

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 AND CAPITAL IMPROVEMENTS WITHIN OPEN SPACE;**
5 **AMENDING A RELEVANT CROSS REFERENCE WITHIN THE OPEN SPACE**
6 **ADVISORY BOARD ORDINANCE; AND AMENDING SECTION 2-12-1, CAPITAL**
7 **IMPROVEMENTS PROGRAM INTENT AND SCOPE, TO MAKE PERMANENT**
8 **THE TWO PERCENT CIP SET ASIDE FOR OPEN SPACE 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 [Trust Acquisition and Capital Improvements] Fund and Land**
16 **Administration Ordinance.”**

17 **§ 4-2-3-2 OPEN SPACE [TRUST ACQUISITION AND CAPITAL**
18 **IMPROVEMENTS] FUND.**

19 **All balances in the Permanent Fund created by Resolution No. 41-1982, as**
20 **amended by Resolution No. 73-1986, [are hereby perpetuated in §§ 4-2-3-1 et**
21 **seq., but the fund shall now be called the together with all funds subsequently**
22 **added thereto from any source, including but not limited to grants, donations,**
23 **appropriations, interest earnings, and proceeds from land sales constitute the**
24 **“Open Space [Trust Acquisition and Capital Improvements] Fund.”**

25 **§ 4-2-3-3 SOURCE OF OPEN SPACE [TRUST ACQUISITION AND CAPITAL**
26 **IMPROVEMENTS] FUND MONEY.**

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1 (A) Some land within the Elena Gallegos Grant acquired by the city was
2 traded by the city to the United States for inclusion in the Cibola National
3 Forest and the lands acquired in exchange (the "Open Space Exchange
4 Lands") shall be sold, leased, or exchanged. The cash proceeds from any
5 sales, leases, or exchanges of Open Space Exchange Lands will be placed in
6 the Open Space ~~[Trust~~ Acquisition and Capital Improvements] Fund
7 ~~[perpetuated by §§ 4-2-3-1 et seq.]~~ PROCEEDS shall mean the net purchase
8 price paid to the City of Albuquerque for the land after deduction of all costs
9 incurred in the marketing or sale of the land. ~~[Income derived from the~~
10 ~~proceeds and other consideration not included in proceeds shall be utilized as~~
11 ~~provided for other income in § 4-2-3-4.]~~

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

23 (C) Money from sources such as grants, donations, and appropriations
24 may be placed in the Open Space ~~[Trust~~ Acquisition and Capital
25 Improvements] Fund ~~[created by §§ 4-2-3-1 et seq.]~~.

26 (D) If Open Space Exchange Lands are exchanged for land designated
27 as Major Public Open Space by the Albuquerque/Bernalillo County
28 Comprehensive Plan or other adopted city plans, no proceeds will be required
29 to be deposited into the Open Space ~~[Trust~~ Acquisition and Capital
30 Improvements] Fund. Any payment to the Academy necessitated by such an
31 exchange may be paid from the Open Space ~~[Trust~~ Acquisition and Capital
32 Improvements] Fund or from other available funds.

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1 § 4-2-3-4 USE AND ADMINISTRATION OF THE OPEN SPACE [TRUST
2 ACQUISITION AND CAPITAL IMPROVEMENTS] FUND INCOME.

3 The principal of the Open Space [Trust Acquisition and Capital
4 Improvements] Fund [~~shall be maintained intact and interest earned thereon~~
5 ~~and other income will be utilized for the following purposes:~~

6 — ~~Up to 90% of the annual earnings generated by investments~~ may[, subject
7 to appropriation,] be used for [capital improvements within City Open Space
8 and for] the acquisition of land designated for Major Public Open Space or for
9 public [open space] easement[s] or rights [of way as recommended] by the
10 Albuquerque/Bernalillo County Comprehensive Plan or other adopted city
11 plans[~~, and/or may~~ Any funds not used for these purposes may] be
12 reinvested as part of the principal of the Open Space Space [Trust Acquisition
13 and Capital Improvements] Fund[, ~~subject to the approval of the City Council~~
14 ~~upon recommendation by the Open Space Advisory Board. The remaining 10%~~
15 ~~of the earnings shall be added to the principal of the trust fund and~~
16 ~~reinvested~~].

17 § 4-2-3-5 DISPOSITION OF OPEN SPACE EXCHANGE LANDS.

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

25 (A) Methods of Disposition.

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

1 types of offers which would be acceptable to the city. Open Space Exchange
2 Lands may be exchanged by private exchange:

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

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

10 (2) Land acquired by exchange for subsequent sale shall be
11 deemed to be Open Space Exchange Land subject to §§ 4-2-3-1 et seq. and the
12 Agreement with the Albuquerque Academy. The Mayor shall obtain appraisals
13 of each parcel of land to be acquired, traded or sold before making or
14 considering offers for disposal. Appropriate fees will be paid to any outside
15 professional service utilized to affect the disposition of land under this
16 section; such service includes, but is not limited to, title insurance,
17 engineering, surveying, legal, brokerage, and appraisal.

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

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

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

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

31 (4) The Council's approval power is delegated to the Open Space
32 Advisory Board in the following cases: any license, easement, grant of right-
33 of-way or leasehold interest of less than ten years in duration, including any

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1 lease extensions or renewals, granted to any entity authorized to exercise the
2 power of eminent domain in the state, provided the value of the land so
3 encumbered does not exceed \$100,000. An aggrieved person shall have the
4 right to appeal such decision to the City Council within 15 days of the
5 decision.

