

AN ORDINANCE

Amending Chapter 15-100 of the Philadelphia Code, entitled “Parks,” by prohibiting the transfer or conversion of outdoor public park and recreation land in the City to other uses or to third parties unless certain procedures and requirements are met.

WHEREAS, William Penn planned for Philadelphia to be a “green country town” and provided for public parks in his original plan for the City;

WHEREAS, in keeping with William Penn’s vision, as the City expanded, City officials reserved or acquired land for public parks and recreation;

WHEREAS, Philadelphia is now graced with magnificent outdoor park and recreation spaces comprising approximately 13% of the total land in the City;

WHEREAS, the City’s outdoor park and recreation spaces contribute to the environmental health of the City and the region and provide important and necessary places of respite and recreation for the City’s citizens;

WHEREAS, the City’s park and recreation spaces enhance the value of neighborhoods throughout the City;

WHEREAS, 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;

WHEREAS, in addition to the tests that may apply under Pennsylvania law regarding permissible changes in use of park and recreation land, it is important to establish standards and procedures regarding the transfer of outdoor public park and recreation land in the City of Philadelphia to protect the interests of the citizens of Philadelphia;

WHEREAS, pursuant to Section 5-601(a) of the Philadelphia Home Rule Charter requiring the Commission on Parks and Recreation to adopt standards and guidelines for the conveyance of park and recreation land, the Commission has recommended adoption of this ordinance; and

WHEREAS, the importance of park and recreation land to the City is underscored by Paragraph X of Resolution No. 080001, which provides Rules for the Government of the Council of the City of Philadelphia, and which requires that two-thirds of all the members of Council vote in favor of reporting certain bills pertaining to the conveyance or lease to a third party of an interest in real estate that includes park or recreation land to the Committee of the Whole.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 15-100 of The Philadelphia Code is amended to read as follows:

CHAPTER 15-100. PARKS AND OUTDOOR SPACES

[(RESERVED)]

§ 15-101. *Definitions. In this Chapter, the following definitions apply:*

(1) *“Convert” and “Conversion” mean a change to the physical characteristics or use of land, if the change, or any grant or agreement necessary to effectuate the change, requires authorization by ordinance of City Council under the Home Rule Charter.*

(2) *“Outdoor Park or Recreation Land” means land (a) that was under the jurisdiction of the former Fairmount Park Commission or former Recreation Department as of June 30, 2009, or is under the jurisdiction of the Department of Parks and Recreation, and (b) used for outdoor public park or outdoor recreation activity. For example, without limitation, “outdoor park or recreation land” includes the following, where each is owned or held by the City for public use or enjoyment: woods; hiking trails; recreation paths; picnic areas; lawns; gardens; baseball, softball and other athletic fields; outdoor fountains and plazas; horseback riding corrals; playgrounds; outdoor tennis courts and outdoor basketball courts. “Outdoor park or recreation land” does not include the following:*

A. *Land occupied by any building or other structure enclosed by a roof and walls at the time this Section became law, but the land surrounding the building or structure is outdoor park or recreation land.*

B. *Land acquired by the City under Philadelphia Code Chapter 16-400 unless the City by ordinance specifies that the City is acquiring the land for outdoor park or recreation activity or the City by later ordinance designates the land for outdoor park or recreation activity.*

(3) *“Transfer” means a change in physical or legal care, custody or control of land, regardless of the form of written document used to accomplish the change, if authorization by ordinance of City Council is required under the Home Rule Charter for the change.*

(4) *“Transferee” means (a) for purposes of a conversion, the Department of Parks and Recreation or the Department of Public Property; or (b) the party to whom the physical or legal care, custody, or control of land is proposed to be transferred.*

§ 15-102. *Conditions to Conversion or Transfer of Outdoor Park or Recreation Land. No land that the City owns or holds now or in the future as outdoor park or recreation land may be transferred or converted unless each of the following conditions is satisfied:*

(1) The proposed transferee provides to the Commission on Parks and Recreation (the “Commission”) and to City Council a complete written “Alternatives Analysis” in compliance with Section 15-104. If the transferee intends to transfer the land to another person or entity, then the Alternatives Analysis may be submitted by that proposed subsequent transferee of the land;

(2) The Commission posts the Alternatives Analysis on its website and accepts public comments about it for a period of at least thirty days prior to the Commission’s next meeting (the “Public Review Period”);

