity;
 - (5) Is capable of being used and enjoyed for purposes of recreation and relaxation; and
 - (6) Is legally and practicably accessible to the residents of the development out of which the required open space is taken, or to the public if dedication of the open space is required pursuant to section 15-199 (Dedication of open space).
- (c) With respect to multifamily developments, any common open space that meets the criteria established in subsection (b) of this section may be used to satisfy the five percent requirement of this section. With respect to single-family or duplex subdivisions, any common open space meeting the criteria established in subsection (b) of this section that results from resort to the provisions of section 15-190 (Cluster subdivisions) may be used to satisfy the five percent requirement of this section.
- (d) Residential subdivisions that are not required to provide usable open space may provide said open space if (i) the city, a homeowners' association, or similar organization that satisfies the criteria set forth in section 15-200 agrees that it will accept an offer of dedication of such open space, and in that case the offer of dedication shall be made, and (ii) the city, the homeowners' association, or similar organization that satisfies the criteria set forth in section 15-200 agrees to become the holder of the required conservation easement, in which case it will execute a legally binding agreement governing the preservation and maintenance of the open space and be responsible for upholding the terms of that easement.

Section 15-197. - Mini-parks optional.

- (a) Notwithstanding section 15-196(b), the development of recreational facilities in the form of mini-parks may be used to satisfy the five percent open space requirements of this article. The purpose of mini-parks is to provide recreational facilities to serve the immediate surrounding neighborhood and, most especially, to provide a convenient and attractive area in which to observe and supervise the play of young children during daytime hours. Mini-parks are intended for active use. Larger mini-parks may have multipurpose hardcourts. Smaller mini-parks may be equipped with play apparatus and minimum seating accommodations. All mini-parks shall be attractively landscaped and shall be provided with sufficient natural or manmade semi-opaque screening (as defined in article XIX) to minimize any negative impacts of the mini-park upon adjacent residences.
- (b) Tennis courts and swimming pools shall be counted as mini-parks for purposes of satisfying the requirements of this article, except that not more than 75 percent of this requirement can be met by the square footage devoted to swimming pools and tennis courts. Community buildings shall not be regarded as mini-parks.

7.2 – Usable Open Space Ord.

- (c) Each mini-park shall be centrally located and easily accessible so that it can be conveniently and safely reached and used by those persons in the surrounding neighborhood it is designed to serve. The approximate population that each mini-park is designed to serve can be determined by dividing the number of square feet in the park by 110.

Section 15-198. - Ownership and maintenance of required open space.

- (a) Except as provided in section 15-199 (Dedication of open space), usable open space required to be provided by the developer in accordance with this article shall not be dedicated to the public, but shall remain under the ownership and control of the developer (or his successor) or a homeowners' association or similar organization that satisfies the criteria established in section 15-200 (Homeowners' associations).
- (b) The person or entity identified in subsection (a) as having the right of ownership and control over such recreational facilities and open space shall be responsible for the continuing upkeep and proper maintenance of the same.

Section 15-199. - Dedication of open space.

- (a) If any portion of any tract proposed for residential development lies within an area designated in an officially adopted city park plan as a neighborhood park or part of any proposed greenway system or bikeway system, the area so designated (not exceeding five percent of the total tract area) shall be included as part of the area set aside to satisfy the requirement of section 15-196 (Usable open space). This area shall be dedicated to public use.
- (b) If more than five percent of a lot proposed for residential development lies within an area designated as provided in subsection (a), the city may attempt to acquire the additional land in the following manner:
 - (1) The developer may be encouraged to resort to the procedures authorized in section 15-190 (Cluster subdivisions) and to dedicate the common open space thereby created; or
 - (2) The city may purchase or condemn the land.
- (c) The city reserves the right to accept a dedication of property that is not a part of an official city park plan if it sees fit to do so to meet the recreational needs of the development.

Section 15-200. - Homeowners' associations.

- (a) Homeowners' associations or similar legal entities that, pursuant to section 15-198 (Ownership and maintenance of required open space), are responsible for the maintenance and control of common areas, including open space and recreational facilities, shall be established in such a manner that:
 - (1) Provision for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;
 - (2) The association or similar legal entity has clear legal authority to maintain and exercise control over such common areas and facilities;
 - (3) The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas and facilities.

Section 15-201. - Flexibility in administration authorized.

- (a) The requirements set forth in this article concerning the amount, size, location, and nature of usable open space to be provided in connection with residential developments are established by the city as standards that presumptively will result in the provision of the amount of open space that is consistent with officially adopted city plans. The city recognizes, however, that due to the particular nature of a tract of land, or the nature of the facilities proposed for installation, or other factors, the underlying objectives of this article may be achieved even though the standards are not adhered to

7.2 – Usable Open Space Ord.

with mathematical precision. Therefore, the zoning administrator, with the concurrence of the director of parks and recreation and the director of planning and inspections, is authorized to permit minor deviations from these standards whenever it determines that: (i) the objectives underlying these standards can be met without strict adherence to them, and (ii) because of peculiarities in the developer's tract of land or the facilities proposed, it would be unreasonable to require strict adherence to these standards.

- (b) Whenever the zoning administrator authorizes some deviation from the standards set forth in this article pursuant to subsection (a), the official record of action taken on the development application shall contain a statement of the reasons for allowing the deviation.

Section 15-202. - Fees in lieu of usable open space.

- (a) Whenever the zoning administrator determines (upon the recommendation of the director of parks and recreation and the director of planning and inspections) that the open space and recreational needs of the development required by this article could also be adequately met by facilities constructed on city property that is located close enough to such development to reasonably serve the residents, the zoning administrator may authorize the developer to pay a fee to the city's open space, parks and recreation fund in lieu of providing on-site facilities.
- (b) The developer shall pay a fee to the city's open space, parks and recreation fund in lieu of providing usable open space when the residential development is exempt from the requirements of section 15-196.
- (c) The minimum amount of fee paid under this section in lieu of usable open space shall be \$100.00 per person of those expected to reside in the development (using the established 2.4 persons per household standard).
- (d) With respect to any development that is authorized or required by this section to pay a fee in lieu of providing usable open space, no use may be commenced, lot sold, or building occupied unless the fee has been paid. If a development is intended to be sold or occupied on a phase-by-phase basis, payment of the fee relating to each phase must first be made.

Sections 15-203—15-209. - Reserved.