

---

---

**MEMORANDUM**

---

**DATE:** October 15, 2004

**TO:** Council Members

**FROM:** Janice Jardine  
Land Use Policy Analyst

**SUBJECT:** Open Space Lands Program Ordinance

cc: Rocky Fluhart, Sam Guevara, DJ Baxter, Lisa Romney, Steve Fawcett, Dan Mule, Linda Cordova, Rick Graham, Kevin Bergstrom, LeRoy Hooton, Jeff Niermeyer, Tim Campbell, Steve Domino, Ed Rutan, Lynn Pace, David Dobbins, Louis Zunguze, Brent Wilde, Doug Wheelwright

**File Location:** Open Space – Open Space Lands Program/Open Space Trust Fund and Advisory Board

---

---

**POTENTIAL MOTIONS:**

1. **["I move that the Council"]** Adopt an ordinance creating the Open Space Lands Program.
  2. **["I move that the Council"]** Not adopt an ordinance creating the Open Space Lands Program.
  3. I further move that the Council direct Council Staff to use the sample findings to prepare a set of standard required findings to be included in a future revision of the ordinance.
  4. I further move that the Council request that the Open Space Lands Board consider recommending "findings of fact" to be provided by the Administration for the disposition of city property to be included in a future ordinance revision.
- 

**WORK SESSION SUMMARY AND NEW INFORMATION**

At the Work Session on October 5<sup>th</sup>, the Council asked staff to identify examples of specific "findings of fact" to be provided by the Administration for the disposition of city property in addition to the procedure outlined by the City Attorney's office. The Council also asked staff to work with the Planning Director to define "low impact use". The Council requested that the ordinance specify that 3 members of the Council could call for an advisory vote in the disposition of property.

The Planning Director has provided the following definition. Low Impact Use – development or redevelopment activities that result in little or no land disturbance, such as, picnic tables, benches and playground equipment.

The City Attorney's office has prepared a revised ordinance that addresses an advisory vote and the low-impact use definition.

As previously noted, if the Council wishes to add further requirements, Council Members could include in the ordinance specific "findings of fact" to be provided by the Administration in addition to the

procedure outlined by the City Attorney's office. Or, the Council could consider including an additional item under "Duties of the Board" authorizing the Board to identify findings of fact to be provided by the Administration and recommend said findings to the Council for a future amendment to the ordinance.

**Examples of Findings of Fact:**

The following examples could be modified to relate to the Open Space Lands Ordinance.

➤ **PROCEDURE FOR THE DISPOSITION OF CITY OWNED ALLEYS.**

**Policy considerations for closure, vacation or abandonment of City owned alleys.**

The City will not consider disposing of its interest in an alley, in whole or in part, unless it receives a petition in writing which demonstrates that the disposition satisfies at least one of the following policy considerations:

A. Lack of Use. The City's legal interest in the property appears of record or is reflected on an applicable plat; however, it is evident from an on-site inspection that the alley does not physically exist or has been materially blocked in a way that renders it unusable as a public right-of-way;

B. Public Safety. The existence of the alley is substantially contributing to crime, unlawful activity, unsafe conditions, public health problems, or blight in the surrounding area;

C. Urban Design. The continuation of the alley does not serve as a positive urban design element; or

D. Community Purpose. The Petitioners are proposing to restrict the general public from use of the alley in favor of a community use, such as a neighborhood play area or garden.

➤ **STATE LERAY MCALLISTER CRITICAL LAND FUND DEFINING PRINCIPLES**

Adopted by the Quality Growth Commission September 12, 2001

**(Background:** The Quality Growth Commission is committed to prudently balancing the conservation and economic interests in the state since both are relevant to quality growth. Accordingly, the Commission desires to only use state critical land preservation funds when appropriate standards are met. The application of these standards is articulated here through three defining principles and the requisite implementation steps and intent language. Compliance with these principles will complement the Commission's legislative recommendation for a net gain of private land in the state and serve to protect the state's economic interests.)

**Principle #1 – Local Control**

McAllister funds may be used to acquire land or an easement only after the local elected legislative body within whose jurisdiction the subject property lies has in a public meeting, subject to normal notice requirements, provided the opportunity for public input and has subsequently approved the acquisition.

**Principle #2 – Defining the Public Benefit**

McAllister funds may be used for an acquisition of land or an easement only after the Commission has prepared, reviewed and adopted a statement of findings describing the compelling public benefit(s) that are unique or irreplaceable to be derived from the acquisition.

➤ **SALT LAKE CITY ZONING ORDINANCE**

**Standards for General Amendments**

- A. Whether the proposed amendment is consistent with the purposes, goals, objectives, and policies of the adopted general plan of Salt Lake City.
- B. Whether the proposed amendment is harmonious with the overall character of existing development in the immediate vicinity of the subject property.
- C. The extent to which the proposed amendment will adversely affect adjacent properties.

**Standards for Conditional Uses**

- A. The proposed development is in harmony with the general purposes and intent of this Title and is compatible with and implements the planning goals and objectives of the City, including applicable City master plans.
- B. The proposed development preserves historical, architectural and environmental features of the property.
- C. The proposed conditional use or, in the case of a planned development, are compatible with the neighborhood surrounding the proposed development and will not have a material net cumulative adverse impact on the neighborhood or the City as a whole.

---

The following information was provided previously for the Council Work Session on October 5, 2004. It is provided again for your reference.

