

## ARTICLE 33

### **OPEN SPACE SUBDISTRICTS**

(;Article inserted on March 8, 1988)

SECTION 33-1. **Preamble.** This article supplements the creation of an open space district (OS) designation, which under Text Amendment No. 101 can be given to public lands or, with the written consent of the owner, to private property. The open space district and nine open space subdistricts, taken together, present a comprehensive means for protecting and conserving open spaces through land use regulations. The open space (OS) designation and an open space subdistrict designation can be used in conjunction with each other, thus establishing for the land so designated the particular restrictions of one of the subdistricts: community garden, parkland, recreation, shoreland, urban wild, waterfront access area, cemetery, urban plaza, or air-right. Land can be given the OS designation, however, without the simultaneous designation of a particular subdistrict, such as "park" or "garden," where the desired subdistrict designation is yet to be determined. This system instills flexibility into the regulation of open space.

SECTION 33-2. **Statement of Purpose.** The purposes of this article are to encourage the preservation of open space for community gardens, parkland, recreation, shoreland, urban wild, waterfront access area, cemetery, and urban plaza purposes; to enhance the quality of life of the city's residents by permanently protecting its open space resources; to distinguish different open space areas in order to provide for uses appropriate to each open space site on the basis of topography, water, flood plain, scenic value, forest cover, urban edge, or unusual geologic features; to prevent the loss of open space to commercial development; to restore Boston's conservation heritage of Olmsted parks; to coordinate state, regional, and local open space plans; to provide and encourage buffer zones between incompatible land uses and mitigate the effects of noise and air pollution; to promote and maintain the visual identity of separate and distinct districts; to enhance the appearance of neighborhoods through preservation of natural green spaces; and to ensure the provision of adequate natural light and air quality by protecting the supply of vegetation and open space throughout Boston.

SECTION 33-3. **Definitions.** For the purposes of this article only, the following words and phrases, when capitalized, shall have the meanings indicated.

1. "Applicant" shall mean any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this article, or the authorized agent of any such person or entity.

2. "Planning and Zoning Advisory Committee" shall mean any neighborhood- based committee appointed by the Mayor to render advice to neighborhood residents, the Mayor, city departments, and the Boston Redevelopment Authority regarding land use planning and zoning issues.
3. "Neighborhood Council" shall mean any neighborhood-based council established by the Mayor to render advice to neighborhood residents, the Mayor, city departments, and the Boston Redevelopment Authority regarding any municipal issues of neighborhood concern.
4. "Proposed Project" shall mean the erection, extension, or demolition of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a building or use permit.
5. "Public Agency" shall mean the Commonwealth or one or more political subdivision(s) of the Commonwealth, or a department, agency, board, commission, authority, or other instrumentality of the Commonwealth, or of one or more political subdivision(s) of the Commonwealth, or the United States.
6. "Transit Corridor" shall mean any interstate, state, or local highway or rail line which lies below the grade level of abutting parcels of land, not including abutting transit corridors which lie below grade level.
7. "Vacant Public Land" shall mean any land owned by a Public Agency that is not in use for an essential public purpose.

**SECTION 33-4. Petitioning for Open Space Subdistricts.** Any property owner, or property owner representing a Planning and Zoning Advisory Committee or Neighborhood Council, or the Boston Redevelopment Authority, or the Boston Conservation Commission may petition the Zoning Commission to establish or to substantially change the use of an open space subdistrict within an open space (OS) district.

**SECTION 33-5. Establishment of Open Space Subdistrict Categories.** The nine categories of open space subdistricts established in Section 3-1 are: (a) OS-G, Community Garden; (b) OS-P, Parkland; (c) OS-RC, Recreation; (d) OS-UW, Urban Wild; (e) OS-SL, Shoreland; (f) OS-WA, Waterfront Access Area; (g) OS-CM, Cemetery; (h) OS-UP, Urban Plaza; and (i) OS-A, Air-Right.

