



# MEMO TO THE PLANNING COMMISSION

**HEARING DATE:** July 8, 2021

**Subject:** Residential Open Space Controls

**Staff Contact:** Scott F. Sanchez – (628) 652-7384

[scott.sanchez@sfgov.org](mailto:scott.sanchez@sfgov.org)

**Recommendation:** None – Informational Only

## Summary

In response to a request from the Planning Commission, this memo provides the Planning Commission with the historical background of the Planning Code’s residential open space requirements (Planning Code Section 135) and a general overview of its primary elements. Given the unique nature of the Planning Code and the complexity of its various requirements, this document is only intended to provide additional context for the application of these requirements and a broad discussion of the requirements in a simplified manner. It is not intended to serve as an interpretation or official summary of these requirements. Please refer to the Exhibit A (Planning Code Section 135) for the current text of this section.

## Background

The residential open space requirements of the Planning Code have evolved over time, resulting in the provisions currently found in Section 135 (Usable Open Space for Dwelling Units and Group Housing in R, NC, Mixed Use, C, and M Districts). To understand the development of the residential open space requirements, which are separate and distinct from the Planning Code’s setback, lot coverage, and exposure requirements, it is important to understand the relationship between these various requirements. None of these requirements are original to the first citywide Zoning Ordinance, which primarily focused on land use regulations and did not contain setback, lot coverage, exposure, or usable open space requirements when it was established in 1921.

In 1930, the Planning Code provided a process for its first setback requirement in residential districts – Building Setback Lines (BSLs). However, BSLs were not uniformly required and were only imposed if requested by the majority of property owners on a street frontage. BSLs became the forerunner of what are now known as Legislated Setback Lines and regulated under Planning Code Section 131.

In 1946, significant amendments were made to the Planning Code to establish minimum lot size and area requirements for newly subdivided lots. Additionally, lot coverage and rear yard requirements were imposed for newly subdivided lots. Interestingly, the lot coverage and rear yard requirements did not then apply to existing lots that met the minimum lot size and area requirements. However, they were required for existing lots that did not meet the lot size and area requirements.

In 1960, the Planning Code underwent the first of two major overhauls resulting in the basic structure that remains to this day. General requirements for side and rear yards were added that applied to all lots within a zoning district (irrespective of when the lots were subdivided). BSLs were retained in the same form as a separate provision.

In 1964, usable open space requirements for dwelling units and group housing – as well as exposure requirements for dwelling units – were added to the Planning Code for certain higher-density residential districts (primarily affecting Pacific Heights, the Marina, Twin Peaks, Potrero Hill, and the Richmond). Prior to these additions, open space and exposure requirements were only administered through the Housing and Building Codes. These amendments provided the basic structure and requirements for usable open space that remain to this day. Included in this structure were greater requirements for common open space vs. private open space; limits on the location of the open space (generally at or below the level of the unit); limits on features allowed within the open space (e.g. permitted obstructions); minimum dimensions and area of the open space (including limits on the slope of the open space); and exposure requirements for open space.

In 1978, the Planning Code underwent its second major overhaul with the Citywide Residential Rezoning ordinance. This action revised all residential zoning in the City and extended usable open space to all dwelling units in R, C, and M Zoning Districts under the current Section 135 designation. This ordinance created the “modern” Planning Code and most of the residential districts created under this ordinance remain in effect today. The standards imposed at this time are generally still in effect and were expanded as newer districts were created, including the Neighborhood Commercial (NC) Districts added through Article 7 and Mixed-Use Districts added through Article 8. After these changes, the Planning Code was amended to also add usable open space requirements for non-residential uses in certain districts. However, non-residential open space requirements are not discussed in this memo.

## Residential Open Space Requirements

The following is a simplified discussion of the basic residential usable open space requirements as found in Section 135 that focuses on the amount and physical characteristics of the required open space. Generally, these requirements are designed to ensure that open space provided for residential uses has adequate dimensions, accessibility, exposure to light and air, and other traits to be “useable.”

- 1. Amount Required.** The amount of usable open space varies by zoning district, use type (i.e. dwelling or group housing), and whether the space is common or private.
  - a. The minimum amounts of usable open space are outlined by zoning district in Tables 135A & 135B, and by reference, within the land use tables of NC and Mixed-Use Districts. However, some Special Use Districts (e.g. Van Ness & Market, Central SoMa, and SUDs resulting from Development Agreements) also provide more detailed open space controls. Generally, the requirements are greater in the lower density districts where more space may be available, and lower in the higher density

districts where space may be more limited. The amount required varies from 300 square feet per dwelling unit in the RH-1(D) Zoning District to 36 square feet in the C-3 Zoning District.

