

ORDINANCE NUMBER \_\_\_\_\_

An ordinance generally amending Title 12, Chapter 12.56 of the Missoula Municipal Code, entitled "Open Space Acquisition," in order to clarify the procedures applicable to the expenditure of funds related to a new conservation bond issuance as well as the makeup and role of the Open Space Advisory Committee in reviewing open space proposals

BE IT ORDAINED THAT Title 12, Chapter 12.56, Section 12.56.060 is deleted, Sections 12.56.015 and 12.56.045 are added, Section 12.56.080 is renamed and amended, and Sections 12.56.010 through 12.56.070 and 12.56.090 and 12.56.110 of the Missoula Municipal Code are amended to read as follows:

## Chapter 12.56

### OPEN SPACE

#### Sections:

12.56.010— Short title.

12.56.015 Terms and their Definitions as used in this Chapter.

12.56.020 Purposes.

12.56.030 General policies.

12.56.040 Types of acquisitions authorized.

12.56.045 Improvements to open space land

12.56.050 Conservation bond.

12.56.060 Repealed.

12.56.070 Citizens Advisory Committee on Open Space.

12.56.080 Committee's Review of Open Space Proposals.

12.56.090 Alternative and supplemental sources of funds.

12.56.100 Open space land conservation by other organizations.

12.56.110 Conversion or diversion of open space land.

**12.56.010 Short title.** This chapter may be cited as "The City of Missoula Open Space ~~Conservation~~ Ordinance."

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#### **12.56.015 Terms and their Definitions as used in this Chapter**

Open Space – A broad term intended to track the definition found in 76-6-104(3), MCA, generally including parks, trail corridors, greenbelts or greenways, conservation lands, riparian areas, and agricultural lands that are provided or preserved for public benefit.

Open Space Plans – Any City Council adopted land use or issue plan that addresses the vision, goals, and strategies related to City Open Space. May include components of various management plans, active transportation plans, or other planning documents which promote, protect, administer, and provide for open space.

Conservation Bond Fund – A fund created to hold voter approved general obligation bond proceeds from (1) the City's portion of the 2006 Missoula County open space bond, a ten million dollar general obligation bond authorized by a vote of Missoula County voters on November 7, 2006, and (2) the City's portion of the 2018 Missoula County open space bond, a fifteen million dollar general obligation bond authorized by a vote of Missoula County residents on November 6, 2018.

Open Space Fund – A separate fund or funds created to hold the proceeds of donations, bequests, grants, and appropriated moneys that are specifically earmarked for City open space acquisition projects.

**12.56.020 Purposes.** The purposes of this chapter are:

- A. To implement, with respect to the City of Missoula, MCA 76-6-104(3) the Montana Open-Space Land and Voluntary Conservation Easement Act of 1969 and the 1995 Missoula Urban Area Open Space Plan; City Council adopted open space plans, including applicable land use and open space management plans.
- B. To establish procedures for the conservation and enhancement of open space landlands located within or near the City's borders; and
- C. To establish procedures for the administration and use of the proceeds of open space bonds including, but not limited to: 1) the Missoula Conservation Bond, a five hundred thousand dollar general obligation bond issue authorized by a vote of the people November 4, 1980 (Ord. 2183 2, 1981), 2) A subsequent Missoula Conservation Bond, a five million dollar general obligation bond issue authorized by a vote of the people November 7, 1995, 3) ~~other such bonds which may be issued, and 4) other funds, bequests, donations, or grants of money, property, service or other advantages and comply with any condition that is not contrary to the public interest earmarked for open space.~~ the City's portion of the 2006 Missoula County open space bond, a ten million dollar general obligation bond authorized by a vote of Missoula County voters on November 7, 2006, the City's portion of the 2018 Missoula County open space bond, a fifteen million dollar general obligation bond authorized by a vote of Missoula County voters on November 6, 2018, and other such bonds which may be issued; and
- D. To provide guidance for the expenditure of other funds, bequests, donations, or grants of money, property, service, or other transfers with conditions or restrictions related to open space conservation and enhancements.

