

CITY of ALBUQUERQUE

TWENTY FOURTH COUNCIL

COUNCIL BILL NO. O-21-79 ENACTMENT NO. _____

SPONSORED BY: Don Harris

1 **ORDINANCE**

2 **AMENDING THE OPEN SPACE TRUST FUND AND LAND ADMINISTRATION**
3 **ORDINANCE TO AUTHORIZE THE USE OF THE FUND FOR OPEN SPACE**
4 **ACQUISITIONS; AMENDING A RELEVANT CROSS REFERENCE WITHIN THE**
5 **OPEN SPACE ADVISORY BOARD ORDINANCE; AND AMENDING SECTION 2-**
6 **12-1, CAPITAL IMPROVEMENTS PROGRAM INTENT AND SCOPE, TO MAKE**
7 **PERMANENT THE TWO PERCENT CIP SET ASIDE FOR OPEN SPACE**
8 **ACQUISITIONS.**

9 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
10 **ALBUQUERQUE:**

11 **SECTION 1. The Open Space Trust Fund and Land Administration**
12 **Ordinance is hereby amended as follows:**

13 **“§ 4-2-3-1 SHORT TITLE.**

14 **Sections 4-2-3-1 et seq. shall be known and may be cited as the “Open**
15 **Space Acquisition Fund and Land Administration Ordinance.”**

16 **§ 4-2-3-2 OPEN SPACE ACQUISITION FUND.**

17 **All balances in the Permanent Fund created by Resolution No. 41-1982, as**
18 **amended by Resolution No. 73-1986, together with all funds subsequently**
19 **added thereto from any source, including but not limited to grants, donations,**
20 **appropriations, interest earnings, and proceeds from land sales constitute the**
21 **“Open Space Acquisition Fund.”**

22 **§ 4-2-3-3 SOURCE OF OPEN SPACE ACQUISITION FUND MONEY.**

23 **(A) Some land within the Elena Gallegos Grant acquired by the city was**
24 **traded by the city to the United States for inclusion in the Cibola National**
25 **Forest and the lands acquired in exchange (the "Open Space Exchange**
26 **Lands") shall be sold, leased, or exchanged. The cash proceeds from any**

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1 sales, leases, or exchanges of Open Space Exchange Lands will be placed in
2 the Open Space Acquisition Fund. PROCEEDS shall mean the net purchase
3 price paid to the City of Albuquerque for the land after deduction of all costs
4 incurred in the marketing or sale of the land.

5 (B) If Open Space Exchange Lands are traded for land which is not Major
6 Public Open Space as defined by adopted city plans, but is intended for
7 ultimate sale or other disposal, no proceeds will be required to be deposited
8 into the Open Space Acquisition Fund or payment made to the Albuquerque
9 Academy pursuant to the purchase agreement approved by the City Council
10 on March 15, 1982. To the extent that cash proceeds are received by the city
11 as part of such an exchange, the cash proceeds will be deposited into the
12 Open Space Acquisition Fund. When the land is ultimately sold, leased, or
13 exchanged for Major Public Open Space, the operative portions of §§ 4-2-3-1 et
14 seq. and the Academy Agreement regarding disposition of proceeds will take
15 effect.

16 (C) Money from sources such as grants, donations, and appropriations
17 may be placed in the Open Space Acquisition Fund.

18 (D) If Open Space Exchange Lands are exchanged for land designated
19 as Major Public Open Space by the Albuquerque/Bernalillo County
20 Comprehensive Plan or other adopted city plans, no proceeds will be required
21 to be deposited into the Open Space Acquisition Fund. Any payment to the
22 Academy necessitated by such an exchange may be paid from the Open
23 Space Acquisition Fund or from other available funds.

24 § 4-2-3-4 USE AND ADMINISTRATION OF THE OPEN SPACE ACQUISITION
25 FUND INCOME. The principal of the Open Space Acquisition Fund may,
26 subject to appropriation, be used for capital improvements within City Open
27 Space and for the acquisition of land designated for Major Public Open Space
28 subject to the requirements of 4-2-3-4(A) or for public open space easements
29 or rights of way as recommended by the Albuquerque/Bernalillo County
30 Comprehensive Plan or other adopted city plans. Any funds not used for these
31 purposes may be reinvested as part of the principal of the Open Space
32 Acquisition Fund.