- b. For group housing, usable open space is regulated by bedroom instead of by unit, and each group housing bedroom is required to provide 1/3 the amount required for a dwelling unit in the same district. While the Code is silent on the reason for this, it is assumed that this is because of the different baselines - the dwelling unit requirement is intended to satisfy the needs of an entire dwelling unit (which may have multiple bedrooms) and the group housing requirement is intended to satisfy the needs of only one bedroom. Section 135 also specifies that when the actual number of beds exceeds an average of two beds for each bedroom, each two beds shall be considered equivalent to one bedroom. This is to ensure that adequate open space is provided for the group housing use regardless of its typology.
- c. SRO units and dwelling units that measure less than 350 square feet plus a bathroom are required to provide usable open space at 1/3 the amount required for a standard dwelling unit in the same district.
- d. Senior Housing dwelling units are required to provide usable open space at 1/3 the amount required for a dwelling unit in the same district.
- e. Homeless Shelters are not required to provide usable open space.

**2. Open Space Typology.** The type and/or location of useable open space varies by zoning district and project.

- a. Usable open space can be provided in the form of private or common usable open space (or a combination of both). Private usable open space is an area or areas private to and designed for use by only one dwelling unit (or one bedroom in group housing). Common usable open space is an area or areas designed for use jointly by two or more dwelling units (or two or more bedrooms in group housing). When providing common usable open space, it must be provided at a ratio 1.33 greater than the amount of required private usable open space.
- b. In the Eastern Neighborhood Mixed Use Districts, some or all the usable open space may also be fulfilled by providing privately-owned public open space. When providing privately-owned public open space, the amount required is generally reduced by 1/3. The privately-owned public open space may also be provided off site if it meets additional requirements. In the event a project seeks a variance or exception from the usable open space requirement, they are subject to a fee for each square foot of usable open space not provided.
- c. In the DTR Districts (e.g. Rincon Hill, South Beach, and Transbay), some or all the usable open space may also be fulfilled by providing privately-owned public open space. The privately-owned public

open space may also be provided off site if it meets additional requirements. Additionally, in the DTR Districts, at least 40% of the provided usable open space must be common open space.

- d. For any Landmark building designated under Article 10, any contributing building within a designated historic district under Article 10, or any building designated Category I-IV under Article 11, some or all of its usable open space may also be fulfilled by providing off-site publicly accessible open space.

**3. Physical Characteristics.** To ensure that open space is *usable*, the Planning Code contains basic requirements for the physical characteristics of these spaces. Unlike the amount required, the physical characteristics are generally consistent across zoning district and use types, with the primary distinction made between whether the space is private or common. Per Section 135(a), the common theme is that the space is “composed of an outdoor area or areas designed for outdoor living, recreation or landscaping, including such areas on the ground and on decks, balconies, porches and roofs, which are safe and suitably surfaced and screened... and shall be designed and oriented in a manner that will make the best practical use of available sun and other climatic advantages.” These characteristics are the basic Planning Code requirements and do not take into consideration the application of relevant design guidelines.

**Location:**

- a. Access to usable open space is to be as close as is practical to the dwelling unit (or bedroom in group housing) for which it is required. Private usable open space is intended to be directly and immediately accessible from a dwelling unit or bedroom and shall be on either the same floor level or no more than one story above or below with convenient private access. Common usable open space is intended to be easily and independently accessible from the dwelling unit or bedroom, or from another common area of the building or lot.
- b. Those features outlined in Planning Code Sections 136 (Obstructions Over Streets and Alleys and in Required Setbacks, Yards, and Usable Open Space) are allowed within required usable open space. Common examples of these include the following: certain overhead horizontal projections that provide a minimum of 7.5 feet of headroom (such as bay windows); fences and windscreens no more than 6 feet in height above grade; normal outdoor recreational and household features (such as play equipment and drying lines); and landscaping and garden furniture.

