

ORDINANCE NO. 97-60

AN INITIATED ORDINANCE SUBMITTED TO THE ELECTORS OF THE CITY
AT THE REGULAR GENERAL MUNICIPAL ELECTION ON APRIL 1, 1997
RELATING TO THE CREATION OF A TRAILS, OPEN SPACE AND PARKS
PROGRAM THROUGH A SALES AND USE TAX.

WHEREAS, Section 29-2-102, Colorado Revised Statutes, and Chapter 7 of the Code of the City of Colorado Springs 1980, as amended ("City Code") authorize the City of Colorado Springs ("City") to levy a sales or use tax, or both, upon the approval of a majority of the registered electors of the city voting on such proposal; and

WHEREAS, the City Code provides that a proposal for a citywide sales and use tax may be referred to the registered electors of the City upon initiation by registered electors pursuant to requirements under the City Code; and

WHEREAS, there is a critical need for the preservation of open space lands and for the provision of trails and parks within the City of Colorado Springs, (the "City") and areas within the immediate vicinity of the City, and it is in the best interests of the present and future citizens of the City to establish a sales tax and use tax of one tenth of one percent (0.10%) to finance the foregoing; and

WHEREAS, it is the intent of the Ordinance to encourage, foster and promote public-private partnerships in the preservation of open space lands, trails and parks in the City and surrounding areas; and

WHEREAS, registered electors within the City desire to submit this proposal to all registered electors of the City;

NOW, THEREFORE, BE IT RESOLVED that the Code of the City of Colorado Springs 1980, as amended, shall be amended to reflect the following provisions:

Section 1) An ordinance amending those sections of Article 2, Chapter 7 of the Code of the City of the City of Colorado Springs 1980, as amended, which reflect the tax rate are hereby amended to reflect an increase of .1%.

GENERAL PROVISIONS

1. **Purpose.** The general purposes of this ordinance are as follows:

a. To establish a trails, open space and parks program to acquire real property in the City and El Paso County by various types of transactions when determined by the City Council, acting pursuant to authority set forth in this ordinance to be necessary to preserve such areas;

b. To acquire water rights and water storage rights for use in preserving fragile ecosystems, natural areas, scenic vistas and areas, fish and wildlife habitats and corridors, or important areas that support biodiversity,

natural resources and landmarks, and cultural, historical and archeological areas;

c. To acquire mineral and fuel resource rights in order to protect the visual geological and biological surface features of open space lands and trails;

d. To acquire rights-of-way and easements for access to open space lands and for trails and to build and improve such access ways and trails;

e. To acquire options related to these acquisitions;

f. Conservation of new open space lands shall be related to resource management including but not limited to water improvements (irrigation, domestic use and recreational use), preservation enhancements (fences, wetlands and wildlife habitat improvements), and passive recreational uses, such as trails, trailhead parking and other access improvements, and restrooms;

g. To manage, patrol, improve and maintain all new open space lands and trails acquired with revenues generated by a sales and use tax approved by the electorate pursuant to this ordinance in accordance with the purposes set forth in this ordinance;

h. To improve new park lands acquired with revenues generated by a sales and use tax approved by the electorate pursuant to this ordinance in accordance with this ordinance;

i. To permit the use of the funds generated by the approved sales and use tax for the joint acquisition of new open space lands between the City and the County of El Paso and neighboring counties, recreational districts or with other governmental entities or land trusts, or with private individuals, corporations or entities, as would benefit the citizens of the City;

j. To permit the use of the funds generated by the approved sales and use tax for repaying bonds issued for trails, open space and park capital purchases;

k. Open space lands, for the purposes of this ordinance, are generally described as those lands that are, or which may be in the future, in the public interest to protect and preserve, and which fulfill one or more of the functions described in this ordinance. The interest acquired may include fee simple ownership, leases, easements, including conservation easements, or development rights. All open space lands purchases in fee simple shall require the payment of fair market value as just compensation. The City shall be authorized, but shall not be obligated, to accept lands donated as trails, open space or park lands which are consistent with the functions or which fulfill the purposes described herein.