**12.56.030 General policies.** It shall be the policy of the City:

- A. To preserve significant open space land, including conservation land, parkland, trails, greenways, views and vistas, agricultural land, riparian land, and urban forest, which, because of its aesthetic, scenic, recreational, historic or ecological value, it is in the public interest to preserve;
- B. To preserve conservation open space ~~land and views and vistas~~ lands in such a manner and under such conditions as to ensure that they remain substantially undeveloped for a significant period of time, preferably in perpetuity;
- C. To acquire and administer public parks ~~and,~~ trails, and other appropriate open space lands in such a manner as to ensure their availability for ~~open space use~~ public benefit;
- D. To make a vigorous effort to preserve open space land under terms and conditions involving the least possible outlay of public funds;
- E. To preserve our native forest, protect and enhance our planted forest, and encourage continued forestation of urban lands through acquisition, restoration, reforestation, and other means;
- F. To preserve significant agricultural lands in their historic use and preserve agricultural soils;
- G. In preserving open space land other than by gift, to utilize sources of funding other than the conservation bond fund and open space bonds to the maximum extent feasible, and thus to conserve the ~~fund~~ bond funds to the greatest extent practicable; and

H. In some cases, funds may be used for the purchase of lands with the intent to pursue limited development or to hold all or a portion of the land for prospective trade or sale from which the proceeds shall be used for acquisition or enhancement of open space real property, in accordance with the goals of ~~the open space plan~~plans. These lands are not to be subject to the provisions of Section 12.56.110 pertaining to the diversion or conversion of lands; and

I. In some cases, funds may be used to improve or enhance open space lands as enumerated in section 12.56.045 below.

#### **12.56.040 Types of acquisitions authorized.**

A. Acquisition of open space real property interests by the City or in partnership with the City may be by purchase (whether by bargain sale or otherwise), gift, bequest, donation, grant, lease, easement, conservation easement, trade, or a combination of the above; and

~~B. Open space real property interest acquired by the City or, with the approval of the City, through a qualified private organization, or a public agency by acquiring fee or conservation easement in accordance with the provisions of the Montana Open Space Land and Voluntary Conservation Easement Act, or other appropriate interests that the City determines are in the public interest; and~~

~~C.~~ The type of open space real property interest acquired shall be sufficient to ensure its preservation as open space land in accordance with the City policies listed in 12.56.030 A through H except in the event that the conditions enumerated in Section 12.56.100 occur.

**12.56.045 Improvements to open space land.** Improvements shall meet the requirement of the Montana Open-Space Land and Voluntary Conservation Easement Act, MCA § 76-6-101, et seq., as amended, and/or the intent of the funding source.

A. In connection with real property acquired, conserved, or designated for the purposes of the Montana Open Space Land and Voluntary Conservation Easement Act, the City may provide or arrange for the provision, construction, maintenance, operation, or repair of any natural or public infrastructure that may be necessary for the provision, conservation, maintenance, and management of the property as open space land.

B. In compliance with applicable management plans, the City may expend open space bond funds to restore and make improvements to open space lands to ensure they continue to serve the public purposes for which they were protected. City Council shall review and approve proposals to restore or improve open space lands.

#### **12.56.050 Conservation bond.**

A. Administration of Fund. The proceeds of the ~~conservation bond~~City's allocation of the 2006 open space bond and 2018 open space bond shall be placed in a special earmarked fund referred to as the conservation bond fund, dispersible only as provided hereinafter. ~~The entire proceeds or, subsequent to disbursements, the remainder of the proceeds not disbursed, money in the conservation bond fund~~ shall be invested so as to secure the maximum rate of return to the City, subject to the limitations and conditions set forth in Montana law and the Internal Revenue Code, and subject also to the possible need to have all or part of the fund available for immediate disbursement. Proposed investments of the fund shall be reviewed by the Citizens Advisory Committee on Open Space established by Section 12.56.060~~Finance Department with recommendations to City Council~~ to insure that the time period of the investment is not inconsistent with anticipated needs for disbursement;

B. Disbursements.

1. Disbursements ~~from of funds out of~~ the conservation bond fund shall ~~only be such as are~~ specifically authorized by the City Council.