**Dimensions:**

- c. For private usable open space, the minimum horizontal dimensions are 6 feet with a minimum area of 36 square feet if located on a deck, balcony, porch, or roof, and the minimum horizontal dimensions are 10 feet with a minimum area of 100 square feet if located on open ground, a terrace, or the surface of an inner or outer court.
- d. For common usable open space, the minimum horizontal dimensions are 15 feet with a minimum area of 300 square feet.

**Exposure:**

- e. For private usable open space on decks, balconies, porches, and roofs, the space must be exposed in a manner such that at least 30% of the perimeter is unobstructed except for necessary railings.

Additionally, this space must either face a street, face or be within a rear yard, or face or be within an area with minimum horizontal dimensions of 15 feet and minimum area of 300 square feet.

- f. Common usable open space may be provided in inner courts if the enclosed space is not less than 20 feet in every horizontal dimension and 400 square feet in area and the height of the walls and projections above the court on at least three sides (or 75% of the perimeter, whichever is greater) is such that no point on any such wall or projection is higher than one foot for each foot that such point is horizontally distant from the opposite side of the clear space in the court.

**Other Factors:**

- g. The slope of any area credited as either private or common usable open space cannot exceed 5%.
- h. In certain circumstances, common usable open space may be provided in a totally or partially enclosed solarium if the minimum dimension and area requirements are met and if such area is exposed to the sun through openings or clear glazing on not less than 30% of its perimeter and 30% of its overhead area.

**Attachments:**

Exhibit A: Planning Code Section 135 (Usable Open Space for Dwelling Units and Group Housing in R, NC, Mixed Use, C, and M Districts)

## SEC. 135. USABLE OPEN SPACE FOR DWELLING UNITS AND GROUP HOUSING, R, NC, MIXED USE, C, AND M DISTRICTS.

Except as provided in Sections 134.1, 172, and 188 of this Code, usable open space shall be provided for each dwelling and each group housing structure in R, NC, C, Mixed Use, and M Districts according to the standards set forth in this Section 135 unless otherwise specified in specific district controls elsewhere in this Code.

(a) **Character of Space Provided.** Usable open space shall be composed of an outdoor area or areas designed for outdoor living, recreation or landscaping, including such areas on the ground and on decks, balconies, porches and roofs, which are safe and suitably surfaced and screened, and which conform to the other requirements of this Section. Such area or areas shall be on the same lot as the dwelling units (or bedrooms in group housing) they serve, and shall be designed and oriented in a manner that will make the best practical use of available sun and other climatic advantages. "Private usable open space" shall mean an area or areas private to and designed for use by only one dwelling unit (or bedroom in group housing). "Common usable open space" shall mean an area or areas designed for use jointly by two or more dwelling units (or bedrooms in group housing). "Privately-owned public open space," only allowed in DTR and Eastern Neighborhood Mixed Use under this Section, shall mean an area of areas designed for use of the general public while owned and maintained by private owners as described in Section 138.

(b) **Access.** Usable open space shall be as close as is practical to the dwelling unit (or bedroom in group housing) for which it is required, and shall be accessible from such dwelling unit or bedroom as follows:

(1) Private usable open space shall be directly and immediately accessible from such dwelling unit or bedroom; and shall be either on the same floor level as such dwelling unit or bedroom, with no more than one story above or below such floor level with convenient private access.

(2) Common usable open space shall be easily and independently accessible from such dwelling unit or bedroom, or from another common area of the building or lot.

(c) **Permitted Obstructions.** In the calculation of either private or common usable open space, those obstructions listed in Sections 136 and 136.1 of this Code for usable open space shall be permitted. Additionally, required common useable open space may be partially used for the provision of open space associated with an on-site Child Care Facility as follows:

(1) The open space shall meet all state licensing requirements;

(2) Not more than 50% of a single common open space may be used by the Child Care Facility; and

(3) The hours of use of the common open space by the Child Care Facility are limited to Monday through Friday, 9 am to 6 pm.

(d) **Amount Required.** Usable open space shall be provided for each building in the amounts specified herein and in Tables 135A and B for the district in which the building is located; provided, however, that in the Downtown Residential (DTR) Districts, open space shall be provided in the amounts specified in Section 825 of this Code.

In Neighborhood Commercial Districts, the amount of usable open space to be provided shall be the amount required in the nearest Residential District, but the minimum amount of open space required shall be in no case greater than the amount set forth in Table 135A for the district in which the building is located. The distance to each Residential District shall be measured from the midpoint of the front lot line or from a point directly across the street there from, whichever requires less open space.

