

§ 14-16-3-8 DETACHED OPEN SPACE REGULATIONS.

In the RA-1, R-D, and other zones in areas designated by the master plan as "Developing" or "Semi-Urban," required open space may be in part on lots separate from the dwellings for which the open space is required (i.e., detached open space). Such detached open space need not be accessible to the residents of the related dwellings, but will preserve open space which is important to the whole community as well as to the residents of the related dwellings. The following regulations and policies apply to such detached open space:

- (A) Alternatives for the satisfaction of the open space requirements of residential zones other than SU-3 in areas designated by the master plan as Developing or Semi-Urban shall be the following:
 - (1) The land owner may elect to meet the total requirement on the dwelling's lot.
 - (2) The land owner may elect to meet the requirement for open space in excess of that met on the dwelling lot by giving the city payment in cash per the provisions of division (H) of this section.
 - (3) If the dwelling is in an area covered by a Sector Development Plan, the landowner may elect to meet the requirement for open space in excess of that met on the dwelling's lot by giving the city a suitable legal instrument preserving detached open space, in an amount equaling his dwelling's remaining obligation.
- (B) The owner of the detached open space shall forfeit permanently to the city by deed or other suitable legal instrument the right to use or develop such land other than as specified in division (E) of this section. The city may accept the land in fee simple, provided the other provisions of this section are met. Such deed or other legal instrument shall contain specifications consistent with this section and shall be filed for record with the County Clerk.
- (C) Detached open space offered to meet open space requirements shall be in a location designated by an adopted city plan either as open space or as a use listed in division (E) of this section, unless otherwise provided in a Sector Development Plan adopted prior to December 1, 1984. The city will refuse to accept the offered property interest as detached open space if, according to other plans, policies, and regulations, it must be dedicated in fee simple or easement for public right-of-way, drainage control, or neighborhood park. Notwithstanding the previous requirement, certain portions of drainage control areas may be accepted as detached open space as provided in § 14-5-2-10.
- (D) The city shall ensure that the detached open space remains in the uses listed below for at least so long as the related residential development exists. When such residential development no longer exists, the city may dispose of its open space rights, but only by trading its rights for open space rights of equal value on other land.
- (E) Uses shall be limited to uses similar to the following, which are found by the city to be beneficial to the whole community as well as to the residents of the dwellings which caused the land to be preserved for open space:
 - (1) Active and passive outdoor recreation.
 - (2) Agriculture (outdoor) and pasturing animals.
 - (3) Botanical parks open to the general public.

- (4) Lakes, waterways, flood water storage areas, and other public facilities for handling flood water.
 - (5) Land maintained in its natural state or being returned to a natural state.
 - (6) Structures and facilities incidental to the above uses.
- (F) If the land acquired under these provisions is owned in fee simple by the city, it may be leased to a private organization for recreational uses, but only if such uses will be open to the general public.
- (G) The city shall acquire and preserve open space, whether by dedication of an off-site property interest or by use of case given in lieu of land, in the general vicinity of the related dwelling which created the open space requirement, consistent with adopted city plans. If the dwelling's Sector Development Plan shows open space land, that land is the preferred location for meeting the dwelling's remaining open space obligation, and the Planning Director may require that it be used, to the extent that the owner gives off-site land for required open space. Before a property interest is acquired, the Planning Director shall certify that the land in question is a desirable open space acquisition which will contribute to the realization of the residential densities and open space patterns defined by the master plan.
- (H) If the city receives cash-in-lieu of open space,
- (1) The city shall make every reasonable effort to use the cash-in-lieu of land to acquire and preserve the amount of detached open space for which the related dwelling was obligated.
 - (2)
 - (a) The city shall spend the money with all due speed to acquire the same types of property interest that could have been accepted from the property owner in areas which will contribute to the realization of the residential densities defined by the master plan. The land should be in the general vicinity of the dwelling which requires the open space. Normally, the site will be designated as a park other than a neighborhood park or as open space by a Rank One, Two, or Three Plan of the city.
 - (b) Where the dwellings are in an area covered by a Sector Development Plan, it is particularly appropriate that such land within the Sector Plan area be acquired. It can also be appropriate to secure limited ownership interests in land appropriate for public support of agriculture in areas designated Semi-Urban or Rural and Open by the Albuquerque/ Bernalillo County Comprehensive Plan.
 - (3) The amount of money the city agrees to accept shall be based on the square foot value of the dwelling site immediately after the site is platted into lots or at the time of annexation and zoning, whichever comes later. The land owner shall obtain appraisal. If the city is not satisfied with this appraisal, the city and land owner will present their estimates of value to the Planning Commission at the public meeting for a determination. The decision of the Planning Commission shall be final; provided, however, in no event will the value be less than the latest appraisal value upon which taxes have been assessed by the Bernalillo County Assessor. This decision of the Planning Commission is not subject to appeal. If the land owner is unwilling to accept the Planning Commission's decision, the land owner will be required to provide the full amount of open space instead of substituting cash.
- (I) The open space requirement shall be met before a building permit is issued by the city.
- (J) No refunds or credits shall be given for lawfully required and received dedication of detached open space or cash-in-lieu thereof because the requirement had been reduced subsequently.

('74 Code, § 7-14-40H)

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