

A Guide to:

Philadelphia's Open Lands Protection Ordinance



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Dear Reader,

The Philadelphia Parks Alliance is pleased to present this guide to Philadelphia's Open Lands Protection Ordinance. With the Ordinance turning two years old this month, it seemed the perfect time to reflect on the law.

First, the good news. Early tests have demonstrated that the Ordinance is successfully fulfilling the mandate of the Commissioners, government officials and advocates who have worked together on its creation, passing and implementation. The law's guidelines for consistent, transparent and timely evaluation of proposals for the transfer or conversion of outdoor park and recreation land have opened up the process to review, analyses and public and expert discourse. The Ordinance has provided a platform for both the consideration of potentially exciting projects to enhance our city and the principle of no-net loss of the parks, recreation and open spaces that make Philadelphia a great place in which to live, work and play.

But, implementation of the Ordinance has not been without its challenges. First, there has not always been universal awareness among project planners that the Ordinance exists or that it applies to their projects. Second, even planners who were aware of the Ordinance and its applicability to their projects have not completely understood some of the law's requirements. And finally, some project planners have been surprised by the positions that the Parks Alliance has taken in its public comments regarding the application of the Ordinance to their projects.

We have prepared this guide to address all three of these issues. We hope that the guide helps raise general awareness of the Ordinance, that it explains in simple terms the requirements of the law, and that it provides a clear understanding of how we interpret the law and why we interpret it the way we do.

We hope that this guide will be a useful resource for everyone: city officials who are working to implement the law, project planners who are trying to comply with it and members of the public who are interested in ensuring that it is faithfully executed.

Learn more about the Parks Alliance, the Open Lands Protection Ordinance and proposals that have triggered the Ordinance at www.philaparks.org.

The Philadelphia Parks Alliance



A Guide to Philadelphia's Open Lands Protection Ordinance

What is the Open Lands Protection Ordinance?

The Ordinance is a Philadelphia law that establishes conditions that must be satisfied before outdoor park or recreation land in Philadelphia may be converted or transferred. The Ordinance can be found on our website (<http://www.philaparks.org/>).

What is the genesis of the Ordinance?

In 2008, Philadelphia City Council proposed, and Philadelphia voters overwhelmingly approved, an amendment to the Philadelphia Home Rule Charter (Charter) supported by the Alliance that merged the former Fairmount Park Commission and the Department of Recreation into a newly created Department of Parks and Recreation (commonly referred to as Philadelphia Parks and Recreation).

The Charter amendment established a new Commission on Parks and Recreation (Commission) with new powers and duties. The Commission consists of 15 members, nine of whom are volunteers appointed by the Mayor from nominations made by City Council and six of whom serve ex officio. The Commission's mission is to develop and adopt written, enforceable standards related to the use of the city's park and recreational land and facilities, make recommendations to enhance revenue opportunities, and assist in promoting parks and recreational facilities and programs.

Among other things, the Charter amendment provided that:

The Commission, after receiving public comment, shall from time to time adopt standards and guidelines relating to City park and recreation land and facilities; including standards and guidelines relating to . . . the conveyance and acquisition of park and recreation land or facilities, *including criteria for the assessment and evaluation of proposed conveyances or acquisitions.*

Philadelphia Home Rule Charter § 5-601(a) (emphasis added).

After approval of the Charter amendment, Mayor Michael Nutter became so convinced of the importance of criteria for the assessment and evaluation of proposed conveyances that he urged that they be codified in an ordinance. To that end, Mayor Nutter worked with the Commission and City Council to introduce legislation. With the support of the Alliance, which had provided significant input on the bill throughout the legislative process, the Ordinance was approved by City Council on April 27, 2011, and became effective on July 1, 2011.

Why is the Ordinance important?

Prior to the enactment of the Ordinance, there were no clear standards or guidelines governing the disposition of outdoor park or recreation land. The lack of standards left such land vulnerable to politically motivated disposition, created uncertainty for project planners proposing transfers or conversions for entirely laudable purposes, and exposed the city to potential liability for

noncompliance with state laws governing the disposition of land donated or dedicated for public purposes. All three of these problems converged when Philadelphia and Fox Chase Cancer Center sought to discontinue using part of Burholme Park as parkland and to lease it to Fox Chase for the expansion of its cancer treatment and research facilities. The high profile legal battle that ensued highlighted an urgent need for clear standards governing the disposition of outdoor park or recreation land.

What are the policies underlying the Ordinance?

According to the legislation's preamble, because "Philadelphia is . . . graced with magnificent outdoor park and recreation spaces comprising approximately 13% of the total land in the City," which "enhance the value of neighborhoods" and "contribute to the environmental health of the City and the region and provide important and necessary places of respite and recreation,

it is important to establish standards and procedures regarding the transfer of outdoor public park and recreation land . . . *to protect the interests of the citizens of Philadelphia,*" and "it is vital to the public interest to preserve and protect the City's public park and recreation spaces and ensure that future developments in the City *do not result in any net loss of public park and recreation land.*"

Bill No. 110002-A (emphasis added).

Does the Alliance have an opinion about these policies?

Yes. We commissioned a report from the Trust for Public Land entitled "How Much Value Does the City of Philadelphia Receive from its Park and Recreation System" (<http://salsa.democracynaction.org/o/372/images/PhilaParkValueReport08.pdf>) that we believe supports the appraisal of the value of outdoor park and recreation spaces offered in the preamble. For that reason, we unreservedly support the "no-net loss" policy underlying the Ordinance.

What does the Ordinance do?