(1) For dwellings other than those specified in Paragraphs (d)(2) through (d)(5) below, the minimum amount of usable open space to be provided for use by each dwelling unit shall be as specified in the second

column of Table 135A if such usable open space is all private. Where common usable open space is used to satisfy all or part of the requirement for a dwelling unit, such common usable open space shall be provided in an amount equal to 1.33 square feet for each one square foot of private usable open space specified in the second column of Table 135A. In such cases, the balance of the required usable open space may be provided as private usable open space, with full credit for each square foot of private usable open space so provided.

(2) For group housing structures, SRO units, and dwelling units that measure less than 350 square feet plus a bathroom, the minimum amount of usable open space provided for use by each bedroom or SRO unit shall be one-third the amount required for a dwelling unit as specified in Paragraphs (d)(1) above and (d)(4) and (d)(5), below. For purposes of these calculations, the number of bedrooms on a lot shall in no case be considered to be less than one bedroom for each two beds. Where the actual number of beds exceeds an average of two beds for each bedroom, each two beds shall be considered equivalent to one bedroom.

(3) For dwellings specifically designed for and occupied by senior citizens, as defined and regulated by Section 102.6.1 of this Code, the minimum amount of usable open space to be provided for use by each dwelling unit shall be one-half the amount required for each dwelling unit as specified in Paragraph (d)(1) above.

(4) **DTR Districts.** For all residential uses, 75 square feet of open space is required per dwelling unit. All residential open space must meet the provisions described in this Section unless otherwise established in this subsection or in Section 825 or a Section governing an individual DTR District. Open space requirements may be met with the following types of open space: "private usable open space" as defined in Section 135(a) of this Code, "common usable open space" as defined in Section 135(a) of this Code, and "publicly accessible open space" as defined in subsection (h) below. At least 40 percent of the residential open space is required to be common to all residential units. Common usable open space is not required to be publicly-accessible. Publicly-accessible open space, including off-site open space permitted by subsection (i) below and by Section 827(a)(9), meeting the standards of subsection (h) may be considered as common usable open space. For residential units with direct access from the street, building setback areas that meet the standards of Section 145.1 and the Ground Floor Residential Design Guidelines may be counted toward the open space requirement as private non-common open space.

(5) **Eastern Neighborhoods Mixed Use Districts.**

(A) **Minimum amount.**

(i) **Dwelling units, excluding SRO dwelling units.** The minimum amount of usable open space to be provided for use by each dwelling unit shall be as specified in Table 135B.

(ii) **Group housing including SRO dwelling units.** The minimum amount of usable open space provided for use by each bedroom shall be one-third the amount required for a dwelling unit as specified in Table 135B.

(B) **Compliance.**

(i) **Privately-owned public open space.** Usable open space requirements in these areas may be fulfilled by providing privately-owned public open space as specified in Table 135B.

(ii) **Towers in the Central SoMa Special Use District.** Residential developments taller than 160 feet shall provide on-site at least 36 square feet per unit or bedroom of the open space requirement of Table 135B. Any additional open space required pursuant to Table 135B may be satisfied through payment of the fee established in Section 427.

(iii) **Payment in case of Variance or exception.** Projects granted a usable open space Variance pursuant to Section 305 or an exception through Section 329 shall pay the fee established in Section 427 for each square foot of useable open space not provided.

(6) **Efficiency Dwelling Units With Reduced Square Footage.** Common usable open space shall be the preferred method of meeting the open space requirement for Efficiency Dwelling Units with reduced square footage, as defined in Section 318 of this Code. Private open space shall not be credited toward satisfaction of

the open space requirement for such units unless the Zoning Administrator determines that the provision of common open space is infeasible or undesirable, in whole or in part, due to

(A) site constraints,

(B) the special needs of anticipated residents, or

(C) conflicts with other applicable policies and regulations, including but not limited to standards for the treatment of historic properties, the Americans with Disabilities Act, or the Building Code.

(7) **Homeless Shelters.** Homeless Shelters, as defined in Section 102 of this Code, are exempt from the open space requirements described in this Section 135.