l. Open space lands shall serve one or more of the following functions:

- 1) linkages and trails, access to public lakes, streams, and other suitable open space lands, stream corridors and scenic corridors along existing highways;
- 2) preservation of fragile ecosystems, natural areas, scenic vistas and areas, fish and wildlife habitats and corridors, or important areas that support biodiversity, natural resources, significant land formations and landmarks, and cultural, historical and archeological areas;
- 3) creating spatial definition of and between urban areas;
- 4) areas of environmental preservation, designated as areas of concern, generally in multiple ownership, where several different preservation methods (including other governmental bodies' participation or private ownership) may need to be used;
- 5) conservation of natural and visual resources, including but not limited to forest lands, range lands, agricultural land, aquifer recharge areas, and surface water;
- 6) lands within or adjacent to a park or public open lands whose development potential is clearly incompatible with those lands;
- 7) preservation of land for educational opportunities and outdoor recreation areas limited to passive recreational use, including but not limited to hiking, photography or nature studies, and if specifically designated, bicycling, horseback riding, or fishing.

m. Park lands shall serve one or more of the following functions:

- 1) Irrigated multi-purpose turf playing areas for both youth and adult baseball, softball, soccer, football, etc.
- 2) Individual picnic areas and group picnic pavilions;
- 3) Playgrounds;
- 4) On site parking; and
- 5) Restrooms, drinking water fountains and storage areas.

n. Trails are defined as public thoroughfares within and connecting open space lands for non-motorized use, often located in or near natural waterways, and which shall serve one or more of the following functions:

- 1) Hiking, walking or jogging;
- 2) Recreational or commuter bicycling; and

3) Horseback riding.

o. No motorized vehicles, other than those necessary for maintenance, emergencies or safety, shall be permitted on trails, open space or parks supported by this ordinance. No right-of-way for new roadways or utility corridors shall be assumed in areas obtained pursuant to this ordinance.

p. When public improvements are located in urban trail corridors, maximum effort will be undertaken to restore the land to its natural state while also providing for efficient maintenance of the constructed facilities.

2. City Code Definitions Incorporated. For purposes of this ordinance, the definitions of the words contained herein shall be as defined in Chapter 7 of the City Code concerning Sales and Use Taxes which definitions are incorporated herein by this reference.

DEPOSIT AND EXPENDITURE OF REVENUES

3. The sales tax and other revenue source funding collected pursuant to this ordinance shall be deposited in a special fund, to be known as the "Colorado Springs Trails, Open Space and Parks Fund" (the "Fund") and all revenue derived from said sales tax and revenues received from other sources shall be allocated and expended only in the following amounts, and for the following purposes:

a. Of the proceeds collected pursuant to this ordinance, a maximum of two percent (2%) may be deposited into an account identified as a Trails, Open Space and Parks Administration, Planning and Maintenance Fund as may be allocated for use by the City Council as recommended by the new Trails, Open Space and Parks Advisory Committee ("Advisory Committee") established by this ordinance for planning purposes as concerning trails, open space and parks.

b. For purposes of Article X, Section 20 of the Colorado Constitution and City Charter Section 7-90, the receipt and expenditure of revenues of the sales and use tax shall be accounted for, budgeted and appropriated separately from other revenues and expenditures of the City and outside of the fiscal year spending of the City as calculated under Article X, Section 20 and City Charter Section 7-90. and nothing in Article X, Section 20 and City Charter Section 7-90 shall limit the receipt and expenditure in each fiscal year of the full amount of such revenues of the sale and use tax, nor shall receipt and expenditure of such revenues affect or limit the receipt or expenditure of any and all other revenues of the City for any fiscal year; nor shall Article X, Section 20, or City Charter Section 7-90 limit the receipt and expenditure of revenues received from sources outside of the sale and use tax described by this ordinance, regardless of the source, and specifically including, but not limited to, any revenues received from the Great Outdoors Colorado Fund or private donations.