2. The City Council may in no event authorize disbursements from the conservation bond fund until the review procedures specified in Section 12.56.060080 have been fully complied with; ~~and,~~  
Upon receipt of the recommendations of the Citizens Advisory Committee on Open Space, the Council may, in its discretion, hold a public hearing on the open space proposal before taking action on the proposal.

C. Restricted Purpose of Disbursements. Disbursements from the conservation bond fund may be made only for the purpose of acquiring open space real property interests ~~and for,~~ trail development and matching other sources of funds for trail development; and improvements to open space land. Open space real property ~~interest~~interests acquired through disbursements from the conservation bond fund may be held in either the name of the City or a qualified ~~private organization or public agency partner.~~ Ancillary expenses of acquisition, trail development, or improvements to open space land, including but not limited to payment of attorneys' fees, appraisal fees, survey fees, and consultants' fees (whether direct charges to the City or reimbursements for expenses incurred by a landowner), may be drawn from the fund, so long as they are directly related to the acquisition, development or improvement of an open space real property interest in a particular parcel of land by the City or, with the approval of the City, by a qualified private organization or public agency.

#### **12.56.060 Review procedures- Repealed.**

~~A. Before any open space conservation proposal is presented to the City Council for approval (whether or not this proposal requires disbursements from the conservation bond fund), it shall be reviewed by the Citizens Advisory Committee on Open Space acquisition established by Section 12.56.070, and a written recommendation from the Committee with regard to the proposal shall be forwarded to the Council as provided for in Section 12.56.070 (E);~~

~~B. In the case of the proposed acquisition of a conservation easement, the matter shall also be submitted to the Missoula City-County Planning Board for review, in accordance with the Montana Open Space Land and Voluntary Conservation Easement Act; and~~

~~C. Upon receipt of the recommendations of the citizen's committee and if applicable, of the Planning Board, the Council may, in its discretion, hold a public hearing on the conservation proposal before taking action.~~

#### **12.56.070 Citizens Advisory Committee on Open Space.**

A. There is established a committee, known as the Citizens Advisory Committee on Open Space, which shall ~~be appointed by the City Council and shall~~ consist of eleven citizens, at least six of whom are qualified electors residing in the City, and the remainder of whom are qualified electors residing either in the City, or in an area within ~~a four and one-half mile radius of the City- the Missoula Planning Region. The City Council shall appoint seven members and the Mayor shall appoint three members, with the remaining seat held, or appointed, by the City Parks and Recreation Board.~~ Each member of the Committee shall serve for a period of three years from date of appointment, with the initial terms being staggered to provide that the terms of four members of the Committee expire annually, except that every third year only three members' terms shall expire;

B. The Committee shall operate in accordance with bylaws approved by the City Council, which shall provide, among other things, that meetings of the Committee shall take place in accordance with the provisions of Montana law;

C. The City shall provide appropriate staff support for the Committee;

D. In appointing citizens to the Committee, the Council and Mayor shall require full disclosure by applicants of existing or potential conflicts of interest, and may consider the same in making appointments. Members of the Committee shall have a continuing obligation to fully to disclose existing or potential conflicts of interest to the Committee, which shall have the power to disqualify any one of its members for such a conflict. In no event may a Committee member who has an actual or apparent conflict of interest with respect to a particular ~~proposed acquisition~~ open space proposal participate in any manner in the Committee's review of that ~~acquisition; proposal.~~

E. It shall be the duty of the Committee to:

1. Do everything in its power to implement ~~the Missoula Urban Area Open Space Plan (Ord. 1575, 1995); and~~ city open space plans, particularly concerning the acquisition of, and capital expenditures for improvements to, parks, trails, or other open space lands using conservation bond funds; and
2. Provide the Council with written recommendations concerning ~~open space the acquisition, improvement, and disposal of lands using funds from the~~ conservation proposals, including proposed acquisitions and trail development proposals, bond fund or open space fund pursuant to the guidance of ~~the Missoula Urban Area Open Space Plan (Ord. 1575, 1995)~~ applicable city open space plans as adopted by the City ~~and County in August, 1995 and any subsequent revisions~~ Council.