<b>TABLE 135A</b>		
<b>MINIMUM USABLE OPEN SPACE FOR DWELLING UNITS AND GROUP HOUSING OUTSIDE THE EASTERN NEIGHBORHOODS MIXED USE DISTRICT</b>		
<i>District</i>	<i>Square Feet of Usable Open Space Required for Each Dwelling Unit If All Private</i>	<i>Ratio of Common Usable Open Space That May Be Substituted for Private</i>
RH-1(D), RH-1	300	1.33
RH-1(S)	300 for first unit; 100 for minor second unit	1.33
RH-2	125	1.33
RH-3	100	1.33
RM-1, RC-1, RTO, RTO-M	100	1.33
RM-2, RC-2, SPD	80	1.33
RM-3, RC-3, RED	60	1.33
RM-4, RC-4, RSD	36	1.33
C-3, M-1, M-2	36	1.33
C-1, C-2	Same as for the R District establishing the dwelling unit density ratio for the C-1 or C-2 District property	
NC Districts	As specified in the Zoning Control Table for the district	
Mixed Use Districts established in Article 8	See the Zoning Control Table for the District	
DTR	This table not applicable. 75 square feet per dwelling. See Sec. 135(d)(4).	

<b>TABLE 135B</b>		
<b>MINIMUM USABLE OPEN SPACE FOR DWELLING UNITS AND GROUP HOUSING IN THE EASTERN NEIGHBORHOODS MIXED USE DISTRICTS</b>		
<i>Square feet of usable open space per</i>	<i>Square feet of usable open space per</i>	<i>Percent of open space that may be</i>



<i>dwelling unit, if not publicly accessible</i>	<i>dwelling unit, if publicly accessible</i>	<i>provided off site</i>
80 square feet	54 square feet	50%

(e) **Slope.** The slope of any area credited as either private or common usable open space shall not exceed five percent.

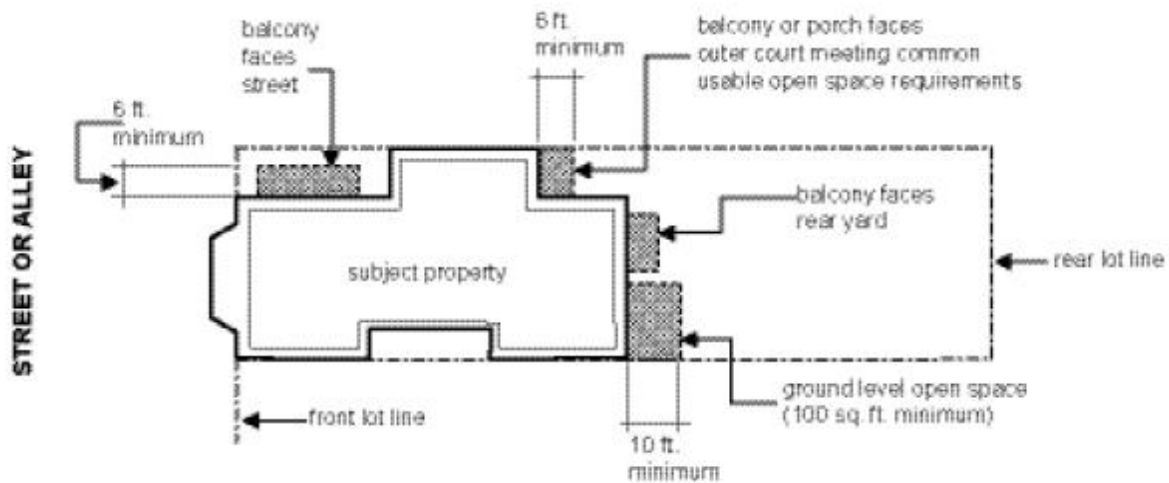
(f) **Private Usable Open Space: Additional Standards.**

(1) **Minimum Dimensions and Minimum Area.** Any space credited as private usable open space shall have a minimum horizontal dimension of six feet and a minimum area of 36 square feet if located on a deck, balcony, porch or roof, and shall have a minimum horizontal dimension of 10 feet and a minimum area of 100 square feet if located on open ground, a terrace or the surface of an inner or outer court.

(2) **Exposure.** In order to be credited as private usable open space, an area must be kept open in the following manner:

(A) For decks, balconies, porches and roofs, at least 30 percent of the perimeter must be unobstructed except for necessary railings.

(B) In addition, the area credited on a deck, balcony, porch or roof must either face a street, face or be within a rear yard, or face or be within some other space which at the level of the private usable open space meets the minimum dimension and area requirements for common usable open space as specified in Paragraph 135(g)(1) below.