c. Private individuals, corporations or entities may form public-private partnerships with the City and the respective municipalities to advance the purposes described in Section 1 of this ordinance, including the making of private donations for such

purposes. This ordinance shall not be construed to limit any tax credits or deductions that may be afforded to private individuals, corporations or entities for charitable donations made hereunder and which are permitted by the Internal Revenue Code, as amended.

d. The City may issue bonds as approved by the voters in future elections to advance the capital acquisition purposes of this ordinance.

e. Interest generated from the revenues of the sales and use tax or other revenues received pursuant to this ordinance shall be used for the purposes set forth above in this ordinance.

f. Open Space Lands Account. Of the revenues distributed hereunder, after deductions for planning as described in Section 3.a. above, a minimum of sixty percent (60%) shall be used only for the acquisition and stewardship of new open space lands as provided herein.

1) The funds allocated for new open space lands shall be expended by the City only for the purposes set forth in Section 1 of this ordinance.

2) Excepting land leases for the growing of agricultural crops, no new open space land acquired through the revenue provided by these sales taxes or other revenue sources as described in this ordinance may be sold, traded or otherwise conveyed, nor may any exclusive license or permit with respect to such open space land be given, until approval is given by a majority vote of the electors of the City in a regular election after referral from the City Council or through a citizen initiative. Prior to such referral to the electors of the City, the proposal shall be reviewed by the Advisory Committee established by this ordinance which shall make a recommendation to the City Council.

3) If the new open space land or any interest acquired in real property by use of proceeds of said sales and use tax generated pursuant to this ordinance be ever sold, exchanged, transferred or otherwise disposed of, the consideration for such sale, exchange, transfer or disposition shall be subject to the same expenditure and use restrictions as those set forth herein for the original proceeds of said sales and use tax and other revenue source, including restrictions set forth in this paragraph; and if such consideration is by its nature incapable of being so subject, then the proposed sale, exchange, transfer or disposition shall be unlawful and shall not be made.

4) Revenue collected by the city that is generated from activities on open space lands acquired with funds generated by this ordinance must be used to acquire, manage, patrol, improve and maintain open space lands consistent with this ordinance.

g. Use for Trails. Of the revenues received from the sales and use tax and other revenue sources, after deductions for planning as described in Section 3.a. above, a maximum of twenty percent (20%) of the revenues may be used to acquire an interest

in new open space land for new trails within the City; including the construction, acquisition and maintenance of new trails, and to join in partnerships with El Paso County, neighboring counties and municipalities incorporated therein, recreational districts or other governmental entities or land trusts, or with private individuals, corporations or entities, as would benefit the City residents by completing trail plans as they exist as of the passage of this ordinance. Such recreational capital improvements shall be limited to the purposes described in Section 1.m. of this ordinance.

h. Use for parks. Of the revenues received from the sales and use tax and other revenue sources, after deductions for planning as described in Section 3.a. above, a maximum of twenty percent (20%) of the revenues may be used to acquire an interest in new open space land for new park areas, including the construction and acquisition (but not maintenance) of new park area recreational capital improvements for the use and benefit of the public. Such recreational improvements shall be limited to the purposes described in Section 1.m. of this ordinance. Any funds or other revenue received pursuant to this ordinance that is spent on existing lands owned by the City may be spent only to establish new parks and related facilities thereon as are described in Section 1.m. of this ordinance.

CITIZENS ADVISORY COMMITTEE

4. If said sales tax is approved, the City Council shall establish and appoint a Trails, Open Space and Parks Advisory Committee which shall be charged with the following duties and responsibilities:

a. To make recommendations to the City Council regarding disbursements of funds from the Colorado Springs Trails, Open Space and Parks Fund, and the selection of open space land to be acquired, maintained, developed or preserved, and establishment of priorities therefor; and may by separate and additional resolutions promulgate such rules and regulations as may be required to implement this proposal for the best interests and preservation of the public peace, health, safety and welfare of the citizens of the City, including, without limiting the generality of the foregoing, all rules and regulations designed to assure that all proceeds from said taxes and other revenue sources, reimbursements, rebates or refunds thereof shall be used for the purposes set forth herein.

b. To make recommendations to the City Council concerning the Trails, Open Space and Parks program, to periodically review the open space elements of the comprehensive land use plans for both the City and the County of El Paso, to review the City Manager's budget as it relates to open space matters and to submit its recommendations concerning this budget to the City Council, and it may prepare and submit to the City Council, the City Manager, the Parks Department, the Utility Department or any other City department recommendations on any other matter relating to or affecting the open space program, and it may request and obtain from the City Manager, the Parks Department, the Utility Department or any other City department information relating thereto.