#### **12.56.080 Committee's review of ~~conservation~~ open space proposals.**

A. In its review of ~~conservation~~ open space acquisition proposals the Committee may hear testimony, require and consider reports, make on-site visits, and hold work sessions with or without expert assistance, for the purpose of determining the desirability of any proposed acquisition, and of recommending on what terms such an acquisition should occur if found desirable. In making these determinations, the Committee shall consider, along with any other matters it deems relevant, the following matters:

1. The selection criteria included in ~~the Missoula Urban Area Open Space Plan (Ord. 1575, 1995);~~ applicable city open space plans;
2. Whether the conditions imposed upon or associated with the ~~conservation~~ acquisition proposal, including the specific legal conditions to be set forth in ~~the any~~ grant instrument, ~~and including also~~ the guidelines proposed for managing the open space ~~land to be acquired, lands~~ are adequate to accomplish and ensure ~~preservation and use in the most desirable manner, are fair, conservation~~ and are in the public interest;
3. Whether there are additional terms or conditions, or land management guidelines or policies, that should be incorporated in or set forth in relation to the proposal;
4. Whether the costs associated with the proposal are reasonably related to the land's value to the community as open space;
5. Whether the proposal will accomplish ~~preservation~~ conservation at the least possible cost (for example, if a fee simple purchase is proposed, whether easements have been explored); and
6. Whether the extent of disbursements from the conservation ~~bond fund~~ necessary to carry through the proposal are reasonably related to the ~~Missoula Urban Area Open Space Plan (Ord. 1575, 1995);~~ goals of applicable city open space plans, or whether the disbursements would give

disproportionate emphasis to one parcel or type of land, to the detriment of the community's interest in preserving other parcels or types of land.

B. Upon concluding its deliberations with respect to ~~a conservation proposal~~ an open space acquisition proposal pursuant to subsection A, or a conservation bond funded capital improvement proposal pursuant to subsection D, the Committee shall forward a written report to the Council expressing its findings and recommendations ~~concerning the acquisition.~~ Such a report may include minority recommendations, if any, and such appendices as the Committee may think desirable for the information of the Council ~~(Ord. 2183-8, 1981).~~

C. In the case of the proposed acquisition of a conservation easement, the matter shall also be submitted to the appropriate Missoula County planning authority for review, in accordance with the Montana Open-Space Land and Voluntary Conservation Easement Act.

D. In the case of open space capital improvements using money from the conservation bond fund, the Committee may hear testimony, require and consider reports, make on-site visits, and hold work sessions with or without expert assistance, for the purpose of determining the desirability of a proposed improvement, and shall make a recommendation to City Council regarding the proposed improvement.

#### **12.56.090 Alternative and supplemental sources of funds.**

A. In connection with the acquisition of a particular parcel of open space land, the City may, for the purpose of defraying all or part of the ~~purchase price~~ cost (including ancillary expenses), accept and expend donations (whether of money, property, or services) from private parties and organizations; grants from governmental, charitable or other entities; and moneys specifically appropriated by other governmental entities for this purpose. In addition, the City may, in its discretion, appropriate funds for this purpose in accordance with the provisions and limitations of the Montana Open-Space Land and Voluntary Conservation Easement Act;

B. In addition, the City may, for the purpose of furthering its general open space acquisition program and having additional funds available for use in future acquisitions, accept donations, bequests, ~~grants,~~ and appropriated moneys and accumulate and expend them as set forth in subsections C through E below;

C. ~~There is established, in~~ In addition to the conservation bond fund described in Section 12.56.050, ~~the City may create other~~ the City may create other earmarked ~~fund known as the~~ open space ~~fund~~ funds for the purposes of open space acquisition, in which shall be deposited all of the funds mentioned in subsections A and B above;