(C) Areas within inner and outer courts, as defined by this Code, must either conform to the standards of Subparagraph (f)(2)(B) above or be so arranged that the height of the walls and projections above the court on at least three sides (or 75 percent of the perimeter, whichever is greater) is such that no point on any such wall or projection is higher than one foot for each foot that such point is horizontally distant from the opposite side of the clear space in the court, regardless of the permitted obstruction referred to in Subsection 135(c) above.

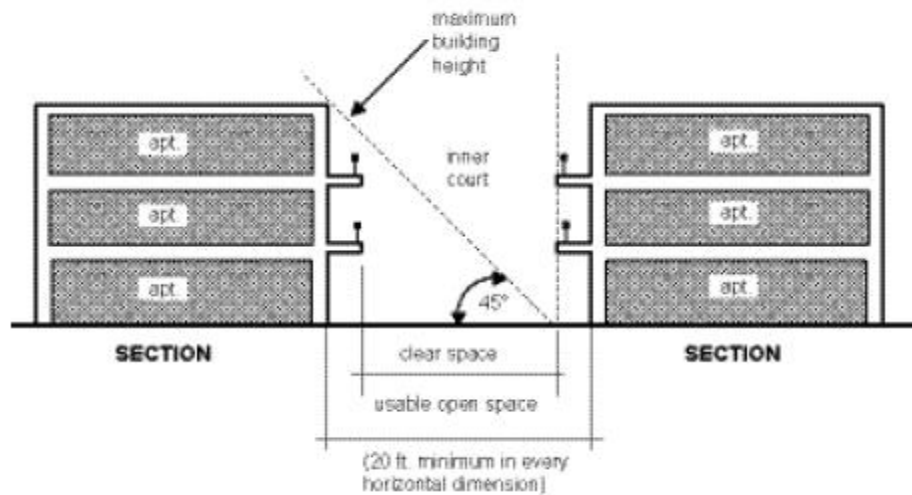
(3) **Fire Escapes as Usable Open Space.** Normal fire escape grating shall not be considered suitable surfacing for usable open space. The steps of a fire escape stairway or ladder, and any space less than six feet deep between such steps and a wall of the building, shall not be credited as usable open space. But the mere potential use of a balcony area for an emergency fire exit by occupants of other dwelling units (or bedrooms in group housing) shall not prevent it from being credited as usable open space on grounds of lack of privacy or usability.

(4) **Use of Solariums.** In C-3 Districts, the area of a totally or partially enclosed solarium shall be credited as private usable open space if (i) such area is open to the outdoors through openings or clear glazing on not less than 50 percent of its perimeter and (ii) not less than 30 percent of its overhead area and 25 percent of its perimeter are open or can be opened to the air.

(g) **Common Usable Open Space: Additional Standards.**

(1) **Minimum Dimensions and Minimum Area.** Any space credited as common usable open space shall be at least 15 feet in every horizontal dimension and shall have a minimum area of 300 square feet.

(2) **Use of Inner Courts.** The area of an inner court, as defined by this Code, may be credited as common usable open space, if the enclosed space is not less than 20 feet in every horizontal dimension and 400 square feet in area; and if (regardless of the permitted obstructions referred to in Subsection 135(c) above) the height of the walls and projections above the court on at least three sides (or 75 percent of the perimeter, whichever is greater) is such that no point on any such wall or projection is higher than one foot for each foot that such point is horizontally distant from the opposite side of the clear space in the court. Exceptions from these requirements for certain qualifying historic buildings may be permitted, subject to the requirements and procedures of Section 307(h) of this Code.



(3) **Use of Solariums.** The area of a totally or partially enclosed solarium may be credited as common usable open space if the space is not less than 15 feet in every horizontal dimension and 300 square feet in area; and if such area is exposed to the sun through openings or clear glazing on not less than 30 percent of its perimeter and 30 percent of its overhead area.