**SECTION 33-6. Land Eligible for Open Space Subdistrict Designation.** Open space subdistricts may be established by the Zoning Commission only on land within an OS zoning district. An open space subdistrict designation imposes land use restrictions, as provided for in Sections 33-8, 33-9, 33-10, 33-11, 33-12,

33-13, 33-14, 33-15, and 33-16, which augment the basic use restrictions pertaining to OS districts (see Section 8-7). An open space subdistrict may be established on any land contained within one or more open space districts, provided that such land is: (a) owned by a Public Agency, including but not limited to the City of Boston, the Boston Conservation Commission, the Boston Parks and Recreation Department, the Boston Redevelopment Authority, the Boston School Department, the Massachusetts Department of Environmental Quality Engineering, the Massachusetts Port Authority, the Metropolitan District Commission, the Boston Public Facilities Department, the Boston Real Property Department, or the Boston Water and Sewer Commission; or (b) owned by a private person, entity, or conservation trust, such as the Boston Natural Areas Fund, which consents in writing to the establishment of an open space subdistrict on such land.

**SECTION 33-7. Minimum Area of Open Space Subdistricts.** There shall be no minimum land area requirement for an open space subdistrict.

**SECTION 33-8. Community Garden Open Space Subdistricts.** Community Garden open space (OS-G) subdistricts shall consist of land appropriate for and limited to the cultivation of herbs, fruits, flowers, or vegetables, including the cultivation and tillage of soil and the production, cultivation, growing, and harvesting of any agricultural, floricultural, or horticultural commodity; such land may include Vacant Public Land.

**SECTION 33-9. Parkland Open Space Subdistricts.** Parkland open space (OS-P) subdistricts shall consist of land appropriate for and limited to passive recreational uses, including walkways, picnic areas, and sitting areas; such land may include Vacant Public Land. No building or structure which exceeds six hundred square feet in land area shall be erected within a Parkland subdistrict, and any structure in such subdistrict is subject to the provisions of Use Item No. 27A of Section 8-7; provided, the Boston Parks and Recreation Department, the Metropolitan District Commission, or the National Park Service may erect in parks that are now or hereafter may be under their control, except the Boston Common, Public Garden, and public squares, structures for the shelter and refreshment of persons frequenting such parks and for other park purposes, of such materials and in such places as in the opinion of the Commissioner of the Boston Fire Department do not endanger buildings or structures beyond the limits of the park.

**SECTION 33-10. Recreation Open Space Subdistricts.** Recreation open space (OS-RC) subdistricts shall consist of land appropriate for and limited to active or passive recreational uses, including walkways, physical education areas, children's play areas, swimming pools, skating rinks, and sporting areas, or a combination thereof, where such uses are administered by the Boston Parks and Recreation Department, the Metropolitan District Commission, or any

nonprofit organization established for the purposes of carrying out the land uses allowed in this article; such land may include Vacant Public Land.

**SECTION 33-11. Shoreland Open Space Subdistricts.** Shoreland open space (OS-SL) subdistricts shall consist of land appropriate for and limited to that which borders on tidewater or the ocean, including land over which the tide ebbs and flows, or any bank, marsh, beach, dune, swamp, salt meadow, tidal flat, or other low land subject to tidal action or coastal storm flowage. Any Proposed Project in a Shoreland subdistrict shall be limited to the following uses: (a) water-based recreational facilities such as swimming beaches, fishing piers, facilities accessory to the operation of a boating program open to the public, and launching ramps and transient dockage for recreational boats; (b) parks, walkways, children's play areas, or other open spaces for public enjoyment of the waterfront; and (c) facilities or services related to waterborne passenger transportation in excursion boats, ferries, cruise ships, water-taxis, or other similar types of vessels.

**SECTION 33-12. Urban Wild Open Space Subdistricts.** Urban Wild open space (OS-UW) subdistricts shall consist of land not in the city's park system which includes undeveloped hills, rock outcroppings, quarries, woodlands, meadows, scenic views, inland waters, freshwater wetlands, flood plains, wildlife habitat, or any estuary, creek, river, stream, pond, or lake, or any land under said waters. Urban Wild open space subdistricts shall be limited to conservation and passive recreational uses. Unpaved walkways are allowed in Urban Wild subdistricts.

**SECTION 33-13. Waterfront Access Area Open Space Subdistricts.** Waterfront Access Area open space (OS-WA) subdistricts shall consist of land which abuts or lies under the waters of the Commonwealth within the jurisdiction of the city. Any Proposed Project in a Waterfront Access Area subdistrict shall be limited to the following uses: (a) water-based recreational facilities such as swimming beaches, fishing piers, facilities accessory to the operation of a boating program open to the public, and launching ramps and transient dockage for recreational boats; (b) parks, walkways, children's play areas, or other open spaces for public enjoyment of the waterfront; and (c) facilities or services related to waterborne passenger transportation in excursion boats, ferries, cruise ships, water-taxis, or other similar types of vessels. Such facilities are subject to the provisions of Use Item No. 27A of Section 8-7.

