



TIMOTHY M. KELLER, MAYOR

CITY OF ALBUQUERQUE
OFFICE OF THE MAYOR/ CHIEF ADMINISTRATIVE OFFICE

INTEROFFICE MEMORANDUM

TO: CITY COUNCIL

FROM: TIMOTHY M. KELLER, MAYOR

TK

SUBJECT: VETO OF O-21-79, AMENDING THE OPEN SPACE TRUST FUND AND LAND ADMINISTRATION ORDINANCE TO AUTHORIZE THE USE OF THE FUND FOR OPEN SPACE ACQUISITIONS; AMENDING A RELEVANT CROSS REFERENCE WITHIN THE OPEN SPACE ADVISORY BOARD ORDINANCE; AND AMENDING SECTION 2-12-1, CAPITAL IMPROVEMENTS PROGRAM INTENT AND SCOPE, TO MAKE PERMANENT THE TWO PERCENT CIP SET ASIDE FOR OPEN SPACE ACQUISITIONS

DATE: JANUARY 2, 2022

The decision to veto a piece of legislation is never something I take lightly, especially as a former legislator at the state level. I know and appreciate how much work goes into getting any legislation passed. In this case, I want to acknowledge the very real problem this ordinance is attempting to remedy. Currently, the open space trust fund is only marginally effective with respect to its ability to meaningfully protect and enhance our city's open space. It is too small to generate meaningful dollars to acquire significant pieces of land. It also lacks a modern equity lens with which to evaluate and make prudent land acquisitions. I would like to thank Don Harris for his efforts to correct problems with the current fund and for championing open space during his tenure on the City Council. Councilor Harris pushed to set aside 2% of our general obligation

bond for open space, generating \$7,870,000 since 2017. The trust fund generated only a fraction of this amount over the same time period. We need to eliminate the sunset as we work to correct the problems with existing law.

However, this ordinance unfortunately fails to address all these issues and remedy many of these shortcomings, in the long run. Therefore, I am vetoing this ordinance for three reasons. The first is because of the last-minute amendment requiring 75% of the dollars to go to a specific geography. While understandable because of the high percentage of available land, this blunt criterion could jeopardize our ability to leverage funds from other sources, such as the Trust for Public Land. The second reason for this veto is the need to incorporate equity criteria when purchasing open space. I believe it will be possible to leverage funds from the state's Outdoor Equity Fund if we work with a diverse group of stakeholders when rewriting the ordinance. Finally, the third veto reason is my belief that, with more time and consultation, a better solution with a broader range of tools will better address the long-term systemic problems with the current trust fund.

Because there is near-term urgency to resolve specific matters, including important properties under development pressure, I propose convening stakeholders, including Councilors, to develop a revised ordinance to better meet the current and future needs of open space in our community. By revisiting this, we can ensure that open space, one of our city's defining and best characteristics, will be nimble enough to seize opportunities for new open space, and also deliberate enough to grow equitably and in-step with our diverse community over the long-term.

**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Timothy M. Keller, Mayor

FROM: Chris Melendrez, Acting Director of Council Services *CM/for 12/23/21*

SUBJECT: Transmittal of Legislation

Transmitted herewith is Bill No. O-21-79 Amending The Open Space Trust Fund And Land Administration Ordinance To Authorize The Use Of The Fund For Open Space Acquisitions; Amending A Relevant Cross Reference Within The Open Space Advisory Board Ordinance; And Amending Section 2-12-1, Capital Improvements Program Intent And Scope, To Make Permanent The Two Percent CIP Set Aside For Open Space Acquisitions (Harris), which was passed at the Council meeting of December 20, 2021, by a vote of 5 FOR AND 4 AGAINST.

For: Bassan, Borrego, Harris, Peña, Sena

Against: Benton, Davis, Gibson, Jones

In accordance with the provisions of the City Charter, your action is respectfully requested.

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.

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

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

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

12 (A) Methods of Disposition.

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

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

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

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

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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

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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

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- 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."

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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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1 PASSED AND ADOPTED THIS 20th DAY OF December, 2021
2 BY A VOTE OF: 5 FOR 4 AGAINST.

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4 For: Bassan, Borrego, Harris, Peña, Sena
5 Against: Benton, Davis, Gibson, Jones
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10 Cynthia D. Borrego, President
11 City Council
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14 APPROVED THIS 2 DAY OF January, 2021
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17 Bill No. O-21-79

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23 Timothy M. Keller, Mayor
24 City of Albuquerque
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27 ATTEST:
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29 _____
30 Ethan Watson, City Clerk
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