(h) **Publicly-Accessible Usable Open Space Standards.** In DTR Districts and the Eastern Neighborhoods Mixed Use Districts, some or all of the usable open space requirements may be fulfilled by providing privately-owned public open space. Any space credited as publicly-accessible usable open space, where permitted or required by this Code, shall meet the following standards:

(1) **Types of Open Space.** Open space shall be of one or more of the following types:

(A) An unenclosed park or garden at street grade or following the natural topography, including improvements to hillsides or other unimproved public areas;

(B) An unenclosed plaza at street grade, with seating areas and landscaping and no more than 10 percent of the total floor area devoted to facilities for food or beverage service, exclusive of seating areas as regulated in Section 138(d);

(C) An unenclosed pedestrian pathway which complies with the standards of Section 270.2 and which is consistent with applicable design guidelines.

(D) Streetscape improvements with landscaping and pedestrian amenities that result in additional pedestrian space beyond the pre-existing sidewalk width and conform to the Better Streets Plan and any other applicable neighborhood streetscape plans pursuant to Section 138.1 or other related policies such as those associated with sidewalk widenings or building setbacks, other than those intended by design for the use of individual ground floor residential units; and

(2) **Standards of Open Space.** Open space shall meet the standards described in Section 138(d).

(3) **Maintenance.** Maintenance requirements for open space in these areas are subject to Section 138(h) of this Code.

(4) **Informational Plaque.** Signage requirements for open space in these areas are subject to Section 138(i) of this Code.

(5) **Open Space Provider.** Requirements regarding how to provide and maintain open space are subject to Section 138(f) of this Code.

(6) **Approval of Open Space Type and Features.** Approval of open space in these areas is subject to requirements of Section 138 ( )<sup>1</sup> of this Code.

(i) **Off-Site Provision of Required Usable Open Space.**

(1) **Eastern Neighborhoods Mixed Use Districts.** In the Eastern Neighborhoods Mixed Use Districts, the provision of off-site publicly accessible open space may be credited toward the residential usable open space requirement, subject to Section 329 for projects to which that Section applies and Section 307(h) for other projects. Any such space shall meet the publicly accessible open space standards set forth in Section 135(h) and shall be within the following distance of the principal project: for principal projects that are not within the Central SoMa SUD such space shall be within 800 feet of said principal project; for principal projects that are within the Central SoMa SUD, the space shall be within the Central SoMa Plan Area or no greater than ¼-mile outside the Central SoMa Plan Area boundary, without regard to distance from the principal project. The distance between the principal project and the offsite open space shall be measured by the direct distance between the closest boundary of the principal project or, as applicable the closest edge of the Central SoMa Plan Area boundary, and the closest boundary of the off-site open space. No more than 50 percent of a project's required usable open space shall be off-site. The publicly accessible off-site usable open space shall be constructed, completed, and ready for use no later than the project itself, and shall receive its Certificate of Final Completion from the Department of Building Inspection prior to the issuance of any Certificate of Final Completion or Temporary Certificate of Occupancy for the project itself.

(2) **DTR Districts.** In DTR Districts the provision of off-site publicly accessible open space may be counted toward the requirements of residential open space per the procedures of Section 309.1 provided it is within the individual DTR district of the project or within 500 feet of any boundary of the individual DTR district of the project, and meets the standards of subsection (h).

(A) **On Site.** At least 36 square feet per residential unit of required open space must be provided on-site. Pursuant to the procedures of Section 309.1, the Planning Commission may reduce the minimum on-site provision of required residential open space to not less than 18 square feet per unit in order to both create additional publicly-accessible open space serving the district and to foster superior architectural design on constrained sites.

(B) **Open Space Provider.** The open space required by this Section may be provided individually by the project sponsor or jointly by the project sponsor and other project sponsors, provided that each square foot of jointly developed open space may count toward only one sponsor's requirement. With the approval of the Planning Commission, a public or private agency may develop and maintain the open space, provided that (i) the project sponsor or sponsors pay for the cost of development of the number of square feet the project sponsor is required to provide, (ii) provision satisfactory to the Commission is made for the continued maintenance of the open space for the actual lifetime of the building giving rise to the open space requirement, and (iii) the Commission finds that there is reasonable assurance that the open space to be developed by such agency will be

developed and open for use by the time the building, the open space requirement of which is being met by the payment, is ready for occupancy.

(3) **Ocean Avenue NCT.** In the Ocean Avenue NCT District, the provision of off-site publicly accessible open space may be credited toward the residential usable open space requirement subject to the procedures of Section 303. Any such open space shall meet the publicly accessible open space standards set forth in Section 135(h) and be provided within 800 feet of the project. No more than 50 percent of a project's usable open space requirement may be satisfied off-site. The publicly accessible off-site usable open space shall be constructed, completed, and ready for use no later than the project itself, and shall receive its certificate of final completion from the Department of Building Inspection prior to the issuance of any certificate of final completion or temporary certificate of occupancy for the project itself.