6 § 4-2-3-6 EXPIRATION.

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

10 ~~§ 4-2-3-7 ADMINISTRATION OF THE TRUST FUND.~~

11 ~~—(A)—The Mayor with the advice of the City of Albuquerque Investment~~
12 ~~Committee ("Investment Committee") is authorized and directed to convey any~~
13 ~~funds appropriated to the Open Space Trust Fund to the City Treasurer or a~~
14 ~~trustee, with instructions to administer such fund as the Open Space Trust~~
15 ~~Fund for the uses and purposes set forth in this Article. The trust fund shall be~~
16 ~~permanent and irrevocable. Funds appropriated to the Open Space Trust Fund~~
17 ~~shall be invested in securities permitted by § 4-1-10 and subject to the city's~~
18 ~~investment policy in effect at the time of adoption of this section or as may be~~
19 ~~amended from time to time, and according to the recommendations and~~
20 ~~oversight of the Investment Committee.~~

21 ~~—(B)—If a trustee is selected, it shall be a qualified, responsible financial~~
22 ~~institution which shall be selected by the Mayor, subject to Council approval,~~
23 ~~for a term of up to five years after publication of a request for sealed bid~~
24 ~~proposals.~~

25 ~~—(C)—The administration of the trust fund shall be evaluated at least~~
26 ~~annually by the Investment Committee to determine whether the~~
27 ~~administration of the trust fund shall be undertaken by the City Treasurer, or a~~
28 ~~new trustee, who shall be selected as provided in division (B).~~

29 ~~—(D)—The fiscal year for the trust fund shall end on June 30 of each year.~~
30 ~~Within 30 days after the end of each fiscal year, the City Treasurer shall~~
31 ~~present a report of all investment activity of the past year in connection with~~
32 ~~the administration of the trust fund to the Open Space Advisory Board for its~~
33 ~~review and comment. The Treasurer shall then furnish the report and any~~

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1 ~~comments from the Open Space Advisory Board to the Mayor and the City~~
2 ~~Council.~~

3 ~~—(E)— In investing the principal of the trust fund, the trustee shall be~~
4 ~~subject to the restrictions imposed on investment of city funds under § 4-1-9.~~

5 ~~—(F)— The City Attorney shall prepare detailed instructions to the trustee~~
6 ~~consistent with the terms of this Article.]”~~

7 SECTION 2. The cross reference to the Open Space Trust Fund found in
8 Section 2-6-16(B), “Duties, Responsibilities, Powers” of the Open Space
9 Advisory Board is removed as follows:

10 “(B) Duties, Responsibilities, Powers.

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

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

- 17 (a) Implementation of adopted open space plans;
- 18 (b) Recommend to the City Council for its approval, a list of
19 priority properties suitable for acquisition through purchase, exchange, or any
20 other suitable mechanism, for purposes of "major public open space" or
21 "public easement or rights of way" for open space purposes, the locations of
22 which are consistent with the policies of the Albuquerque/Bernalillo County
23 Comprehensive Plan. Such recommendations shall be based upon policies or
24 procedures for the evaluation of open space priority properties as may be
25 approved by resolution of the City Council;
- 26 (c) Basic policies on management of city- owned open
27 space; and
- 28 (d) Criteria for evaluating proposals for significant physical
29 changes and installations on and adjacent to open space lands;
- 30 (e) Evaluation of proposals to install extraordinary facilities
31 on city-owned open space; and

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1 (f) Evaluation of proposals to sell, lease, exchange, or
2 otherwise dispose of open space exchange lands or other lands acquired with
3 open space funds.

4 ~~[(3) Advise the City Treasurer or designated trustee on the~~
5 ~~administration and management of the Open Space Trust Fund.]~~

6 [(4)(3)] Annually make recommendations to the EPC, the Mayor,
7 and the City Council on updating the open space program, including land
8 acquisition and other open space capital improvements.

9 [(5)(4)] Periodically review open space plans in consultation
10 with citizen interest groups, especially the Open Space Task Force. Advise the
11 EPC, the Mayor, and the City Council on needed new plans and plan
12 amendments, ranging from detailed project plans to the
13 Albuquerque/Bernalillo County Comprehensive Plan. Make recommendations
14 for the annual proposed city planning program.

15 [(6)(5)] Upon request, advise or assist the Mayor in negotiations
16 for open space land acquisition.

17 [(7)(6)] The Board's recommendations shall be consistent with
18 the conditions imposed on expenditure of interest of the Permanent Fund for
19 Open Space as specified in §§ 4-2-3-1 et seq. and the conditions imposed on
20 the expenditure of monies from the Quality of Life Fund as specified in
21 Resolution 89-1987; the Board's proposals shall also take into account all
22 funding sources available for the Open Space program.

23 [(8)(7)] Approve the sale or lease of certain interests in Open
24 Space Exchange Lands, as provided in § 4-2-3-5.”

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

28 “ ...

29 (O) Two percent of the General Obligation Bond Program shall be
30 reserved for the acquisition of lands identified for Open Space land and capital
31 restoration of Open Space.

1 ~~[(P) The term of the CIP Set Aside for Open Space Acquisition shall be~~
2 ~~for the following General Obligation Bond Cycles, 2017, 2019, 2021, 2023,~~
3 ~~2025, 2027, 2029, 2031, 2033 and 2035.]”~~

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

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

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

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