D. Disbursements from ~~the~~ an open space fund may be made only in the manner and for the purposes set forth in Section 12.56.040 ~~B and C~~. Until disbursements are made, or in case part of the fund remains unexpended after disbursements, the moneys in the fund shall be invested in a reasonable and prudent manner so as to ~~insure~~ ensure the maximum rate of return on the money, and the interest so earned shall be deposited in and accumulated in the fund; and

E. If not in conflict with the specific terms of the grant or donation, the City may sell, trade, or otherwise reasonably dispose of any property donated to it for purposes of ~~open space~~ acquisition of open space (as distinguished from property donated as open space land), ~~and~~ or acquired using money from an open space fund. The City shall deposit the proceeds in ~~the~~ an open space fund.

#### **12.56.100 Open space land conservation by other organizations.**



—A. No provision of this chapter is intended to or shall prevent any qualified private organization, as that term is defined in the Montana Open-Space Land and Voluntary Conservation Easement Act from acquiring or holding open space land located within or near the City; and

—B. When it is in the public interest to do so, the City may acquire, hold and administer open space land cooperatively with other governmental entities or qualified private organizations, under such terms and conditions as will best fulfill the purposes and policies of this chapter.

C. When it is in the public interest to do so, the City may provide funds from the conservation bond fund for acquisition of open space real property interests by or in the name of a qualified private organization or other public agency. If funds are provided to or for the benefit of a qualified private organization or public agency for the acquisition of an open space real property interest, the City shall enter into an agreement with the qualified private organization or public agency sufficient to ensure that such acquisition is and remains consistent with the general policies expressed in Section 12.56.030. Such agreement may provide the City with a reversionary interest in the open space real property interests.

#### **12.56.110 Conversion or diversion of open space land.**

A. No open space land acquired by the City using conservation bond funds described in section 12.56.050 shall be converted or diverted from open space use, including uses described in Section 12.56.030 (F), unless the provisions of the Montana Open-Space Land and Voluntary Conservation Easement Act have been fully complied with. In addition, no open space land acquired by the City, except land identified in Section 12.56.030 (H), may be converted or diverted from open space use unless:

1. The City Council has, after public hearing, made the findings called for in subsection B of this section and passed a resolution calling for a referendum on the matter of such conversion or diversion at a general or special City election; or
2. A petition calling for such a referendum, signed by fifteen percent of the registered voters in the City, has been submitted to the City in a regular manner; and in either case,
3. At the election ~~upon such referendum, at least forty~~ called pursuant to subsection (1) or (2) above, more than fifty percent of ~~the registered electors of the City vote upon the questions, and of those voting upon it, at least sixty percent~~ the referendum vote in favor of conversion or diversion.

B. The City Council may not consider a resolution for a referendum on the conversion or diversion of any parcel of open space land until it has found, on the basis of the public hearing, either that:

1. Due to changed circumstances, the land has lost its value as open space land significant to the community; or
2. That there exists an overriding public interest in conversion or diversion of the land.

C. Any moneys or other valuable consideration received by the City in connection with any conversion or diversion of open space land are required to be deposited in the earmarked fund established by Section 12.56.090 (C); and

D. The referendum procedures established by subsection A of this section are special referendum procedures relating specifically to conversion or diversion of open space land, and in no way imply that the acquisition of open space land or other property by the City is a legislative act.

Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

Effective Date. This ordinance will be effective 30 days after passage.

First reading and preliminary adoption on the \_\_\_\_ day of \_\_\_\_\_, 2019, by a vote of \_\_\_\_ ayes ; \_\_\_\_ nays; \_\_\_\_ abstaining; and \_\_\_\_ absent.

Second and final reading and adoption on the \_\_\_\_ day of \_\_\_\_\_, 2019 by a vote of \_\_\_\_ ayes; \_\_\_\_ nays; \_\_\_\_ abstentions; and \_\_\_\_ absent.

ATTEST:

APPROVED:

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Martha L. Rehbein, CMC  
City Clerk

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John Engen  
Mayor