(4) **Historic Buildings.** For a landmark building designated per Article 10 of this Code, a contributing building located within a designated historic district per Article 10, or any building designated Category I-IV per Article 11 of this Code, the provision of off-site publicly accessible open space may be credited toward the residential usable open space requirement subject to the procedures of Section 307(h) of this Code.

(Amended by Ord. 414-85, App. 9/17/85; Ord. 532-85, App. 12/4/85; Ord. 69-87, App. 3/13/87; Ord. 131-87, App. 4/24/87; Ord. 445-87, App. 11/12/87; Ord. 412-88, App. 9/10/88; Ord. 115-90, App. 4/6/90; Ord. 368-94, App. 11/4/94; Ord. 262-00, File No. 001426, App. 11/17/2000; Ord. 217-05, File No. 050865, App. 8/19/2005; Ord. 72-08, File No. 071157, App. 4/3/2008; Ord. 298-08, File No. 081153, App. 12/19/2008; Ord. 61-09, File No. 090181, App. 4/17/2009; renumbered by Ord. 108-10, File No. 091275, App. 5/25/2010; amended by Ord. 310-10, File No. 101194, App. 12/16/2010; Ord. [196-11](#), File No. 110786, App. 10/4/2011, Eff. 11/3/2011; Ord. [35-12](#), File No. 111305, App. 2/21/2012, Eff. 3/22/2012; Ord. [188-12](#), File No. 111374, App. 9/11/2012, Eff. 10/11/2012; Ord. [228-12](#), File No. 120220, App. 11/14/2012, Eff. 12/14/2012; Ord. [242-12](#), File No. 120996, App. 12/7/2012, Eff. 1/6/2013; Ord. [42-13](#), File No. 130002, App. 3/28/2013, Eff. 4/27/2013; Ord. [227-14](#), File No. 120796, App. 11/13/2014, Eff. 12/13/2014; Ord. [232-14](#), File No. 120881, App. 11/26/2014, Eff. 12/26/2014; Ord. [14-15](#), File No. 141210, App. 2/13/2015, Eff. 3/15/2015; Ord. [189-17](#), File No. 170693, App. 9/15/2017, Eff. 10/15/2017; Ord. [296-18](#), File No. 180184, App. 12/12/2018, Eff. 1/12/2019; Ord. [47-21](#), File No. 201175, App. 4/16/2021, Eff. 5/17/2021)

#### AMENDMENT HISTORY

Division (d) amended; Ord. [196-11](#), Eff. 11/3/2011. Table 135A amended; Ord. [35-12](#), Eff. 3/22/2012. Division (d)(2) amended; Ord. [188-12](#), Eff. 10/11/2012. Divisions (a), (d)(5), (h), and (h)(1) through (5) amended; former divisions (h)(2)(A) through (I) deleted; division (h)(6) added; Ord. [228-12](#), Eff. 12/14/2012. Division (d)(3) amended; division (d)(6) added; Ord. [242-12](#), Eff. 1/6/2013. Table 135A amended; Ord. [42-13](#), Eff. 4/27/2013. Table 135A amended; Ord. [227-14](#), Eff. 12/13/2014. Divisions (d), (d)(3), (g)(2), (i)(2)(A), and Table 135A amended; division (i)(4) added; Ord. [232-14](#), Eff. 12/26/2014. Division (d)(7) added; Ord. [14-15](#), Eff. 3/15/2015. Division (c) amended; divisions (c)(1) through (3) added; Ord. [189-17](#), Eff. 10/15/2017. Undesignated introductory material amended; division (d)(5) amended and redesignated as (d)(5)-(d)(5)(B)(i); divisions (d)(5)(B)(ii)-(iii) added; Table 135A amended; divisions (h)(1)(B), (h)(1)(D), and (h)(2) amended; Ord. [296-18](#), Eff. 1/12/2019. Divisions (h)(6) and (i)(1) amended; Ord. [47-21](#), Eff. 5/17/2021.

#### Editor's Note:

*Former division (j) of this section was redesignated as Sec. 427 by Ord. 108-10.*

#### CODIFICATION NOTE

1. So in Ord. [47-21](#).