The ordinance prohibits the transfer (i.e., change in physical or legal care, custody or control) or conversion (i.e., change to the physical characteristics or use) of land under the jurisdiction of Philadelphia Parks and Recreation, where the transfer or conversion requires authorization by ordinance of City Council under the Home Rule Charter, unless certain *conditions* are met.

What are those conditions?

The conditions are:

- (1) The person or entity proposing the transfer or conversion provides a written *Alternatives Analysis* to the Commission and City Council;
- (2) The Commission posts the Alternatives Analysis on its *website* and accepts public comment on it for at least thirty days prior to the Commission's next meeting;
- (3) The Commission reviews the Alternatives Analysis and considers any public comment received;
- (4) The Commission submits to the Mayor and the City Council President a written determination and explanation regarding whether certain *criteria* enumerated in the Ordinance have been met;
- (5) City Council and all other City officials give substantial weight to the Commission's determination;

- (6) Within a timeframe established by the Ordinance, a Committee of Council conducts at least one public hearing on a bill authorizing the proposed transfer or conversion;
- (7) The ordinance that authorizes the transfer or conversion includes a copy of the Commissioner’s written determination; and
- (8) The City receives or acquires *Substitute Land* on or before the transfer or conversion.

What are the criteria referenced above?

The criteria set forth in the Ordinance are:

- (1) The continuation of the original use of the land as outdoor park or recreation land is no longer practicable or possible and has ceased to serve the public interest;
- (2) The proposed transfer or conversion is necessary for the public interest;
- (3) There is no reasonable and practical alternative to the proposed transfer or conversion; and
- (4) The Substitute Land has the same or greater usefulness as outdoor park or recreation land as the land to be transferred or converted.

What is required of the Alternatives Analysis referenced above?

The Alternatives Analysis must include:

- (1) Detailed explanations of whether the proposed transfer or conversion satisfies the first three criteria set forth in response to the immediately preceding question;
- (2) A detailed explanation of all requirements or restrictions applicable to the use of the land proposed to be transferred or converted;
- (3) A description of the land proposed to be transferred or converted, including a location map and photographs;
- (4) A description of the impact of the proposed transfer or conversion on outdoor park or recreational uses;
- (5) A description of the environmental impact of the proposed transfer or conversion, including on storm water management, natural habitat, canopy preservation, and noise, light, and water pollution;
- (6) A description of the effect of the proposed transfer or conversion on traffic and parking;
- (7) A list of all *community groups*, including “Friends Groups” and “Recreation Advisory Councils,” consulted on the proposed transfer or conversion, along with copies of all correspondence received about the proposed transfer or conversion from these groups or other members of the public;
- (8) An analysis of the most reasonable alternatives to the proposed transfer or conversion and an explanation of why such alternatives were deemed to be impractical or unreasonable; and
- (9) A description of the proposed Substitute Land, including a location map and photographs, analysis of built and natural resources and usefulness as outdoor park or recreation land, and other environmental reports.

Does the term community groups include the Alliance?

Yes, and we encourage all project planners to consult with us before proposing a transfer or conversion. Our contact information can be found on the last page or back cover of this guide.

What is Substitute Land?

Substitute Land is land that the City receives or acquires on or before the transfer or conversion to substitute for the transferred or converted land.

As compared to the land to be transferred or converted, Substitute Land must be of at least equal:

- 1) *Value*;
- 2) *Size*; and
- 3) *Park or recreational usefulness*.

To the extent reasonably feasible, Substitute Land must be located in the same or an adjacent City Council district or in the same watershed as the transferred or converted land.

How are value, size and park or recreational usefulness to be determined?

The value of the Substitute Land and the land proposed to be transferred or converted must be based on professional, independent appraisals that assume the parcel's highest and best use without regard to their existing zoning. Size and park or recreational usefulness are to be determined by the Commission with input from Philadelphia Parks and Recreation staff.

How does the Alliance interpret these requirements?

We believe that the City must receive or acquire Substitute Land from the person or entity proposing the transfer or conversion or from some other third party. We do not believe that the City can acquire Substitute Land using its own funds to satisfy this requirement.

We believe that the person or entity proposing the transfer or conversion should retain the services of a land appraiser to support its determinations of value and provide data to support its determinations of size. Because park and recreational usefulness is more subjective, the Commission has some flexibility in making these determinations, which we believe should be informed by the public comment that the Commission receives. We also recommend that the Commission issue a policy to help guide its discretion in making this determination.

Does the Ordinance contain any exemptions?

Yes. Certain renewals of agreements and adaptive re-use of existing structures that predate the Ordinance, certain transfers or conversions for public utility sub-surface easements and stormwater management facilities, certain modifications of rights-of-way, and certain concession agreements do not need to satisfy the conditions set forth above. In addition, a transfer or conversion that changes the use of the land to a park or recreational use that would be permissible for outdoor park or recreation land under Pennsylvania law does not need to satisfy the Substitute Land requirement.

How does the Alliance interpret the latter exemption?

The Alliance believes that to be permissible for outdoor park or recreation land, the park or recreational use to which the park or recreation land is being converted must be reasonably accessible to the public.

Where can the public find and comment on the Alternatives Analyses that the Commission posts?

<http://www.phila.gov/ParksandRecreation/aboutus/parc/Pages/default.aspx>



The Philadelphia Parks Alliance is an independent nonprofit that works to advance and influence sound policies and practices that support thriving parks and recreation and ensure that they are at the forefront of Philadelphia's public interest agenda.

Learn more at www.philaparks.org.

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