---

**POTENTIAL OPTIONS:**

- A. Advance the ordinance forward for Council action.
- B. Request outside legal counsel review of the proposed ordinance prior to Council action.
- C. Identify specific findings of fact required for sale of open space to be included in the ordinance.
- D. Request that the Board identify specific findings of fact and provide a recommendation to the Council for a future amendment to the ordinance.
- E. Any combination of the above.
- F. Other options identified by Council Members.

---

Please find attached a new draft ordinance with changes from the Council's discussion in July (shown in revision format) and revised text for the section dealing with removal of lands from the program (prepared by the Attorney's office.) (In order to remain consistent with the Open Space bond language and the consultant's recommendation to use the term "open land" rather than "open space", the Attorney's office recommended using the term "open space land" throughout the document.)

On July 8, 2004, the Council reviewed suggested changes to the proposed draft Open Space Lands Trust Fund and Advisory Board Ordinance. The Council asked for follow-up in two areas, and the Planning Director has since requested follow-up in a third area:

## ITEM A-3 & F-5

1. The extent to which the Council may be involved in the disposition of City-owned property. (Council)
2. The options for ensuring that land acquired using open space funding are properly protected. (Council)
3. Additional clarification on the definition of Open Space Land (Planning Director)

In regard to the definition of Open Space Land, the Planning Director has provided additional information explaining the rationale for requesting that the Council change the proposed definition. Please see the attached email document for details. The Director notes that “neighborhood parks compatible with low-impact use” identified in the Open Space Land definition needs some clarification in order to eliminate the potential for confusion. He suggests:

1. Define “low-impact use”, or
2. Emphasize that the Definition Section should identify that the City is interested in acquiring predominantly open and undeveloped land for any of the uses identified in the Open Space Land definition.

In regard to the extent to which the Council may be involved in the disposition of City-owned property, Lynn Pace in the City Attorney’s office provided a legal opinion. Please see the attached memo for details. Council staff contacted Mr. John Martinez regarding this issue. Mr. Martinez confirmed Mr. Pace’s opinion that State Statute does not allow for a Council vote on the disposition of City property.

It is staff’s understanding that while the Council cannot vote on the final disposition of property, the Council can set clear policy expectations and spell out a public process. In keeping with that, staff requested that the City Attorney’s Office prepare a draft that includes a number of procedural requirements to ensure public notification and maximum opportunity for public input. In addition, the draft ordinance language requires a 6-month waiting period to ensure that no sale of open space is completed without maximum deliberation and an opportunity to explore alternatives to the proposed sale or transfer. The City Attorney’s office has spelled out a mandatory procedure that includes the following. (Please see the proposed text for specific details.)

1. A written proposal for any sale or transfer of open space land signed by the Mayor.
  - a. Description of the property
  - b. Purpose of the proposed sale or transfer
  - c. Proposed purchaser
  - d. Purchase price
  - e. Anticipated future use
  - f. Anticipated zoning change to be requested
  - g. Statement by the Mayor explaining why the sale/transfer is in the best interest of the City
2. Holding a public hearing before the Mayor and the City Council.
3. Publication of public notice of the public hearing
  - a. For two successive weeks beginning at least 30-days prior to the hearing
  - b. In a newspaper of general circulation in the city
  - c. In a portion of the newspaper other than legal notices and classified advertisements sections
4. Posting signs (2 feet by 3 feet) on the property providing information regarding the public hearing at least 30-days prior to the hearing.
5. Mailed written notice to all property owners within 1000 feet at least 30-days prior to the hearing.
6. Notices must include language to indicate:
  - a. The Mayor is proposing to sell or transfer open space land owned by the City.
  - b. Location
  - c. Sale amount
  - d. Proposed buyer
  - e. Proposed future use

ITEM A-3 & F-5

7. No sale or transfer may occur until at least 6-months after the hearing to provide an opportunity to explore alternatives to the proposed sale or transfer.

If the Council wishes to add further requirements, Council Members could include in the ordinance specific “findings of fact” to be provided by the Administration in addition to the procedure outlined by the City Attorney’s office. Or, the Council could consider including an additional item under “Duties of the Board” authorizing the Board to identify findings of fact to be provided by the Administration and recommend said findings to the Council for a future amendment to the ordinance.

In regard to the desire to ensure that open space purchased with the bond funding is protected, the Attorney’s Office has drafted language as follows, and has indicated that the Council could set more specific requirements as a condition of appropriating funds for specific parcels, similar to the way in which Housing Trust Fund loans are approved by the Council:

Sec. 2.88.040 – Creation of Fund. (pg. 4)

- C. Expenditures from the Fund shall be used for the sole purpose of acquisition and/or protection of Open Space Lands. The appropriation of any amounts from the Fund for the acquisition of land shall be conditioned upon granting a restrictive covenant or conservation easement in favor of a qualified public or non-profit land conservation entity, in a form sufficient to ensure that any land acquired shall be protected and preserved as open space in perpetuity.

Email received by Jardine, Janice

From: Pace, Lynn  
Sent: Friday, October 15, 2004 12:24 PM  
Subject: open space lands

Revisions requested by the City Council at the briefing session on October 5. The changes are as follows:

1. Additional definition material added to describe what constitutes low impact use. (Section 2.88.020 A.5)
2. Adding a requirement that, except to the extent that the bond documents require otherwise, any proceeds from the sale or transfer of open space land must be deposited into the open space land trust fund. (Section 2.88.040 A.5)
3. Allowing the City Council to hold an advisory vote on any proposed sale or transfer of open space land. (Section 2.88.120 A.2(d))

Please let me know if you have any questions or need anything further on this matter. As an aside, I will not be able to attend the Council meeting on Tuesday, October 19, so if you have any questions, please let me know in advance.

Thanks. LHP