5. To assist the Advisory committee in carrying out its functions in an efficient manner, the Advisory Committee shall be authorized to recommend to City Council the expenditure of up to two percent (2%) of the revenues collected by the City to retain outside professional services to the extent necessary or appropriate. Such expenses shall be considered part of and count against the administration expenses described in Section 3.a of this ordinance, and subject to the limitations set forth therein.

6. The members of said Advisory Committee shall all be residents of the City, shall not hold elected public office, shall serve without pay and shall be appointed by the City Council. At a minimum, said Advisory Committee shall include at least one member from each of the following:

a. one (1) representative appointed at large selected from lists of nominees submitted by non-profit groups whose mission includes promoting and protecting open space lands;

b. one (1) representative appointed at large selected from lists of nominees submitted by non-profit neighborhood groups; and

c. one (1) representative appointed at large selected from lists of nominees submitted by non-profit groups whose mission includes promoting and protecting trails.

7. In the year 2009, the Advisory Committee shall draft language for and recommend to the City Council a ballot measure which shall be referred to the electors of the City in November 2010 concerning renewal of this ordinance.

BIENNIAL REVIEW

8. The City Council shall adopt regulations requiring biennial review by the City Council, with City and Advisory Committee participation, of the expenditures of all of the net proceeds from said sales tax and other revenue sources made for the preceding two (2) years, and of the proposed expenditures to be made during the next succeeding two (2) years when appropriate, with a view to establishing priorities therefor; and for such purpose the relevant official City audit reports shall be made available to the Advisory Committee and to the City Council.

EFFECTIVE DATE - EXPIRATION DATE

9. Upon adoption by the electorate at the election on April 1, 1997, or the sales and use tax to fund the trails, open space and parks program described in this ordinance, this ordinance shall become effective and in force at 12:01 a.m. on July 1, 1997, and shall expire at 12:00 a.m. on April 30, 2009, unless renewed by a vote of the electors of the City; and upon said expiration all monies remaining in any of the Funds created hereunder may continue to be expended for the purposes set forth herein until completely exhausted.

MISCELLANEOUS

10. Severability. If any section, paragraph, clause, or provision of this ordinance, or the ballot question submitted to the registered electors at the election shall be adjudged to be invalid or unenforceable, the invalidity or enforceability of such section, paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions of this ordinance or said ballot question. It is the intention of the City Council that the various parts of this ordinance and said ballot question are severable.

11. Repeal and Amendment. If this ordinance is approved by a majority of the registered electors of the City at the election to be held on April 1, 1997, its provisions shall not be repealed or amended except by a vote of the registered electorate of the City.

Section 2) If passed by the electorate, this ordinance shall be in full force and effect on July 1, 1997.

CLERK'S CERTIFICATE

I, HEREBY CERTIFY that the foregoing ordinance entitled "AN INITIATED ORDINANCE SUBMITTED TO THE ELECTORS OF THE CITY AT THE REGULAR GENERAL MUNICIPAL ELECTION ON APRIL 1, 1997 RELATING TO THE CREATION OF A TRAILS, OPEN SPACE AND PARKS PROGRAM THROUGH A SALES AND USE TAX" was placed upon the April 1, 1997, City of Colorado Springs General Municipal Election; that as a result of that election was adopted by the electorate on August 1, 1997; that the full text and title of said Ordinance was published as provided by the Charter of the City of Colorado Springs; and that that Ordinance becomes effective upon this publication as provided by the City Charter.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City this 11th day of April, 1997.

/s/ Kathryn M. Young*
City Clerk