(A) 75% of the funds in the Open Space Acquisition Fund available as of December 20th, 2021 shall only be used to purchase eligible Major Public Open Space Properties located West of the Rio Grande river.

§ 4-2-3-5 DISPOSITION OF OPEN SPACE EXCHANGE LANDS.

Pursuant to the powers granted to the city under Article X, Section 6, of the New Mexico Constitution and the Charter of the city, the Council hereby adopts the following procedure specifically for the disposition of the Open Space Exchange Lands. The method set out herein is intended to be an alternative to the provisions governing disposition provided for in § 5-2-1 et seq., or any other laws or ordinances governing disposition of real property by the city.

(A) Methods of Disposition.

(1) The city may sell, lease, or exchange the Open Space Exchange Lands by any reasonable means, including, but not limited to, the use of competitive bidding, request for proposals or negotiation. The Mayor shall not make or consider offers to dispose of land under this section until he has advertised his offer to dispose or his willingness to consider offers in a public notice in a daily newspaper of general circulation in the city, or if the land is not located within Albuquerque, then in the county in which the land is located; such notice shall give relevant information as to the city's offer or the types of offers which would be acceptable to the city. Open Space Exchange Lands may be exchanged by private exchange:

(a) For lands designated as Major Public Open Space by the Albuquerque/Bernalillo County Comprehensive Plan or other adopted city plans; or

(b) For land that the city wishes to acquire for subsequent sale or exchange for lands designated as Major Public Open Space by the Albuquerque/Bernalillo County Comprehensive Plan or other adopted city plans.

(2) Land acquired by exchange for subsequent sale shall be deemed to be Open Space Exchange Land subject to §§ 4-2-3-1 et seq. and the Agreement with the Albuquerque Academy. The Mayor shall obtain appraisals of each parcel of land to be acquired, traded or sold before making or

1 considering offers for disposal. Appropriate fees will be paid to any outside
2 professional service utilized to affect the disposition of land under this
3 section; such service includes, but is not limited to, title insurance,
4 engineering, surveying, legal, brokerage, and appraisal.

5 (B) Report by the Mayor and Approval by the Council or Its Designee.

6 (1) The Mayor shall report any final decision to dispose of any of
7 the Open Space Exchange Lands to the City Council for its approval, and no
8 sale, lease, exchange or other disposition of any of the Open Space Exchange
9 Lands shall occur without the notification of and an opportunity to comment
10 by the Open Space Advisory Board prior to final approval of the City Council.

11 (2) All proposals which are submitted to the Council in
12 accordance with the requirements of this section shall be supported by a
13 message setting out the circumstances, benefits, responsibilities and
14 advantages relative thereto.

15 (3) All offers and related documentation received by the City as
16 part of the disposal of each parcel of the Exchange Lands shall be transmitted
17 to the Council along with the proposal.

18 (4) The Council's approval power is delegated to the Open Space
19 Advisory Board in the following cases: any license, easement, grant of right-
20 of-way or leasehold interest of less than ten years in duration, including any
21 lease extensions or renewals, granted to any entity authorized to exercise the
22 power of eminent domain in the state, provided the value of the land so
23 encumbered does not exceed \$100,000. An aggrieved person shall have the
24 right to appeal such decision to the City Council within 15 days of the
25 decision.

26 § 4-2-3-6 EXPIRATION.

27 Section 4-2-3-4 shall expire upon acceptance by the City Council of a final
28 report from the Mayor to be submitted after the disposition of all Open Space
29 Exchange Lands has been completed.

30 “§ 4-2-3-7 ADMINISTRATION OF THE TRUST FUND.

31 (A) The Mayor with the advice of the City of Albuquerque Investment
32 Committee ("Investment Committee") is authorized and directed to convey any
33 funds appropriated to the Open Space Acquisition Fund, but not appropriated

1 to any other specific purpose, to the City Treasurer or investment officer to be
2 invested in securities permitted by § 4-1-10 and subject to the city's
3 investment policy in effect at the time of adoption of this section or as may be
4 amended from time to time, and according to the recommendations and
5 oversight of the Investment Committee.

6 (B) The fiscal year for the fund shall end on June 30 of each year. Within
7 30 days after the end of each fiscal year, the City Treasurer or investment
8 officer shall present a report of all investment activity of the past year in
9 connection with the administration of the fund to the Open Space Advisory
10 Board for its review and comment. The Treasurer or investment officer shall
11 then furnish the report and any comments from the Open Space Advisory
12 Board to the Mayor and the City Council.

