CITY of ALBUQUERQUE
TWENTY-FIRST COUNCIL

COUNCIL BILL NO. C/S(3) O-15-48 ENACTMENT NO. 0•2015•028

SPONSORED BY: Isaac Benton, Ken Sanchez

1
ORDINANCE
2 AMENDING THE OPEN SPACE TRUST FUND AND LAND ADMINISTRATION
3 ORDINANCE.
4 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
5 ALBUQUERQUE:
6 SECTION 1. The Open Space Trust Fund and Land Administration
7 Ordinance is hereby amended as follows:
8 “§ 4-2-3-1 SHORT TITLE.
9 Sections 4-2-3-1 et seq. shall be known and may be cited as the "Open
10 Space Trust Fund and Land Administration Ordinance."
11 § 4-2-3-2 OPEN SPACE TRUST FUND.
12 All balances in the Permanent Fund created by Resolution No. 41-1982, as
13 amended by Resolution No. 73-1986, are hereby perpetuated in §§ 4-2-3-1 et
14 seq., but the fund shall now be called the "Open Space Trust Fund."
15 § 4-2-3-3 SOURCE OF OPEN SPACE TRUST FUND MONEY.
16 (A) Some land within the Elena Gallegos Grant acquired by the city was
17 traded by the city to the United States for inclusion in the Cibola National
18 Forest and the lands acquired in exchange (the "Open Space Exchange
19 Lands") shall be sold, leased, or exchanged. The cash proceeds from any
20 sales, leases, or exchanges of Open Space Exchange Lands will be placed in
21 the Open Space Trust Fund perpetuated by §§ 4-2-3-1 et seq. PROCEEDS shall
22 mean the net purchase price paid to the City of Albuquerque for the land after
23 deduction of all costs incurred in the marketing or sale of the land. Income
24 derived from the proceeds and other consideration not included in proceeds
25 shall be utilized as provided for other income in § 4-2-3-4.
(B) If Open Space Exchange Lands are traded for land which is not Major Public Open Space as defined by adopted city plans, but is intended for ultimate sale or other disposal, no proceeds will be required to be deposited into the Open Space Trust Fund or payment made to the Albuquerque Academy pursuant to the purchase agreement approved by the City Council on March 15, 1982. To the extent that cash proceeds are received by the city as part of such an exchange, the cash proceeds will be deposited into the Open Space Trust Fund. When the land is ultimately sold, leased, or exchanged for Major Public Open Space, the operative portions of §§ 4-2-3-1 et seq. and the Academy Agreement regarding disposition of proceeds will take effect.

(C) Money from sources such as grants, donations, and appropriations may be placed in the Open Space Trust Fund created by §§ 4-2-3-1 et seq.

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

§ 4-2-3-4 USE AND ADMINISTRATION OF THE OPEN SPACE TRUST FUND INCOME.

The principal of the Open Space Trust Fund shall be maintained intact and interest earned thereon and other income will be utilized for the following purposes:

(A) Up to 90% of the annual earnings generated by investments may be used for the acquisition of land designated for Major Public Open Space or for public easement or rights by the Albuquerque/Bernalillo County Comprehensive Plan or other adopted city plans, and/or may be reinvested as part of the principal of the Open Space Trust fund, subject to the approval of the City Council upon recommendation by the Open Space Advisory Board.

The remaining 10% of the earnings shall be added to the principal of the trust fund and reinvested.

§ 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 considering offers for disposal. Appropriate fees will be paid to any outside professional service utilized to affect the disposition of land under this section; such service includes, but is not limited to, title insurance, engineering, surveying, legal, brokerage, and appraisal.
(B) Report by the Mayor and Approval by the Council or Its Designee.

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

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

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

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

§ 4-2-3-6 EXPIRATION.

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

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

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

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

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

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

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

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

SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph,
sentence, clause, word or phrase of this ordinance is for any reason held to be
invalid or unenforceable by any court of competent jurisdiction, such decision
shall not affect the validity of the remaining provisions of this ordinance. The
Council hereby declares that it would have passed this ordinance and each
section, paragraph, sentence, clause, word or phrase thereof irrespective of
any provisions being declared unconstitutional or otherwise invalid.

SECTION 3. COMPILATION. This ordinance shall be incorporated in and
made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five
days after publication by title and general summary
PASSED AND ADOPTED THIS 2nd DAY OF November, 2015
BY A VOTE OF: 8 FOR 0 AGAINST.

Excused: Harris

Rey Garduno, President
City Council

APPROVED THIS ______ DAY OF __________________, 2015

Bill No. C/S(3) O-15-48

Richard J. Berry, Mayor
City of Albuquerque

ATTEST:

Natalie Y. Howard, City Clerk
City of Albuquerque  
Office of the City Clerk

Richard J. Berry, Mayor  
Natalie Y. Howard, City Clerk

Interoffice Memorandum  
November 23, 2015

To: CITY COUNCIL

From: NATALIE Y. HOWARD, CITY CLERK


I hereby certify that on November 20, 2015, the Office of the City Clerk received Bill No. C/S(3) O-15-48 as signed by the president of the City Council, Rey Garduño. Enactment No. O-2015-028 was passed at the November 2, 2015 City Council meeting. Mayor Berry did not sign the approved Ordinance within the 10 days allowed for his signature and did not exercise his veto power. Pursuant to the Albuquerque City Charter Article XI, Section 3, this Ordinance is in full effect without Mayor's approval or signature. This memorandum shall be placed in the permanent file for Bill No. C/S(3) O-15-48.

Sincerely,

[Signature]
Natalie Y. Howard  
City Clerk