**SECTION 33-14. Cemetery Open Space Subdistricts.** Cemetery open space (OS-CM) subdistricts shall be comprised of land appropriate for and limited to the purposes of interment.

**SECTION 33-15. Urban Plaza Open Space Subdistricts.** Urban Plaza open space (OS-UP) subdistricts shall consist of land appropriate for and limited to passive recreational uses; Urban Plaza subdistricts shall be directly accessible

to the public from an adjoining street and may be furnished with benches, chairs, or other seating facilities and contain works of art, plantings, and other features.

**SECTION 33-16. Air-Right Open Space Subdistricts.** Air-Right open space (OS-A) subdistricts shall consist of land used as Transit Corridors owned by a Public Agency; Air-Right open space subdistrict regulations shall apply only to the development of spaces over such Transit Corridors.

1. No Proposed Project which is not necessary for the operation and maintenance of the Transit Corridor shall be permitted in an Air-Right open space subdistrict unless: (a) the Proposed Project preserves an area of open space equal to at least fifty percent (50%) of the site area of the Proposed Project, provided that such open space is exclusive of land that is paved for parking or loading or used for parking or loading; and (b) the Proposed Project provides open space which has landscaping features and a shape, dimension, character, and location suitable to assure its use for park, recreation, conservation, or garden purposes. The Public Agency or Applicant shall provide an open space plan which demonstrates compliance with the requirements of this paragraph; such plan shall be subject to the approval of the Boston Conservation Commission.
2. The Boston Conservation Commission shall base its approval of the open space plan required in paragraph 1 above on the Public Agency's provision of a perpetual conservation restriction of the type described in General Laws, Chapter 184, Section 31, as amended, which restriction shall run to or be enforceable by the city and recorded in respect to such open space. Such restriction shall provide that the open space shall be retained in perpetuity for one or more of the following purposes: conservation, garden, recreation, parkland, or any other purpose allowed pursuant to this article. Such restriction shall be in such form and substance as the Boston Conservation Commission prescribes and may contain such additional restrictions on development and use of the open space as the Boston Conservation Commission may deem appropriate pursuant to an agreement executed between the Boston Conservation Commission and the Public Agency.

**SECTION 33-17. Direct Designation of Open Space Districts.** Notwithstanding any other provision of this article, the Zoning Commission finds the following areas are in compliance with the provisions of this article, and hereby designates the following areas as open space (OS) districts in their present uses.

<u>Name of Park</u>	<u>Address/Location</u>
<u>Government Center</u>	
Cardinal Cushing Park James M. Curley Memorial Plaza	Cambridge Street/New Chardon Street 119-133 Hanover/16-64 Union Street
<u>Waterfront</u>	
Christopher Columbus Park Rose Kennedy Garden	115-157 Atlantic Avenue 115-157 Atlantic Avenue
<u>South Cove</u>	
Tai Tung Park Elliott Norton Park	116 Tyler Street/Tai Tung 301-317 Tremont Street, Charles Street South
<u>South End</u>	
Peter's Park	Shawmut Avenue/Briggs Street/Bradford Street/Wilkes Street/Washington Street
Watson Park	12-14 Taylor Street
James Hayes Park	167 West Canton Street/ 158 Warren Avenue
Titus Sparrow Park	176-224 West Newton Street
David L. Ramsay Park (formerly Derby Park)	3 Ball Street/622 Shawmut Avenue/ 1901-1903 Washington Street, 1 Worcester Place
St. Helena's Park	95-99 Union Park Street
<u>Fenway</u>	
Morville Community Park	Norway Street/48-58 Edgerly Road/ Burbank Street
<u>Roxbury</u>	
Madison Park High School Track and Field	Cabot Street/Ruggles Street/Dewitt Street
Jeep Jones Park	New Dudley Street/King Street/Roxbury Street
Malcolm X Park (formerly Washington Park)	2700 Washington Street/Dale Street/Paulding Street/Martin Luther King, Jr. Boulevard
<u>Charlestown</u>	

Shipyard Park

Charlestown Navy Yard

SECTION 33-18. **Severability.** The provisions of this article are severable, and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this article.