13 (C) In investing the principal of the fund, the City Treasurer or
14 investment officer are subject to the restrictions imposed on investment of
15 city funds under § 4-1-9.

16 SECTION 2. The cross reference to the Open Space Trust Fund found in
17 Section 2-6-16(B), "Duties, Responsibilities, Powers" of the Open Space
18 Advisory Board is amended as follows:

19 "(B) Duties, Responsibilities, Powers.

20 (1) Study data, including ecological data, which should guide the
21 adoption and amendment of open space plans and programs, maintain liaison
22 and seek input from citizen interest groups including especially the Open
23 Space Task Force.

24 (2) Advise the EPC, the Mayor, and the City Council as to an
25 appropriate city open space program, which advice shall include:

- 26 (a) Implementation of adopted open space plans;
27 (b) Recommend to the City Council for its approval, a list of
28 priority properties suitable for acquisition through purchase, exchange, or any
29 other suitable mechanism, for purposes of "major public open space" or
30 "public easement or rights of way" for open space purposes, the locations of
31 which are consistent with the policies of the Albuquerque/Bernalillo County
32 Comprehensive Plan. Such recommendations shall be based upon policies or

- 1 procedures for the evaluation of open space priority properties as may be
2 approved by resolution of the City Council;
- 3 (c) Basic policies on management of city-owned open
4 space; and
- 5 (d) Criteria for evaluating proposals for significant physical
6 changes and installations on and adjacent to open space lands;
- 7 (e) Evaluation of proposals to install extraordinary facilities
8 on city-owned open space; and
- 9 (f) Evaluation of proposals to sell, lease, exchange, or
10 otherwise dispose of open space exchange lands or other lands acquired with
11 open space funds.
- 12 (3) Advise the City Treasurer or investment officer, and the Mayor
13 and City Council, as appropriate, on the administration, use, and management
14 of the Open Space Acquisition Fund.
- 15 (4) Annually make recommendations to the EPC, the Mayor, and
16 the City Council on updating the open space program, including land
17 acquisition and other open space capital improvements.
- 18 (5) Periodically review open space plans in consultation with
19 citizen interest groups, especially the Open Space Task Force. Advise the
20 EPC, the Mayor, and the City Council on needed new plans and plan
21 amendments, ranging from detailed project plans to the
22 Albuquerque/Bernalillo County Comprehensive Plan. Make recommendations
23 for the annual proposed city planning program.
- 24 (6) Upon request, advise or assist the Mayor in negotiations for
25 open space land acquisition.
- 26 (7) The Board's recommendations shall be consistent with the
27 conditions imposed on expenditure of interest of the Permanent Fund for
28 Open Space as specified in §§ 4-2-3-1 et seq. and the conditions imposed on
29 the expenditure of monies from the Quality of Life Fund as specified in
30 Resolution 89-1987; the Board's proposals shall also take into account all
31 funding sources available for the Open Space program.
- 32 (8) Approve the sale or lease of certain interests in Open Space
33 Exchange Lands, as provided in § 4-2-3-5."

1 **SECTION 3. Section 2-12-1(P) of the “Capital Improvements Program**
2 **Intent; Scope” is amended as follows to make permanent the 2% CIP set aside**
3 **for open space by eliminating the sunset clause:**

4 **“ ...**

5 **(O) Two percent of the General Obligation Bond Program shall be**
6 **reserved for the acquisition of lands identified for Open Space land and capital**
7 **restoration of Open Space.”**

8 **SECTION 4. SEVERABILITY CLAUSE. If any section, paragraph, sentence,**
9 **clause, word or phrase of this ordinance is for any reason held to be invalid or**
10 **unenforceable by any court of competent jurisdiction, such decision shall not**
11 **affect the validity of the remaining provisions of this resolution. The Council**
12 **hereby declares that it would have passed this resolution and each section,**
13 **paragraph, sentence, clause, word or phrase thereof irrespective of any**
14 **provisions being declared unconstitutional or otherwise invalid.**

15 **SECTION 5. COMPILATION. Sections 1, 2, and 3 of this ordinance amend,**
16 **are incorporated in and made part of the Revised Ordinances of Albuquerque,**
17 **New Mexico, 1994.**

18 **SECTION 6. EFFECTIVE DATE. This ordinance takes effect five days after**
19 **publication by title and general summary.**

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