(3) After reviewing the Alternatives Analysis and considering public comment, the Commission submits to the Mayor and the Council President, along with a written explanation, the Commission’s determination whether, in its judgment, (i) 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; (ii) the proposed transfer or conversion is necessary for the public interest; (iii) there is any reasonable and practical alternative to the proposed transfer or conversion; and (iv) the Substitute Land (defined below) has the same or greater usefulness as outdoor park or recreation land as the land to be transferred or converted. If the Commission does not submit its determination by the later of (a) 30 days after the next Commission meeting following the Public Review Period, or (b) 120 days after receipt of the complete Alternatives Analysis, then a Committee of Council may proceed to consider a bill authorizing the proposed transfer or conversion without receiving the Commission’s determination; however, the Commission may still submit its determination any time before Council has taken final action on the proposed transfer or conversion. City Council and all other City officials shall give substantial weight to the Commission’s determination;

(4) A Committee of Council conducts at least one public hearing on the bill authorizing the proposed transfer or conversion no less than twenty days after the Commission delivers its written determination to the Mayor and Council President; subject, however, to the timing deadlines and consequences set forth in Section 15-102(3) above;

(5) The ordinance that authorizes the transfer or conversion includes findings that: (i) the continuation of the original use of the land as open park or recreation land is no longer practicable or possible and has ceased to serve the public interest; (ii) the proposed transfer or conversion is necessary for the public interest; and (iii) there is no reasonable and practical alternative to the proposed transfer or conversion; and

(6) The City receives or acquires land to substitute for the transferred or converted land (the “Substitute Land”) on or before the transfer or conversion. The Substitute Land must be of at least equal value, size, and park or recreational usefulness as the land to be transferred or converted, as determined by the Commission; except that the respective value of the Substitute Land and the land proposed to be transferred or converted must be based on professional, independent appraisals which assume the

parcels' highest and best use without regard to their existing zoning. To the extent reasonably feasible, the 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.

§ 15-103. Exemptions.

(1) The provisions of § 15-102 do not apply to the following transactions:

(a) Renewals of any license, lease, professional services agreement, permit, temporary easement, grant agreement, or concession agreement in effect on the date this Section became effective, if the terms of the renewal do not increase impervious coverage on park or recreation land.

(b) Transfers or conversions for public utility sub-surface easements that do not impair outdoor park or recreational use (except temporarily during construction).

(c) Transfers or conversions for stormwater management facilities that do not impair outdoor park or recreational use.

(d) Adaptive re-use of any structure on park or recreation land existing at the time this Section became law, that promotes preservation of the structure but that does not require more than a de minimus increase in impervious coverage on outdoor park or recreation land.

(e) Modifications or corrections of roadways, curb lines, sidewalks, paths, and similar adjustments that result in only a de minimus increase in impervious coverage on outdoor park or recreation land

(f) Concession agreements where the concessionaire will not make any physical change to the land subject to the concession but will only use physical features already existing on the land.

(2) The provisions of § 15-102(3)(i) and(iv), (5) and (6) and § 15-104(1)(a)(i) and (1)(e) do not apply to 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.

§ 15-104. "Alternatives Analysis."

(1) The "Alternatives Analysis" required by Section 15-102(1) must include:

(a) Detailed explanations of: (i) why 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; (ii) why the proposed transfer or conversion is necessary for the public interest; (iii) why there is no reasonable and practical alternative to the proposed transfer or conversion; and (iv) all other requirements or restrictions applicable to the use of the land, including but not limited to those imposed

or created under any dedication; will; deed; deed of trust; federal or Commonwealth grant agreement; easement; historic, natural landmark, or other designation; or declaration of covenants.

(b) A description of the current outdoor park or recreation land proposed to be transferred or converted; the impact of the transfer or conversion on current outdoor park or recreational uses at the site; the environmental impact of the proposed transfer or conversion; and the effect of the proposed transfer or conversion on traffic and parking;

(c) A list of all community groups with whom the transferee met to discuss the proposed transfer or conversion (including but not limited to what are commonly called “Friends Groups” and “Recreation Advisory Councils”) and copies of any letters or e-mails the transferee received about the proposed transfer or conversion from those groups, its members, or other members of the public;

(d) An analysis of the most reasonable alternatives that do not require the transfer or conversion, including but not limited to an analysis of those alternatives’ costs, environmental impact, and traffic and parking impact, and why those alternatives were judged to be impractical or unreasonable; and

(e) A description of the proposed Substitute Land, including a map, photographs, and analysis of its built and natural resources and its usefulness as outdoor park or recreation land, including without limitation consideration of traffic, parking and proximity to other open space.

§ 15-105. Other Land Controls. This Chapter 15-100 does not affect any requirement or restriction applicable to outdoor park or recreation land imposed or created under any dedication; will; deed; deed of trust; federal or Commonwealth grant agreement; easement; historic, natural landmark, or other designation; or declaration of covenants.